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Modernizing Civil Litigation in the Unique Landscape of Louisiana's State Court System

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INTRODUCTION

It is no secret that civil litigation practice in federal district courts has its fair share of differences from civil litigation practice in state district courts. Perhaps nowhere are these differences more pronounced than in Louisiana. Indeed, nearly all aspects of civil litigation practice in Louisiana's state court system differ in some way from the federal counterpart. Some of the most noticeable distinctions are the number of Articles in the Louisiana Code of Civil Procedure compared to the number of Rules in the Federal Rules of Civil Procedure[1] and the widely divergent filing and recordkeeping systems used by different state clerks of court compared to the standard, uniform system used throughout the federal clerks of court. Because of these differences—among many others—Louisiana has been slow to adapt its civil procedure rules to fit ever-evolving technological advances in modern civil litigation practice—especially rules concerning the use of electronic transmissions as the preferred method of communication and delivery—while the federal court system has remained at the forefront.

One problem stymying modernization of Louisiana's state court system is that there are budgetary and bureaucracy issues that limit all of Louisiana's district courts from adopting uniform standards for information technologies. Without any comprehensive statewide standards, practitioners must attempt to navigate the peculiarities of each district court while complying with the relevant provisions in the Louisiana Code of Civil Procedure, the Louisiana Revised Statutes, and the local court rules. In this respect, Louisiana's rules governing filing, service, and notice of court activity in civil cases are very different from their federal counterparts. Even so, there are many more external forces in play within Louisiana's state court system that can cause unnecessary costs and delays when attempting to follow its procedural rules.

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1. There are 5,251 articles in the Louisiana Code of Civil Procedure. In contrast, there are 86 Rules in the Federal Rules of Civil Procedure. As measured in 2016, at least 33 states have replicated the Federal Rules of Civil Procedure. Michael Vitiello, *Revising the Federal Rules of Civil Procedure: Carving Out a More Active Role for Congress*, 35 NOTRE DAME J.L. ETHICS & PUB. POL'Y 147, 148 n.15 (2021) (citing Stephen N. Subrin & Thomas O. Main, *Braking the Rules: Why State Courts Should Not Replicate Amendments to the Federal Rules of Civil Procedure*, 67 CASE W. RES. L. REV. 501, 536 (2016)). Louisiana is not one of them.

With that in mind, the Louisiana legislature has subscribed to the age-old wisdom of "better late than never" in its recent efforts to modernize civil litigation practice in Louisiana's state court system. Act 68 of the 2021 Regular Legislative Session and the creation of a Task Force to study and recommend uniform electronic filing and recordkeeping standards represent the latest of these efforts.[2] Act 68 of the 2021 Session has helped to usher in procedural rules that are more compatible with modern litigation practice. Attorneys now must designate an email address for service on every pleading that they file with the court. Pleadings and orders that set court dates can now be served by email, provided the sender obtains an electronic confirmation of delivery. Although there are unsettled issues concerning what such email service requires, the amendment is a welcomed change.

Additionally, House Bill 50 of the 2022 Regular Session would have furthered these modernization efforts by requiring the clerks of court to email notice of all signed court orders to all of the attorneys in the case. Disappointedly, however, House Bill 50 died in the committee stage, leaving the current patchwork of notice of judgment practices currently in place—although, perhaps not for much longer. The Task Force on Statewide Standards for Clerks of Court Electronic Filing and Record Retention is working tirelessly to facilitate uniform e-filing and recordkeeping standards throughout Louisiana's state court system by January 1, 2025. While an earlier target date would undoubtedly be preferable, the implementation of a uniform e-filing system across the state seems to be on the horizon. All of these recent and proposed changes will undoubtedly help to streamline litigation and promote efficiency among parties, lawyers, and district courts all across Louisiana.

Part I provides the constitutional backdrop of Louisiana's state court system and the relevant laws from which judicial district courts and their officers derive their duties and powers. It also highlights the impediments that stand in the way of uniform technological standards in every one of Louisiana's district courts. Part II outlines the pertinent laws governing filing, service, and notice of court activity in Louisiana's state court system and explains how those laws work in practice. Part III discusses the analogous laws governing filing, service, and notice of court activity in the federal court system, compares them to their state court analogs, and demonstrates why the federal court's system is superior. Part IV summarizes the Louisiana legislature's recent efforts—successful and unsuccessful—to bring Louisiana's state court system into the twenty-first

2. *See* Act No. 68, 2021 La. Acts; S. Res. 202, 2021 REG. LEG. SESS. (La. 2021).

century. Finally, Part V analyzes unsettled questions concerning some of the legislature's recent amendments. Ultimately, the objective of this Article is to bring Louisiana's outdated state court system into focus so that lawmakers can effect real change as expeditiously as possible.

I. A PRIMER ON LOUISIANA'S STATE COURT SYSTEM

Article 5 of the Louisiana Constitution of 1974 vests the judicial power "in a supreme court, courts of appeal, district courts, and other courts authorized by this Article."[3] In general, district courts have original jurisdiction of all civil and criminal matters.[4] The 1974 Constitution requires that each district court be composed of at least one parish and served by at least one district judge.[5]

The 1974 Constitution retained the judicial districts that were already in existence at the time it went into effect.[6] The 1974 Constitution also authorized the legislature to, by law, establish, divide, or merge judicial districts with approval via referendum in each affected district and parish, subject to the limitations set forth in the constitution.[7] Moreover, the 1974 Constitution authorized the legislature to change the number of judges in any judicial district by law enacted by two-thirds of each house.[8] Currently, there are 42 judicial districts that serve Louisiana's 64 parishes.[9] Twenty-eight judicial districts serve a single parish,[10] six judicial districts serve two parishes,[11] and eight judicial districts serve three parishes.[12]

The 1974 Constitution also sets forth the duties and powers of other court officers, including sheriffs and clerks of court.[13] In general, the sheriff "shall be the chief law enforcement officer in the parish, except as

3. LA. CONST. art. V, § 1.
4. *Id.* art. V, § 16(A).
5. *See id.* art. V, § 14.
6. *See id.* art. V, § 15(B).
7. *See id.*
8. *See id.* art. V, § 15(D).
9. *See* discussion *infra* notes 10, 11, 12.
10. These include the 1st, 8th, 9th, 10th, 11th, 12, 13th, 14th, 17th, 19th, 24th, 25th, 26th, 28th, 29th, 30th, 31st, 32nd, 33rd 34th, 35th, 36th, 37th, 38th, 39th, 40th, Orleans Parish, and 42nd Judicial Districts. *See Louisiana District Courts Judicial Districts*, LA. SUP. CT., https://www.lasc.org/About/MapsofJudicial Districts [https://perma.cc/T2AF-DXKG] (last visited July 12, 2022).
11. These include the 3rd, 4th, 7th, 20th, 22nd, and 26th Districts. *See id.*
12. These include the 2nd, 5th, 6th, 15th, 16th, 18th, 21st, and 23rd Districts. *See id.*
13. *See* LA. CONST. art. V, §§ 27, 28(A), 32.

otherwise provided by this constitution, and shall execute court orders and process . . . ."[14] The clerk "shall be *ex officio* notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law."[15] Notably, the 1974 Constitution requires the election of a sheriff and a clerk of the district court in each parish.[16] Thus, judicial districts serving multiple parishes have multiple sheriffs and clerks of court pursuant to the Constitution.

In addition to the state constitution, there are several other rules governing the way that Louisiana's court system operates in the context of civil litigation. These provisions derive from three sources: the Louisiana Code of Civil Procedure (the Code), the Louisiana Revised Statutes, and local district court rules.[17]

The Code was adopted in 1960 to, among other things, "revise the Code of Practice of the State of Louisiana by adopting a system of laws consolidating the procedural rules applicable generally to civil actions and proceedings; . . . [and] to provide for the continuous revision thereof . . . ."[18] Book I, Title I of the Code sets forth the rules governing the powers and duties of courts and their officers—namely, clerks of court and sheriffs. The rules applicable to clerks of court in Book I, Title I of the Code appear in Articles 251–288 while those applicable to sheriffs are found in Articles 321–334. These rules establish the foundation for and limitations of Louisiana's state court system.

Article 251 recognizes that the clerk of court "is the legal custodian of all of its records and is responsible for their safekeeping and

14. *Id.* art. V, § 27. However, Orleans Parish is governed by a different Section of Article V. *Id.*; *id.* art. V, § 32.

15. *Id.* art. V, § 28(A).

16. *See id.* art. V, §§ 27, 28(A), 32.

17. The Louisiana Supreme Court has constitutional authority to promulgate procedural and administrative rules applicable to district courts that are not in conflict with the law. *See id.* art. V, § 5(A). In exercising this authority, the Court established the "Uniform Rules for Louisiana District Courts and Juvenile Courts and Family Louisiana Family Law Proceedings" in order to supplement the Code. *See* LA. UNIF. DIST. CT. R. 1.0 cmt. (a) (2022). Additionally, Article 193 of the Code recognizes that the district courts have the power to adopt local rules "governing matters of practice and procedure" so long as those rules "are not contrary to the rules provided by law." *See* LA. CODE CIV. PROC. art. 193(A) (2023). The Appendices to the Uniform Rules are subordinate to the Uniform Rules. *See* LA. UNIF. DIST. CT. R. 1.0 cmt. b (2022).

18. *See* Act No. 15, 1960 La. Acts 22.

preservation."[19] As such, the clerk "may issue a copy of any of these records, certified by him under the seal of the court to be a correct copy of the original."[20] Moreover, except as otherwise provided by law, the clerk "shall permit any person to examine, copy, photograph, or make a memorandum of any of these records at any time during which the clerk's office is required by law to be open."[21] In connection with the clerk of court's role as record custodian, Article 253 requires that all pleadings or documents filed in a civil action instituted or pending in a court "shall be delivered to the clerk of the court for such purpose."[22] In turn, the clerk is required to "endorse thereon the fact and date of filing" and "retain possession thereof for inclusion in the record, or in the files of his office, as required by law."[23]

Pertinently, Paragraph B of Article 253 allows all filings with the clerk's office to be made electronically "in accordance with a system established by a clerk of court or by Louisiana Clerks' Remote Access Authority."[24] When "such a system is established," Article 253 requires the clerk of court to "adopt and implement procedures for the electronic filing and storage of any pleading, document, or exhibit . . . ."[25] In such circumstances, the official suit record is the electronic record.[26] Paragraph B further provides that "[a] pleading or document filed electronically is deemed filed on the date and time stated on the confirmation of electronic filing sent from the system, if the clerk of court accepts the electronic

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19. LA. CODE CIV. PROC. art. 251(A) (2023). Indeed, the Uniform District Court Rules require each clerk of court to maintain and destroy records according to law. *See* LA. UNIF. DIST. CT. R. 7.0 (2022).

20. LA. CODE CIV. PROC. art. 251(A) (2023).

21. *Id.*

22. *Id.* art. 253(A).

23. *Id.*

24. *Id.* art. 253(B). The Louisiana Clerks' Remote Access Authority (LCRAA) is established in Louisiana Revised Statutes § 13:754, to:

> [P]rovide for infrastructure, governance, standard operating procedures, technology, and training to support a statewide portal for secure remote access by internet users to certain records maintained by LCRAA members and shall provide assistance to LCRAA members in procuring, implementing, enhancing, and maintaining equipment, supplies, and services related to technology to facilitate electronic transactions and communications and to disseminate information to the public, to facilitate the operations of any member during any declared emergency, and to provide for document preservation.

LA. REV. STAT. § 13:754(B) (2023).

25. LA. CODE CIV. PROC. art. 253(B) (2023).

26. *Id.*

filing" and that the rules governing the public's access to physically filed documents also apply to the public's access to electronically filed documents.[27]

Importantly, the current law allows each of the 64 clerks of court to establish their own electronic filing and recordkeeping systems; *there is no uniform system used throughout the state*.[28] One possible reason for this is that "Louisiana does not have a unified state court funding system."[29] Although an annual state legislative appropriation funds the operations of the Louisiana Supreme Court and the five courts of appeal as well as the salaries and benefits for all state court judges, local governments primarily fund the operations of district, parish, and city courts.[30] As a result, the amount of money and resources available to each of the 42 district courts in the state varies by district. Consequently, while some district courts have implemented electronic filing and record management systems, others are not quite there yet.

Article 252 recognizes another one of the clerk of court's duties regarding civil actions filed in his or her particular court—the issuance of process. Specifically, Article 252 states that the clerk "shall issue all citations, writs, mandates, summons, subpoenas, and other process of the court in the name of the State of Louisiana" and "shall indicate thereon the court from which they issue, sign them in his official capacity, and affix the seal of the court thereto."[31] Additionally, "[i]f service by the sheriff is required, the clerk shall deliver or mail them to the sheriff who is to make the service."[32]

Correspondingly, Article 321 requires that the sheriff "shall serve citations, summons, subpoenas, notices, and other process, and shall execute writs, mandates, orders, and judgments directed to him by the district courts, the courts of appeal, and the supreme court."[33] Article 324 further requires that the sheriff "shall make a return to the issuing court on

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27. *Id.*

28. *See id.*

29. *See Judiciary Budget Information*, LA. SUP. CT., https://www.lasc.org/About/JudiciaryBudget [https://perma.cc/967X-UBVN] (last visited July 13, 2022).

30. *Id.* Moreover, district courts are not required to create a single, comprehensive budget that accounts for all funding sources pursuant to the Louisiana Local Government Budget Act. LA. REV. STAT. § 39:1301 (2023). Instead, district courts are only responsible for budgeting related to their judicial expense funds. *See id.* § 39:1302(k). Consequently, it is much more difficult for judicial oversight bodies to review district courts' overall finances.

31. LA. CODE CIV. PROC. art. 252 (2023).

32. *Id.*

33. *Id.* art. 321.

citations, summons, subpoenas, notices, and other process, and on writs, mandates, orders, and judgments, showing the date on which and the manner in which they were served or executed."[34] Nevertheless, Article 322 imposes a significant restriction on the sheriff in carrying out the foregoing duties, providing that he "may exercise his civil functions only in the parish for which he was elected."[35]

In short, as the federal courts and many other state courts' systems continue to advance, the structure of the Louisiana state district court system is not especially conducive to modernization. There are budgetary and bureaucracy issues that hinder the ability of all district courts to adopt uniform standards for information technologies. Without any such standards, practitioners must attempt to navigate the differing idiosyncrasies of each district court while complying with the pertinent provisions in the Code, the Revised Statutes, and the local court rules.

II. PERTINENT STATE COURT RULES GOVERNING FILING, SERVICE, AND NOTICE

There are three primary aspects of civil litigation in which Louisiana's state court system differs from the federal court system: (1) filing court documents; (2) serving process and subsequent papers; and (3) receiving notice of court activity. The Code sets forth the rules governing filing documents, service of citation and subsequent papers, and notice of court activity in civil cases pending in Louisiana's district courts. This Part details the relevant Code provisions bearing on each of those three subjects and explains how those provisions operate in practice.

A. *Commencement of Civil Action, Citation, and Service of Citation*

The Code defines a *civil action* as "a demand for the enforcement of a legal right."[36] A civil action "is commenced by the filing of a pleading presenting the demand to a court of competent jurisdiction."[37] The Code contemplates three "modes of procedure" used in civil actions in Louisiana district courts: ordinary proceedings, summary proceedings, and executory proceedings.[38] The Articles in Book II of the Code govern

34. *Id.* art. 324.

35. *Id.* art. 322. *See also* Thompson v. Emery, 53 So. 968, 968–69 (La. 1911) ("[S]heriff of the district court of St. Landry [Parish] is without authority to serve process in the [P]arish of Tangipahoa.").

36. LA. CODE CIV. PROC. art. 421 (2023).

37. *Id.*

38. *See id.* art. 851.

ordinary proceedings, "which are to be used in the district courts in all cases, except as otherwise provided by law."[39]

All ordinary proceedings must be commenced by filing a petition and serving the adverse party with citation.[40] Indeed, the essential elements in an ordinary proceeding are citation and service of process; "without them, the proceeding against that defendant is an absolute nullity."[41] The Code places the onus upon the plaintiff to request service of the citation in a timely manner.[42] Specifically, Article 1201 provides that "[s]ervice of the citation shall be requested on all named defendants within ninety days of commencement of the action."[43] The purpose of requiring that service be requested within 90 days of filing suit "is to insure that the defendant receives notice of the suit within a reasonable time after it has been commenced."[44]

Notably, the Code does *not* specify the person to whom the request for service of citation must be made, the manner in which the plaintiff must make the request, or when the request is deemed to be made.[45] However, under Article 1202, the clerk of court must prepare and issue the citation under the clerk's signature and seal of the court.[46] Hence, courts have determined that the initial request for service should be made to the clerk of court.[47]

The issue of what constitutes a valid request for service as defined in Article 1201 is fact specific to each case.[48] In any event, courts have found that "service of citation should be deemed 'requested' when the clerk receives service instructions from the plaintiff."[49] Thus, as long as the plaintiff provides sufficient service instructions to the clerk of court within 90 days of filing suit, the request is timely.

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39. *Id.*

40. *See* West v. Melancon, 843 So. 2d 485, 487 (La. Ct. App. 4th Cir. 2003).

41. FRANK L. MARAIST, CIVIL PROCEDURE § 8.2, *in* 1 LOUISIANA CIVIL LAW TREATISE (2d ed. 2001); *see also* LA. CODE CIV. PROC. art. 1201(A) (2023).

42. *See* LA. CODE CIV. PROC. art. 1201 (2023).

43. *Id.* art. 1201(C).

44. Draten v. Univ. Med. Ctr. Mgmt. Corp., 325 So. 3d 441, 445 (La. Ct. App. 4th Cir. 2021) (quoting Macquet v. Westbay, 302 So. 3d 564, 566 (La. Ct. App. 4th Cir. 2020)).

45. *See Draten*, 325 So. 3d at 445–46 (citing Tranchant v. State, 5 So. 3d 832, 835 (La. 2009); Parker v. Rite Aid Corp., 843 So. 2d 1140, 1141 (La. Ct. App 4th Cir. 2003)).

46. *See* LA. CODE CIV. PROC. art. 1202 (2023).

47. *Parker*, 843 So. 2d at 1141; *see also* Walker v. GoAuto Ins. Co., 323 So. 3d 918, 922–23 (La. Ct. App. 4th Cir. 2021).

48. *Draten*, 325 So. 3d at 445.

49. *Walker*, 323 So. 3d at 922 (citing *Tranchant*, 5 So. 3d at 835–36).

Once service is timely and properly requested, the clerk of court is responsible for issuing the citation to the person who is authorized to serve it on the defendant.[50] Article 1291 mandates that service of citation in the first instance "shall be made by the sheriff of the parish where service is to be made or of the parish where the action is pending" except as otherwise provided by law.[51] The sheriff is required, pursuant to Article 1292, to endorse on a copy of the citation the date, place, and method of service and provide any other information to show service in compliance with law.[52] After the sheriff makes service, he or she is further obligated to promptly return the copy of the citation to the clerk of court who issued it.[53]

Because Article 1291 generally gives the sheriff "first dibs" on service of citation, the clerk is obligated under Article 252 to deliver or mail the citation "to the sheriff who is to make service."[54] The Code does *not* specify the manner in which the clerk must deliver or mail the citation to the sheriff. The Code likewise does *not* specify the manner in which the sheriff must return the copy of the citation to the clerk after making service.[55] Further, recall that the sheriff can only exercise his or her civil functions (e.g., service of process) in the parish for which he or she was elected.[56] The foregoing uncertainties and limitations can result in fairly lengthy logistical delays.

For example, imagine that a lawsuit is filed in Orleans Parish, but the defendant must be served in Caddo Parish—which is in the opposite corner of the state from Orleans Parish. In that scenario, the Orleans Parish clerk must deliver or mail the citation to the Caddo Parish sheriff for service on the defendant in that parish.[57] In turn, the Caddo Parish sheriff must send his or her return promptly after the service to the Orleans Parish clerk,

50. *See* LA. CODE CIV. PROC. art. 252 (2023).

51. *Id.* art. 1291.

52. *Id.* art. 1292.

53. *Id.*

54. *See id.* art. 252. *But see* Hugh Eymard Towing, Inc. v. Aeroquip Corp., 776 So. 2d 472, 473 (La. Ct. App. 5th Cir. 2000) ("[W]hen it is the plaintiff's obligation to issue a certified copy of the citation and petition to the defendant under La. R.S. 13:3204, the plaintiff must mail the citation and petition within ninety days of commencement of the action. In a La. R.S. 13:3204 situation, the plaintiff's mere request for service to the Clerk of Court is insufficient because in actuality this is merely a request that the certified copy of the citation and petition be issued to the plaintiff. From here, the plaintiff has control over when the non-resident defendant receives notice of the claims against it.").

55. *See* LA. CODE CIV. PROC. art. 1292(A) (2023).

56. *See id.* art. 322.

57. *See id.* arts. 252, 1291.

pursuant to Article 1292.[58] Under these circumstances, weeks could pass before there is any record of service made on the defendant in Caddo Parish, assuming service is even made.

The only scenario that the Code[59] allows for someone *other* than the sheriff to serve a defendant with citation is if the sheriff fails to serve the defendant within ten days after receipt of the citation or if the sheriff has certified in his return that he has been unable to make service, whichever is earlier.[60] In those circumstances, a party can file a motion for the court to appoint a Louisiana resident who is over the age of majority and not a party to make service in the same manner required of the sheriff.[61] If the court grants the motion, service of citation made in this manner must be proven like any other fact in the case.[62] Unlike the sheriff, private process servers can make service anywhere in the state.[63]

Under Article 1231, service of citation "may be either personal or domiciliary, and except as otherwise provided by law, each has the same effect" and "may be made at any time of day or night, including Sundays and holidays."[64] Personal service is made when a proper officer (i.e., the sheriff, or failing that, a court-appointed process server) tenders the citation to the person to be served.[65] Personal service may be made anywhere the officer making the service may lawfully go to reach the

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58. *See id.* art. 1292(A).

59. The Long-Arm Statute's service provisions require the plaintiff to carry out service of the citation on non-resident defendants. *See Hugh Eymard Towing, Inc.*, 776 So. 2d at 473 ("[W]hen it is the plaintiff's obligation to issue a certified copy of the citation and petition to the defendant, under La. R.S. 13:3204, the plaintiff must mail the citation and petition within ninety days of commencement of the action. In a La. R.S. 13:3204 situation, the plaintiff's mere request for service to the Clerk of Court is insufficient because in actuality this is merely a request that the certified copy of the citation and petition be issued to the plaintiff. From here, the plaintiff has control over when the non-resident defendant receives notice of the claims against it.").

60. *See* LA. CODE CIV. PROC. art. 1293(A) (2023).

61. *See id.*

62. *Id.*

63. *Id.*

64. *Id.* art. 1231.

65. LA. CODE CIV. PROC. ANN. art. 1232 cmt. a (2022) (noting that LA. CODE CIV. PROC. arts. 1291 and 1293 should be consulted "with reference to persons who may make service, who, within the intent of this article are 'proper officers'"). *See also* LA. CODE CIV. PROC. art. 5251(12) (2023) (defining *person* as "an individual, partnership, unincorporated association of individuals, joint stock company, corporation, or limited liability company").

person to be served.[66] Conversely, domiciliary service is made when a proper officer leaves the citation "at the dwelling house or usual place of abode of the person to be served with a person of suitable age and discretion residing in the domiciliary establishment."[67] Service can also be made on a person who is represented by another via court appointment, by operation of law, or by mandate, through personal or domiciliary service on such representative.[68]

The manner of serving entity defendants with citation differs slightly. Service of citation on a domestic or foreign[69] corporation or limited liability company is made by personal service on any one of its agents for service of process.[70] If the corporation or limited liability company has no registered agent or if the person attempting to make service certifies that he is unable, after due diligence, to serve the designated agent, service of the citation may be made by any of the following methods:

> (1) personal service on any officer or director of the corporation, any manager if the limited liability company is manager-managed, or any member if the limited liability company is not manager-managed;
> (2) personal service on any employee of suitable age and discretion at any place where the business of the corporation or limited liability company is regularly conducted; or

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66. LA. CODE CIV. PROC. art. 1233 (2023). For reference to where the officer making the personal service may "lawfully go" to reach the person to be served, see *id.* art. 322, providing that a sheriff can only serve a party with process in the parish in which the sheriff was elected.

67. *Id.* art. 1234.

68. *Id.* art. 1235(A). The Code defines *legal representative* as "an administrator, provisional administrator, administrator of a vacant succession, executor, dative testamentary executor, tutor, administrator of the estate of a minor child, curator, receiver, liquidator, trustee, and any officer appointed by a court to administer an estate under its jurisdiction." *Id.* art. 5251(10). *See also id.* art. 374 ("A legal representative appointed or confirmed by a court is an officer of this court from the time of his qualification for the office until his discharge.").

69. *Id.* art. 5251(6) (defining *foreign corporation* as "a corporation organized and existing under the laws of another state or a possession of the United States, or of a foreign country").

70. *Id.* art. 1261(A) (regarding service on corporations); *id.* art. 1266(A) (regarding service on limited liability companies). *See also id.* art. 5251(2) ("'Agent for the service of process' means the agent designated by a person or by law to receive service of process in actions and proceedings brought against him in the courts of this state.").

> (3) service of process pursuant to the Long Arm Statute,[71] if the corporation or limited liability company is subject to its provisions.[72]

If all the foregoing options fail, the Louisiana Secretary of State can accept service on behalf of the corporation or limited liability company if the officer making service certifies that he or she is unable, after diligent effort, to serve the corporation or limited liability company by any of the foregoing methods.[73] In that event, the Secretary of State is required to forward the citation to the last known address of the corporation or limited liability company.[74] Under no circumstances, however, is domiciliary service proper on "a corporation or limited liability company because a corporate entity does not have a '*dwelling house* or *usual place of abode*,' nor does it have a '*domiciliary establishment*.'"[75]

B. Service of Subsequent Papers

After the original petition is filed and properly served, almost every contested dispute involves the filing of subsequent pleadings[76] by the parties.[77] Procedural due process requires that the adverse party receive fair notice of the content of every pleading and the action requested, as well as a reasonable opportunity to respond.[78] Accordingly, Article 1312

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71. *See* LA. REV. STAT. § 13:3201 (2023).

72. LA. CODE CIV. PROC. art. 1261(B)(1)–(3) (2023); *id.* art. 1266(B)(1)–(3).

73. *Id.* art. 1262 (regarding service on a corporation through the Secretary of State); *id.* art. 1267 (regarding service on limited liability company through the Secretary of State). If the party requesting service would have little difficulty ascertaining the information it needs to effect service on the corporation or limited liability company, that party cannot establish that it made a "diligent effort" to serve the corporation or limited liability company under Article 1261 or 1266 so as to allow service through the Secretary of State. *See* La. Dist. Council of Assemblies of God, Inc. v. Victory Temple Assembly of God, 376 So. 2d 169, 171 (La. Ct. App. 4th Cir. 1979).

74. LA. CODE CIV. PROC. arts. 1262, 1267 (2023).

75. *See* Adair Asset Mgmt., LLC/US Bank v. Honey Bear Lodge, Inc., 138 So. 3d 6, 15 (La. Ct. App. 1st Cir. 2014) (emphasis added) (citing Rue v. Messmer, 332 So. 2d 591, 593 (La. Ct. App. 4th Cir. 1976)).

76. The Code defines *pleadings* as "petitions, exceptions, written motions, and answers." LA. CODE CIV. PROC. art. 852 (2023). Additionally, "[a] copy of any written instrument that is an exhibit to a pleading is a part thereof." *Id.* art. 853.

77. 2 STEPHEN R. PLOTKIN, LOUISIANA CIVIL PROCEDURE, ART. 1312 (2021).

78. *Id.*

generally requires that "every pleading subsequent to the original petition shall be served on the adverse party as provided by Article 1313 or 1314, whichever is applicable."[79]

Importantly, Article 1313 allows parties to serve post-petition pleadings and other papers on the other parties through their counsel of record by any of the methods authorized in the Article.[80] This approach makes sense, given that the Code specifically requires every pleading of a party represented by counsel to designate his counsel's physical address and email address for service of process.[81] Still, the manner in which parties may serve post-petition pleadings and other papers under Article 1313 differs depending on the type of paper in question.

Under Article 1313(A), parties can serve post-petition pleadings via the sheriff, U.S. mail, hand delivery, or email.[82] If, however, a pleading or order sets a court date, Article 1313(C) imposes heightened requirements on the party making service.[83] To wit, Paragraph C mandates that service shall be made by registered mail, certified mail, the sheriff under Article 1314,[84] actual delivery by a commercial courier, or email to the email address designated by counsel for the party.[85]

Regarding service of post-petition pleadings by email under Paragraph A of Article 1313, Subparagraph (A)(4) recognizes that service "is complete upon transmission but is not effective and shall not be certified if the serving party learns the transmission did not reach the party to be

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79. LA. CODE CIV. PROC. art. 1312 (2023).
80. *See id.* art. 1313(A).
81. *See id.* art. 863(A).
82. *See id.* art. 1313(A).
83. *Id.* art. 1313(C).
84. Article 1314(A) states:

> A pleading which is required to be served, but which may not be served under Article 1313, shall be served by the sheriff by either of the following:
>
> (1) Service on the adverse party in any manner permitted under Articles 1231 through 1266.
>
> (2)(a) Personal service on the counsel of record of the adverse party or delivery of a copy of the pleading to the clerk of court, if there is no counsel of record and the address of the adverse party is not known.
>
> (b) Except as otherwise provided in Article 2293, service may not be made on the counsel of record after a final judgment terminating or disposing of all issues litigated has been rendered, the delays for appeal have lapsed, and no timely appeal has been taken.

Id. art. 1314(A).
85. *Id.* art. 1313(C).

served."[86] Conversely, as for email service of a pleading or order setting a court date, Paragraph C states that service "is complete upon transmission, provided that the sender receives an electronic confirmation of delivery."[87] This latter provision differs slightly from and ostensibly requires more than the former provision addressing the effectiveness of email service of other pleadings in Paragraph A (i.e., those that do *not* set a court date).

Paragraph B of Article 1313 provides that when service is made by mail, delivery, or email, "the party or counsel making the service shall file in the record a certificate of the manner in which service was made."[88] This certificate of service may be made by endorsement on the face or reverse of the pleading served or on a separate page annexed thereto.[89] Moreover, "[t]his 'Certificate of Service' is presumed to be correct, but not conclusively so, and may be refuted or amended and corrected when it is shown in an appropriate proceeding to be in error."[90]

C. Notice of Court Activity

The clerk of court is intimately connected with the judicial district court sitting in the parish where the clerk's office is located. Indeed, the clerk of court is an officer of that district court and is dutifully required to serve as the custodian of that court's records.[91] Despite this, there is currently no rule that specifically requires the clerk of court to immediately notify all of the parties in a case whenever the court issues any order.

Compounding this problem in the state district courts is current law providing that a party is only entitled to receive notice of a hearing from the clerk of court by certified mail at least ten days before the hearing if that party has filed a request for written notice into the record, pursuant to Article 1572.[92] Otherwise, each district court has its own procedures for

86. *Id.* art. 1313(A)(4).
87. *Id.* art. 1313(C).
88. *Id.* art. 1313(B).
89. LA. CODE CIV. PROC. ANN. art. 1313 cmt. c (1960).
90. *See* Hall v. Hall, 460 So. 2d 1053, 1056 (La. Ct. App. 2d Cir. 1984).
91. *See* LA. CODE CIV. PROC. art. 251(A) (2023).
92. Article 1572 states:

> The clerk shall give written notice of the date of the trial whenever a written request therefor is filed in the record or is made by registered mail by a party or counsel of record. This notice shall be mailed by the clerk, by certified mail, properly stamped and addressed, at least ten days before the date fixed for the trial. The provisions of this article may be waived by all counsel of record at a pre-trial conference.

Id. art. 1572.

providing adequate notice to all parties.[93] But, even if a party has filed a request for written notice in accordance with Article 1572, nothing in that Article mandates the clerk of court to serve a notice of hearing on the requesting party *more* than ten days before the hearing or in any manner other than certified mail.[94]

Irrespective of whether a party requests written notice under Article 1572, the only provisions in the Code mandating the clerk of court to notify all parties in a case of any court activity are Articles 1913 and 1914.[95] Article 1913 merely requires the clerk of court to *mail* a notice of signing of judgment to all counsel of record following the court's signing of a final judgment under Article 1915.[96] The clerk is also required, pursuant to Article 1913, to "file a certificate in the record showing the date on which, and the counsel and parties to whom, notice of the signing of judgment was mailed."[97] However, Article 1913 does *not* require the clerk to send the notice of signing of judgment to all counsel of record in any particular manner except by *mail*.[98] Likewise, Article 1913 does *not* impose any time restrictions on the clerk for mailing the notice of signing of judgment to all of the parties.

Similarly, Article 1914 only requires the clerk of court to *mail* notice of an interlocutory judgment to all counsel of record in certain situations.[99] Article 1914 also does *not* require the clerk to send the notice in any particular manner except by mail, nor does it impose any time restrictions on the clerk for mailing the notice to all of the parties.[100]

The most critical aspect of the notice requirements in Articles 1913 and 1914 is that they trigger the delays for post-trial motions, supervisory

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93. *See id.* art. 1571(A)(1) ("The district courts shall prescribe the procedure for assigning cases for trial, by rules which shall . . . [r]equire adequate notice of trial to all parties . . . .").

94. *See id.* art. 1572.

95. *See id.* arts. 1913(A), 1914(B)–(C).

96. *See id.* art. 1915.

97. *See id.* art. 1913(D).

98. *Id.*

99. *See id.* art. 1914(B)–(C).

100. *But see id.* art. 966(C)(1)(b), which provides that "[n]otice of the hearing date [on a motion for summary judgment] shall be served on all parties in accordance with Article 1313(C) or 1314 not less than thirty days prior to the hearing." However, this provision does not specifically direct the clerk of court to serve this "notice of hearing date." *See* Taylor E. Brett, *Another Call to Amend Louisiana Code of Civil Procedure Article 966 to Promote Efficiency, Practicality, and Alignment with the Explicit Purpose of Summary Judgment Procedure*, 68 LOY. L. REV. 223, 243–49 (2022).

writs, and appeals.[101] These delays commence running on the date that the clerk *mails* the notice—*not* on the date the notice is *received*.[102] Therefore, it is certainly foreseeable that a party against whom judgment is rendered might not receive notice of the court's judgment for several days after the clerk mailed it—especially if the district court is located across the state from the office of the party's attorney. Moreover, if the clerk of court's office does not have a system for maintaining electronic court records that is accessible to the public, the party affected by the court's judgment would not be able to monitor the docket in its case before the clerk's notice arrives in the mail. This would effectively shorten the affected party's deadlines for seeking modification or review of the court's judgment against it.

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101. *See, e.g.*, LA. CODE CIV. PROC. art. 1811(A) (2023) ("Not later than seven days, exclusive of legal holidays, *after the clerk has mailed . . . the notice of judgment under Article 1913*, a party may move for a judgment notwithstanding the verdict." (emphasis added)); *id.* art. 1974 ("A party may file a motion for a new trial not later than seven days, exclusive of legal holidays, *after the clerk has mailed . . . the notice of judgment as required by Article 1913*." (emphasis added)); *id.* 1914(C) ("If the interlocutory judgment is one refusing to grant a new trial or a judgment notwithstanding the verdict, *the clerk shall mail notice to each party regardless of whether the motion is taken under advisement. The delay for appealing the final judgment commences to run only from the date of the mailing of the notice, as provided in Articles 2087 and 2123*." (emphasis added)); *id.* art. 2087(A) (providing that a devolutive appeal may be taken within sixty days from: (1) "[t]he expiration of the delay for applying for a new trial or judgment notwithstanding the verdict, as provided by Article 1974 and Article 1811, if no application has been filed timely"; or (2) "[t]he date of the mailing of notice of the court's refusal to grant a timely application for a new trial or judgment notwithstanding the verdict, as provided under Article 1914"); *id.* art. 2123(A) (providing that a suspensive appeal may be taken within thirty days from (1) "[t]he expiration of the delay for applying for a new trial or judgment notwithstanding the verdict, as provided by Article 1974 and Article 1811, if no application has been filed timely"; or (2) "[t]he date of the mailing of notice of the court's refusal to grant a timely application for a new trial or judgment notwithstanding the verdict, as provided under Article 1914"); LA. UNIF. R. CT. OF APPEAL R. 4-3 (2022) ("The judge who has been given notice of intention as provided by Rule 4-2 shall immediately set a reasonable return date within which the application shall be filed in the Court of Appeal. The return date in civil cases *shall not exceed 30 days from the date of notice of judgment, as provided in La. C.C.P. art. 1914*." (emphasis added)).

102. *See, e.g.*, Fraternal Ord. of Police v. City of New Orleans, 831 So. 2d 897, 900 (La. 2002); Coxe Prop. Mgmt. & Leasing v. Woods, 46 So. 3d 258, 260 (La. Ct. App. 4th Cir. 2010).

As the above example illustrates, there can be serious consequences for litigants in Louisiana's archaic district court system. These consequences would be obsolete if a modernized, uniform filing and recordkeeping system was used in every district court. It is imperative for Louisiana's district courts to get with the times so that parties are not kept in the dark about any aspect of their cases.

III. PERTINENT FEDERAL COURT RULES GOVERNING FILING, SERVICE, AND NOTICE

As previously mentioned, the three aspects of civil litigation in which the differences between Louisiana's state court system and the federal court system are most prevalent are: (1) filing court documents; (2) serving process and subsequent papers; and (3) receiving notice of court activity. The Federal Rules of Civil Procedure contain the rules governing filing documents, service of process and subsequent papers, and notice of court activity in civil cases pending in federal district courts. This Part details the relevant Federal Rules governing each of those three subjects and explains how those rules work in practice.

A. Commencement of Civil Action, Summons, and Service of Summons

Under the Federal Rules of Civil Procedure, a civil action in federal court commences by filing a complaint with the court.[103] Upon or after filing the complaint, the plaintiff may present a summons to the clerk, which, if properly completed by the plaintiff, the clerk must sign, seal, and issue to the plaintiff for service on the defendant.[104] This differs from the state court procedure wherein the plaintiff simply submits a request to the clerk that service of citation be made on the defendant, upon which the clerk prepares the citation and issues it to the person who will make service (i.e., the sheriff or court-appointed process server if the sheriff fails to serve the citation).[105] Additionally, under the Federal Rules, the *plaintiff* is responsible for having the summons and complaint timely and properly served on the defendant.[106] In contrast, the Code requires only that the plaintiff timely *request* service of citation.[107] Thus, in federal courts,

103. FED. R. CIV. P. 3.

104. *See id.* 4(b).

105. *Cf.* LA. CODE CIV. PROC. arts. 252, 1201–02 (2023).

106. *See* FED. R. CIV. P. 4(c)(1); *see also id.* 4(m) (requiring service of the summons on the defendant within 90 days after the complaint is filed).

107. *Cf.* LA. CODE CIV. PROC. art. 1201(A) (2023). *But see* Hugh Eymard Towing, Inc. v. Aeroquip Corp., 776 So. 2d 472, 473 (La. Ct. App. 5th Cir. 2000)

effectuating service of process is entirely in the plaintiff's hands, whereas in Louisiana courts, the clerk and the sheriff handle service after receiving the plaintiff's instructions. While the latter scenario may appear like less of a hassle for the plaintiff, in practice, parties just as well may prefer to oversee service of process themselves instead of relying on the clerk and the sheriff—especially in situations like the Orleans Parish-Caddo Parish hypothetical posed in Part II.A, *supra*. In this way, the Federal Rules do not impose nearly as much "red tape" as the Code.

Further, the Federal Rules allow "[a]ny person who is at least 18 years old and not a party [to] serve a summons and complaint."[108] Thus, unlike the Code, the Federal Rules do not require that a sheriff or some other law enforcement officer get "first dibs" on serving the summons before anyone else can do so.[109] Unless service is waived, proof of service under the Federal Rules must be made to the court, which, except for service by a U.S. marshal or deputy marshal, must be by the server's affidavit.[110]

If the defendant is an individual who is in the United States, the defendant may be served in a judicial district of the United States by:

> (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
> (2) doing any of the following:
>
> (A) delivering a copy of the summons and of the complaint to the individual personally;
>
> (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
>
> (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.[111]

("[W]hen it is the plaintiff's obligation to issue a certified copy of the citation and petition to the defendant under La. R.S. 13:3204, the plaintiff must mail the citation and petition within ninety days of commencement of the action. In a La. R.S. 13:3204 situation, the plaintiff's mere request for service to the Clerk of Court is insufficient because in actuality this is merely a request that the certified copy of the citation and petition be issued to the plaintiff. From here, the plaintiff has control over when the non-resident defendant receives notice of the claims against it.").

108. FED. R. CIV. P. 4(c)(2).

109. *Cf.* LA. CODE CIV. PROC. arts. 1291–93 (2023).

110. FED. R. CIV. P. 4(1)(1).

111. *Id.* 4(e).

Hence, the Federal Rules allow service of the summons to be made in the same manner allowed under the forum state's laws governing service of process or the laws governing service of process in the state where service is made.[112] Thus, in cases pending in Louisiana's federal district courts, the plaintiff can use the Code's provisions governing service of citation to effectuate service on the defendant.[113] But, practically speaking, it would not make sense to use that option, at least with respect to having the sheriff serve the defendant, given the sheriff's jurisdictional limitations.[114]

Fortunately, the Federal Rules provide other options for serving the summons on an individual defendant—personal service on the individual, domiciliary service, or personal service on the individual's authorized agent.[115] These methods are essentially no different than the analogous provisions in the Code governing service of citation on an individual defendant, except the Federal Rules allow more flexibility in *who* can serve the summons on the defendant by using any of these methods.[116]

The Federal Rules's provisions governing service of summons on entity defendants are somewhat similar in this respect.[117] Pertinently, if the defendant is a domestic or foreign corporation, partnership, or other unincorporated association that is subject to suit under a common name, the defendant may be served:

> (1) in a judicial district of the United States:
>
> (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or
>
> (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant . . . .[118]

As explained above, Rule 4(e)(1) authorizes service in any judicial district of the United States by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the

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112. *Id.*
113. *See* LA. CODE CIV. PROC. arts. 1231–35 (2023).
114. *Id.* art. 322.
115. *See* FED. R. CIV. P. 4(e)(2)(A)–(C).
116. *Compare* LA. CODE CIV. PROC. arts. 1231–35 (2023), *with* FED. R. CIV. P. 4(c)(2).
117. *Cf.* FED. R. CIV. P. 4(h)(1)(A)–(B).
118. *Id.*

district court is located or where service is made . . . ."[119] Therefore, in cases pending in Louisiana's federal district courts, the plaintiff can use the Code's provisions governing service of citation to make service on the entity defendant.[120] Again, however, the Code's preference for the sheriff's service carries with it bureaucratic jurisdictional limitations.[121]

The alternative method for serving the entity defendant under the Federal Rules is by delivering the summons and complaint to an officer, managing or general agent, or any other authorized agent of the entity.[122] This is somewhat similar to the analogous Code provisions governing service on entity defendants.[123] The biggest differences, however, are that the Code requires service on the entity's registered agent, and only if the entity does not have a registered agent is service on its officers or employees proper.[124] In this regard, the Federal Rules offer more flexibility by not imposing any exhaustion requirements before serving an entity defendant through its officers or employees.

B. Service of Subsequent Papers

Rule 5 of the Federal Rules of Civil Procedure does two things: "First, it dictates the manner in which parties not in default for failure to appear shall be served with all papers and pleadings subsequent to the service of the summons and original complaint.[125] Second, it directs the filing of those papers."[126] With regard to the Rule 5's first objective—service of post-complaint papers—the Rule provides:

> A paper is served under this rule by:
> (A) handing it to the person;
> (B) leaving it:

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119. FED. R. CIV. P. 4(e)(1).

120. *See* LA. CODE CIV. PROC. arts. 1261–67 (2023); *see also* LA. REV. STAT. § 13:3204 (2023).

121. *See* LA. CODE CIV. PROC. art. 322 (2023); *cf.* Hugh Eymard Towing, Inc. v. Aeroquip Corp., 776 So. 2d 472, 473 (La. Ct. App. 5th Cir. 2000) (Those same limitations are not implicated when service is made pursuant to the Long Arm Statute, however, because the plaintiff, rather than the sheriff, is responsible for delivering the citation to the defendant in accordance with the requirements of the statute.); *see also* LA. REV. STAT. §§ 13:3201, 13:3204, 13:3205 (2023).

122. FED. R. CIV. P. 4(h)(1)(B).

123. *See* LA. CODE CIV. PROC. arts. 1261–67 (2023).

124. *See id.* arts. 1261(B)(1)(3), 1266(B)(1)–(3).

125. 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1141 (4th ed. 2022).

126. *Id.*

> (i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
> (ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
> (C) mailing it to the person's last known address—in which event service is complete upon mailing;
> (D) leaving it with the court clerk if the person has no known address;
> (E) sending it to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or
> (F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.[127]

Thus, Rule 5 allows a broader range of options for serving post-complaint papers than Articles 1312–1314 of the Code.[128] Moreover, unlike Article 1313(C) of the Code, Rule 5 does not impose any special requirements for serving a paper that sets a court date.[129] The only additional requirement for serving post-complaint papers under Rule 5 is that if a party is represented by counsel, service of any paper under the Rule *must* be made on the party's attorney unless the court orders service on the party.[130]

Rule 5's second objective is to facilitate "a system for the filing of papers with the clerk that will create an orderly court record for each case."[131] Rule 5(d) mandates that any post-complaint paper that requires service be filed no later than a reasonable time after service but exempts certain discovery papers from this filing requirement.[132] The Rule

127. FED. R. CIV. P. 5(b)(2)(A)–(F).
128. *Cf.* LA. CODE CIV. PROC. arts. 1312–14 (2023).
129. *Cf. id.* arts. 1313(C), 1314.
130. FED. R. CIV. P. 5(b)(1).
131. WRIGHT & MILLER, *supra* note 125, § 1141.
132. *See* FED. R. CIV. P. 5(d)(1)(A) ("[D]isclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories,

delineates the requirements applicable to electronic filings and non-electronic filings.[133]

Incidentally, there has been a growing trend and an increasing preference toward electronic filing in the federal court system over the last two decades.[134] Indeed, in 2001, the federal judiciary began the "process of installing the case management/electronic case files (CM/ECF) system in bankruptcy, district, and appellate courts."[135] That "system now operates throughout the federal judiciary."[136] With CM/ECF,

> service is made by the system in the form of an automatically generated notice of electronic filing, which includes a hyperlink to where the filed document may be viewed and downloaded, that is sent to the attorneys representing other parties involved in the case if the attorneys are registered with the system.[137]

As such, when a paper is served by filing it with the court's CM/ECF system, no certificate of service is required.[138]

In 2018, Congress amended Rule 5 to provide that: (1) "any person represented by an attorney *must* file electronically, unless the court allows non-electronic filing for good cause or non-electronic filing is allowed or required by local rule;" and (2) filing a document with the court's electronic filing system constitutes effective service on all registered users in the court's CM/ECF system.[139] Thus, the Federal Rules now effectively require represented parties to file most papers electronically via CM/ECF. And "while Rule 5(b)(2)(E) still requires written consent from the persons served via electronic means[,] . . . many, if not all, federal courts require attorneys and *pro se* users to give consent to electronic service before being allowed to register to use CM/ECF."[140] Louisiana's federal district courts have adopted variations of this rule in their administrative procedures.[141] Consequently, email service of filed documents is now the

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requests for documents or tangible things or to permit entry onto land, and requests for admission.").

133. *See* FED. R. CIV. P. 5(d).

134. *See* WRIGHT & MILLER, *supra* note 125, § 1147.

135. *Id.*

136. *Id.*

137. *Id.*

138. *See* FED. R. CIV. P. 5(d)(1)(B).

139. WRIGHT & MILLER, *supra* note 125, § 1147 (citing FED. R. CIV. P. 5(b)(2)(E)); *see also id.* § 1153 (citing FED. R. CIV. P. 5(d)(3)(A)).

140. *See id.* § 1147.

141. *See* U.S. DIST. CT. R.E.D. LA. ECF Admin. Proc. R. 2; U.S. DIST. CT. R. M.D. LA. ECF Admin. Proc. R. I.A, D, E.3; U.S. DIST. CT. R. W.D. LA. ECF

standard in federal courts and occurs automatically upon an electronic filing by way of CM/ECF.[142] In this way, the CM/ECF system has made filing, serving, and accessing electronically filed papers coterminous.

Louisiana's state court system could not be more different from the federal judiciary in this respect. As previously explained, many of the issues with Louisiana's state court system stem from the lack of uniformity among the 42 judicial district courts, particularly with regard to electronic filing and recordkeeping practices. Instead, Article 253 tasks each of the clerks of court with establishing their own electronic filing and recordkeeping systems.[143] Article 253 further provides that "[t]he clerk of court may procure equipment, services, and supplies necessary to accommodate electronic filings out of the clerk's salary fund."[144] The clerk's salary fund is a fund into which all fees and charges due to the clerk of court's office are deposited and from which the clerk is required to pay expenses of his or her office, as well as salaries and benefits to certain employees.[145] So, if the clerk decides to implement an electronic filing system for his or her district court, the costs of implementing such a system would diminish the amount of money available in the fund to pay other required expenses. Presumably, this is one reason why: (1) electronic filing is not universally available in all of Louisiana's state district courts; and (2) every clerk of court's office is not equipped with online public access to docket records.

C. Notice of Court Activity

Another one of the many perks of the CM/ECF system is that registered users receive an automated electronic notice of filing not only when a party in their case files something, but also when the court takes any type of action in the case. Thus, regardless of whether the court issues a ruling in the case or simply sets a conference with the parties, the parties will instantaneously receive an email from the CM/ECF system notifying them of the court's activity and giving them access to the online docket to

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Admin. Proc. R. I.A.1, C, D.1; *see also* Advisory Committee Note to the 2018 amendments to Rule 5(b) (advising that "a party who registers [for the court's CM/ECF system] will be subject to service through the court's facilities unless the court provides otherwise").

142. *See* U.S. DIST. CT. R. E.D. LA. ECF Admin. Proc. R. 2; U.S. DIST. CT. R. M.D. LA. ECF Admin. Proc. R. I.A, D, E.3; U.S. DIST. CT. R. W.D. LA. ECF Admin. Proc. R. I.A.1, C, D.1.

143. *See* LA. CODE CIV. PROC. art. 253(B) (2023).

144. *Id.* art. 253(G).

145. *See* LA. REV. STAT. §§ 13:781(A), 13:783, 13:783.1 (2023).

view the court's order. This benefits all litigants, as it gives parties the opportunity to quickly react and formulate the appropriate course of action whenever another party files something or the court issues an order.

Needless to say, the federal courts' CM/ECF system is exponentially more efficient than the analogous patchwork of different filing and recordkeeping systems among Louisiana's state district courts. Making matters worse in the state district courts is that there is presently no comparable provision regarding automated electronic notice of court activity under the Code.

Indeed, under the current law, a party is only entitled to receive notice of a hearing from the clerk of court by certified mail at least ten days before the hearing if that party has filed a request for written notice into the record pursuant to Article 1572.[146] Otherwise, each district court has its own procedures for providing adequate notice to all parties.[147] But, as previously mentioned, even if a party has filed a request for written notice in accordance with Article 1572, nothing in that Article mandates the clerk of court to serve a notice of hearing on the requesting party *more* than ten days before the hearing or in any manner other than certified mail. Moreover, under Articles 1913 and 1914, the clerk is only required to mail the notice of judgment to all counsel of record.[148] Those provisions do not impose any time constraints within which the clerk must mail the notice.[149] Further compounding this problem is that the date the clerk mails the notice, rather than the date the affected party receives it, is the triggering event that starts the clock on important deadlines concerning post-judgment motions, supervisory writs, and appeals.

Thus, unlike the federal court system, there is currently no rule or method in Louisiana's state court system that entitles litigants to receive prompt notice of court activity in their cases. The scenario regarding appellate deadlines in Part II.C, *supra*, highlights the significant

146. LA. CODE CIV. PROC. art. 1572 (2023) ("The clerk shall give written notice of the date of the trial whenever a written request therefor is filed in the record or is made by registered mail by a party or counsel of record. This notice shall be mailed by the clerk, by certified mail, properly stamped and addressed, at least ten days before the date fixed for the trial. The provisions of this article may be waived by all counsel of record at a pre-trial conference.").

147. *See id.* art. 1571(A)(1) ("The district courts shall prescribe the procedure for assigning cases for trial, by rules which shall … [r]equire adequate notice of trial to all parties . . . .").

148. *See id.* arts. 1913(A), 1914(B)–(C).

149. *See id.* arts. 1913(A), 1914(B)–(C).

consequences that can result under Louisiana's current rules. This may be the biggest issue in Louisiana's archaic state court system.[150]

IV. RECENT LEGISLATIVE EFFORTS TO MODERNIZE CIVIL LITIGATION IN LOUISIANA'S STATE COURT SYSTEM

Fortunately, the Louisiana legislature has had its sights set on solutions for modernizing civil litigation practice in the state court system in recent legislative sessions.[151] While some of these legislative efforts have undoubtedly changed components of Louisiana's outdated state court system for the better, other efforts failed to do so. Either way, the work is far from over.

A. Email Service is Now Authorized Under Article 1313(C)[152]

The legislature took a significant step in the right direction when it passed Act No. 68 of the 2021 Regular Legislative Session, which "provide[d] for the modernization of certain provisions of the Code of Civil Procedure."[153] Among other things, Act 68 amended Article 1313(C) "to allow service of a pleading or order setting a court date by emailing the party or his counsel at a designated email address, provided that the sender receives an electronic confirmation of delivery."[154]

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150. This problem is unlikely entirely fixable by legislation, as streamlining filing and recordkeeping systems among all 42 district courts is more of an administrative budgetary issue. The Judicial Budgetary Control Board is responsible for establishing rules and regulations to govern the expenditure of all funds appropriated by the legislature to the Louisiana judiciary and judicial agencies. *See* LA. SUP. CT. GEN. ADMIN. R., Part G, § 4. Additionally, the Louisiana Clerks' Remote Access Authority would likely have a say in how any funds appropriated to the Louisiana judiciary and judicial agencies should be allocated for the creation and implementation of a comprehensive uniform electronic filing and recordkeeping system used on a statewide basis. *See* LA. REV. STAT. ANN. § 13:754 (2021).

151. *See* Act No. 68, 2021 La. Acts; S. Res. 202, 2021 REG. LEG. SESS. (La. 2021); S. Res. 27, 2022 REG. LEG. SESS. (La. 2022); H.B. 50, 2022 REG. LEG. SESS. (La. 2022).

152. This Subpart contains excerpts from the author's *Loyola Law Review* Article titled *Another Call to Amend Louisiana Code of Civil Procedure Article 966 to Promote Efficiency, Practicality, and Alignment with the Explicit Purpose of Summary Judgment Procedure*. *See* Brett, *supra* note 100.

153. 2021 LA. SESS. LAW SERV. Act 68 (La. 2021).

154. LA. CODE CIV. PROC. ANN. art. 1313. cmt. (2021).

Before the passage of Act 68, service of a pleading or an order that sets a court date was proper under Article 1313(C) if made by registered mail, certified mail, the sheriff under Article 1314, or actual delivery by a commercial courier.[155] The amended Article 1313(C) enables parties to avoid the added expenses associated with serving physical copies of pleadings and orders setting a court date via certified mail, registered mail, the sheriff, or commercial courier. This is particularly advantageous when serving motions for summary judgment, which often include voluminous exhibits attached to the motion. Moreover, email service is instantaneous, whereas delivering pleadings via the other methods in Article 1313(C) often takes at least one business day and often times, more than that. Consequently, if a party uses any of the other methods for service under Article 1313(C), that party effectively shortens already tight deadlines for making timely service under most scenarios. Email service avoids this dilemma.

Consistent with the new amendment to Article 1313(C), Act 68 also amended Articles 863(A) and 891(A) to further require every pleading to include an email address of the party or the party's attorney for service. Specifically, the amended Article 863(A) states:

> Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose physical address *and email address for service of process shall be stated*. A party who is not represented by an attorney shall sign his pleading and state his physical address *and email address*, if he has an email address, for service of process. If mail is not received at the physical address for service of process, a designated mailing address shall also be provided.[156]

The amended Article 891(A) states:

> The petition *shall comply with Articles* 853, 854, *and 863*, and, whenever applicable, with Articles 855 through 861. It shall set forth the name, surname, and domicile of the parties; shall contain a short, clear, and concise statement of all causes of action arising out of, and of the material facts of, the transaction or occurrence that is the subject matter of the litigation; *shall designate* a physical address, not a post office box, *and an email address for receipt of service of all items involving the litigation*; and shall conclude with a prayer for judgment for the relief sought. Relief

155. *See id.* art. 1313(C) (amended 2021).
156. *Id.* art. 863(A) (emphasis added).

may be prayed for in the alternative.[157]

The changes to Articles 863(A) and 891(A) facilitate email service under the amended Article 1313(C) by requiring attorneys to designate an email address for service in every pleading that they sign. In today's world, these changes are important to streamline litigation and avoid unnecessary delays caused by antiquated procedural rules.

B. Task Force Created for Clerks of Court Electronic Filing and Record Keeping Standards

Another positive outcome from the 2021 Legislative Session was the passage of Senate Resolution 202, which created the Task Force on Statewide Standards for Clerks of Court Electronic Filing and Record Retention "to develop statewide standardized electronic filing and record retention procedures, including studying the costs and benefits of such standardized procedures, and studying existing procedures for the management and disposal of paper records, documents, and filings . . . ."[158] Senate Resolution 202 provided that the task force was to propose recommendations, together with specific proposals for legislation, by written report to the legislature no later than February 15, 2022.[159] The task force's deadline was subsequently extended to October 31, 2022, by way of Senate Resolution No. 27 of the 2022 Regular Session.[160]

The task force met on April 1, 2022, during the 2022 Regular Session to discuss several issues relating to modernizing litigation practice in Louisiana's state court system.[161] Among those topics was setting a timeframe for the clerks of court to have uniform e-filing capabilities along with best practices and minimum standards.[162] Ultimately, the task force determined that January 1, 2025, was the appropriate time frame for the clerks of court to implement these measures.[163] Thus, while the goal of modernizing Louisiana's state court system is undeniably on the legislature's mind, that goal is still years away.

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157. *Id.* art. 891(A) (emphasis added).
158. *See* S. Res. 202, 2021 REG. LEG. SESS. (La. 2021).
159. *Id.*
160. *See* S. Res. 27, 2022 REG. LEG. SESS. (La. 2022).
161. *See Task Force on Statewide Standards for Clerks of Court Electronic Filing and Record Retention Meeting Minutes*, STATE OF LA. (Apr. 1, 2022), https://legis.la.gov/archive/2022/4989.pdf [https://perma.cc/2ZXT-GJDY].
162. *Id.*
163. *Id.*

C. Clerk of Court Still Not Required to Email Notice of Judgment to Counsel of Record

During the 2022 Regular Session, one bill sought to fill the void that exists under the current law regarding how the clerk of court must provide notice of a signed judgment to all counsel in a lawsuit.[164] Specifically, House Bill No. 50 sought to enact a new provision in the Code, Article 1913.1, which would have required the clerk of court to send notice of signed court orders to all counsel of record via U.S. mail and email and would have also required the clerk to certify in the record the date on which and to whom the order was sent.[165] The spirit of House Bill 50 continued the legislative trend of modernizing civil litigation practice in Louisiana's state court system and would have built off the 2021 amendments to Articles 863(A), 891(A), and 1313(C) by bringing the clerk's office into the fold. Now that all attorneys must include an email address on every pleading filed with the court, the clerks of court have all the information necessary to contact counsel via email.

Had it passed, House Bill 50 may have obviated the necessity of filing a written request for notice under Article 1572 because it would have mandated the clerk of court send all signed court orders to the parties, irrespective of whether the parties had filed a request for written notice. More importantly though, had House Bill 50 passed, the proposed law would have helped to immediately apprise lawyers of the court's rulings in their cases, which frequently can trigger significant case deadlines. Therefore, although House Bill 50 did not propose a top-down, system-wide legislative overhaul of Louisiana's 42 district courts, the proposed law would have been an extremely positive step in the right direction toward bringing civil litigation practice in Louisiana's state court system up to date. Unfortunately, however, House Bill 50 never made it past the House Committee on Civil Law and Procedure for undisclosed reasons. Consequently, the status quo remains.

V. LINGERING QUESTIONS OF COMPLIANCE WITH EMAIL SERVICE REQUIREMENTS IN RECENT LEGISLATIVE AMENDMENTS

Aside from the incomplete and failed legislative efforts outlined in the previous part, the legislation that did pass did not resolve everything it sought to fix. Most, if not all, of the problems with Louisiana's state court system discussed in this Article are traceable to the lack of a

164. *See* H.B. 50, 2022 REG. LEG. SESS. (La. 2022).
165. *Id.*

comprehensive uniform electronic case filing and recordkeeping system used in each of Louisiana's 42 judicial district courts. Indeed, if all the district courts in the state adopted and implemented the same electronic filing and recordkeeping system—namely, a system akin to CM/ECF equipped with instantaneous notice of any court activity—it would eliminate the majority of logistical issues that persist under the current state of the law. But because no such system exists, practitioners must comply with the provisions in the Code, the Revised Statutes, and the local court rules while navigating the varying bureaucratic and technological peculiarities of each district court in the state. In other words, practitioners can only play the highly complex hand they are dealt.

In that vein, one significant issue with the amended Article 1313(C) is the added requirement that email service of pleadings setting a court date must obtain an *electronic confirmation of delivery*.[166] Namely, the article itself does *not* specify how the sender is supposed to obtain an electronic confirmation of delivery or what *delivery* actually means.[167]

The revision comments to Article 1313 vaguely cite to Louisiana Revised Statutes § 9:4845(2)—a provision in the Louisiana Private Works Act addressing electronic communications—for presumable guidance.[168] The revision comments immediately following the citation to Louisiana Revised Statutes § 9:4745(2) state that "[i]f *such confirmation* is not received, the sender will need to use one of the other alternative methods of service provided in Paragraph C."[169] Thus, perhaps the legislature intended that the proper way to obtain an electronic confirmation of delivery of an email under Article 1313(C) is set forth in Louisiana Revised Statutes § 9:4845(2). That statute states, in relevant part:

> A communication or document required or permitted by this Part to be given or delivered shall be deemed to have been given or delivered when it is delivered by electronic means to a recipient who has consented to that method of delivery of communications

166. *See* LA. CODE CIV. PROC. art. 1313(C) (2023).

167. As one practitioner noted on the recent changes to Article 1313(C),

> Unfortunately, e-service, like so many things associated with the practice of law in our state, will be a slow climb. To start, there is no unified electronic filing system, or "ECF," like in other states or the federal courts, and there is already confusion over who serves whom, where service is proper, and what 'delivery' actually means.

Scott L. Sternberg, *Electronic Service: A Step-by-Step Primer*, 69 LA. BAR J. 452, 453 (2022).

168. *See* LA. CODE CIV. PROC. ANN. art. 1313 rev. cmt. (2021).

169. *Id.* (emphasis added).

> or documents related to the work. Delivery by electronic means is accomplished when any of the following occurs:
>
> . . .
>
> (2) The communication or document is delivered to an electronic mail address at which the recipient has consented to receive communications or documents related to the work, provided that the sender receives an electronic confirmation of receipt.
> (3) The communication or document enters an electronic information processing system designated or used by the recipient for purposes of receiving communications or documents related to the work, and the communication or document is deemed to have been received by the recipient in accordance with R.S. 9:2615.[170]

The revision comments to Louisiana Revised Statutes § 9:4845 note that Paragraph (3) recognizes all forms of electronic communication that are permitted under the Louisiana Uniform Electronic Transactions Act[171] (UETA) and that Paragraph (2) of the statute supplements the UETA and is not intended as a limitation on the effectiveness of notices made in accordance with that Act.[172] The revision comments also recognize that

> [u]nder the [UETA], an electronic communication is received when it reaches the intended recipient's designated system, regardless of whether he is aware of its receipt or whether he ever retrieves or reads it. *See In re Tillman*, 187 So. 3d 445 (La. 2016). Similarly, this Section does not condition the effectiveness of an electronic communication on the intended recipient's knowledge of its receipt or on his actions in reading it.[173]

Although Louisiana Revised Statutes § 9:4845(2) requires the email sender to receive a *confirmation of receipt*, this required receipt "is merely one indicating delivery and not the 'read receipt' that is customary with respect to email communications."[174] Indeed, "neither the Private Works Act nor the UETA requires the recipient to read or retrieve the electronic

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170. LA. REV. STAT. § 9:4845(2)–(3) (2023).
171. *Id.* §§ 9:2601–9:2621.
172. *See id.* LA. REV. STAT. ANN. § 9:4845 rev. cmt. (a) (2019).
173. *Id.* § 9:4845 rev. cmt. (c) (2019).
174. L. David Cromwell & Mallory C. Waller, *Reworking Louisiana's Private Works Act*, 80 LA. L. REV. 993, 1086 (2020) (citing Minutes of June 15, 2018 Meeting of the Security Devices Committee, Louisiana State Law Institute (June 19, 2018) (on file with the Louisiana State Law Institute)).

communication or even to be aware of the fact that it has been received."[175] Instead, "the electronic communication is considered to be received the moment it reaches the intended recipient's fax number, email address, or other electronic information processing system."[176] Thus, while the revision comments to Article 1313(C) do not specifically cite to Louisiana Revised Statutes § 9:4845(3)'s incorporation of the UETA as an additional method for email service, the method provided in Louisiana Revised Statutes § 9:4845(2) was ostensibly intended to follow the UETA's provisions.

The UETA "applies to electronic records and electronic signatures relating to a transaction"[177] and "applies only to a transactions between parties, each of which has agreed to conduct transactions by electronic means."[178] "The context and surrounding circumstances, including the conduct of the parties, shall determine whether the parties have agreed to conduct a transaction by electronic means" for purposes of the UETA.[179] The UETA's provisions must be interpreted "[t]o facilitate electronic transactions consistent with other applicable law," "[t]o be consistent with reasonable practices concerning electronic transactions and with the

175. *Id.* (citing LA. REV. STAT. ANN. § 9:4845 rev. cmt. (c) (2019); LA. REV. STAT. § 9:2615(E) (2023); LA. REV. STAT. ANN. § 9:2615 rev. cmt. (e) (2001); *In re* Tillman, 187 So. 3d 445 (La. 2016)).

176. *Id.* (citing LA. REV. STAT. ANN. § 9:4845 rev. cmt. (c) (2019); LA. REV. STAT. § 9:2615(E) (2023); LA. REV. STAT. ANN. § 9:2615 rev. cmt. (e) (2001); *In re Tillman*, 187 So. 3d 445).

177. LA. REV. STAT. § 9:2603(A) (2023).

178. *Id.* § 9:2605(B)(1). The UETA has several terms of art that are relevant to email service. "'Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." *Id.* § 9:2602(5). An "electronic record" is "a record created, generated, sent, communicated, received, or stored by electronic means." *Id.* § 9:2602(7). A "'record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." *Id.* § 9:2602(13). "Information" as defined by the Act, "includes data, text, images, sounds, codes, computer programs, software, and databases, or the like." *Id.* § 9:2602(10). An "information processing system" is "an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information." *Id.* § 9:2602(11). A "'[t]ransaction' means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs." *Id.* § 9:2602(16). Finally, a "'[p]erson' means "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity." *Id.* § 9:2602(12).

179. *Id.* § 9:2605(B)(2).

continued expansion of those practices," and "[t]o effectuate its general purpose to make uniform the law" governing electronic transactions among other states.[180] Importantly, "a transaction subject to [the UETA] is also subject to other applicable substantive law."[181] As such, the question of "[w]hether an electronic record or electronic signature has legal consequences is determined by the UETA and other applicable law."[182]

The provisions in the UETA governing the time and place of sending and receiving electronic communications are set forth in Louisiana Revised Statutes § 9:2615.[183] The revision comments to this statute explain

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180. *See id.* § 9:2606.
181. *See id.* § 9:2603(D).
182. *See id.* § 9:2605(E).
183. The statute provides as follows:

> A. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:
>
> (1) Is addressed properly or is otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.
>
> (2) Is in a form capable of being processed by that system.
>
> (3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.
>
> B. Unless otherwise agreed between the sender and the recipient, an electronic record is received when it:
>
> (1) Enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.
>
> (2) Is in a form capable of being processed by that system.
>
> C. Subsection B of this Section applies even if the place where the information processing system is located is different from the place where the electronic record is deemed to be received under Subsection D of this Section.
>
> D. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the place of business of the sender and to be received at the place of business of the recipient. For purposes of this Subsection, the following rules apply:

that "[t]o have a proper sending, Subsection A requires that information be properly addressed or otherwise directed to the recipient.[184] This contemplates specific information that will direct the record to the intended recipient."[185] As such, the revision comments instruct that "*[t]he record will be considered sent once it leaves the control of the sender, or comes under the control of the recipient*."[186] Nevertheless, the revision comments recognize that "[r]ecords sent through e-mail or the Internet will pass through many different server systems"; therefore, "the critical element when more than one system is involved is the loss of control by the sender."[187]

Regarding the issue of receipt under Louisiana Revised Statutes § 9:2615, the revision comments to the statute note that Subsection B simply provides that a record is received when it enters the system that "the recipient has designated or uses and to which the recipient has access, in a form capable of being processed by that system . . . ."[188] The rationale behind "[t]ying receipt to a system accessible by the recipient" is to prevent a recipient from "leaving messages with a server or other service in order to avoid receipt."[189] However, the revision comments point out

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> (1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.
>
> (2) If the sender or the recipient does not have a place of business, the place of business is the residence of the sender or recipient, as the case may be.
>
> E. An electronic record is received under Subsection B of this Section even if no individual is aware of its receipt.
>
> F. Receipt of an electronic acknowledgment from an information processing system described in Subsection B of this Section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.
>
> G. (1) If a person is aware that an electronic record purportedly sent under Subsection A of this Section, or purportedly received under Subsection B of this Section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law.
>
> (2) Except to the extent allowed by the other law, the requirements of this Subsection may not be varied by agreement.

Id. § 9:2615.

184. *See* LA. REV. STAT. ANN. § 9:2615 rev. cmt. (b) (2001) (footnote added).
185. *See id.*
186. *Id.* (emphasis added).
187. *Id.*
188. *See id.* § 9:2615 rev. cmt. (c).
189. *See id.*

that Subsection B "*does not resolve the issue of how the sender proves the time of receipt*."[190] But, the comments explain that "*[t]o assure that the recipient retains control of the place of receipt, Subsection B requires that the system be specified or used by the recipient, and that the system be used or designated for the type of record being sent*."[191]

The recent amendments to Articles 863(A) and 891(A) seem to follow this rule by requiring attorneys to designate an email address for service in every pleading they sign. As a corollary, the revision comments to Louisiana Revised Statutes § 9:2615 advise that "*[r]eceipt is not dependent on a person having notice that the record is in the person's system. Receipt occurs when the record reaches the designated system whether or not the recipient ever retrieves the record.* The paper analog is the recipient who never reads a mail notice."[192] Still, Subsection F of Louisiana Revised Statutes § 9:2615 "provides legal certainty about the effect of an electronic acknowledgment."[193] Significantly, however, "it only addresses the fact of receipt, not the quality of the content, nor whether the electronic record was read or 'opened.'"[194]

There have not been any reported cases in which courts have determined when an email is received under the provisions of the UETA. However, in *In re Tillman*—the case cited in revision comment (c) to Louisiana Revised Statutes § 9:4845—the Louisiana Supreme Court examined the issue of when a faxed document was deemed received for purposes of the UETA.[195] *Tillman* involved two consolidated cases in which the courts of appeal reversed judgments overruling exceptions of prescription in medical malpractice cases based on a provision in the Louisiana Medical Malpractice Act (MMA) governing when a request for review of a malpractice claim was deemed filed.[196] The provision in question stated:

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190. *Id.* (emphasis added).
191. *Id.* (emphasis added).
192. *Id.* § 9:2615 rev. cmt. (e) (emphasis added).
193. *See id.* § 9:2615 rev. cmt. (f).
194. *See id.*
195. *In re* Tillman, 187 So. 3d 445 (La. 2016).
196. Before a medical malpractice suit can be filed, the claimant must file a complaint seeking review of the complaint by a medical review panel, pursuant to the MMA. *See* LA. REV. STAT. § 40:1231.8(A)(1)(a) (2023) ("All malpractice claims against health care providers covered by this Part, other than claims validly agreed for submission to a lawfully binding arbitration procedure, shall be reviewed by a medical review panel established as hereinafter provided for in this Section."); *id.* § 40:1231.8(B)(1)(a)(i) ("No action against a health care provider covered by this Part, or his insurer, may be commenced in any court before the

> The request for review of a malpractice claim under this Section shall *be deemed filed on the date of receipt of the request stamped and certified by the division of administration* or on the date of mailing of the request if mailed to the division of administration by certified or registered mail only upon timely compliance with the provisions of Subparagraph (1)(c) or (d) of this Subsection. Upon receipt of any request, the division of administration shall forward a copy of the request to the board within five days of receipt.[197]

The plaintiffs in each of the consolidated cases faxed requests for review of their medical malpractice claims to the Louisiana Division of Administration after 5:00 p.m. on the one-year anniversary of the alleged malpractice.[198] The DOA's website at the time stated that "faxed filings . . . received after 5:00 p.m. will not be stamped until the next working date."[199] In each of the consolidated cases, the appellate court held that, under Louisiana Revised Statutes § 40:1231.8(A)(2)(b), the filing date was the date the plaintiffs' faxed request for review was stamped and certified by the DOA, which was the day after it was faxed to the DOA.[200]

The Louisiana Supreme Court reversed both decisions by the courts of appeal and held that when Louisiana Revised Statutes § 40:1231.8(A)(2)(b) is read in conjunction with the UETA, the plaintiffs' fax-transmitted requests for review were received by the DOA when they were transmitted into the DOA's facsimile transmission system on the last day of the prescriptive period—not when they were stamped and certified by the DOA the following day.[201] In reaching its decision, the Court reasoned that "the UETA encompasses the electronic transmission of legal documents, via facsimile, by parties to governmental agencies."[202] The Court determined that a fax-filed request for review of a medical

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claimant's proposed complaint has been presented to a medical review panel established pursuant to this Section."). Additionally, Louisiana Revised Statutes § 40:1231.8(A)(2)(a) provides, in pertinent part: "The filing of the request for a review of a claim shall suspend the time within which suit must be instituted . . . until ninety days following notification, by certified mail . . . to the claimant or his attorney of the issuance of the opinion by the medical review panel . . . ." *Id.* § 40:1231.8(A)(2)(a).

197. *In re Tillman*, 187 So. 3d at 450 (citing LA. REV. STAT. § 40:1231.8(A)(2)(a) (2016)).

198. *See id.* at 447–48.

199. *Id.* at 448.

200. *See id.*

201. *See id.* at 455–56.

202. *Id.* at 452.

malpractice claim is an *electronic record* under the UETA since it is "'a record . . . sent . . . by electronic means' consisting of 'information' in the form of 'data [and] text' that is 'stored in an electronic or other medium and is retrievable.'"[203] The Court further determined that "a fax-filed request for review of a medical malpractice claim is related to a 'transaction'" pursuant to the UETA because it is "'an action' 'between two or more persons' (i.e., the plaintiffs and the governmental agency, the DOA), which relates 'to the conduct of governmental affairs' (as it is the statutory duty of the DOA pursuant to Louisiana Revised Statutes § 40:1231.8(A)(2)(b) to process a plaintiff's request and forward it to the PCF Oversight Board)."[204] Having concluded that the "electronic transmission, via facsimile machine, of a request for review of a medical malpractice claim was subject to the provisions of the UETA[,]" the Court then analyzed the provisions of the UETA governing when an electronic record is deemed *received*.[205] The Court explained:

> UETA Section 2615(B) states that "[u]nless otherwise agreed between the sender and the recipient, an electronic record is received when it: (1) Enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record. (2) Is in a form capable of being processed by that system." An electronic record is received under [La. Rev. Stat. §] 9:2615(B) "even if no individual is aware of its receipt." [La. Rev. Stat. §] 9:2615(E). Comment (e) to Section 2615 further states: "Subsection E makes clear that receipt is not dependent on a person having notice that the record is in the person's system. Receipt occurs when the record reaches the designated system whether or not the recipient ever retrieves the record. The paper analog is the recipient who never reads a mail notice."
>
> Thus, the import of these UETA provisions is that the electronic transmission of a record, such as the plaintiffs' fax-filed requests for review of their medical malpractice claims, occurs when the electronic record "[e]nters an information processing system" (which, pursuant to [La. Rev. Stat. §] 9:2602(11), includes "an electronic system for … receiving … information" and thus encompasses a facsimile machine) that the recipient has

203. *Id.* (alteration in original).
204. *Id.* at 452–53.
205. *Id.* at 453.

> "designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record … even if no individual is aware of its receipt." *See* [La. Rev. Stat. §] 9:2615(B), (E).[206]

The Court in *Tillman* also opined that because "the plaintiffs' fax-filed requests were transmitted on the last day of the applicable prescriptive period but prior to the expiration of that day, the DOA's failure to deem the fax-filing as filed on the day it entered the DOA's facsimile system served to shorten the one-year prescriptive period provided to the plaintiffs"; in other words, "the one-year prescriptive period did not accrue until the *expiration of* the last day of the year."[207]

Although *Tillman* concerned the issue of when a faxed request for review of a medical malpractice claim is received by the DOA, the Court's interpretation of Louisiana Revised Statutes § 9:2615 could logically be extended to establishing when an email is received under the recently amended Article 1313(C). After all, an email serving a pleading or order setting a court date certainly fits the UETA's definition of an *electronic record*. Specifically, it is a *record* sent by *electronic means*, consisting of *information* in the form of *data and text* that is stored in an electronic or other medium and is retrievable in perceivable form.[208] Moreover, it is related to a *transaction* under the UETA because it is an *action between two or more persons* (i.e., the parties and/or their counsel of record), which relates to the conduct of business, commercial, or governmental affairs, as it involves communications between parties to litigation concerning the litigation.[209]

As previously mentioned, the recent amendments to Articles 863(A) and 891(A) requiring parties and their counsel to designate an email address for service on every pleading seem to follow the UETA's provision deeming an electronic record received when it enters the recipient's designated information processing system for receiving

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206. *Id.* (first alteration in original).

207. *See id.* at 455. The Court further reasoned that

> [t]he task of stamping and certifying required of the DOA by [La. Rev. Stat. §] 40:1231.8(A)(2)(b) is ministerial, such that the DOA is only authorized to ascertain from the facsimile machine-generated records the actual date and time that the request for review entered the DOA's fax machine system and to record that information on the face of the request.

Id. at 456.

208. LA. REV. STAT. § 9:2602(7) (2023).

209. *Id.* § 9:2602(16).

electronic records of that type.[210] In other words, by mandating parties and their lawyers to designate an email address for service on every pleading, parties and their lawyers effectively agree to receive email service of pleadings or orders setting a court date at their designated email address. Consequently, under the UETA, email service of a pleading or order setting a court date is received by the recipient when it enters the recipient's designated email system for receiving service.

Nevertheless, a transaction subject to the UETA is also subject to other applicable substantive law,[211] and in addition to the UETA, the legal consequences of an electronic record are determined by other applicable law.[212] In this instance, the other applicable law could be Article 1313(C)'s additional requirement that the sender of an email receives an *electronic confirmation of delivery* to prove service.[213] Article 1313(C) recognizes the consequences of failing to obtain such confirmation, in which case the sender must serve the pleading or order by registered mail or certified mail, the sheriff, or actual delivery by a commercial courier.[214] This brings up a couple of questions: (1) how does someone obtain an electronic confirmation of delivery to ensure proper service under Article 1313(C)?; and (2) how does this added requirement impact the validity of the sender's certificate of service contemplated in Article 1313(B)?

As previously explained, neither the text of the Article nor the revision comments provide how the sender must obtain an electronic confirmation of delivery of an email even though the revision comments ostensibly suggest that the Louisiana Private Works Act's provision requiring delivery receipts for electronic communications is instructive.[215] Of course, the simplest way is to ask the opposing counsel if he or she received the email. Opposing counsel's quick acknowledgment of receipt eliminates any doubt about the validity of service.[216]

If, however, opposing counsel is not cooperative, the answer is much less clear. In that case, Microsoft Outlook users might consider requesting a *delivery receipt* when sending the transmittal email to opposing counsel. After sending the transmittal email using this function, the sender *should* receive an automated message telling him or her whether or not the email went through. If the automated message indicates that the email was *not* delivered, the sender should consider using one of the alternative methods

210. *See id.* § 9:2615(B)(1).
211. *See id.* § 9:2603(D).
212. *See id.* § 9:2605(E).
213. LA. CODE CIV. PROC. art. 1313(C) (2023).
214. LA. CODE CIV. PROC. ANN. art. 1313 rev. cmt. (2021).
215. *See id.* (citing LA. REV. STAT. § 9:4545(2) (2021)).
216. *See* Sternberg, *supra* note 167, at 453–54.

in Article 1313(C) to serve the paper to opposing counsel.[217] Nevertheless, one potential issue with this approach is that sometimes the recipient may not have a compatible email server, in which case, the automated message generated in response to a delivery receipt request will not say *delivered* or *not delivered*. Instead, the message will say *relayed*. While this *may* suffice as a *confirmation of delivery* under the UETA as applied to Article 1313(C),[218] courts may see it differently.

Some overly cautious attorneys might still want to hedge their bets to ensure proof of delivery under Article 1313(C). One alternative for Outlook users is to request *both* a *delivery receipt and* a *read receipt* for the transmittal email. Unlike a request for a *delivery receipt*, a request for a *read receipt* will prompt the recipient with a message that allows him or her to accept or deny the sender's request for a read receipt. If the recipient accepts the request, the sender will receive an automated message saying that the recipient has read the email. That said, if the recipient denies the request, the sender will not receive any automated message in response to the request for a read receipt. In the latter scenario, the sender will only be able to rely upon the delivery receipt to prove an *electronic confirmation of delivery* under Article 1313(C). But, if the sender receives a message in response to a request for a delivery receipt indicating that the email was *not* delivered *and* does not receive any automated message following his or her request for a read receipt (i.e., the recipient denied the request), the sender will not have any way to show an *electronic confirmation of delivery* aside from directly asking the recipient if he or she received the email.

This begs the other related question from above—how does the confirmation of delivery requirement for email service under Article 1313(C) impact the certificate of service required in Article 1313(B)? That provision states that "[w]hen service is made by mail, delivery, or *electronic means*, the party or counsel making the service *shall* file in the record a certificate of the manner in which service was made."[219] "This 'Certificate of Service' *is presumed to be correct*, but not conclusively so, and may be refuted or amended and corrected when it is shown in an appropriate proceeding to be in error."[220] Thus, in a proper evidentiary

217. *See* LA. CODE CIV. PROC. art. 1313(C) (2023).

218. Specifically, *relayed* arguably means that the transmittal email has entered the recipient's designated information processing system (i.e., the email address designated under Articles 863(A) and 891(A)) for receiving electronic records of this type (i.e., emails).

219. *Id.* art. 1313(B) (emphasis added).

220. *See* Hall v. Hall, 460 So. 2d 1053, 1056 (La. Ct. App. 2d Cir. 1984) (emphasis added). When a certificate of service dated the same day as the filing

proceeding, a party may establish that a certificate of service is incorrect and that in fact the document was not served on that party in the manner reflected by the certificate; that is, that it was not delivered at all, it was delivered to the wrong party or the wrong place, or it was not delivered timely.[221] In contrast, if the party merely objects to the consideration of a filed paper because that party claims it did not receive service of that paper, the objection alone is "insufficient to rebut the presumption attached to the certificate of record . . . ."[222]

But where does the *confirmation of delivery* requirement come into play with respect to the certificate of service? For the other methods of service listed in Article 1313(B) (i.e., mail and hand delivery), it is much easier to certify when service of the paper has been made.[223] The same is true for email service of papers that *do not* set a court date, which is complete upon *transmission*.[224] The completion of service in those situations, for the most part, is not contingent upon external forces. In contrast, the completion of email service under Article 1313(C) *is* contingent upon the sender receiving an *electronic confirmation of delivery*. In this scenario, does Article 1313(B) require the certificate of service to also include a certification that the sender received an electronic confirmation of delivery to establish the presumption of validity? All of these questions remain unsettled.

Without unequivocal assurance that the transmittal email was in fact delivered to opposing counsel, the sender may have to use one of the other methods for service under Article 1313(C). Therefore, while the legislature had good intentions when it sanctioned the use of email as a method for serving pleadings that set a court date, the lack of a uniform notification system in all the district courts overcomplicates compliance with Article 1313(C)'s requirements.

CONCLUSION

In summary, there are substantial differences between Louisiana's civil procedure rules and the federal civil procedure rules, which become even more apparent when they are put to practice in each court system. This is especially the case when it comes to the use of electronic filings

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of the paper in question, the certificate is *prima facie* proof that the paper was served on the day it was filed. *See id.*

221. *See id.* at 1056–57.

222. *See id.* at 1057.

223. For instance, service by "mail" is "complete upon mailing." LA. CODE CIV. PROC. art. 1313(A)(1) (2023).

224. *See id.* art. 1313(A)(4).

and communications in litigation. For a variety of reasons, some being institutional issues, Louisiana's state court system has lagged far behind in that department. In this regard, the core problem with Louisiana's state court system is the lack of a uniform electronic filing and recordkeeping system used in each district court.

Without a uniform system in place throughout the state, attorneys must attempt to maneuver the distinct practices of each district court while making sure to follow the pertinent provisions in the Code, the Revised Statutes, and the local court rules. In that vein, Louisiana's rules governing filing, service, and notice of court activity in civil cases differ in multiple ways from their federal analogs. Still, there are many more external forces within Louisiana's state court system that can result in unnecessary costs and delays when attorneys attempt to follow the procedural rules.

Cognizant of these issues, the Louisiana legislature has prioritized modernizing the Code in recent legislative sessions. These efforts have elevated the use of electronic filing and email service into the mainstream practice. However, the fact remains that Louisiana's district courts still do not have uniform electronic filing and recordkeeping standards. Consequently, litigants still do not have concrete answers for ensuring compliance with the rules governing electronic filings and service. Furthermore, litigants in Louisiana's state courts still do not have a guaranteed means by which to receive instantaneous notice of any court activity in their cases, while such notice is the standard in the federal court system.

This Article is intended to highlight all the practical issues perpetuated by Louisiana's archaic state court system. Hopefully, these issues will soon be worries of the past. Until then, practitioners must understand how the current laws operate within the existing state court system and temper their expectations accordingly.