



LOUISIANA STATE LAW INSTITUTE

PAUL M. HEBERT LAW CENTER, ROOM W127

1 EAST CAMPUS DRIVE

BATON ROUGE, LA 70803-1016

(225) 578-0200

FAX: (225) 578-0211

EMAIL: LAWINSTITUTE@LSLI.ORG

WWW.LSLI.ORG

January 30, 2024

Representative Phillip R. DeVillier
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HOUSE CONCURRENT RESOLUTION NO. 22 OF THE 2023 REGULAR SESSION

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to mailing of notice.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

GH/puc

Enclosure

cc: Mr. Lawrence B. Frieman

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CODE OF CIVIL PROCEDURE COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO
HCR NO. 22 OF THE 2023 REGULAR SESSION**

Relative to mailing of notice

Prepared for the
Louisiana Legislature on

January 30, 2024

Baton Rouge, Louisiana

LOUISIANA STATE LAW INSTITUTE CODE OF CIVIL PROCEDURE COMMITTEE

Neil C. Abramson	New Orleans
Lauren Brink Adams	New Orleans
Kelly Brechtel Becker	New Orleans
Danielle L. Borel	Baton Rouge
Lawrence J. Centola	New Orleans
Sarah Rubin Cohen	New Orleans
June Berry Darensburg	Gretna
Annette M. Fontana	Thibodaux
William R. Forrester, Jr.	New Orleans
Piper D. Griffin	New Orleans
James C. Gulotta, Jr.	New Orleans
Thomas M. Hayes, III	Monroe
Karli Glascock Johnson	Baton Rouge
Rachael D. Johnson	New Orleans
Robert E. Kleinpeter	Baton Rouge
Raymond C. Lewis	New Orleans
William A. Morvant	Baton Rouge
Harry J. "Skip" Philips, Jr.	Baton Rouge
Christopher H. Riviere	Thibodaux
Michael H. Rubin	Baton Rouge
Lloyd N. "Sonny" Shields	New Orleans
Monica T. Suprenant	New Orleans
Mark Tatum	Shreveport
Kacy Collins Thomas	Baton Rouge

* * *

Judge Guy Holdridge, Reporter
Josef P. Ventulan, Staff Attorney
Mallory C. Waller, Staff Attorney

2023 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 22

BY REPRESENTATIVE FRIEMAN

A CONCURRENT RESOLUTION

To authorize and direct the Louisiana State Law Institute to study procedures in civil actions that require the mailing of notice with respect to the commencement of certain deadlines or answers or responses or for appearance before the court for certain motions and other hearings to determine whether it is more effective to base timely notice on the date of mailing of such notice or on the date of actual receipt of such notice and report its findings to the Louisiana Legislature no later than February 1, 2024.

WHEREAS, the required notice and related deadlines in certain civil actions, such as motions for new trial and default judgments, are based upon the mailing of notice as opposed to the receipt of notice; and

WHEREAS, the United States Postal Service is often delayed in its delivery of items; and

WHEREAS, due to the delays of delivery by the United States Postal Service, it is possible for parties to receive notice after a deadline has passed or not within enough time to respond; and

WHEREAS, timely notice is crucial so all parties can respond accordingly within adequate time; and

WHEREAS, it may be more effective for notice to be based upon the date of receipt instead of the date of mailing because deadlines may pass before delivery.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize and direct the Louisiana State Law Institute to study procedures in civil actions that require the mailing of notice with respect to the commencement of certain deadlines for answers or responses or for appearance before the court for certain motions and other hearings and to report its findings to the Legislature of Louisiana no later than February 1, 2024.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit one print copy and one electronic copy of any report produced pursuant to this Resolution to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

January 30, 2024

To: Representative Phillip DeVillier
Speaker of the House
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator Cameron Henry
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO HOUSE CONCURRENT
RESOLUTION NO. 22 OF THE 2023 REGULAR SESSION**

House Concurrent Resolution No. 22 of the 2023 Regular Session urged and requested the Louisiana State Law Institute to study and make recommendations pertaining to Code of Civil Procedure provisions relative to the mailing of notice, specifically with respect to the commencement of certain deadlines or answers or responses or for appearance before the court for certain motions and other hearings, in order to determine whether it would be more effective to base timely notice on the date of actual receipt, rather than the date of mailing, of notice.

In fulfillment of this request, the Law Institute assigned this project to the Code of Civil Procedure Committee, which operates under the leadership of Judge Guy Holdridge as Reporter. The Committee approached the issue from a broad practical standpoint and concluded that uncertainties in delivery times of traditional physical mail, regardless of whether a deadline is predicated on the date of mailing or actual receipt, may cause a litigant to miss certain deadlines. Particularly, the Committee found that a deadline's dependance upon actual delivery is problematic in multiple-party actions. For example, under Code of Civil Procedure Article 1974, a motion for new trial must be filed not later than seven days, exclusive of legal holidays, from the mailing of the notice of judgment by the clerk. The date on which notice is mailed is a date certain and will be evident to all parties upon review of the record. The date will also be the same for all parties. If, however, Article 1974 were changed to provide that the deadline commences upon actual receipt of notice, different parties may receive notice on different days and the deadline for filing a motion for new trial may therefore be uncertain. On the other hand, though the date of mailing is a date certain, there is always a possibility that a party will not receive mailed notice before deadlines lapse. Therefore, the salient issue is to determine the procedure that best ensures that all parties are given timely knowledge of the deadlines for answering and filing responses, post-trial motions, and appeals. Furthermore, laws should ensure that all parties receive dependable, proper notice of any hearing or trial date.

The Committee revisited its most recent changes to Code of Civil Procedure Article 966. There, the Committee recommended that Subparagraphs (B)(1) and (2) be amended to provide that service be limited to electronic means. Applying this concept analogously, the Committee reached consensus that Louisiana's procedural framework would need to shift to the uniform use of electronic mailing of notice. The Committee then reviewed the viability of a complete conversion

to electronic mailing of notice like that found in the federal court system, hoping to articulate a framework that lessens uncertainty as to the triggering of certain legal deadlines. The Committee, however, identified various issues preventing full conversion at this time, including lack of uniformity with respect to the use of electronic versus physical mail.

In furtherance of its study, the Committee met with various stakeholders to receive suggestions and review possible best practices. In meeting with clerks of court as to their practices in utilizing electronic or physical mail when remitting notices to litigants, the Committee found that the clerks of court predominantly remit notice via physical mail. This practice is favored by both the clerks of court and the judiciary. The clerks of court indicated that many litigants do not provide electronic mailing addresses, so use of physical mail is necessary. Moreover, to satisfy various statutory requirements when remitting notice, the clerks of court prefer that the record reflect a copy of the physical mailing. Though these processes could be automated, various issues would persist, including the lack of electronic mailing address for certain litigants and the lack of uniformity among the clerks of court – the current system of notice provides certainty that a change to another method may not replicate. Additionally, the clerks of court were concerned with monetary obstacles to implementation. Members of the judiciary expressed similar issues when asserting their preference for the physical mailing of notice.

Nevertheless, the Committee conducted a comprehensive review of various Code of Civil Procedure articles and identified at least eighty-one provisions that would require amendment should the Committee pursue wholesale revision.¹ During this review, the Committee also observed that the Code of Civil Procedure is inconsistent in its use of certified, registered, and ordinary mail, bearing on the reliability and timeliness of receipt of notice.² Thus, on account of the current lack of uniformity with respect to usage of electronic mailing and the inconsistency with respect to the various forms of physical mail, the Committee ultimately determined that revision at this time is premature; findings support the conclusion that, although electronic filing and service is used in some parishes, until a uniform system is both adopted and implemented, the promulgation of new articles would create uncertainty regarding various issues relative to the mailing of notice. In light of this prematurity, the Code of Civil Procedure Committee will continue to monitor this issue, meet with various stakeholders regarding new developments, and reevaluate Louisiana's framework as the issue ripens.

¹ The Committee identified the following Code of Civil Procedure articles with respect to the mailing of notice: Articles 225, 339, 561, 592, 594, 596, 970, 971, 1355.1, 1430.1, 1437, 1438, 1446, 1447, 1448, 1449, 1450, 1463, 1464, 1469, 1572, 1672, 1704, 1734, 1734.1, 1795, 1796, 1811, 1878, 1913, 1914, 1917, 1951, 1974, 1976, 2031, 2087, 2121, 2123, 2125.1, 2126, 2166, 2167, 2333, 2412, 2414, 2595, 2786, 2787, 2789, 2791, 2792, 3091, 3093, 3094, 3132, 3224.1, 3305, 3306, 3307, 3335, 3393, 3432, 3432.1, 3602, 3607, 3742, 3829, 4065, 4067, 4394, 4607, 4657.1, 4702, 4904, 4905, 4907, 4921.1, 4922, 4925, and 5002.

² See Code of Civil Procedure Articles 1913 (requiring that notice of signing of a default judgment be mailed by the clerk); 1572 (requiring that notice of the date of trial be sent by certified mail); and 2126 (requiring that notice of estimated costs be sent by certified mail to the appellant and by first class mail to the appellee).