

NATCHITOCHEs CITY COURT

GUIDE TO PRACTICE

Updated November 19, 2015

NATCHITOCHEES CITY COURT

GUIDE TO PRACTICE

In order to assist litigants and attorneys using the Natchitoches City Court, the court has created this “Guide to Practice”. This document is not meant to be a definitive statement of the law nor may it be cited to the court as support for any position. This document is merely a tool to be utilized to assist litigants and attorneys in access to the court. Legal citations are provided to assist litigants and attorneys in their quest to determine applicable law and procedure.

**NATCHITOCHEs CITY COURT
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NATCHITOCHEs CITY COURT
Roster of Officials

JUDGE

The Honorable Fred S. Gahagan

CLERK OF COURT

Clerk/Court Administrator – Rhonda Roge’

Deputy Clerks:

Gwen Hernandez - Traffic/Criminal/Juvenile

Susan Cloutier - Civil

Tanya Brown - Traffic/Criminal

NATCHITOCHEES CITY COURT

About The Court

The Natchitoches City Court is a court of limited jurisdiction. There are several limitations on what cases the court can hear. The first limitation is geographical. The Court can only hear matters arising within the boundaries of the City of Natchitoches, Ward One. Insofar as criminal cases are concerned, the Court can only consider misdemeanor cases. As to civil cases, the court can entertain cases where up to \$25,000 is in dispute. However, some cases cannot be brought in the City Court, such as cases involving title to real property, cases involving the right to public office or position, cases involving civil or political rights, cases involving annulment of marriage, divorce, separation of property or alimony, matters of succession, interdiction, receivership, liquidation, habeas corpus or quo warranto proceedings, cases in which the state, city or other political corporation is a defendant, and matters concerning tutorship, curatorship, emancipation or partition proceedings. There are no jury trials in City Court.

The Natchitoches City Court is located at 314 Rue Amulet. The court is open on all weekdays except holidays. The clerk's office is open from 8:30 AM until 4:30 PM Monday through Thursday, and 8:30 AM until 4:00 PM Friday.

NATCHITOCHEs CITY COURT EXPUNGEMENT

Many individuals who are arrested for a misdemeanor violation of the law wish to have the record of such arrest expunged. Under **LA. C.Cr.P. 971 (1)**, expungement means removal of a record from public access but does not mean destruction of the record. Any individual interested in expungement should read La. Code of Criminal Procedure Articles 971-993 carefully to determine if they are eligible for expungement, and, if so, how it can be accomplished.

One of the most frequent occasions which results in an individual seeking an expungement arises from the application of **LA.C.Cr.P. 894** by the judge. Under that article, when a defendant is convicted of a misdemeanor, other than criminal neglect of family or stalking, the judge may suspend the imposition of sentence and place the defendant on probation under such conditions as the court may fix. If at the end of the period of deferral the court finds that defendant has not been convicted of any other offense during that period and that no criminal charge is pending, the court may set aside the conviction and dismiss the prosecution. "The dismissal of the prosecution shall have the same effect as an acquittal". **LA. C.Cr.P. 894 B(2)** Under **LA. C.Cr.P. 976**, the defendant may make a motion for expungement of the arrest record since "prosecution has been instituted, and such proceedings have been finally disposed of by * * * acquittal."

An individual seeking an expungement should be aware of the limitations found in LA C.Cr.P 971-993 which make expungement unavailable in certain situations. For example, under LA C.Cr.P 977, for an arrest and conviction, expungement shall occur only once with respect to any person during a five-year period, except in the case of a misdemeanor offense of operating a vehicle while intoxicated which may occur only once during a ten-year period. Another example of limitations of the availability of an expungement is under LA. C.Cr.P 977 is that "no person shall be entitled to an expungement if the misdemeanor conviction arose from circumstances involving a sexual act or an act of domestic violence."

The law sets forth specific forms which must be used in seeking an expungement. These forms are found in LA. C.Cr.P 987-993. Samples of these motions may be found on this website in the forms section.

The fee for filing a motion for expungement is as follows and should be made in the form of money orders as follows (LA C.Cr.P. 983):

1. \$250 to the Louisiana State Police
2. \$200 to the Natchitoches City Court
3. \$ 50 to the arresting agency
4. \$ 50 to the district attorney.
5. \$ 50 to OMV if DWI.

Once paid, such fees cannot be refunded even if the expungement is denied.

The permissible fees are set forth in **LA. C.Cr.P. 983**. Under **LA. C.Cr.P. 983 F**, expungement fees may be waived if the District Attorney certifies that the mover has not been convicted of any felonies or pending felony charges and the mover meets one of the criteria set forth, i.e. acquittal after trial, if the prosecutor dismisses the charges or fails to bring timely charges, and if the mover did not participate in pretrial diversion.

The expungement law requires the clerk of court to provide notice of the filing of petition for expungement to certain parties. LA C. Cr.P 979 These parties have up to 120 days to file an objection to the motion, and if an objection is filed, a hearing will be held. LA C.Cr.P. 980 Therefore, no action can be taken on an expungement motion until after 60 days have elapsed from the filing of the motion.

NATCHITOCHEs CITY COURT CIVIL ACTIONS

Various types of civil actions are brought in City Court. The Court also entertains Eviction Actions for removal of occupants to property that no longer have a right to be there. All other civil actions filed in the Court are handled as regular civil actions.

A regular civil action is initiated by the filing of a "Petition", which is a demand for enforcement of a legal right. The fee for filing a petition is Two Hundred and No/100 (\$200.00) Dollars. Generally, a "petition" contains "a short, clear, and concise statement of all causes of action arising out of, and the material facts of, the transaction or occurrence that is the subject matter of the litigation". The "petition" must also contain a plea for whatever relief is sought. The "petition", like all pleadings in a civil action, must comply with the procedural rules for pleadings. See **LA. C.C.P. 853-863** To file a petition in a civil action, the attorney or litigant must pay the sum of \$200.00 . To determine what the fees in civil matters will be, refer to the Civil Cost Sheet .

Once a "petition" has been filed, a "Citation" must be issued and served upon all defendants along with a copy of the "petition", which is known as service of process. The court has no authority over any defendant until this service is made. It is the obligation of the plaintiff who filed the "petition" to insure that the service is made. The plaintiff must provide an address to the court where the Marshal can effect such service. If the address turns out to be insufficient, it is the obligation of the plaintiff to provide another address. The civil action cannot proceed further until after service of process is made.

Once service of process is made, the defendant has ten (10) days to respond [unless defendant is served through the secretary of state whereupon fifteen (15) days are permitted].

The response to a petition is an "answer". However, there are several other pleadings which may be filed prior to filing the answer. A defendant may file "Exceptions" which are means of defense to retard, dismiss or defeat the demand in the petition.

The "Answer" shall admit or deny the allegations of the "petition", state in

short and concise terms the material facts upon which the defenses to the action asserted are based, and shall set forth all affirmative defenses. The answer shall also contain a prayer for the relief sought.

If service of process has been made and no “answer” is filed within the delays set by the law (including delays occasioned by the filing of exceptions), the plaintiff may pursue a judgment by default. Unlike actions in the State District Courts, no preliminary default is required. **LA. C.C.P. 4904 A** To secure a default judgment, plaintiff must produce relevant and competent evidence which establishes a prima facie case. **LA. C.C.P. 4904 B** In cases involving a sum due on open account, promissory note, negotiable instrument, or other negotiable instrument, proof may be submitted by affidavit and no proof of any signature on a promissory note or other negotiable instrument shall be required. No hearings shall be held in these matters unless ordered by a judge.

In addition to the proof set forth above, a plaintiff must submit an original and at least one copy of a proposed judgment. The clerk of court shall certify that no “answer” or other pleading has been filed by defendant. The proof submitted, certificate of the clerk, and the proposed judgment shall be submitted to the judge for consideration and signing. A certified copy of the judgment shall be sent to the plaintiff. A copy of the judgment will be served upon the defendant (by mail if the defendant was personally served or by the Marshal if there was no personal service). **LA. C.C.P. 4905 & 1913**

CHECKLIST

(Filing a Civil Action)

- Petition (with service information)
- Filing fee of \$200.00

NATCHITOCHEs CITY COURT EVICTIONS

When a landlord has a tenant that no longer has a right to occupy the premises, the method to get the tenant to vacate the premises is Eviction. Eviction in City Court is governed by the provisions of **LA. C.C.P. 4701 et seq.** Anyone planning to file an eviction action in City Court should be familiar with those laws.

In order for a tenant to be evicted from any premises, the tenant must no longer have a right to occupy such premises. This is the basis for any eviction action.

Termination of a tenant's right of occupancy can occur in a number of ways. Probably the most common reasons for losing this right of occupancy would be expiration of the term of the lease or the failure to pay rent. When either of these events occurs, the landlord is in a position to initiate eviction proceedings.

Non-Fixed Term or Reconducted Leases. When the lease is not for a fixed term or has become a reconducted lease (by permitting the tenant to stay in the premises after the term of a lease has expired), there is a requirement that a ten (10) day notice be given of the termination of the lease. **(Civil Code Article 2728 (2))** Once the lease has been terminated by this notice, the landlord is in a position to initiate eviction proceedings. The ten (10) day notice of termination of the lease shall be considered as a notice to vacate. **LA. C.C.P. 4701**

Notice to Vacate. Prior to filing an eviction action, notice to vacate must be given to the tenant at least five (5) days before the date of filing, unless notice has been waived in the lease. The court has determined that notice to vacate should be given within 30 days of the filing of an eviction action. A notice to vacate over 30 days old may be considered "stale", and the judge may order a new notice to vacate.

Computation of Time. In computing the five (5) day delay, the day after delivering notice is counted as day one. Weekend days and holidays are not counted. Five (5) full days must pass after delivering the notice. An eviction petition may be filed on the sixth day.

Rule to Evict. Evictions are initiated by filing a Rule to Evict with the court. The fee for filing an eviction is ONE HUNDRED SEVENTY-FIVE AND NO/100 (\$175.00) Dollars. The court has prepared a sample form which may be used in filing an eviction.

The rule to show cause orders the tenant to appear in court to show cause why possession should not be delivered to the landlord. The rule is served upon the defendant. The date set for hearing on this rule to show cause must be set at least three (3) days after service of the rule. If the tenant has abandoned the premises or his whereabouts are unknown, the rule to show cause may be tacked on the door of the premises, and this will be equivalent to personal service. **LA. C.C.P. 4703**

Hearing on Rule to Show Cause. At the hearing of the rule to show cause, both the landlord and the tenant may present any evidence they have supporting their position. If the tenant fails to answer or appear, or if the court finds the landlord entitled to relief, a judgment of eviction shall be rendered.

Warrant for Possession. If the tenant does not comply with the judgment of eviction by 5:00 PM on the first non-weekend or non-holiday day following the rendering of the judgment of eviction, the plaintiff may request the court to issue a warrant of possession directing the marshal to deliver possession of the premises.

Upon issuance of the warrant of possession, the landlord will contact the marshal and set up a time to go to the premises. It is to be remembered that it is the obligation of the landlord, not the marshal, to move any items out of the premises or to have someone available to do so.

CHECKLIST

- Rule to Evict (& with service information)
 - Vacancy Notice or waiver in lease
 - Lease
 - Authority of agent (if filed by other than the owner)
- Filing fee of \$175.00

NATCHITOCHEs CITY COURT EXECUTION OF JUDGMENTS

A judgment which is not voluntarily complied with must be enforced through court proceedings. Louisiana law does not permit self-help. Only the court can enforce a judgment.

A judgment setting forth that a defendant (hereinafter referred to as judgment debtor) owes a certain sum of money to a plaintiff (hereinafter referred to as judgment creditor) can only be enforced through the court. The judgment cannot be enforced until the delays for filing a “suspensive appeal” from the judgment has elapsed. A “suspensive appeal” is an appeal which prevents execution of the judgment during the appeal process and requires the judgment debtor to put up security. If no suspensive appeal has been filed within the permissible delays, the judgment debtor can proceed with execution of the judgment for collection of the amount owed.

While it is not technically “execution” of the judgment, a judgment creditor may want to record the judgment in the mortgage records of the state court. This gives the judgment creditor a lien against any property owned by the judgment debtor. **Natchitoches City Court automatically records judgments in the mortgage records the 10th Judicial District Court.**

Judgment Debtor Examination. In order to determine what if any assets the judgment debtor, the judgment creditor may want to ask the judgment debtor questions about his or her finances. To accomplish this, the judgment creditor should file a motion for judgment debtor examination. The fee for this is \$65. Upon filing of the motion, the court will order the judgment debtor to appear in court at least 10 days after service to answer any questions relative to his or her property and to bring with them any financial documents requested in the motion. The judgment debtor will be placed under oath and required to answer all questions relative to his or her financial situation. See FORMS: Petition for Judgment Debtor Examination Order for Judgment Debtor Examination .

There are several methods available for execution of a judgment. One method is having the property of the judgment debtor seized and sold under a writ of Fieri Facias. **LA. C.C.P. 2291 et seq.** Another method is garnishing the wages of the judgment debtor. **LA. C.C.P. 2411 et seq.**

Seizure & Sale. When a judgment debtor owns property, it is subject to seizure and sale to satisfy the judgment debtor's obligations. In some situations, such property is exempt from seizure under the law. Otherwise, the property of a judgment debtor is available for satisfaction of the debts of the judgment debtor. If a judgment creditor is aware of property owned by a judgment debtor, the judgment creditor may file an application for a Writ of Fieri Facias directing seizure and sale of the judgment debtor's property. The fee for this is One Hundred Twenty-Five (\$125.00) Dollars. The application should indicate if any payments have been made toward satisfaction of the judgment since its issuance. The court will issue the Writ of Fieri Facias and the Marshal will seize the property. Upon seizure of the property, the Marshal shall serve written notice of the seizure upon the judgment debtor. The Marshal shall advertise the sale which cannot be before the passing of 3 non-holiday-or-weekend days after service of the notice on the judgment debtor. If a judgment creditor wants to retain a right to pursue his or her rights against the judgment debtor for any amounts not brought by the sale, the property must be appraised prior to the sale. After sale of the property, the Marshal distributes the proceeds of the sale; first to cover the costs of the sale, and then to satisfy the seizing creditor. See FORMS: Application for a Writ of Fieri Facias & Marshal's Information Sheet.

Garnishment. When a third party owes money to the judgment debtor, the court can order the third party to pay it over to the judgment creditor. This is called garnishment. Where this most often is applicable is when a judgment debtor has a bank account or is employed. To initiate a garnishment, the judgment creditor must file a petition for garnishment. The fee for filing a garnishment is One Hundred Fifty (\$150.00) Dollars. Attached to this petition, the judgment creditor must pose interrogatories to the third party relative to their indebtedness to the judgment debtor. A copy of the petition and interrogatories shall be mailed by the judgment creditor to the judgment debtor. The court will issue a writ of Fieri Facias which will be served on the third party along with the petition and interrogatories. This service will effect a seizure of whatever property the third party has belonging to the judgment debtor. The garnishee must answer the interrogatories within 15 days. When the garnishee admits or is found at a hearing to having property of the judgment debtor, the court will order the funds paid over

to the Marshal up to the amount of the indebtedness. When the garnishment is for wages, the court shall render a judgment setting forth how much the employer should pay each pay period to the judgment creditor. See FORMS: Petition for Garnishment & Garnishment Order.

Forms. To assist litigants, the court provides a number of forms. It is to be remembered that these are not official court forms, but merely guideline suggestions to assist litigants. Any litigant is free to draft their own pleadings as long as they comply with legal requirements. Some of the available forms in the area of execution of judgments are as follows:

- Judgment Debtor Examination
 - o Petition for Judgment Debtor Examination
 - o List of documents to be produced for Judgment Debtor Examination
 - o Sample questions for a judgment debtor examination
 - o Proposed Order
- Seizure & Sale
 - o Application for a Writ of Fieri Facias
 - o Marshal's Information Sheet
- Garnishment
 - o Petition for Garnishment
 - o Proposed Order of Garnishment

EXECUTION OF JUDGMENTS CHECKLISTS

Judgment Debtor Examination

- Request for Judgment Debtor Examination
 - o Information for Service
 - o List of possible questions to be asked & documents to be produced (optional)
 - o Proposed order setting the judgment debtor examination
- Filing fee of \$65.00

Garnishment

- Petition for Garnishment
 - o Information for Service
 - o Interrogatories
- Filing fee of \$150.00

NATCHITOCHEs CITY COURT SUBPOENAS

A subpoena is an order of the court for an individual to appear before the court at a date and time set forth as a witness in the court proceedings. A subpoena Duces Tecum orders the individual to appear before the court at a date and time set forth to act as a witness and to bring with them listed material.

Subpoenas are issued by the clerk of court upon request of one of the parties. It should be remembered that a subpoena should be requested a sufficient amount of time prior to the date of appearance for service of the subpoena to be made upon the witness. The fee for having a subpoena issued and served in a civil case is FIFTY (\$50.00) Dollars.

Service of a subpoena is made in the same manner as service of a Citation. Service should be either personal or domiciliary, and should be made by the marshal or private process server. Service on a party can be made through such party's attorney. The return of service should be filed with the clerk of court. If service is made by a private process server, the return should be notarized. If a subpoena has been served and is to be re-issued, it may be sent by registered or certified mail. **LA. C.C.P. 1355.1**

There are different rules and limitations regarding subpoenas in civil and criminal cases. However, whenever a party wishes to have a subpoena issued, a written request for that subpoena should be filed with the clerk with all pertinent service information.

In civil cases a witness may be subpoenaed from anywhere in the State of Louisiana. However, if a witness resides outside the parish where the courthouse is located and is more than 25 miles from the courthouse, the witness cannot be compelled to attend unless the party requesting the subpoena first deposits with the clerk of court the fees set forth in **LA. R.S. 13:3661** (mileage at the rate of \$0.20/mi.; witness fee of \$25/day & hotel and meals expense at the rate of \$5.00/day). **LA. C.C.P. 1352 & 1353** These fees are paid to the witness by the clerk of court immediately upon appearance.

In criminal cases each defendant can subpoena up to six (6) witnesses at the expense of the City. **LA. C.Cr.P. 738** Any further witness subpoenaed by a defendant shall be at their own expense

CHECKLIST

- Request for Subpoena (w/ name & address of person to be subpoenaed)
- \$50.00 fee
 - NOTE: If person to be subpoenaed is outside of the City Limits, contact the clerk's office as additional fees will be required.

NATCHITOCHEES CITY COURT

IF YOU ARE THE DEFENDANT:

If you decide to contest a case in the City Court of Natchitoches, file your answer in writing with the Clerk's Office within the ten (10) day period provided (10 days after service of citation) or the plaintiff may receive a default judgment against you. Your answer should be truthful and contain every defense you intend to raise.

Some possible defenses include:

1. No jurisdiction or improper "venue"
2. Contributory negligence (negligence on the part of the plaintiff)
3. Discharge in bankruptcy
4. Error or mistake
5. Fraud or illegality on plaintiff's part
6. Previous compromise or payment of an obligation

If you have a "counterclaim" or "reconventional demand" against the plaintiff, you may include it in your answer. **HOWEVER, YOU WILL BE REQUIRED TO PAY A DEPOSIT FOR COURT COSTS SINCE YOU ARE NOW INSTITUTING A SUIT AGAINST THE OTHER PARTY. (\$200 DEPOSIT)**

WHAT HAPPENS AFTER THE TRIAL:

If the judge decides that you win, he may award you only part of the money you requested or whatever amount of damages he thinks you have proved you deserve. The judgment of the court becomes a binding legal obligation after it is signed, unless one of the parties requests a new trial within three (3) days after judgment. However, a judgment merely establishes that the defendant owed you money. **IT DOES NOT NECESSARILY MEAN YOU WILL BE PAID.**

Some judgment creditors are never paid for various reasons. In order to collect your money, you may have to take further action such as asking the court to "garnish" the defendant's wages or "seize" and sell certain non-exempt property that belongs to the defendant. An additional deposit is required for each procedure.

If you need more information about the defendant in order to take these

steps, you may request a “judgment debtor examination” to require the defendant to appear in court and produce evidence of his assets and employment status. There is a court costs deposit required for filing this action (\$75) and it is not a new trial or hearing. You will be allowed to orally examine the defendant who will be under oath regarding his assets, employment, etc., at a place suitable for such examination, usually in the courtroom. This information may help you in finding other legal means for collecting on your judgment.

NATCHITOCHEs CITY COURT APPEALS

Appeals from judgments of the City Court normally go the Third Circuit Court of Appeals. Since some different rules apply to civil and criminal appeals, the two types of appeals will be discussed separately.

Appeals from Civil Judgments. Final judgments are appealable in all cases, except for those cases for which no appeal is provided by law. In civil cases, there must be a written judgment signed by the judge. **LA. C.C.P. 1911** An appeal must be filed within 10 days of the date of the judgment (or from service of the notice of judgment when required). **LA. C.C.P. 5002** To appeal, a party must file a motion in writing. The fee for an appeal of a civil judgment is \$250.00 (which includes the fee of the Third Circuit Court of Appeal). The clerk of court shall prepare an estimate of costs & mail it to the appellant & appellee. **LA. C.C.P. 2126** The return date of the appeal shall be 45 days from the date costs are paid (or 30 days if no transcript is needed) **LA. C.C.P. 2125**

Appeals from Criminal Judgments. Only final judgments which impose sentences are appealable. **LA. C.Cr.P. 912** An appeal of a judgment involving violation of a state statute will be heard of the Court of Appeal (Third Circuit). **LA. C.Cr.P. 912.1 C & LA. R.S. 13:896 B** An appeal is initiated by filing a written motion. The appeal must be filed within 30 days of the rendition of the judgment. **LA. C.Cr.P. 914 B(1)** The return date for a criminal appeal is 75 days from the date the motion to appeal was granted. **LA.C.Cr.P. 915 A**

CHECKLIST

- Motion for Appeal
- Proposed Order for Appeal
- \$250.00 Fee