

GUIDELINES AND FORMS

FOR

LOUISIANA'S INTERDICTION LAW

By

Kevin Robshaw
Mental Health Advocacy Service
150 Third Street, Suite 812
Baton Rouge, Louisiana 70801
(225) 342-6678

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OVERVIEW

1. Historical Background

1. Louisiana interdiction laws, until 2001, contained provisions dating back to the Napoleonic Code and included archaic and demeaning language.

1. One example was the **standard** for interdiction:

1. “No person above the age of majority, who is subject to an habitual state of imbecility, insanity or madness, shall be allowed to take care of his own person and administer his estate, although such person shall, at times, appear to have the possession of his reason.” CC 389 (*repealed*).

2. Not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to any infirmity, are incapable of taking care of their persons and administering their estates. Such persons shall be placed under the care of a curator, who shall be appointed and shall administer in conformity with the rules contained in the present chapter.” CC 422 (*repealed*).

2. The Louisiana Law Institute submitted a comprehensive revision of the laws on interdiction to the Louisiana legislature, and it passed without a dissenting vote in the first special session of 2000, Act No. 25.

3. Effective date

1. The new law took effect July 1, 2001.

2. Highlights

1. Strict time lines.

2. Detailed pleading requirements.

3. Personal service requirements.

4. Counsel’s responsibilities are set forth.

5. “Provisional” interdiction changed to “temporary” or “preliminary” interdiction.

6. Consideration of less restrictive means is required.

7. Specific requirements for judgments of interdiction.

8. Curators liability is lessened.

9. No placement in a long term care facility without a hearing

3. The Consequences of Full Interdiction

1. Interdiction is a harsh remedy. “A judgment of interdiction is, in the final analysis, a pronouncement of civil death without the dubious advantage of an inscription

thereof on a tombstone.” Doll v. Doll, 156 So.2d 275 (La. App. 4 Cir. 1963).

2. The interdict loses his capacity to make a juridical act. This includes a unilateral act such as an affidavit, or a bilateral act such as a contract. The interdict cannot make an act to create, modify, transfer or extinguish rights and obligations, whether personal or real. The interdict loses control over where he will live, how he will spend his money, almost all medical decisions, and virtually every aspect of his life.

4. Examples of Less Restrictive Means.
 1. One defense to a petition for interdiction is that the defendant’s interests can be protected by less restrictive means.
 1. Some individuals may be able to maintain autonomy by obtaining services such as: home health services, case management services, Meals on Wheels, help from family/neighbors, community mental health centers, partial/day hospital programs, churches/synagogues, state services such as the Office for Citizens with Developmental Disabilities, the Office of Community Services and the Office of Mental Health. Information about many services is available from the Information Line for Disabilities (1-800-922-DIAL).

 2. Cases of Abuse and/or Neglect
 1. If there is an immediate crisis involving abuse/neglect/self-neglect/exploitation, the adult/elderly protective services agencies may be able to address the crisis without the need to interdict. *See* R.S.14:403.2.

 3. Involuntary treatment/placement
 1. Mental health and substance abuse
 1. Civil commitment for mental illness or substance abuse. R.S. 28:52-56.
 - (1) Addresses situations where an individual needs mental health or substance abuse treatment but is unwilling to go. Unlike interdiction, it is time limited.
 - (1) The grounds for involuntary commitment are: dangerous to self or others and/or gravely disabled “as a result of mental illness or substance abuse.”
 - (2) A judicial commitment can protect an individual incapable of taking care of his person by providing placement and treatment.
 - (2) A judicial commitment can protect an individual incapable of taking care of his person by providing placement and treatment.
 2. Developmental disabilities
 1. Civil commitment is not necessarily time limited. R.S. 28:404.

 4. Obtaining medical authorization

1. The Medical Consent Law, R.S. 40:1299.50-58, sets forth procedures to obtain medical authorization in a wide variety of situations. R.S. 40:1299.50 *et seq.*

5. Life sustaining procedures: living wills
 1. A living will is a voluntary declaration made by the declarant, authorizing the withholding or withdrawal of life-sustaining procedures. The declarant may also appoint someone to make these decisions.

6. Mandate, procuration, letters of attorney, power of attorney .
 1. These allow one person to give power to another to transact for him and in his name one or more matters.
 2. A Conditional Procuration (“Springing” Power of Attorney) allows a principal to execute a procuration which becomes effective only if the principal becomes disabled. A notarized statement by two physicians is required to establish the disability of the principal. R.S. 9:3890 .
 3. Mental Health Advance Directive
 1. Recent legislation (2001 La. Acts No. 755) allows a principal to execute a declaration and/or appoint a representative for mental health treatment decisions. R.S. 28:221-237.
 4. Louisiana Military Power of Attorney Act. R.S. 9:3861 *et seq.*

7. Finances
 1. Establishment of a trust
 2. Alternate payees for benefits
 1. Curator for receipt and administration of welfare benefits. R.S. 46:431.
 2. Administration of social security funds and/or other benefits for veterans. R.S. 29:355, 374.

OUTLINE OF NEW INTERDICTION LAW

5. Grounds
 1. Full Interdiction
 1. “A court may order the full interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity, is unable consistently to make reasoned decisions regarding the care of his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means.” CC 389.
 1. Functional definition: The new standard for full interdiction focuses on the defendant’s capacity to care for himself and his property rather than on labeling the defendant as one suffering from a

specific mental or physical disability.

2. Limited Interdiction:
 1. Same as the standard for full interdiction except a limited interdiction can be ordered when there is incapacity concerning the “person or property, or any aspect of either.” CC 390.

6. Petition

1. Petitioner
 1. Any person. CCP 4541(A).
 2. “Shall verify the petition and, **to the extent known**, shall set forth the following with particularity:” (*Highlighted language added by Act 1008 of the 2003 regular session of the legislature*).
 3. Shall make a reasonable effort to obtain the required information. CCP 4541(B), *as amended*, 2003 La. Acts 1008.
2. Contents
 1. ★Detailed requirements: Petitioner’s relationship to defendant; place petitioner proposes defendant will reside; reasons why interdiction is necessary, infirmities; if full interdiction is requested, reasons why limited interdiction is inappropriate; if limited interdiction is requested, the capacity sought to be removed from the limited interdict, and the powers sought to be conferred upon the limited curator; name and address of spouse; name and address of adult children, or if none, parents and siblings, or if none, nearest adult relative; name and address of any legal representative of the defendant; name and address of any previous curator; name and address of proposed curator, reasons why proposed curator should be appointed. CCP 4541.
3. Venue
 1. Where defendant is domiciled or resides, or if no domicile, then where he is physically present. CCP 4542.
4. Service
 1. ★★Personal service on the defendant. If defendant is out of state then delivery of certified copy by anyone over the age of 18. CCP 4543.
 2. ★★An appointed attorney is not empowered to accept service on behalf of a defendant that the petitioner has failed to personally serve. CCP 4544, *comment(c)*.
 3. ★★Failure to personally serve the petition precludes the court from granting the relief sought in the petition. Service is effective as of the date a notarized affidavit is filed in the record affirming the personal delivery. CCP 4543(A).
 4. Note: Service requirements are frequently ignored , potentially creating title and other legal problems.
5. Notice to Interested Parties
 1. ★Within 3 days of filing petition each person named in the petition must be sent a copy by certified mail. CCP 4543(B).

6. Experts
 1. Court may appoint examiner with training or experience in the type of infirmity alleged. CCP 4545.
 2. Examiner must send written report to court, counsel and unrepresented parties seven days prior to hearing. CCP 4545.
 7. Wrongful filing of interdiction petition and potential liability
 1. If petitioner knew or should have known that any material factual allegation concerning grounds for interdiction was false, then liable for damages. CC 399.
7. Temporary Interdiction
1. Grounds
 1. "... when there is a substantial likelihood that grounds for interdiction exist and substantial harm to the health, safety, or property of the person sought to be interdicted is imminent." CC 391.
 2. "When the court finds that immediate and irreparable injury, loss, or damage will result to the person or property of the defendant before a hearing can be held." CCP 4549(A)(1).
 2. Pleadings
 1. Petition for interdiction must be pending. CC 391.
 2. Request for temporary interdiction must be accompanied by:
 1. An affidavit by a physician or psychologist attesting to facts supporting the claim that all grounds for temporary interdiction set forth in CC 391 exist. CCP 4549(A)(2)(a).
 2. A verified petition or affidavit attesting to facts supporting the claim that immediate and irreparable injury, loss or damage will result to the person or property of the defendant before he or his attorney can be heard. CCP 4549(A)(2)(b).
 3. An affidavit by movant or his attorney attesting to efforts made to give notice to the defendant or the reasons supporting a claim that notice should not be required. CCP 4549(A)(2)(c).
 3. Order
 1. May be ordered *ex parte*, without notice and without an adversarial hearing (somewhat similar to temporary restraining order).
 2. In the order of temporary interdiction, the court shall schedule a preliminary interdiction hearing to be held not more than ten days following the *ex parte* signing of the judgment of temporary interdiction. CCP 4549(A)(1).
 3. The order shall state why it was granted without notice and without an adversarial hearing. CCP 4549(A)(1), ★*as amended*, 2003 La. Acts 1008.
 4. In the *ex parte* judgment the court shall appoint an attorney to represent the defendant. The defendant can always choose his own attorney. CCP 4549(C).
 5. Termination

1. Ten days after being signed the judgment of temporary interdiction terminates unless the defendant moves for an extension or unless there are extraordinary reasons shown at a contradictory hearing, in which case it may be extended for another 10 days. CC 397.
 - (1) The date of termination must be written on the judgment. CCP 4551(C).

8. Preliminary Interdiction

1. Grounds
 1. "... when there is a substantial likelihood that grounds for interdiction exist and substantial harm to the health, safety, or property of the person sought to be interdicted is imminent." CC 391.
2. Pleadings
 1. Petition for interdiction must be pending. CC 391.
3. Service/notice
 1. ★ All orders, pleadings, and supporting documents must be personally served on the defendant AND his attorney no later than 72 hours prior to the preliminary interdiction hearing. CCP 4549(B)(2).
 2. To the extent possible, petitioner shall give reasonable notice of the hearing to all other persons named in the petition. CCP 4549(B)(2).
4. Hearing
 1. The hearing shall be held within 20 days of signing the order scheduling the hearing. CCP 4549(B)(1).
 2. In order scheduling hearing, the court shall appoint an attorney to represent the defendant. CCP 4549(C).
5. Judgment
 1. A preliminary interdiction cannot be granted prior to an adversary hearing. CCP 4549(B)(1).
 2. ★ A judgment of preliminary interdiction terminates 30 days after being signed unless extended by the court for good cause for a period not to exceed 30 days. CC 397.
 1. The date of termination must be written on the judgment. CCP 4551(C).

9. Hearing on Petition for Interdiction

1. Time of hearing
 1. Interdiction proceedings shall be heard summarily and by preference. CCP 4547.
 2. ★Note: If there is a judgment of preliminary interdiction, the matter should be tried within 60 days of being signed (30 days plus a 30 day extension) to avoid a lapse in the curator's authority. *See* CC 397.
2. Notice of Hearing
 1. ★ Notice of the interdiction hearing is served in the manner prescribed for summary proceedings and personal service is required on the defendant.

- CCP 4546, referring to CCP 4543.
2. ★ Petitioner shall provide notice to each person named in the petition by first class mail, return receipt requested, at least ten days prior to the hearing . CCP 4546.
 3. Presence of the Defendant and Proposed Curator; Location of Hearing
 1. ★The defendant has a right to be present at the hearing and the court shall not conduct the hearing in his absence unless the court determines that good cause exists to do so. The court may require the presence of the proposed curator. CCP 4547.
 2. If the defendant is unable to come to the courthouse the hearing may be held where the defendant is located. CCP 4547.
 4. Burden and Standard of Proof, Evidence
 1. The petitioner bears the burden of proof by clear and convincing evidence. CCP 4548, *as amended*, 2003 La. Acts 1008.
 2. Usual rules of evidence apply, including health care provider privilege. C.E. 510(g).
10. Legal Counsel
1. Appointment:
 1. If defendant makes no timely appearance through an attorney the petitioner has the responsibility to apply for an order to have an attorney appointed, but the judge can appoint an attorney on his own motion. The defendant can always choose his own attorney. CCP 4544.
 2. If the court previously appointed counsel in temporary or preliminary interdiction there is no need to reappoint counsel. CCP 4544 *comment* (b).
 2. Duties
 1. ★ The attorney shall personally visit the defendant, unless excused by the court for good cause. To the extent possible, the attorney shall discuss the allegations in the petition, the relevant facts and law and the rights and options of the defendant. CCP 4544(B).
 2. Failure to perform these duties may subject the attorney to sanctions. CCP 4544(B).
11. Curators
1. Selection of curator
 1. Court chooses person best able to fulfill the duties of his office, and considers them in the following order of preference:
 1. First, a person designated by the defendant in a signed writing, then the spouse, adult child, parent, a person with whom the defendant resided for more than 6 months prior to filing, any other person. CCP 4561(C)(1).
 2. Never a minor, interdict or nonresident of the state without a resident agent for service of process. CCP 4561(B)(1).
 3. Not the following except for good cause: a felon, a person indebted

to the interdict, an adverse party in a pending lawsuit, the owner operator or employee of a long term care institution where interdict gets care, unless they are related. CCP 4561(B)(2).

2. Separate curator for person and affairs is permitted. CCP 4561(C)(2).
2. Appointment & Qualification
 1. ★ Appointed in the judgment. CCP 4551.
 2. To qualify, the curator must furnish security and take an oath. CCP 4562(A).
 3. If curator fails to qualify within 10 days of appointment, court may revoke appointment and appoint someone else or the court may extend the delay for qualifying. CCP 4562(B).
 4. Court may issue protective orders to protect the interdict in the interim before appointment of curator. CCP 4562(C).
3. Inventory and Security
 1. Curator shall furnish security. CCP 4563(A).
 2. A detailed descriptive list is permitted in lieu of an inventory. CCP 4563(B).
4. Letters of Curatorship
 1. Upon qualification, court or clerk issues letters of curatorship in the name and under the seal of the court. CCP 4564.
 2. ★ Letters must set forth date, if any, of expiration, and enumerate the powers if it is a limited curator. CCP 4564.
5. Standard of Care
 1. In discharging his duties, the curator shall exercise reasonable care, diligence and prudence and shall act in the best interest of the interdict. CC 392.
6. Removal
 1. Anyone can petition for removal for good cause. CCP 4568.
12. Undercurators
 1. Court selects person best able to fulfill duties of office. CCP 4565(A)(1).
 2. If failure to qualify within ten days, court may revoke appointment or extend the delay for qualifying. CCP 4565(A)(3).
 3. Undercurator shall:
 1. Notify court when curator fails to qualify timely. CCP 4565(B).
 2. Have free access to interdict and interdict's records. CCP 4565(B).
 3. Review all accounts and personal reports filed by curator. *Id.*
 4. Notify court when he thinks the curator has failed to perform duties. *Id.*
 5. Approve or disapprove transactions which require his concurrence. *Id.*
 6. Move to appoint successor when curator's office is empty. *Id.*
 4. Duty to exercise reasonable care, diligence and prudence, and to act in the best interest of the interdict. CC 393.
13. Costs and Attorney Fees

1. Costs and attorney fees, or any part thereof, may be awarded against any party, except that no attorney fees awarded to a petitioner when judgment is granted against the petitioner or the petition is dismissed on the merits. CCP 4550.
14. Judgment
1. A judgement of interdiction shall appoint a curator and undercurator and state that their powers commence only upon qualification, direct the clerk of court to record the judgment, enumerate the powers if it is a limited curator, and set forth the date of termination if it is a temporary or preliminary interdiction. CCP 4551.
15. Recordation in Conveyance and Mortgage Records
1. Clerk of court must record notice of filing of interdiction in the mortgage and conveyance records of the parish where action is pending and must record every judgment granting, modifying or terminating interdiction in the parish where rendered. CCP 4552(A).
 2. Curator has fifteen (15) days from qualification to record judgment in every parish in which the interdict owns immovable property. CCP 4552(B).
 3. Curator has fifteen days from a judgement modifying or terminating interdiction to record it every other parish in which the interdict owns immovable property. CCP 4552(B), ★*as amended*, 2003 La. Acts 1008.
16. Appeals
1. 30 days from applicable date provided in CCP 2087. CCP 4555.
 2. Not suspensive. CCP 4555.
 3. Acts of curator and undercurator not invalidated by annulment on appeal. CCP 4555.
17. Modification or Termination of Interdiction
1. Grounds:
 1. The terms of the judgment are currently either excessive or insufficient or the ability of the interdict to care for his own person or property has so changed as to warrant modification or termination. CCP 4554.
 2. Standard of proof is preponderance of the evidence. CCP 4554.
 3. On motion of the court or any person, including the interdict. CCP 4554.
18. Effects of Interdiction
1. Pre-interdiction juridical acts
 1. Interdiction does not affect the validity of a juridical act made by the interdict prior to the effective date of the interdiction. CC 394.
 2. Capacity to make juridical acts
 1. Full interdict lacks the capacity to make a juridical act. ★CC 395, *as amended*, 2003 La. Acts No. 1008.
 1. A juridical act is a lawful volitional act intended to have legal consequences. CC 395, *comment (b)*

2. Limited interdict lacks capacity to make a juridical act pertaining to the property or aspects of personal care that the judgment of limited interdiction places under the authority of his curator, except as provided in Article 1482, or in the judgment of interdiction. ★ CC 395 *as amended*, 2003 La. Acts 1008.
3. Donations
 1. Proof of incapacity to donate
 - (1) A person who challenges the capacity of a donor must prove by clear and convincing evidence that the donor lacked capacity at the time the donor made the donation *inter vivos* or executed the testament. ★ CC 1482, *as amended*, 2003 La. Acts 1008.
 2. Full interdict lacks the capacity to make or revoke a donation *inter vivos* or disposition *mortis causa*. ★ CC 1482, *as amended*, 2003 La. Acts 1008.
 3. Limited interdict
 - (1) With respect to property under the authority of the curator, lacks capacity to make or revoke a disposition *inter vivos* and is presumed to lack capacity to make or revoke a disposition *mortis causa*.
 - (2) With respect to his other property, the limited interdict is presumed to have capacity to make or revoke a donation *inter vivos* or *mortis causa*.
 - (1) These presumptions may be rebutted by a preponderance of the evidence. ★ CC 1482, *as amended*, 2003 La. Acts 1008.

19. Post Judgment Monitoring and Reporting

1. ★ A curator for the affairs of the interdict shall file a report to the court and to the undercurator annually and upon termination of his office. CCP 4569 (A).
 1. The report shall show the money and other property received by and in the possession of the succession representative at the beginning of the period covered by the account, the revenue, other receipts, disbursements, and disposition of property during the period, and the remainder in his possession at the end of the period. CCP 4569 *cross referencing other articles*.
2. ★ A curator for the person of the interdict shall file a personal report describing the location and condition of the interdict annually. CCP 4569.
 1. The report should “among other things” describe if there has been a material change in the functional ability of the interdict to care for his person and affairs. CCP 4569 *comment (b)*.
3. The court may appoint an examiner at any time to review an account or personal report of the curator, to interview the interdict, curator, or undercurator, or to make

any other investigation. At any time , the court may appoint an attorney to represent the interdict. CCP 4569(B).

20. Management of Affairs of Interdict

1. Relationship between curator and interdict is the same as between a minor and tutor, except as otherwise provided. CCP 4566(A).
2. Curator who owns interest in property with the interdict may acquire the property in certain circumstances. CCP 4566(B).
3. Curator may accept donations made to the interdict. CCP 4566(C).
4. Curator may place interdict's property in trust. CCP 4566(D).
5. Curator must notify undercurator reasonably in advance of material changes in living arrangements and transactions materially affecting the interdict's person or affairs. CCP 4566 (E).
6. Curator shall not move the dwelling of interdict out of state without prior court authorization. CCP 4566(F).
7. Curator cannot consent to abortion or sterilization without prior court approval. CCP 4566 (G).
8. Curator and court cannot admit or commit to a mental health treatment facility except by using mental health law. CCP 4566(H).
9. ★ A temporary curator cannot place the defendant in a residential or long term care facility (such as a nursing home) without good cause shown at a contradictory hearing. CCP 4566(I).

21. Expenses of the Interdict and Legal Dependents

1. Curator shall expend enough revenue to care properly for the interdict's person or affairs, or (with court authorization) to support his legal dependants. CCP 4567.
2. If revenue is insufficient, then capital, with court authorization. CCP 4567.

22. Liability

1. ★ Neither a curator nor an undercurator is personally responsible to a third person for a delictual obligation of the interdict in his charge solely by reason of his office. CCP 2319.
2. Wrongful Filing of Interdiction Suit
 1. If petitioner knew or should have known allegations were false, and petition denied, liable for resulting damages. CC 399.

23. Effective Date of Interdiction and Effect of Interdiction on Acts Prior to Interdiction

1. Retroactive to date of filing. CC 396.
2. Interdiction does not affect the validity of a juridical act made by the interdict prior to the effective date of interdiction. CC 394.

TIME LINES FOR TEMPORARY AND PRELIMINARY INTERDICTION*

Action

Time

Petition for Interdiction	Pending petition required before temporary interdiction may be ordered. CC 391.
Motion for Temporary Interdiction	With petition for interdiction or after filing. CC 391.
Affidavit by Licensed Physician or Psychologist.	Filed with motion. CCP 4549(A)(2)(a).
Affidavit by Mover or Attorney	Filed with motion. CCP 4549(A)(2)(c).
Verification or Affidavit	Filed with motion. CCP 4549(A)(2)(b).
Judgment of Temporary Interdiction	Ex parte. CCP 4549(A).
Appointment of Attorney	In judgment of temporary interdiction. CCP 4549(C).
Termination of Temporary Interdiction Jt.	10 days after signing; may be extended for one 10 day period. CC 397.
Deadline for Personal Service on Defendant	72 hours prior to preliminary interdiction hearing. CCP 4549(B)(2).
Notice to other Persons named in Petition	Reasonable notice of hearing date. CCP 4549(B)(2).
Preliminary Interdiction Hearing	Date set in judgment of temporary interdiction to be held within 10 days, or up to 20 days for extraordinary reasons. CCP 4549.
Termination of Preliminary Interdiction Jt.	30 days after signing, may be extended for another 30 days. CC 397.

* Special thanks to Kerry Triche for his work on this Timeline.

TIME LINES FOR INTERDICTION

Action	Time
Petition for Interdiction Filed	CC 389; CCP 4541.

Recordation of Notice of Filing Suit	Clerk has duty. CCP 4552.
Service of petition by sheriff	Personal service required. CCP 4543(A).
Service by other person	If defendant located out of state. CCP 4543(A).
Affidavit of Service	Service not effective until affidavit filed in record. CCP 4543(A).
Mailing Petition to Other Persons	Within 3 days of filing petition. CCP 4543(B).
Appointment of Attorney	If no appearance made. CCP 4544.
Appointment of Examiner	Upon order of court. CCP 4545.
Written Report of Examiner	Provided to parties and court not less than 7 days prior to hearing. CCP 4545.
Fixing of Hearing or Trial	Summary proceeding. CCP 4546, 4547.
Notice of Hearing or Trial	Mailed to persons named in petition within 10 days of hearing. Personal service on defendant. CCP 4546.
Judgment of Interdiction	Rendered after hearing. CCP 4551. Effective retroactive to date of filing petition. CC 396.
Interim Protective Orders	After judgment and before qualification. CCP 4562(C).
Appointment of Curator and Undercurator	In judgment of interdiction. CCP 4551.
Detailed descriptive list/inventory	Before security furnished. CCP 4563(B).
Recordation of Judgment in Parish	Clerk has duty after judgment. CCP 4552(A).
Qualification of Curator:oath/security	10 days from appointment. Extension for good cause. CCP 4562(B)(1).
Qualification of Undercurator: oath	10 days from appointment. Extension for good cause. CCP 4565(A)(3).
Letters of Curatorship.	After qualification. CCP 4564.
Duties of curator	Commence upon qualification. CC 392.

Recordation of Judgment in other Parishes	15 days after qualification; curator has duty. CCP 4552(B).
Notice of signing Judgment	CCP 1913.
Application for New Trial	7 days. CCP 1974.
Appeal	30 days from date provided in CCP art. 2087. No suspensive appeal allowed. CCP 4555.
Accounting by Curator	Annually and at other times ordered by the court. CCP 4569(A).
Personal Report	Annually and at other times ordered by the court. CCP 4569(A).
Service of Account or Report	At time of filing, by mail. CCP 4569(A).
Order Terminating or Modifying Judgment	Effective on signature. CC 398.
Termination of interdiction	Death or order of court. CC 397.

INTERDICTION FORMS

Most of these forms are available on disk with the Handbook On Louisiana Family Law , Kerry Triche (West Publishing) and are reproduced with the permission of the author.

Form No. 17.1 Verified Petition for Interdiction

* (caption) *

PETITION FOR INTERDICTION¹

The petition of _____, who is domiciled in _____, State of Louisiana, whose age is _____, and whose current address is _____ respectfully represents:²

1.

The name of the defendant is _____. The defendant is domiciled in _____, State of Louisiana, and is ___ years old.³

2.

Petitioner's relationship to the defendant is _____.⁴

3.

The current address of the defendant is _____. The petitioner proposes that the defendant will reside at _____ if the relief sought in this petition is awarded.⁵

4.

An interdiction of the defendant is necessary for the following reasons: _____.⁶

5.

The nature and extent of the defendant's infirmities are as follows: _____.⁷

6.

The defendant, due to this infirmity, is unable consistently to make reasoned decisions regarding the care of his person and property, or to communicate those decisions. Petitioner believes

that a full interdiction is warranted in this case. The defendant's interests cannot be protected by less restrictive means. A limited interdiction is inappropriate for the following reasons.

_____.⁸

[or in the alternative]

Petitioner believes that a limited interdiction is warranted, and seeks to remove only the capacity to _____ from the limited interdict. Petitioner also seeks the following powers to be conferred upon the limited curator: _____.⁹

7.

The defendant is married to _____, whose address is _____.¹⁰

8.

The names and addresses of the adult children of the defendant are: _____.

[or in the alternative]

The defendant has no adult children. The names and addresses of parents and siblings of the defendant are: _____.¹¹

9.

The defendant currently does not have a legal representative.

[or in the alternative]

The defendant's legal representative is _____, whose address is _____.¹²

10.

The defendant has not designated in writing any person to be curator to the knowledge of the petitioner.

[or in the alternative]

The defendant previously designated _____, whose address is _____, to be curator in the event one is necessary in a writing signed by the defendant.¹³

11.

The petitioner suggests that _____ be appointed as curator of the person and property of the defendant. The proposed curator's domicile is _____ Parish, and current address is _____. The proposed curator, age _____, has a _____ education.¹⁴

12.

The reasons why the proposed curator should be appointed are as follows:
_____.¹⁵

13.

Petitioner suggests that _____ is best qualified to fulfill the duties of undercurator.¹⁶

WHEREFORE, the petitioner prays that:¹⁷

1. A judgment of interdiction be rendered.
2. _____ be appointed as curator over the person and property of the defendant, after qualifying as required by law.
3. _____ be appointed as undercurator, after qualifying as required by law.

By attorney:

Service information.
Please serve the defendant

Personally¹⁸ at: *insert address*

* (caption) *

AFFIDAVIT OF VERIFICATION¹⁹

State of Louisiana

Parish of _____

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified within and for the State and Parish aforesaid, personally appeared _____, who, after being by me duly sworn, stated as follows: I am the petitioner in the above captioned suit for interdiction of _____ and all of the allegations of fact contained therein are true and correct to the best of the my knowledge, information, and belief.

Petitioner

SWORN TO AND SUBSCRIBED, before me, this ____ day of _____, 200__.

Notary Public

Notes to Form No. 17.1

1. A Louisiana district court has jurisdiction over an interdiction proceeding if the person sought to be interdicted is domiciled in this state, or is present in this state and has property here. C.C.P. art. 10(A)(3). Venue for an interdiction proceeding is the parish where the defendant is domiciled or where he resides if he has no domicile in this state. Venue may also be in the parish where he is physically present if he has no residence in this state. C.C.P. art. 4542.

2. Any person may petition for the interdiction of a natural person who is of the age of majority or an emancipated minor. The petition must be verified and contain the information required by C.C.P. art. 4541. Insert the name, domicile, age, and current address of the petitioner. Further information required by C.C.P. art. 4541 should be stated in the following numbered paragraphs to

the petition.

3. Insert the name, domicile, and age of the defendant.
4. State the relationship of the petitioner to the defendant. Relationship obviously includes relationship by blood or affinity, but it may also include relationships of friendship or as concerned neighbors.
5. Insert the defendant's current address and the place the petitioner proposes the defendant will reside if the interdiction is granted.
6. List with particularity the reasons why interdiction is necessary.
7. The petition must include a brief description of the nature and extent of the alleged infirmities of the defendant. For a person to be interdicted, "the inability to make reasoned decisions regarding the care of his person and his property must result from an infirmity, including among others, chronic substance abuse. Advanced age alone is not an infirmity." See Revision Comment (b) to C.C. Article 389.
8. The petition should state whether a full interdiction or a limited interdiction is requested. "A court may order the full interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity, is unable consistently to make reasoned decisions regarding the care of his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means." C. C. Art. 389. The petitioner must also list the reasons why limited interdiction is not appropriate.
9. If limited interdiction is requested rather than a full interdiction, the petitioner should state which capacity should be removed from the limited interdict, and what powers should be conferred upon the limited curator. C.C.P. art. 4541(5).
10. The petition must state the name and address of the spouse of the defendant if he has one. The spouse enjoys a priority of appointment, if the defendant has not designated another person to be curator. C.C. P. art. 4561. In addition to service of process on the defendant, the petitioner must mail a copy of the petition to every other person listed in the petition. C.C.P. art. 4543. This changes prior law.
11. Use one of the alternative paragraphs depending on the facts of the case. List the name and address of the adult children of the defendant or, if he has none, of his parents and siblings. If has no parents or siblings list his nearest adult relative. In addition to service of process on the defendant, the petitioner must mail a copy of the petition to these relatives. C.C.P. art. 4543.
12. Insert the name and address of any legal representative of the defendant, or state that he has no representative. The term "legal representative" is not be limited to those persons listed in C.C.P. art. 5251(10) but may include any attorney or agent that represents the defendant in legal matters. In addition to service of process on the defendant, the petitioner must mail a copy of the petition to the defendant's legal representative, if he has one. C.C.P. art. 4543.
13. C.C.P. art. 4541 requires that the petitioner state whether the person to be interdicted has previously designated in writing a person to be his curator. The writing need not be in authentic form but must be signed by the person being interdicted. A person designated by the defendant enjoys a priority of appointment over other persons, such as the defendant's spouse or relatives. C.C. P. art. 4561. A copy of the writing may be attached to the petition or simply introduced at the trial. If no curator has been named, the petition should so allege.
14. State the name, domicile, age, education, and current address of the proposed curator. This information is required by C.C.P. art. 4541.
15. State the reasons why the proposed curator should be appointed. This information is required by C.C.P. art. 4541. The court must appoint a qualified person who "is best able to fulfill the duties of his office." C.C.P. art. 4561.
16. While C.C.P. art. 4541 does not require that the petition list the name of a person who may qualify as an undercurator, it was customary to do so under prior practice. The undercurator may also be suggested when the detailed descriptive list is filed. The appointment of an undercurator is not required when the curator is a nonprofit curatorship program. R.S. 9:1031(F).
17. The prayer should request the type of interdiction appropriate.

18. Insert service of process information as to where the defendant may be found. C.C.P. art. 4543 mandates personal service of process on the defendant in all cases. A suit based on domiciliary service is a nullity. If the defendant may be found in Louisiana, the sheriff must serve him. If the defendant is domiciled in Louisiana but is located outside the state, service may be made by personal delivery by a private person. See C.C.P. art. 4543(A) and Form No. 17.2. If the defendant cannot be served, the court has no authority to interdict him. See C.C.P. art. 4543, Comment (b). In addition to personal service on the defendant, the petitioner must mail a copy of the petition to every other person listed in the petition. C.C.P. art. 4543(B). See Form No. 17.3.

19. The petition must be verified by the petitioner. C.C.P. art. 4541.

Form No. 17.2 Affidavit of Service when Defendant is Located out of State

* (caption) *

AFFIDAVIT OF SERVICE

State of Louisiana

Parish of _____

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified within and for the State and Parish aforesaid, personally appeared _____, who, after being by me duly sworn, stated as follows: The defendant, _____, is domiciled in this state but is located elsewhere. I am over the age of eighteen and did deliver a certified copy of the above-captioned petition for interdiction, citation, and all attachments to the defendant personally, on the ____ day of _____, 200__ at the following address: _____.

Process server

SWORN TO AND SUBSCRIBED, before me, this ____ day of _____, 200__.

Notary Public

Notes to Form No. 17.2

C.C.P. art. 4543 mandates personal service of process on the defendant in all cases. A suit based on domiciliary service is a nullity. If the defendant may be found in Louisiana, the sheriff must serve him. If the defendant is domiciled in Louisiana but is located outside the state, service may be made by personal delivery by a private person. Under the normal rules of procedure, the petitioner must file a motion to appoint a private process server who is approved in advance by the court. C.C.P. art. 1293. However, C.C.P. art. 4543(A) does not expressly require prior court action to appoint a private process server. Any person over the age of eighteen may make service. After service is made, an affidavit of service should be filed in the court record. Service is effective on the date the affidavit is filed in the record.

If the defendant cannot be served, the court has no authority to interdict him. See C.C.P. art. 4543, Comment (b).

In addition to personal service on the defendant, the petitioner must mail a copy of the petition to every other person listed in the petition. C.C.P. art. 4543(B). See Form No. 17.3.

Form No. 17.3 Notice to Interested Persons, with Certificate of Mailing

(date)

(name)

(address)

Dear _____:

NOTICE IS HEREBY GIVEN, as required by Louisiana Code of Civil Procedure Article 4543(B), that a petition entitled “Interdiction of _____,” bearing Docket Number _____ of the _____ Judicial District Court, Parish of _____, State of Louisiana was filed on _____. A copy of the petition is enclosed.

Sincerely,

Attorney at Law
Certified Mail

Enclosure

* (caption)*

CERTIFICATE OF MAILING NOTICE

I certify that notice of the filing of the above-captioned interdiction proceeding and a copy of the petition was mailed to the last known address of each person named in the petition, other than the parties, by mailing a cover letter and copy of the petition by certified mail, within three days of filing the petition. The certification of mailing from the U.S. post office is attached.

Signed this ____ day of _____, 200__.

Attorney for petitioner

Notes to Form No. 17.3

This form contains two separate documents, neither of which is expressly required by the 2000 Revision. C.C.P. art. 4543(B) requires that the petitioner mail a copy of the petition for interdiction to all non-parties mentioned in the petition, such as the spouse or children of the defendant. There is no requirement that the copy be certified, but all essential information should be included, such as the docket number and date of filing. The purpose of the rule is to give notice to persons who may have evidence of the issues or may want to qualify as curator. This cover letter may be sent with the petition to serve as evidence of mailing to the particular person and address. The petition must be sent by certified mail.

The second suggested form is a certificate of notice that should be captioned and filed in the court record. This protects the attorney and petitioner from possible sanctions. While the failure to mail a copy of the petition to the other persons does not affect the validity of the proceeding, it “may subject the petitioner or his attorney to sanctions.” C.C.P. art. 4543(B). The attorney preparing the certificate may also want to include the names and addresses of all persons who were sent letters.

Notice must also be given to these same persons of the date any hearing or trial is fixed. C.C.P. art. 4546.

Form No. 17.4 Notice of Filing Interdiction Suit

* (caption)*

NOTICE OF PENDENCY OF ACTION

NOTICE IS GIVEN that a petition for interdiction of _____ entitled “Interdiction of _____,” bearing Docket Number _____ of the _____ Judicial District Court, Parish of _____, State of Louisiana was filed on _____.

Clerk of Court

Notes to Form No. 17.4

The clerk of court is given the responsibility to record notice of filing an interdiction suit in both the mortgage and conveyance records. C.C.P. art. 4552. A judgment of interdiction is retroactive to the date the petition is filed. C.C. art. 396. A full interdict generally does not have the capacity to make a juridical act. C.C. art. 395. Thus, acts made by the interdict between the filing of the petition and the judgment of interdiction are null. A limited interdict retains the capacity to make a juridical act, unless otherwise specified in the judgment of limited interdiction.

Form No. 17.5 Motion for Appointment of Attorney with Order

** (caption)**

MOTION AND ORDER FOR APPOINTMENT OF ATTORNEY

On motion of _____, who is the petitioner in the above-captioned suit for interdiction, and upon suggesting to the Court that:

1.

Petitioner filed a suit for the interdiction of _____, on the _____ day of _____, 200___. Citation and service of process was made on the defendant on the _____ day of _____, 200___. More than fifteen days has elapsed and the defendant has not filed an answer or other opposition nor have the defendant made a timely appearance through an attorney.

2.

Petitioner suggests that an attorney should be appointed to represent the defendant in this proceeding as required by Code of Civil Procedure Article 4544.

WHEREFORE, mover prays that this Court should appoint an attorney to represent the defendant in this proceeding.

By Attorney:

* (caption)*
ORDER APPOINTING ATTORNEY

Upon consideration of the foregoing motion: IT IS ORDERED that
_____ is appointed as attorney to represent the defendant, _____, in
the above-captioned proceeding. ORDERED AND SIGNED, this ___ day of _____,
200 ____, in _____, Louisiana.

District Judge

Notes to Form No. 17.5

If the defendant does not answer the petition or attempts to answer in proper person, the plaintiff has the duty to apply to the court for an order appointing an attorney to represent the defendant. The duties of the court-appointed attorney are listed in C.C.P. art. 4544.

Leave a blank in the order for the court to fill in the name of the attorney. The court may accept a recommendation for appointment only if it is “manifestly in the interest of the unrepresented party.” C.C.P. art. 5092.

Form No. 17.6 Motion and Order for Appointment of Examiner

*** (caption)***

MOTION AND ORDER FOR APPOINTMENT OF EXAMINER

On motion of petitioner, and upon suggesting to the Court that a petition for interdiction was filed in the above-captioned matter, and it is necessary for the Court to appoint a person who has training or experience in the type of infirmity alleged in the petition.

WHEREFORE, mover prays that a rule to show cause issue directed to the defendant to show cause why this Court should not appoint an examiner to examine the defendant for purposes of this interdiction proceeding.

ORDER

Upon consideration of the foregoing motion:

IT IS ORDERED that the defendant show cause on the ____ day of _____, 200____, why this Court should not appoint an examiner to examine the defendant for purposes of proceeding.

ORDERED AND SIGNED, this ____ day of _____, 200____, in _____, Louisiana.

District Judge

* (caption) *

JUDGMENT APPOINTING EXAMINER

IT IS ORDERED that _____ is appointed to examine the defendant in this suit and present a written report to the Court and the parties no later than seven days before any hearing. The report shall include a description of any infirmities suffered by the defendant, the appropriateness of interdiction, including whether a less restrictive means of intervention is available, the type of interdiction that is appropriate, and any other relevant matters.

IT IS FURTHER ORDERED that the defendant, _____, is ordered to submit to and cooperate in the examination by the examiner appointed by the Court. Communications made by the defendant in the course of the examination shall not be subject to a claim of testimonial privilege.

ORDERED AND SIGNED, on the _____ day of _____, 200____, in _____, Louisiana.

Notes to Form No. 17.6

C.C.P. art. 4545 authorizes the court to appoint an expert to examine the defendant. The Article does not specifically mention whether the petitioner may move for the appointment and whether the appointment is after a contradictory hearing. However, C.C.P. art. 192 recognizes that the general authority of the court to appoint an expert is governed by C.E. art 706 and comment (b) to C.C.P. art. 4545 refers to Code of Evidence Article 706(A). Thus, this form follows the rule to show cause procedure required by the Code of Evidence. The statement in the order concerning the confidentiality of communications made by the defendant during the examination is included in light of C.E. art. 510(B)(2)(f). As to the confidentiality of prior communications between the defendant and his current health care provider, see C.E. art. 510(B)(2)(g).

Form No. 17.7.1 Motion for Judgment of Temporary Interdiction

* (caption)*

MOTION FOR JUDGMENT OF TEMPORARY INTERDICTION

On motion of _____, who is the petitioner in the above-captioned suit for interdiction, and upon suggesting to the Court that:

1.

Immediate and irreparable injury, loss, or damage will result to the person or property of the defendant before a hearing can be held.¹

2.

Petitioner filed a suit for the interdiction of _____, on the _____ day of _____, 200__, in the above-captioned matter.²

3.

As appears from the attached affidavit, there is a substantial likelihood that grounds for interdiction exist and that substantial harm to the health, safety, or property of the defendant is imminent.³

4.

As appears from the attached affidavit, [the following efforts have been made to give notice of this motion to the defendant: _____] or [notice to the defendant should not be required because _____].⁴

5.

Petitioner suggests that an attorney should be appointed to represent the defendant in this proceeding.⁵

6.

Mover suggests that _____ be appointed as curator of the person and property of the defendant. The pertinent facts concerning this curator are stated in the petition for interdiction.⁶

WHEREFORE, mover prays that this Court should issue an ex-parte judgment of temporary interdiction and set a date for a contradictory hearing not later than ten days from the signing of judgment, and appoint an attorney to represent the defendant in this proceeding.

By Attorney:

Notes to Form No. 17.7.1

1. This Paragraph contains the essential allegation for the issuance of a temporary interdiction. The facts that support this allegation may be included in the motion, if verified, or may be included in a separate affidavit.
2. The court may order a temporary or preliminary interdiction only when a petition for interdiction is pending. See Form No. 17.1. The motion for temporary interdiction may be combined with the petition for interdiction, or it may be filed as a separate pleading in conjunction with the petition. This form separates the two pleadings.
3. Paragraph 3 makes reference to the affidavit by the licensed physician or psychologist attesting to the facts that support a claim for temporary interdiction. C.C.P. art. 4549(A)(2)(a). This Paragraph may be expanded to include the facts mentioned in the affidavit.
4. The court may issue an ex parte judgment of interdiction without notice to the defendant. However, the mover or his attorney must attach an affidavit detailing why notice should not be given or attesting to prior efforts to give notice.
5. The court must appoint an attorney for the defendant in every ex parte judgment of temporary interdiction and in every order scheduling a preliminary injunction hearing. C.C.P. art. 4549(C).
6. Rather than repeat the allegations concerning the curator, reference is made to the petition for interdiction which must be filed before motion for temporary interdiction. The court must appoint a qualified person who "is best able to fulfill the duties of his office." C.C.P. art. 4561. See Comment (a) to C.C.P. art. Art. 4549.

Form No. 17.7.2 Affidavit and Verification for Motion for Temporary Interdiction

* (caption) *

AFFIDAVIT OF VERIFICATION¹

State of Louisiana

Parish of _____

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified within and for this State and Parish, personally appeared _____, who, after being by me duly sworn, stated as follows: I am the *Mover/Attorney* in the above-captioned suit for interdiction of _____ and all of the allegations of fact contained therein are true and correct to the best of the my knowledge, information, and belief.

The following facts support the claim that immediate and irreparable injury, loss, or damage will result to the person or property of the defendant before he or his attorney can be

heard: _____.²

Mover/Attorney

SWORN TO AND SUBSCRIBED, before me, this ____ day of _____, 200__.

Notary Public

Notes to Form No. 17.7.2

1. This form combines a verification and affidavit. Both are not needed but are included here in an abundance of caution. A motion for ex parte temporary interdiction must be accompanied by a separate attestation of facts supporting the claim that immediate and irreparable injury, loss, or damage will result to the person or property of the defendant before he or his attorney can be heard. C.C.P. art. 4549(A)(2)(b). The motion may be made part of the initial petition for interdiction, in which case the verification of the initial petition should be expanded to include the language in this form. If the motion is filed as a separate pleading after the petition has been filed, this affidavit should be used.
2. Insert the facts supporting the claim of immediate and irreparable injury, loss, or damage.

Form No. 17.7.3 Affidavit of Physician or Psychologist

* (caption)*

State of Louisiana

Parish of _____

BEFORE ME personally appeared _____, who after being duly sworn did depose and say that he is a licensed *Physician/Psychologist*¹ who is familiar with the defendant in this matter, has personally examined the defendant, and that all grounds for temporary interdiction set forth in Civil Code Article 391 exist as shown by the following attested facts:

There is a substantial likelihood that grounds for interdiction exist because the defendant, due to an infirmity, is unable consistently to make reasoned decisions regarding the care of his person or property, or any aspect of either, or to communicate those decisions, and whose interests cannot be protected by less restrictive means. More particularly, _____.² Substantial harm to the health, safety, or property of the defendant is imminent because: _____.³

Physician/Psychologist

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 200__.

Notary Public

Notes to Form No. 17.7.3

1. A motion for ex-parte temporary interdiction must be accompanied by a separate affidavit by a licensed physician or psychologist attesting to the facts that support a claim for temporary interdiction. C.C.P. art. 4549(A)(2)(a). Civil Code Article 391 states the required findings before the court may order a temporary interdiction.
2. The affidavit must first state that there is a “substantial likelihood” that the grounds for interdiction exist. The grounds for interdiction are stated in Civil Code Articles 389 and 390 and are reproduced in this affidavit. However, the affidavit should state particular and detailed facts showing the nature of the infirmity and its effect on the defendant. The more detailed the better since this affidavit will be the main evidence relied on by the court to issue the temporary interdiction.
3. Civil Code Article 391 requires there be a finding that substantial harm to the defendant or his property is imminent. The physician should include facts to support this allegation.

Form No. 17.7.4 Affidavit of Notice to the Defendant

* (caption)*

AFFIDAVIT OF NOTICE

State of Louisiana

Parish of _____

BEFORE ME personally appeared _____, who after being duly sworn did depose and say that affiant is the *mover/attorney* in the above-entitled motion for order of temporary interdiction, and affiant attests to the following facts:

The following efforts were made to give notice to the defendant: _____.

or/

Notice should not be required to be given to the defendant for the following reasons:

_____.

Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 200__.

Notary Public

Notes to Form No. 17.7.4

The court may issue an ex parte judgment of interdiction without notice to the defendant. However, the mover or his attorney must attach an affidavit detailing why notice should not be given or attesting to prior unsuccessful efforts to give notice. This notice requirement is similar to that for the issuance of a temporary restraining order under C.C.P. art. 3603. Under that Article it has been held that appending a "Certificate of Service" to the motion does not satisfy the notice requirement. *John W. Fisk Co. v. Michel*, 709 So. 2d 1061 (La. App. 4 Cir. 1998). The notice requirement should not be ignored. See *Ford Motor Credit v. Butler*, 532 So. 2d 1178 (La. App. 1 Cir. 1988) (damages awarded for issuance of ex parte temporary restraining order without notice.)

Form No. 17.7.5 Judgment of Temporary Interdiction, with Appointment of Curator and Attorney

* (caption) *

JUDGMENT OF TEMPORARY INTERDICTION

Considering the pleadings and affidavits filed in this proceeding, the court finds that immediate and irreparable injury, loss, or damage will result to the person or property of the defendant before notice can be served and a hearing held.¹

IT IS ORDERED that:

A. _____ is placed under a temporary full interdiction and a preliminary interdiction hearing shall be held on the ____ day of _____, 20__, and defendant is ordered to show cause why a preliminary judgment of interdiction should not be issued.²

B. _____ is appointed as the curator of the interdict. The powers of the curator commence only upon qualification.³

C. _____ is appointed as undercurator of the interdict.

D. _____ is appointed as attorney to represent the defendant in the above-captioned proceeding.⁴

E. The Clerk of Court is directed to record this judgment in the conveyance and mortgage records of this Parish and to issue letters of curatorship upon qualification.

ORDERED AND SIGNED, this ___ day of _____, 200____, in _____, Louisiana. This judgment expires ten days after being signed, on the ___ day of _____, 20____.⁵

District Judge

Notes to Form No. 17.7.5

1. The basis for the temporary interdiction is a finding by the court that immediate and irreparable injury, loss, or damage will result to the person or property of the defendant before a hearing can be held. The interdiction Articles in the Code of Civil Procedure require the court to state the reasons why the ex parte order was issued without notice or hearing. C.C.P. Art. 4549(A), *as amended*, 2003 La. Acts 1008.
2. In the temporary interdiction order, the court must schedule a preliminary interdiction hearing not more than ten days following the signing of the judgment of temporary interdiction. On motion of the defendant or for extraordinary reasons shown at a contradictory hearing, the court may continue the hearing for one additional period not to exceed ten days. C.C. art. 397.
3. The court must appoint a curator in the interdiction order. C.C.P. Art. 4551. On motion of the defendant or for extraordinary reasons shown at a contradictory hearing, the court may continue the hearing for one additional period not to exceed ten days. C.C. art. 397.
4. The court must appoint an attorney for the defendant in every ex parte judgment of temporary interdiction and in every order scheduling a preliminary injunction hearing. C.C.P. art. 4549(C). An appointed attorney may not accept service of the order setting a hearing on the preliminary interdiction. See comment (c) to C.C.P. art. 4544. Service on the defendant must be personal. C.C.P. art. 4543(A). The duties of the court-appointed attorney are listed in C.C.P. art. 4544. Leave a blank in the order for the court to fill in the name of the attorney. The court may accept a recommendation for appointment only if it is “manifestly in the interest of the unrepresented party.” C.C.P. art. 5092.

C.C.P. art. 4550 authorizes the court in an interdiction proceeding to render a judgment for attorney fees against any party that it considers fair (but not to an unsuccessful petitioner). It is not certain whether it would be fair to award attorney fees for obtaining the ex parte temporary interdiction, without notice.

5. The judgment of temporary interdiction expires ten days after being signed. C.C. art. 397. On motion of the defendant or for extraordinary reasons shown at a contradictory hearing, the court may continue the hearing for one additional period not to exceed ten days. C.C. art. 397. A judgment granting or extending temporary or preliminary interdiction shall set forth the date of termination. C.C.P. art. 4551(C).

Form No. 17.8 Detailed Descriptive List

* (caption)*

DETAILED DESCRIPTIVE LIST

State of Louisiana

Parish of _____

BEFORE ME personally appeared _____, who after being duly sworn did
depose and say that:

Affiant, who is the petitioner in the above-entitled interdiction proceeding, presents to the
Court the following detailed descriptive list of all items of property belonging to the interdict and the
fair market value of each item.

ITEM OF PROPERTY	FAIR MARKET VALUE
Immovable property <i>(list)</i>	
Movable property <i>(list)</i>	
TOTAL VALUE OF PROPERTY	\$

The following is a list of all debts and liabilities of the estate of the curator to the best of my
knowledge and belief:

(List debts here)

TOTAL DEBTS \$

RECAPITULATION

Total assets of the interdict. \$

Total debts of the interdict. \$

TOTAL NET ESTATE \$

Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 200__.

Notary Public

Form No. 17.9 Judgment of Full Interdiction, with Appointment of Curator and Undercurator and Fixing Security

* (caption) *

JUDGMENT OF INTERDICTION

Considering the pleadings, exhibits, and the detailed descriptive list filed in this proceeding, and after finding that the law and evidence favors the appointment of a curator for the defendant:

IT IS ORDERED that:

A. _____ is placed under a full interdiction.

B. _____ is appointed as the curator of the interdict. The powers of the curator commence only upon qualification.

C. The security to be furnished by the curator is fixed at the sum of _____ in the form of _____.

D. _____ is appointed as undercurator of the interdict.

E. The Clerk of Court is directed to record this judgment in the conveyance and mortgage records of this Parish and to issue letters of qualification of the curator upon qualification.

F. Costs and attorney fees are awarded to the petitioner and may be fixed by motion of the petitioner.

ORDERED AND SIGNED, this ___ day of _____, 200____, in _____,
Louisiana.

District Judge

Notes to Form No. 17.9

C.C.P. Art. 4550 provides that: "The court may render judgment for costs and attorney's fees, or any part thereof, against any party, as the court may consider fair. However, no attorney's fees shall be awarded to a petitioner when no judgment of interdiction is granted."

Form No. 17.10 Oath of Curator

* (caption) *

OATH OF CURATOR

State of Louisiana

Parish of _____

BEFORE ME, the undersigned Notary Public, personally appeared _____
who solemnly swears to discharge faithfully the duties of his office as curator of the interdict,
_____.

Curator

SWORN TO AND SUBSCRIBED, this
_____ day of _____, 200__.

Notary Public

Notes to Form No. 17.10

The person appointed curator must take the oath office within ten days from his appointment or within such other period specified by the court. C.C.P. art. 4562. In addition to taking an oath, the curator must furnish the security required by law. If the person does not timely qualify for the office, the court on its own motion, or on motion of any interested person, may revoke the appointment and appoint another qualified person. C.C.P. art. 4562.

Form No. 17.11 Oath of Undercurator

* (caption) *

OATH OF UNDERCURATOR

State of Louisiana

Parish of _____

BEFORE ME, the undersigned Notary Public, personally appeared _____
who solemnly swears to discharge faithfully the duties of his office as undercurator of the interdict,
_____.

Undercurator

SWORN TO AND SUBSCRIBED, this
_____ day of _____, 200__.

Notary Public

Form No. 17.12 Letters of Curatorship

* (caption) *

LETTERS OF CURATORSHIP

THIS CERTIFIES that _____ has been appointed as the curator of the interdict, _____, by the _____ Judicial District Court for the Parish of _____, State of Louisiana, in the matter entitled "Interdiction of the _____," Docket No. _____, signed on the ____ day of _____, 200__, and that the curator has qualified for the office on the ____ day of _____, 200__, by complying with all requirements of law.

IN WITNESS WHEREOF, the Letters of Curatorship are issued in the name and under the seal of the _____ Judicial District Court for the Parish of _____, State of Louisiana, this ____ day of _____, 200__.

Deputy Clerk

{Seal}

Notes to Form No. 17.12

C.C.P. art. 4564 governs the issuance of letters of curatorship. These letters evidence the authority of the curator to act on behalf of the interdict. The letters must state the date that the curator qualified for office, which would be the date the curator furnished

security and take the oath. See C.C.P. art. 4562 for the rules for the qualification of the curator. The letters should also state the date on which the letters expire if so specified in the appointment order. If it is a limited interdiction the letters should specify the powers of the limited curator.