

100<sup>TH</sup> JUDICIAL DISTRICT COURT FOR THE PARISH OF BLACK ACRE  
STATE OF LOUISIANA

NO. 123-456

DIVISION "A"

JANE DOE,

Petitioner,

-versus-

JOHN DOE,

Defendant.

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

**DILATORY EXCEPTION OF INSUFFICIENCY OF SERVICE OF PROCESS  
WITH INCORPORATED MEMORANDUM<sup>1</sup>**

NOW INTO COURT, through undersigned counsel, and solely for the purposes of filing the exceptions cited herein, comes JOHN DOE, sought to be made defendant-in-rule, objecting to the several legal errors perpetrated by the petitioner-in-rule, JANE DOE, in the Order setting the above captioned matter for hearing, specifically, service of the signed Order was improper because, pursuant to Article 1313 (C) of the Louisiana Code of Civil Procedure, if a pleading sets a court date then service shall be made by registered or certified mail, or by the sheriff; therefore, regular mail delivery of the Order setting the court date for hearing was insufficient service of process.

**Law and Argument**

The declinatory exception of insufficiency of service of process should and ought to be maintained, because a signed Order setting a court date cannot be served by hand delivery. The Louisiana Code of Civil Procedure defines an exception as "a means of defense, other than a denial or avoidance of the demand, used by the defendant, whether in the principal or an incidental action, to retard, dismiss, or defeat the demand brought against him." L.C.C.P Art. 921 (West 2004). "Three exceptions and no others shall be allowed: the declinatory exception, the dilatory exception, and the peremptory exception." L.C.C.P Art. 922 (West 2004). "The function of the declinatory exception is to decline the jurisdiction of the court, while the dilatory exception merely retards the progress of the action, but neither exception tends to defeat the

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<sup>1</sup> The United States Supreme Court has held that the allegations of a pro se litigant's pleadings are to be held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). Article 865 of the Louisiana Code of Civil Procedure mandates that every pleading shall be construed as to do substantial justice.

action. The function of the peremptory exception is to have the plaintiff's action declared legally nonexistent, or barred by effect of law, and hence this exception tends to dismiss or defeat the action.” L.C.C.P Art. 923 (West 2004). Insufficiency of service of process is an objection which may be raised through the declinatory exception. L.C.C.P Art. 925 (West 2004). “The declinatory exception and the dilatory exception shall be pleaded prior to or in the answer and, prior to or along with the filing of any pleading seeking relief other than entry or removal of the name of an attorney as counsel of record, extension of time within which to plead, security for costs, or dissolution of an attachment issued on the ground of the nonresidence of the defendant, and in any event, prior to the confirmation of a default judgment.” L.C.C.P Art. 928 (West 2004). “When both exceptions are pleaded, they shall be filed at the same time, and may be incorporated in the same pleading. When filed at the same time or in the same pleading, these exceptions need not be pleaded in the alternative or in a particular order.” Id.

Louisiana law prevents the petitioner-in-rule from serving her Order via hand delivery. Article 1313 (C) of the Louisiana Code of Civil Procedure, if a pleading sets a court date then service shall be made by registered or certified mail, or by the sheriff; therefore, regular mail delivery of the Order setting the court date was not proper service. Pursuant to the mandate of Article 1313 of the Louisiana Code of Civil Procedure, and even though the Order was subsequent to the original petition, Article 1313 requires that the Order be served by the sheriff, hence activating the “Except as otherwise provided by law” clause of Paragraph A of Article 1313. L.C.C.P. Art 1313 (West 2004). Hence, as a matter of law, the petitioner was prohibited from using any method other than service by the sheriff or via registered or certified mail. Therefore, this Honorable Court should and ought to strike the Order and dismiss said Order at the costs of the recipient.

### **CONCLUSION**

WHEREFORE, John DOE, exceptor herein, respectfully requests that this Honorable Court maintain the Exceptions, and dismiss the Order at the costs of the Petitioner.

Respectfully Submitted,

JOHN DOE  
123 Maple Leaf Drive  
Black Acre, Louisiana 70000

(504) 555-1212

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JOHN DOE  
In Proper Person

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**ORDER**

Considering the above and foregoing:

IT IS FURTHER ORDERED THAT JANE DOE appear and show cause, if she can, on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock a.m./p.m., why JOHN DOE'S exceptions should not be maintained and why her Order should not be dismissed at petitioner-in-rule's costs.

Signed at BLACKACRE, LOUISIANA, this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
J U D G E

**PLEASE SERVE:**

JANE DOE  
*Through her attorney of record:*  
Support Inc.  
Attorneys at Law  
123 Canal Street  
Black Acre, Louisiana 70000  
(504) 555-5200