

## **Rule 55. Default; Default Judgment**

### **(a) ENTERING A DEFAULT.**

(1) *In General.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the clerk or the court must enter the party's default.

(2) *Effective Date of Default; Motion by Defendant.* Any order of default entered on the court's or the clerk's own initiative, including a default for failure to respond to the complaint within the time prescribed in Rule 12(a), will not take effect until 14 days after the date on which it is docketed and must be vacated if the court grants a motion filed by defendant within the 14-day period showing good cause why the default should not be entered.

(3) *Extension of Time to Plead or Otherwise Defend.* Before an order of default is issued, the time to plead or otherwise defend may be extended by one of the following:

(A) an order granting a motion, which shows good cause for the extension; or

(B) a praecipe, signed by the parties or their representatives, and filed with the court, which provides for a one-time extension of not more than 21 days within which to plead or otherwise respond.

### **(b) ENTERING A DEFAULT JUDGMENT.**

(1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request—must enter judgment for that amount and costs against a defendant who has been defaulted for not responding as provided in Rule 12 if:

(A) the plaintiff filed and served a verified complaint or an affidavit verifying the complaint at least 21 days prior to the request for judgment;

(B) the verified complaint or affidavit sets out the sum claimed to be due, exclusive of all set-offs and defenses;

(C) the request for judgment is made no more than 60 days after default is entered; and

(D) the plaintiff, at the time of requesting the judgment, properly filed, for each defendant who is an individual, a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043).

(2) *By the Court.* In all other cases, and no more than 60 days after default is entered, the party must apply to the court for a default judgment either by motion or by praecipe, served on all parties, requesting the setting of an ex parte proof hearing.

(A) *Notice of Motion.* If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the motion at least 7 days before the hearing.

(B) *Servicemembers Civil Relief Act Affidavit.* If the party against whom a default judgment is sought has not appeared in the action, a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043), must be filed for each defendant who is an individual before the court may enter a default judgment.

(C) *Hearings or Referrals.* The court may conduct hearings or make referrals—preserving any applicable statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(i) conduct an accounting;

- (ii) determine the amount of damages;
- (iii) establish the truth of any allegation by evidence; or
- (iv) investigate any other matter.

(3) *Minors and Incompetents*. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, committee, conservator, or other like fiduciary who has appeared.

(4) *Members of the Military; Military Status Unknown*. If the Civil Action Form 114 filed by the plaintiff under Rule 55(b)(1) or (2) indicates that the defendant is in the military or that his or her military status is unknown, the court must follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (50 U.S.C. § 3931).

(5) *Dismissal*. A plaintiff's failure to comply with Rule 55(b)(1) or (2) will result in the dismissal without prejudice of the complaint.

(c) SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT.

(1) *By the Clerk*. The clerk may set aside an entry of default or a default judgment by consent pursuant to Rule 55-III.

(2) *By the Court*. The court may set aside an entry of default for good cause on the filing of a verified answer setting up a defense sufficient, if proved, to bar the claim in whole or in part. The movant does not need to file an answer if the motion is accompanied by a settlement agreement or a proposed consent judgment signed by both parties. In addition, an answer is not required when the movant asserts a lack of subject-matter or personal jurisdiction or when the default was entered after the movant had filed an answer. The court may set aside a final default judgment under Rule 60(b).

(d) JUDGMENT AGAINST THE UNITED STATES OR THE DISTRICT OF COLUMBIA. A default judgment may be entered against the United States, the District of Columbia, or an officer or agency of either only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

## COMMENT TO 2017 AMENDMENTS

This rule continues to differ substantially from *Federal Rule of Civil Procedure 55*. However, this rule has been amended consistent with the 2007 stylistic changes to the federal rule, and it incorporates other 2007, 2009, and 2015 federal amendments. Specifically, in accordance with the 2007 federal amendments, former section (d) was eliminated. It included two provisions—one stating that Rule 55 applied to the described claimants, which was an incomplete list, and one reminding parties that Rule 54(c) limited the relief available for a default judgment. Also, time periods were revised in accordance with the 2009 federal amendments. Finally, consistent with 2015 amendments to the federal rule, the word “final” was added to the provision in subsection (c)(2) that indicated the court “may set aside a final default judgment under Rule 60(b).” This amendment helped to clarify the difference between a final default judgment that could be reviewed under Rule 60(b) and a default judgment that does not dispose of all of the claims. The latter is not final until the court directs entry under Rule 54.

## COMMENT

Paragraph (b)(1) has been revised to conform to the prior practice in the Court of General Sessions of requiring a verified complaint or affidavit stating the amount due before entry of default by the Clerk. Paragraph (b)(1) has been modified to add the requirement that plaintiff provide a proposed order with the request for judgment within 60 days after default is entered. A Form CA 114 in compliance with the Servicemembers Civil Relief Act (2003) (*50 U.S.C. App. § 501 et seq.*) must be filed in all cases, whether the default judgment is to be entered by the clerk or the Court, where defendant has failed to appear. A request for judgment under paragraph (b)(2) must now be made by way of a motion. Moreover, paragraph (c) has also been revised to conform to the prior practice in the Court of General Sessions of requiring a verified and sufficient answer before setting aside a default except in those cases in which the parties have entered into a settlement agreement or consent judgment or where either the movant asserts a lack of subject matter or personal jurisdiction or when the default was entered after the movant has filed an answer. In addition, paragraph (e) has been revised to reflect reference to the District of Columbia as well as the United States and paragraph (b)(2) has been revised to refer to any "applicable statute" in place of "statute of the United States".