

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 09-02

(Amend SCR Civil 55, 55-II, CA Form 114, LT 11, 14 and 14-I)

WHEREAS, pursuant to D.C. Code § 11-946 the Board of Judges of the Superior Court approved amendments to Superior Court Rules of Civil Procedure 55, 55-II and SCR Civil Action Form 114 and Superior Court Rules-Landlord and Tenant 11, 14, and 14-I; and

WHEREAS, pursuant to D.C. Code § 11-946 the amendment to SCR Civil 55 has been approved by the District of Columbia Court of Appeals; and

WHEREAS, SCR Civil 55-II and SCR Civil Action Form 114 and SCR LT 11, 14 and 14-I do not modify the Federal Rules of Civil Procedure; it is

ORDERED, that amendments to SCR Civil 55, 55-II and SCR Civil Action Form 114 and SCR LT 11, 14 and 14-I are hereby amended as set forth below; and it is further

ORDERED that the above enumerated amendments shall take effect May 1, 2009 and govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

SCR CIVIL 55

DEFAULT

(a) *Entry*. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules, the Clerk or the Court shall enter the party's default. Any order of default entered sua sponte, including a default for failure to respond to the complaint within the time prescribed in Rule 12(a), shall not take effect until fourteen (14) days after the date on which it is docketed and shall be vacated upon the granting of a motion filed by defendant within such 14 day period showing good cause why the default should not be entered. Before an order of default is issued, the time to plead or otherwise defend may be extended by one of the following:

(1) An order granting a motion which shows good cause for such an extension.

(2) A praecipe, signed by the plaintiff(s) and defendant(s) in question or their attorneys of record and filed with the Court, which provides for a one-time extension of not more than 20 days within which to plead or otherwise respond.

(b) *Judgment.* Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, and the plaintiff shall have filed a complaint verified by the plaintiff or by the plaintiff's agent, or shall have thereafter filed and served on the defendant in the manner prescribed in Rule 5 an affidavit executed by the plaintiff or the plaintiff's agent verifying the complaint, and such verified complaint or affidavit shall have set out the sum claimed to be due exclusive of all set-offs and just grounds of defense, and a copy of said verified complaint or affidavit shall have been served upon the defendant at least 20 days prior to the request for judgment, the Clerk, upon request of the plaintiff or the plaintiff's attorney made no more than 60 days after default is entered, shall enter judgment for that amount and costs against the defendant if the defendant is in default for failure to appear as provided in Rule 12, and if the plaintiff or the plaintiff's attorney, ~~shall have filed~~ at the time of requesting the judgment, shall have filed, a proposed order setting forth the sum claimed to be due exclusive of all set-offs and just grounds of defense and an affidavit for each defendant who is an individual, a Form CA 114 in compliance that complies with the Soldiers and Sailors Civil Relief Act of 1940, as amended Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.); but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or such representative who has appeared therein. ~~Failure of plaintiff~~ The plaintiff's failure to comply with the provisions of this paragraph shall result in the dismissal without prejudice of plaintiff's the complaint. If the Form CA 114 filed by the plaintiff indicates that the defendant is in the military or that his or her military status is unknown, the Court shall follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 521).

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply by motion to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any applicable statute. If the party against whom judgment by default is sought has not appeared in the action, ~~an affidavit~~ a Form CA 114 in compliance that complies with the Soldiers and Sailors Civil Relief Act of 1940, as amended Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.), must be filed for each defendant who is an individual before judgment by default may be entered by the Court. If the Form CA 114 indicates that the defendant is in the military or that his or her military status is unknown, the Court shall follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 521).

(c) *Setting aside default.* For good cause shown, and upon the filing of a verified answer setting up a defense sufficient if proved to bar the claim in whole or in part, the Court may set aside an entry of default. No answer need be filed if the movant accompanies the motion with a settlement agreement or a proposed consent judgment signed by both parties. In addition, an answer shall not be 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.

(d) *Plaintiffs, counterclaimants, cross-claimants.* The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff, a 3rd-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) *Judgment against the United States or the District of Columbia.* No judgment by default shall be entered against the United States or the District of Columbia, or an officer or agency of either, unless the claimant establishes a claim or right to relief by evidence satisfactory to the Court.

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. ~~An affidavit~~ A Form CA 114 in compliance with the ~~Soldiers and Sailors Civil Relief Act of 1940~~ 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".

SCR CIVIL 55-II

EX PARTE PROOF OF PECUNIARY LOSSES; DEFICIENCY JUDGMENT

(a) *Ex parte proof of pecuniary losses.* In any action for property damage or other pecuniary losses or any action in which there is filed a praecipe withdrawing all claims other than those for such property damage or such pecuniary losses, wherein a default has been noted, judgment may be entered upon the filing, within 60 days of the default, of a motion for judgment along with an affidavit meeting the requirements of Rule 56(e) and setting forth: (1) The specific pecuniary loss sustained, (2) its causal relationship to the factual situation set forth in the complaint and (3) that a copy of the motion was sent to defendant at the defendant's last known address notifying the defendant that any objections thereto must be received by the Clerk within 20 days. The affidavit provided with the motion shall be accompanied by (1) a paid bill for the work done or an estimate of value from a person, firm or company regularly engaged in the business of doing such work or in the event of total loss, regularly engaged in the estimation of such losses, or a sworn statement from plaintiff's employer setting forth plaintiff's rate of compensation and the days and hours plaintiff was unable to work on account of the matters alleged in the complaint, or a statement of account from a health care provider or facility setting forth the reasonable and necessary charges incurred by plaintiff for treatment of injuries received as a result of the occurrence alleged in the complaint, and where applicable, (2) ~~an affidavit a Form CA 114 in compliance that complies with the Soldiers and Sailors Civil Relief Act of 1940~~ an affidavit a Form CA 114 in compliance that complies with the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.). Thirty days after the filing of such motion, the Clerk shall forward to the judge assigned to the case the motion, the affidavit, supporting papers, and any objection received by the Clerk. The judge may enter judgment for the amount alleged in the affidavit or for such lesser sum as may be warranted by all materials of record, including defendant's objection, if any, or may schedule the matter for an ex parte proof hearing, as appropriate. If the Form CA 114 indicates that the defendant is in the military or that his or her military status is unknown, the Court shall follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 521).

(b) *Deficiency judgment.* A deficiency judgment after repossession of personal property may be granted as provided in paragraph (a) of this Rule. However, the motion, affidavit and supporting documents must set forth a basis on which the Court can reasonably conclude that said plaintiff complied with applicable law and that said property was resold for a fair and reasonable price.

(No change to the Comment)

SCR LT 11

PRELIMINARY PROCEEDINGS BY THE CLERK

(a) *Introductory Statement.* At the beginning of each session of the Court, the judge shall make an introductory statement approved by the Chief Judge or his or her designee that describes the procedures and legal framework governing cases brought in the Landlord and Tenant Branch.

(b) *Roll call and entry of a default when the defendant fails to appear.* The Clerk shall then call the cases scheduled for initial hearings that day to determine if any parties are absent. The Clerk shall enter a default against the defendant in any such case in which (1) the plaintiff or the plaintiff's attorney is present, (2) neither the defendant nor the defendant's representative is present, (3) there is no question as to the validity of service upon the defendant, and (4) the complaint alleges facts sufficient, if true, to entitle the plaintiff to possession of the premises.

(c) *Dismissal when both parties or the plaintiff fail to appear.* The Clerk shall dismiss the case without prejudice for want of prosecution if both parties fail to appear for the roll call, either personally or through counsel, or if the defendant appears, personally or through counsel, but neither the plaintiff nor the plaintiff's attorney is present.

(d) *All other cases.* The Clerk shall present all other cases to the Court for disposition except that the Clerk may continue a case to a later date upon agreement of the parties.

(e) *Entry of judgment for possession by default.* (1) In any case in which a default is entered under section (b) and in which either the plaintiff seeks possession pursuant to section 1303 of the Residential Drug - Related Evictions Re-Enactment Act of 2000 (D.C. Code § 42-3602) (authorizing evictions for maintaining a "drug haven") or the defendant has previously entered an appearance, a judgment for possession in favor of the plaintiff may be entered only upon the plaintiff's presentation of ex parte proof and the filing of ~~an affidavit~~ a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act. In cases requiring the presentation of ex parte proof, the plaintiff shall appear before the judge on the day that the default is entered to present ex parte proof or to schedule a hearing for a later date for the presentation of ex parte proof. If the presentation of ex parte proof is scheduled for another date, the Clerk shall send written notice to all parties.

(2) In all other cases in which a default is entered under section (b), the Clerk shall enter a judgment for possession in favor of the plaintiff upon the filing of ~~an affidavit~~ a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act.

(f) *Entry of money judgment by default.* The plaintiff shall appear before the judge to request the entry of a money judgment following the entry of a default under section (b). The Court may hear and rule upon the plaintiff's request; however, entry of a money judgment by default shall be deferred until the plaintiff files ~~an affidavit~~ a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act.

SCR LT 14

ENTRY OF JUDGMENT

(a) A judgment for possession may be entered:

(1) by the Clerk in favor of the plaintiff if the defendant fails to appear at the 9:00 a.m. roll call and the plaintiff files ~~an affidavit~~ a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. app. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act, unless the presentation of ex parte proof is required.

(2) by the Interview and Judgment ~~Clerk~~ Officer by consent in the case of a consent judgment executed in accordance with Rule 11-I;

(3) by the Court;

(A) upon the defendant's confession of liability before the Court; or

(B) upon the defendant's failure to pay a protective order; or

(C) upon the entry of summary judgment; or

(D) in accordance with D.C. Code § 16-1501 in a trial proceeding; or

(E) when ex parte proof is required, upon the presentation of ex parte proof and the filing of ~~an affidavit~~ a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act.

(b) Summary judgment may be entered in favor of the plaintiff or defendant on the issue of possession.

(c) A money judgment may be entered:

(1) in favor of the plaintiff, upon default by the defendant, when the plaintiff has prayed for such relief in the complaint, obtained personal service, and filed ~~an affidavit~~ a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act. A money judgment entered based upon the defendant's default shall be limited to the amount sued for in the complaint.

(2) in favor of the prevailing party in accordance with Rule 3 or 5(b), at the conclusion of a trial or other hearing to the extent of the total amount proven; or

(3) by consent of the parties.

(d) Additional relief may be entered:

(1) by consent of the parties; or

(2) in favor of either party, by the Court at the conclusion of a trial or a hearing.

(No change to the Comment)

SCR LT 14-I

DISMISSAL FOR FAILURE TO PROSECUTE

The Clerk shall dismiss the complaint without prejudice if, within 90 days of the entry of a default, the plaintiff fails to file ~~an affidavit~~ a Form CA 114 in compliance with the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) or to request an opportunity to present ex parte proof, when such proof is required. The Clerk shall mail written notice of the dismissal to all parties. This rule shall apply to any complaint or counterclaim on which a default has been entered.



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Case Number: _____

_____, vs. _____
Plaintiff/Landlord Defendant

AFFIDAVIT IN COMPLIANCE WITH THE SERVICEMEMBERS CIVIL RELIEF ACT (2003) (50 U.S.C. App. § 501 et seq.)

(Type or print name clearly) _____, certifies and declares as follows:

- 1. I am: [] the plaintiff or [] the plaintiff's agent in the above-entitled case. My relationship to the plaintiff is (if the person completing the form is the plaintiff, leave this line blank) _____.
2. This affidavit is made pursuant to Section 201 of the Servicemembers Civil Relief Act (50 U.S.C. App. § 521).
3. I have caused a careful investigation to be made to ascertain whether the above named defendant is in the military service of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; or a National Guard member called to active service for more than 30 consecutive days by the President or Secretary of Defense to respond to a national emergency; or a commissioned officer in active service of the Public Health Service or the National Oceanic and Atmospheric Administration.
4. As a result of this investigation, I hereby state as follows: (check box A, B, C, or D and complete as instructed)
A. [] The defendant is not in any of the above named branches of the military service AND the defendant has not received notice of induction or notice to report for military service, AND, if this is an action for possession of real property, the premises are not occupied chiefly for dwelling purposes by the spouse, children, or other dependents of a person in military service. The facts supporting this conclusion are as follows (check all that apply and attach additional pages and documentation as necessary):
[] I have proof of the defendant's military status from the Department of Defense Manpower Data Center, and the certificate of non-military status is attached.
[] I have contacted each branch of the military and have received confirmation from each branch that the defendant is not in military service. The responses I received are attached.
[] The defendant is not an individual. It is a _____ and, therefore, no investigation of military service is required. (Specify Type of Business Entity)
[] I asked the defendant personally on (date) _____.
[] I spoke on (date) _____ with (name and relationship with defendant) _____ who has reason to know the defendant's military status because _____.
[] For the following reasons (explain): _____
B. [] After a careful investigation, I could not determine whether the defendant is in any of the above named branches of the military service, whether the defendant received notice of induction or notice to report for military service, or, if this is an action for possession of real property, whether an occupant of the property is the spouse, child, or other dependent of a person in military service. I have made the following efforts to investigate the defendant's military status (attach additional pages and documentation as necessary): _____
C. [] The defendant is in one of the above named branches of the military service. The facts supporting this conclusion are as follows (attach additional pages and documentation as necessary): _____
D. [] The defendant executed a waiver of rights under Section 107 of the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 517). A copy of the waiver, in at least 12 point type, signed by the defendant during or after his/her military service, is attached.
5. Pursuant to Section 201(b)(4) of the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 521(b)(4)), I certify and declare under penalty of perjury that the information contained above is true.

Date: _____

Signature: _____

By the Court:

Date: _____

Lee F. Satterfield
Chief Judge

Copies to:

All Judges
All Magistrate Judges
Library
David Luria, Attorney Advisor