

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

### **(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 court must enter the party's default.

(2) *Effective Date of Default; Motion by Defendant.* Any default entered on the court's or the clerk's own initiative, including a default for failure to respond to the complaint or petition 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 the defendant or respondent 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 a 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 document, 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 OR ORDER.**

(1) *In General.* Except as provided in Rule 55(b)(2), a party must move for entry of a default judgment or order no more than 60 days after default is entered.

(A) *Notice of Motion.* Unless the court orders otherwise, a party against whom a default judgment or order is sought must be served with written notice of the motion at least 7 days before the hearing on the motion for entry of a default judgment or order.

(B) *Servicemembers Civil Relief Act.* If the party against whom a default judgment or order is sought has not appeared in the action, the requesting party must comply with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043).

#### **(2) Default Parentage Order.**

(A) *Ex Parte Hearing Not Required.* When a defendant or respondent fails to appear at a hearing in which parentage is at issue, the court may conduct an ex parte hearing on that date to determine the issue of parentage, but an ex parte hearing is not required.

(B) *Requirements for Issuance of Default Order.* The court must issue a default order concerning parentage if:

(i) the defendant or respondent was served with notice of the action by any method permitted under D.C. Code § 46-206 (b) (2012 Repl.);

(ii) the defendant or respondent received actual notice of the first, or any other hearing, where parentage is at issue which the respondent failed to attend; and

(iii) the plaintiff or petitioner complied with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043).

(3) *Minors and Incompetents.* Unless otherwise permitted by statute or rule, a default judgment or order 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 plaintiff or petitioner indicates that the defendant or respondent 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 or petitioner's failure to comply with Rule 55(b)(1) or (2) will result in the dismissal without prejudice of the complaint or petition.

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

(1) *By the Clerk*. The clerk may vacate a default or default judgment, within 60 days after its entry, if the claimant and the defaulted party, or their attorneys, file a signed document so requesting and bearing evidence of its service on all parties that have appeared. When required by Rule 55(c)(2), the document must be accompanied by a verified answer.

(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 or order under Rule 60(b).

## COMMENT TO 2018 AMENDMENTS

The rule has been substantially amended, consistent with Civil Rule 55 and with current practice in the Domestic Relations Branch. The rule now provides for entry of default by the court as well as the clerk.

The former rule did not address entry of default judgments, but new section (b) addresses default judgments and orders. Consistent with current practice, final orders concerning parentage and child support are called orders rather than judgments.

Subsection (b)(1)(A) provides that the court generally may not enter a default judgment or order unless it holds a hearing after notice to the defaulting party. However, consistent with current practice, subsection (b)(1)(A) gives the court discretion to enter a default judgment at the same hearing in which it enters a default. Rule 4(a)(1)(E) requires the summons to notify the defendant that a failure to file an answer to the complaint and to appear at any scheduled hearing will result in a default judgment against the defendant for the relief demanded in the complaint. Written notice of a hearing on a motion for a default judgment or order may warn that if the defaulting party does not appear at the hearing or otherwise respond, the court may proceed with the hearing and enter a default judgment or order. Civil Rule 55 also provides for entry of a default judgment without a hearing, when it authorizes the clerk to enter a default judgment in cases where the claim is for a sum certain or a sum that can be made certain by computation. Unlike Civil Rule 55, this rule does not provide for entry of a default judgment or order by the clerk because the overwhelming majority of default judgments or orders for a sum certain involve child support and spousal support, and these default judgments or orders may be entered only by the court.

Subsection (b)(2) contains a separate provision for entry of a default order concerning parentage; this provision tracks D.C. Code § 16-2343.03 (2012 Repl.). Subsection (c)(1) incorporates the substance of Civil Rule 55-III.

Finally, consistent with Civil Rule 55(c)(2) and the 2015 amendments to the federal rule, the word "final" was added to subsection (c)(2) to indicate that the court "may set

aside a final default judgment under Rule 60(b).” The inclusion of this word helps 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

The procedures for default contained in this Rule do not apply to proceedings to determine paternity (see D.C. Code § 16-2341 et seq.; SCR-Dom. Rel. 405). The statement required under paragraph (a) of this Rule may be submitted by use of a court form, if available. Because, unlike Civil actions, Domestic Relations actions often involve issues over which the Court has continuing jurisdiction, paragraph (c) allows a party in default to appear and respond to new or additional claims raised by any party without having the default set aside.