

Amendments to Rule 55

Rule 55 is amended as follows:

Rule 55. Default **Judgment**

(a) [Entry] **Entering a Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend [~~as prescribed by these rules~~], and that [~~fact~~]**failure** is [~~made to appear~~]**shown** by affidavit or otherwise, the clerk [~~shall~~]**must** enter the party's default.

(b) **Entering a Default Judgment.** [~~Judgment by default may be entered as follows:~~].

In all cases the party [~~entitled to a judgment by default shall~~]**must** apply to the court [~~therefore.~~] **for a default judgment.**

When the plaintiff's claim [~~against a defendant~~] is for a sum certain or for a sum [~~which~~]**that** can **be made certain** by computation [~~be made certain~~], the court [~~upon~~] **-- on the plaintiff's** request [~~of the plaintiff and upon~~]**with an** affidavit [~~of~~]**showing** the amount due [~~shall~~] **-- must** enter judgment for that amount **and costs** against [~~the~~]**a** defendant[;] [~~if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.~~] **who has been defaulted for not appearing and who is neither a minor nor an incompetent person. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared.**

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 [~~10 days~~]**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 application [or judgment. 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] **at least 10 days before the hearing. The court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when to enter or effectuate judgment, it needs to:**

(1) conduct an accounting;

(2) determine the amount of damages or [to] other relief;

(3) establish the truth of [any averment] an allegation 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 statute of the United States]

(4) investigate any other matter.

(c) Setting Aside a Default[For good cause shown, the] **or a Default Judgment.**

The court may set aside an entry of default [and, if a judgment by default has been entered, may likewise set it] **for good cause, and it may set** aside [as prescribed by] **a default judgment under** Rule 60(b).

~~[(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third 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~~**d**) Judgment Against the United States. [~~No~~**A default**] judgment [~~by default~~
shall]**may** be entered against the United States [~~or an officer or agency thereof unless~~], **its**
officers, or its agencies only if the claimant establishes a claim or right to relief by
evidence [~~satisfactory to~~**that satisfies**] the court.

(As amended July 28, 1988, eff. Nov. 1, 1988; **Nov. 25, 2008, eff. Jan. 1, 2009.**)