

Proposed 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 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; _____, **2008, eff.** _____, **2009.**)

Advisory Committee Note

Rule 55 has been amended stylistically to conform to the 2007 amendments to the Fed. R. Civ. P. Included in the conforming amendments is the deletion of CIT Rule 55(d) to mirror the deletion of Fed. R. Civ. P. 55(d). The Notes of the Advisory Committee on the 2007 amendments to the Fed. R. Civ. P. indicate that the list of described claimants in Fed. R. Civ. P. 55(d) was “incomplete and unnecessary” and the second sentence of the rule was redundant. Former CIT Rule 55(e) is now CIT Rule 55(d). The Court of International Trade continues to require that entry of default judgment be made by application to the court.