

SAC – Subcommittee on Servicemembers’ Civil Relief Act

Recommended Changes to Mass. R. Civ. P. 55

(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 and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(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, the clerk upon request of the plaintiff and upon affidavit of the amount due and affidavit that the defendant is not an infant or incompetent person or an incapacitated person as defined in G.L. c.190B, shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person or an incapacitated person as defined in unless represented in the action by a guardian, conservator, or other such representative who has appeared therein. The court shall not conduct a hearing unless the party entitled to a judgment by default has provided notice to all other parties, including the party against whom a judgment by default is sought, of the date, time, and location of the hearing. Such notice must include a statement setting forth the nature and type of all damages requested and the amount of any damages that are a sum certain or a sum which can by computation be made certain. The notice shall be sent at least fourteen days prior to the date of hearing by first-class mail to the last known address or by other means approved by the court. 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 statute.

(3) The provisions of subparagraph (b)(2) supplement, but do not supersede, any other requirements of notice established by law.

(4) Affidavit Required. Notwithstanding the foregoing, no judgment by default shall be entered until the filing of an affidavit made by any competent person, on the affiant's own knowledge, setting forth facts showing whether or not the defendant is in military service or,

if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service, as set forth in the "Servicemembers Civil Relief Act," 50 U.S.C. §§ 3901 et seq., except upon order of the court in accordance with the Act.

(c) Setting aside default

For good cause shown the court may set aside an entry of default and, if a judgment has been entered, may likewise set it aside in accordance with 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).