

MASSACHUSETTS RULES OF CIVIL PROCEDURE

Rule 55. Default

DRAFT Reporter's Notes--2019

An amendment to Rule 55(b)(4) deals with the requirement of a military affidavit which is a prerequisite to a default judgment. The amendment is intended to make the Massachusetts rule consistent with the language of the federal Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 et seq., so as to provide more information about whether or not a defendant is in military service.

The previous language of Rule 55(b)(4) required an affidavit “setting forth facts showing that the defendant is not a person in military service. ...” The federal statute, however, provides that the plaintiff must file an affidavit “stating whether or not the defendant is in military service and showing necessary facts to support the affidavit” 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.” 50 U.S.C. § 3931(b)(1)(A) and (B). The revised language of Rule 55(b)(4) more closely tracks the federal language.

In recommending this amendment, the Standing Advisory Committee on the Rules of Civil Procedure of the Supreme Judicial Court also suggested that the Trial Court update the military affidavit form commonly in use in the Massachusetts trial courts to comply with the amendment and that a revised form indicate whether the plaintiff conducted a search of the Servicemembers Civil Relief Act Website in making a determination regarding the defendant's military status; to attach the results of any such search to the form; and if such a search was not conducted, to state facts in the form that would support the plaintiff's statement that the defendant is not in military service.