

Practice XXV. Military Affidavits

If there has not been an answer or other appearance (as defined in Rule 11 (b) of the Massachusetts Rules of Civil Procedure) filed in a matter by each defendant, respondent or other interested person, after the time for filing the answer or other appearance has expired, after diligent inquiry a military affidavit certifying the military status of each defendant, respondent or other interested person who has not appeared or answered must be filed before the earliest of:

- (1) any subsequent request for a court hearing; or
- (2) the date of the next event scheduled by the court; or
- (3) a temporary order in the case.

A subsequent military affidavit must be filed before a final judgment or decree may be entered in a case when more than three (3) months have expired from the filing of the prior military affidavit and the prior military affidavit states that each defendant, respondent, or interested person is not currently in military service or military status cannot be determined.

A military affidavit shall not be required to be filed when it appears that all interested persons have filed a written assent to the allowance or judgment.

Amended effective June 1, 2018; Amended effective January 2, 2012.

Reporter's Notes- 2018

The Practice is amended to clarify when a military affidavit is required to be filed in all matters in the Probate and Family Court. The Servicemembers Civil Relief Act, 50 U.S.C. § 3931, requires that in cases in which the defendant does not make an appearance, the plaintiff must file an affidavit as to military service before the court may enter judgment – temporary or final. If it appears from the military affidavit that the defendant is in military service, no judgment (temporary or final) may be entered until the court appoints an attorney to represent the non-appearing defendant.

Reporter's Notes- 2012

The Practice is amended to apply generally to all matters in the Probate and Family Court.