

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 787

Amending Civil Rule 55 concern-  
ing default judgment

IT IS ORDERED:

Civil Rule 55 is amended to provide:

Default.

(a) Entry.

(1) Application for Default. When a party against whom a judgment for affirmative relief is sought has failed to [PLEAD] appear and answer or otherwise defend as provided by these rules, and that fact is [MADE TO APPEAR] shown by affidavit or otherwise, the clerk shall enter [HIS] a default. Service of the application is not required if the party has failed to appear.

(2) When Service Required. A party who appears but fails to answer or otherwise defend may be defaulted by the clerk not less than three days following service of the application for default.

(b) Judgment by the Clerk.

(1) Failure to Appear. If the defendant has been defaulted for failure to appear and [WHEN] the plaintiff's claim(s) [AGAINST A DEFENDANT] is for a sum certain or for a sum which which can by computation be made certain, [THE CLERK] upon [THE REQUEST OF THE PLAINTIFF] the filing of an application for default judgment including an [AND UPON] affidavit of the amount due which also states that the person against

whom judgment is sought is: (i) not an infant or an incompetent person; and (ii) not a member of the Armed Forces of the United States protected by the Soldiers and Sailors Civil Relief Act of 1940, as amended, the clerk shall enter default judgment for [THAT] the amount [,] due and costs and attorneys fees against the defendant [, IF HE HAS BEEN DEFAULTED FOR FAILURE TO APPEAR AND IF HE IS NOT AN INFANT OR INCOMPETENT PERSON, AND UPON THE PROOF REQUIRED BY RULE 73(c)(2)].

(2) Multiple Parties or Claims. The clerk may not enter a default judgment in a case involving multiple defendants unless all defendants have been defaulted.

(c) Judgment by the Court.

(1) In all other cases the party entitled to a default judgment shall apply to the court therefor; but no default judgment shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom default judgment is sought has appeared in the action, that party [HE] (or, if appearing by representative, the party's [HIS] representative) shall be served with written notice of the application for judgment at least 3 days prior to a decision [THE HEARING] on the [SUCH] application. This written notice requirement and the memorandum requirement of (c)(2) do not apply if the party fails to appear for trial in which case the court may proceed ex parte upon any motion for default or default 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 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.

(2) When application is made to the court for a default judgment, counsel shall file a memorandum of the default, showing when and against what parties it was entered and the pleadings to which no defense has been made. If any party against whom default judgment is sought is shown by the record to be an infant or incompetent person, or in the military service of the United States, counsel shall also file a memorandum stating whether or not that person is represented in the action by a general guardian, committee, conservator, attorney or such other representative who has appeared therein. If the party against whom default judgment is sought has appeared in the action or proceeding, the memorandum shall also indicate whether or not the record shows that notice has been served as required by paragraph (1) of this subdivision.

(3) If the amount of damages claimed in an application to the court for default judgment is unliquidated, the applicant may submit evidence by affidavit showing the amount of damages and if, under the provisions of paragraph (1) of this subdivision, notice of the application is necessary, the parties against whom judgment is sought may submit affidavits in opposition.

(4) If the case involves multiple defendants and all defendants have not been defaulted, the court may not enter a default judgment unless the non-defaulting defendant's defenses would not be available to the defaulting defendant. A default judgment issued under such circumstances is nevertheless subject to Civil Rule 54(b).

(d) Response to Pleading. A party may respond to any pleading at any time before a default is entered.

(e) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a default judgment has been entered, may likewise set it aside in accordance with Rule 60(b).

(f) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the default judgment is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a default judgment is subject to the limitations of Rule 54(c).

(g) Judgment Against the State. No default judgment shall be entered against the state or an officer or agency thereof unless the claimant establishes the [HIS] claim or right to relief by evidence satisfactory to the court.

DATED: December 15, 1986

EFFECTIVE DATE: March 1, 1987

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Chief Justice Rabinowitz

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Justice Burke

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Justice Matthews

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Justice Compton

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Justice Moore