

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1663

Amending District Court Civil Rule 17 and Civil Rule 55 concerning the affidavit required for default judgment, and adding a Note to Civil Rule 55.

IT IS ORDERED:

1. District Court Civil Rule 17 is amended to read as follows:

Rule 17. Judgment.

(a) If the defendant fails to answer the complaint within 20 days after service of process or fails to attend trial, the defendant is in default. Default judgment shall be entered only after the plaintiff files an affidavit upon proof under oath made upon personal knowledge good faith belief, after diligent inquiry, stating that the defendant is not an infant or otherwise incompetent, and that the defendant is not in the active military service of the United States or, if the plaintiff is unable to determine whether the defendant is in military service, stating that the plaintiff is unable to determine that fact. The court shall also require proof under oath, made upon personal knowledge or based on business records, of the truth of every essential element of the claim for relief. The clerk may enter a default judgment if the damages alleged are liquidated and no default hearing is required. If the defendant answers but fails to appear at trial, the court may nevertheless consider any relevant and material evidence filed with the answer. The court may allow an answer to be filed after the defendant is in default, but before judgment is entered, upon a showing of good cause. The plaintiff may move the court to enter

a default judgment if the defendant is in default. Affidavits or exhibits necessary to the entry of default judgment under this rule shall accompany the motion.

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2. Civil Rule 55 is amended to read as follows:

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(b) **Judgment by the Clerk.**

(1) *Failure to Appear.* If the defendant has been defaulted for failure to appear and the plaintiff's claim(s) is for a sum certain or for a sum that can by computation be made certain, upon the filing of an application for default judgment including an 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 in the active military service of the United States or, if the plaintiff is unable to determine whether the defendant is in military service, stating that the plaintiff is unable to determine that fact ~~not a member of the Armed Forces of the United States protected by the Servicemembers Civil Relief Act (50 App. U.S.C. § 521), as amended~~, the clerk shall enter default judgment for the amount due and costs and attorney's fees against the defendant.

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(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 (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three days prior to a decision on the 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. The party seeking default must also file an affidavit stating whether the person against whom judgment is sought is in the active military service of the United States or, if the plaintiff is unable to determine whether the defendant is in military service, stating that the plaintiff is unable to determine that fact. 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.

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3. The following Note is added to Civil Rule 55:

Note: The affidavit described in subsections (b) and (c) incorporates the requirements of the Servicemembers Civil Relief Act (50 App. U.S.C. § 521), as amended, concerning whether a party is in the military service.

DATED: October 28, 2008

EFFECTIVE DATE: April 15, 2009

/s/

Chief Justice Fabe

/s/

Justice Matthews

/s/

Justice Eastaugh

/s/

Justice Carpeneti

/s/

Justice Winfree