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March 1, 2021

Representative Clay Schexnayder
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

RE: HOUSE RESOLUTION NO. 50 OF THE 2020 REGULAR SESSION

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to the elimination of preliminary defaults.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

cc: Representative Robby Carter

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov
Secretary of State, Mr. R. Kyle Ardoin
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CODE OF CIVIL PROCEDURE COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO
HR NO. 50 OF THE 2020 REGULAR SESSION**

Relative to the elimination of preliminary defaults

Prepared for the
Louisiana Legislature on

March 1, 2021

Baton Rouge, Louisiana

William R. Forrester, Jr., Reporter
Mallory C. Waller, Staff Attorney

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William R. Forrester, Jr., Reporter
Mallory C. Waller, Staff Attorney

2020 Regular Session

HOUSE RESOLUTION NO. 50

BY REPRESENTATIVE ROBBY CARTER

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations regarding the laws on preliminary default judgments.

WHEREAS, it is of the utmost importance that the law regarding civil procedure be useful and efficient; and

WHEREAS, modern pleadings have evolved such that there may be older laws of civil procedure which are no longer meaningful or useful; and

WHEREAS, preliminary defaults are no longer used in city courts; and

WHEREAS, preliminary defaults are referred to in district courts as judgments of default, but are actually not judgments; and

WHEREAS, preliminary defaults are, in practical terms, minute entries which can be mailed in, require no hearing, and may serve no practical purpose; and

WHEREAS, under the rules of Louisiana Civil Procedure, a defendant has fifteen days from the day it is served with a petition to file responsive pleadings; and

WHEREAS, a defendant has two extra days to file responsive pleadings after a preliminary default has been entered against it; and

WHEREAS, under the Federal Rules of Civil Procedure, a defendant has twenty days to file a responsive pleading to a complaint; and

WHEREAS, judicial efficiency might be enhanced through the elimination of preliminary defaults in Louisiana courts and the adoption of the Federal Rules of Civil Procedure to allow a defendant twenty days to file responsive pleadings, rather than fifteen days.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute study the rules of preliminary defaults and make recommendations, if any, to enhance judicial efficiency and clarity with the rules of pleadings and that the Louisiana State Law Institute report its findings and recommendations to the Legislature of Louisiana on or before March 1, 2021.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

March 1, 2021

Representative Clay Schexnayder
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE
IN RESPONSE TO HR NO. 50 OF THE 2020 REGULAR SESSION**

House Resolution No. 50 of the 2020 Regular Session urged and requested the Louisiana State Law Institute to study and make recommendations regarding the laws on preliminary default judgments to enhance judicial efficiency and clarity with the rules of pleadings. In fulfillment of this request, the Law Institute assigned to the project to its Code of Civil Procedure Committee, which operates under the direction of Mr. William R. Forrester, Jr. as Reporter.

The Code of Civil Procedure Committee considered the research set forth in the attached appendix providing background information with respect to preliminary defaults in Louisiana and exploring whether a similar process exists in other jurisdictions or under the Federal Rules of Civil Procedure. The Committee also considered the proposed revisions contained in House Bill No. 648 of the 2020 Regular Session concerning the elimination of preliminary defaults. The Committee discussed the history of preliminary defaults in Louisiana and found that, although preliminary defaults previously served the purpose of precluding the filing of exceptions, the relevant provision of the Code of Civil Procedure was long ago amended to eliminate this function.¹

In light of this information, the Committee concluded that today preliminary defaults serve little practical purpose. As a result, the Law Institute proposes the following revisions to provisions of the Code of Civil Procedure and the Revised Statutes to eliminate preliminary defaults in Louisiana and to update existing terminology accordingly. More specifically, these revisions would extend the time period within which a defendant must answer or file responsive pleadings and would require the plaintiff to give notice of his intent to obtain a default judgment against any defendant whose attorney has contacted the plaintiff or his attorney in writing concerning the action. Such notice must be provided at least seven days, exclusive of holidays, before a default judgment may be rendered.

These revisions will be submitted to the Legislature as proposed legislation during the 2021 Regular Session.

¹ See 1997 amendment to LA. CODE OF CIV. P., Art. 928, which replaced “prior to judgment by default” with “prior to the confirmation of a default judgment.”

Article 253.3. Duty judge exceptions; authority to hear certain matters

A. In any case assigned pursuant to Article 253.1, a duty judge shall only hear and sign orders or judgments for the following:

* * *

(3) ~~Entry of preliminary defaults, confirmation of defaults~~ Default judgments, stipulated matters, examination of judgment debtors, orders to proceed in forma pauperis, orders allowing the filing of supplemental and amending petitions when no trial date has been assigned, orders allowing incidental demands when no trial date has been assigned, orders allowing additional time to answer, and judicial commitments.

* * *

Article 284. Judicial powers of district court clerk

The clerk of a district court may render, confirm, and sign ~~final~~ default judgments or judgments by confession in cases where the jurisdiction of the court is concurrent with that of justices of the peace, as provided in Article 5011.

Article 928. Time of pleading exceptions

A. The declinatory exception and the dilatory exception shall be pleaded prior to or in the answer and, prior to or along with the filing of any pleading seeking relief other than entry or removal of the name of an attorney as counsel of record, extension of time within which to plead, security for costs, or dissolution of an attachment issued on the ground of the nonresidence of the defendant, and in any event, prior to the signing of a ~~final~~ default judgment. When both exceptions are pleaded, they shall be filed at the same time, and may be incorporated in the same pleading. When filed at the same time or in the same pleading, these exceptions need not be pleaded in the alternative or in a particular order.

B. The peremptory exception may be pleaded at any stage of the proceeding in the trial court prior to a submission of the case for a decision and may be filed with the declinatory exception or with the dilatory exception, or both.

Article 1001. Delay for answering

A. A defendant shall file his answer within ~~fifteen~~ twenty-one days after service of citation upon him, except as otherwise provided by law. If the plaintiff files and serves a discovery request with his petition, the defendant shall file his answer to the petition within thirty days after service of citation and service of the discovery request.

B. When an exception is filed prior to answer and is overruled or referred to the merits, or is sustained and an amendment of the petition ordered, the answer shall be filed within ~~ten~~ fifteen days after the exception is overruled or referred to the merits, or ~~ten~~ fifteen days after service of the amended petition.

C. The court may grant additional time for answering.

Comments – 2021

(a) The revision to Paragraph A of this Article extends the time within which the defendant must file an answer from fifteen to twenty-one days after service of citation. If the plaintiff files a discovery request with his petition, the delays for answering and for responding to the discovery request will be thirty days. See Articles 1458(A), 1462(B)(1), and 1467(A). This change is intended to eliminate confusion, particularly for self-represented litigants who are served with a discovery request along with the petition, since the delays for responding to both are now the same.

(b) The revision to Paragraph B of this Article extends the time within which the defendant must file an answer to fifteen days after an exception is overruled or referred to the merits, or fifteen days after service of an amended petition when an exception is sustained and an amendment is ordered.

Article 1002. Answer or other pleading filed prior to signing of ~~final~~ default judgment

Notwithstanding the provisions of Article 1001, the defendant may file his answer or other pleading at any time prior to the signing of a ~~final~~ default judgment against him.

Article 1471. Failure to comply with order compelling discovery; sanctions

A. If a party or an officer, director, or managing agent of a party or a person designated under Article 1442 or 1448 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Article 1464 or 1469, the court in which the action is pending may make such orders in regard to the failure as are just, including any of the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a ~~final~~ default judgment against the disobedient party upon presentation of proof as required by Article 1702.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

(5) Where a party has failed to comply with an order under Article 1464, requiring him to produce another for examination, such orders as are listed in Subparagraphs (1), (2), and (3) of this

Paragraph, unless the party failing to comply shows that he is unable to produce such person for examination.

B. Absent exceptional circumstances, a court may not impose sanctions under this Article on a person or party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

C. In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Article 1701. Preliminary default

~~A. If a defendant in the principal or incidental demand fails to answer or file other pleadings within the time prescribed by law or by the court, a preliminary default may be entered against him. The preliminary default may be obtained by oral motion in open court or by written motion mailed to the court, either of which shall be entered in the minutes of the court, but the preliminary default shall consist merely of an entry in the minutes.~~

~~B. When a defendant in an action for divorce under Civil Code Article 103(1), by sworn affidavit, acknowledges receipt of a certified copy of the petition and waives formal citation, service of process, all legal delays, notice of trial, and appearance at trial, a preliminary default may be entered against the defendant the day on which the affidavit is filed. The affidavit of the defendant may be prepared or notarized by any notary public. The preliminary default may be obtained by oral motion in open court or by written motion mailed to the court, either of which shall be entered in the minutes of the court, but the preliminary default shall consist merely of an entry in the minutes. Notice of the entry of the preliminary default is not required.~~

Article 1702. Confirmation of preliminary default Default judgment

~~A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of evidence. If no answer or other pleading is filed timely, this confirmation may be made after two days, exclusive of holidays, from the entry of the preliminary default. When a preliminary default has been entered against a party that is in default after having made an appearance of record in the case, notice of the date of the entry of the preliminary default must be sent by certified mail by the party obtaining the preliminary default to counsel of record for the party in default, or if there is no counsel of record, to the party in default, at least seven days, exclusive of holidays, before confirmation of the preliminary default. If a defendant in the principal or incidental demand fails to answer or file other pleadings within the time prescribed by law or by the court, and the plaintiff establishes a prima facie case by competent and admissible evidence that is admitted on the record, a default judgment in favor of the plaintiff may be rendered. The court may permit documentary evidence to be filed in the record in any~~

electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of evidence.

B. If a party has made an appearance of record in the case, notice that the plaintiff intends to obtain a default judgment shall be sent by certified mail to counsel of record for the party who failed to answer, or if there is no counsel of record, to the party who failed to answer, at least seven days, exclusive of holidays, before a default judgment may be rendered.

C. If an attorney for a party has contacted the plaintiff or the plaintiff's attorney in writing concerning an action after it has been filed, notice that the plaintiff intends to obtain a default judgment shall be sent by certified mail to the attorney for the party who failed to answer at least seven days, exclusive of holidays, before a default judgment may be rendered.

~~B-~~ D.(1) When a demand is based upon a conventional obligation, affidavits and exhibits annexed thereto which contain facts sufficient to establish a prima facie case shall be admissible, self-authenticating, and sufficient proof of such demand. The court may, under the circumstances of the case, require additional evidence in the form of oral testimony before entering a ~~final~~ default judgment.

(2) When a demand is based upon a delictual obligation, the testimony of the plaintiff with corroborating evidence, which may be by affidavits and exhibits annexed thereto which contain facts sufficient to establish a prima facie case, shall be admissible, self-authenticating, and sufficient proof of such demand. The court may, under the circumstances of the case, require additional evidence in the form of oral testimony before entering a ~~final~~ default judgment.

(3) When the sum due is on an open account or a promissory note or other negotiable instrument, an affidavit of the correctness thereof shall be prima facie proof. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

~~C-~~ E. In those proceedings in which the sum due is on an open account or a promissory note, other negotiable instrument, or other conventional obligation, or a deficiency judgment derived therefrom, including those proceedings in which one or more mortgages, pledges, or other security for the open account, promissory note, negotiable instrument, conventional obligation, or deficiency judgment derived therefrom is sought to be enforced, maintained, or recognized, or in which the amount sought is that authorized by R.S. 9:2782 for a check dishonored for nonsufficient funds, a hearing in open court shall not be required unless the judge, in his discretion, directs that such a hearing be held. The plaintiff shall submit to the court the proof required by law and the original and not less than one copy of the proposed ~~final~~ default judgment. The judge shall, within seventy-two hours of receipt of such submission from the clerk of court, sign the proposed ~~final~~ default judgment or direct that a hearing be held. The clerk of court shall certify that no answer or other pleading has been filed by the defendant. The minute clerk shall make an entry showing the dates of receipt of proof, review of the record, and rendition of the ~~final~~ default judgment. A certified copy of the signed ~~final~~ default judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing of the ~~final~~ default judgment shall be given as provided in Article 1913.

~~D. F.~~ When the demand is based upon a claim for a personal injury, a sworn narrative report of the treating physician or dentist may be offered in lieu of his testimony.

~~E. G. (1)~~ Notwithstanding any other provisions of law to the contrary, when the demand is for divorce under Civil Code Article 103(1) or (5), whether or not the demand contains a claim for relief incidental or ancillary thereto, a hearing in open court shall not be required unless the judge, in his discretion, directs that a hearing be held. The plaintiff shall submit to the court an affidavit specifically attesting to and testifying as to the truth of all of the factual allegations contained in the petition, the original and not less than one copy of the proposed ~~final~~ default judgment, ~~and~~ a certification ~~which shall indicate~~ indicating the type of service made on the defendant; and the date of service, ~~the date a preliminary default was entered~~, and a certification by the clerk that the record was examined by the clerk, including the date of the examination, and a statement that no answer or other pleading has been filed. If the demand is for divorce under Civil Code Article 103(5), a certified copy of the protective order or injunction rendered after a contradictory hearing or consent decree shall also be submitted to the court. If no answer or other pleading has been filed by the defendant, the judge shall, ~~after two days, exclusive of holidays, of entry of a preliminary default~~, review the submitted affidavit, proposed ~~final~~ default judgment, and certification; and render and sign the proposed ~~final~~ default judgment; or direct that a hearing be held. The minutes shall reflect rendition and signing of the ~~final~~ default judgment.

(2) If the demand is for divorce under Civil Code Article 103(1) and the defendant, by sworn affidavit, acknowledges receipt of a certified copy of the petition and waives formal citation, service of process, all legal delays, notice of trial, and appearance at trial, a default judgment of divorce may be entered against the defendant two days, exclusive of legal holidays, after the affidavit is filed. The affidavit of the defendant may be prepared or notarized by any notary public.

Comments – 2021

(a) Paragraph C of this Article adopts a new rule that, prior to the rendition of a default judgment, notice must be sent to a party's attorney who has contacted the plaintiff or his attorney in writing about the case. The term "in writing" includes electronic means as well as any other type of writing. If such notice is not given, any default judgment rendered shall be a nullity similar to a lack of the notice required by Paragraph B. See, e.g., First Bank & Trust v. Bayou Land and Marine Contractors, Inc., 103 So. 3d 1148 (La. App. 5 Cir. 2012).

(b) Paragraph G of this Article continues the authorization under former Articles 1701 and 1702(E) for a judgment of divorce under Civil Code Article 103(1) to be granted without a hearing in open court two days, exclusive of holidays, after the filing of the defendant's affidavit waiving all legal delays, and for a judgment of divorce under Civil Code Article 103(5) to be rendered without a hearing in open court after the delays for answering have expired.

Article 1702.1. ~~Confirmation of preliminary default~~ Default judgment without hearing in open court; required information; certifications

A. When the plaintiff seeks ~~to confirm a preliminary default judgment~~ without appearing for a hearing in open court as provided in Article 1702(B)(1) and ~~(C)(D)(1) and (E)~~, along with

~~any proof required by law, he or his attorney shall include in an itemized form with a written motion for confirmation of preliminary default and proposed final~~ the plaintiff shall file a written request for default judgment containing a certification that the suit is on an open account, promissory note, or other negotiable instrument, on a conventional obligation, or on a check dishonored for nonsufficient funds, and that the necessary invoices and affidavit, note and affidavit, or check or certified reproduction thereof are attached, along with any proof required by law and a proposed default judgment. If attorney fees are sought under R.S. 9:2781 or 2782, the attorney shall certify that fact and the fact that the number of days required by R.S. 9:2781(A) or 2782(A), respectively, have elapsed since demand was made upon the defendant.

B. The certification shall indicate the type of service made on the defendant; and the date of service, ~~and the date a preliminary default was entered,~~ and shall also include a certification by the clerk that the record was examined by the clerk, including therein the date of the examination and a statement that no answer or other pleading has been filed within the time prescribed by law or by the court.

Article 1703. Scope of judgment

A ~~final~~ default judgment shall not be different in kind from that demanded in the petition. The amount of damages awarded shall be the amount proven to be properly due as a remedy.

Article 1704. ~~Confirmation of preliminary default~~ Default judgment in suits against the state or a political subdivision

A. Notwithstanding any other provision of law to the contrary, prior to ~~confirmation of a preliminary~~ the court rendering a default judgment against the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities, ~~a certified copy of the minute entry constituting the preliminary default entered pursuant to Article 1701,~~ the plaintiff or his attorney shall send notice of the plaintiff's intent to obtain a default judgment, together with a certified copy of the petition or other demand, ~~shall be sent by the plaintiff or his counsel~~ to the attorney general by registered or certified mail, or the notice and petition shall be served by the sheriff personally upon the attorney general or the first assistant attorney general at the office of the attorney general. If ~~the minute entry and the~~ notice and petition are served on the attorney general by mail, the person mailing such items shall execute and file in the record an affidavit stating that these items have been enclosed in an envelope properly addressed to the attorney general with sufficient postage affixed, and stating the date on which such envelope was deposited in the United States mail. ~~In addition the~~ The return receipt shall be attached to the affidavit which was filed in the record.

B. If no answer or other pleading is filed during the ~~fifteen~~ twenty-one days immediately following the date on which the attorney general or the first assistant attorney general received notice of the ~~preliminary~~ intent to obtain a default judgment as provided in Paragraph A of this Article, a ~~preliminary default entered~~ default judgment against the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities may be confirmed by proof as required by Article 1702.

C. Notwithstanding any other provision of law to the contrary, prior to ~~confirmation of a preliminary~~ the court rendering a default judgment against a political subdivision of the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities, ~~a certified copy of the minute entry constituting the preliminary default entered pursuant to Article 1701, the plaintiff or his attorney shall send notice of the plaintiff's intent to obtain a default judgment, together with a certified copy of the petition or other demand, shall be sent by the plaintiff or his counsel~~ by registered or certified mail to the proper agent or person for service of process at the office of that agent or person. The person mailing such items shall execute and file in the record an affidavit stating that these items have been enclosed in an envelope properly addressed to the proper agent or person for service of process, with sufficient postage affixed, and stating the date on which such envelope was deposited in the United States mail. ~~In addition the~~ The return receipt shall be attached to the affidavit which was filed in the record.

D. If no answer or other pleading is filed during the ~~fifteen~~ twenty-one days immediately following the date on which the agent or person for service of process received notice of the ~~preliminary intent to obtain a default judgment~~ as provided in Paragraph C of this Article, a ~~preliminary default entered~~ default judgment against the political subdivision of the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities may be confirmed by proof as required by Article 1702.

Comments – 2021

Article 1704 continues the requirement that, prior to a default judgment being rendered against the state of Louisiana or any of its departments, offices, boards, commissions, agencies, or instrumentalities, the office of the attorney general must receive notice of the plaintiff's intent to obtain the default judgment along with a certified copy of the petition or other demand. The same notice requirement applies to any political subdivision of the state.

Article 1843. ~~Final default~~ Default judgment

A ~~final~~ default judgment is that which is rendered against a defendant who fails to plead within the time prescribed by law.

Article 1913. Notice of judgment

A. Except as otherwise provided by law, notice of the signing of a final judgment, including a partial final judgment under Article 1915, is required in all contested cases, and shall be mailed by the clerk of court to the counsel of record for each party, and to each party not represented by counsel.

B. Notice of the signing of a ~~final~~ default judgment against a defendant on whom citation was not served personally, or on whom citation was served through the secretary of state, and who filed no exception, answer, or other pleading, shall be served on the defendant by the sheriff, by either personal or domiciliary service, or in the case of a defendant originally served through the secretary of state, by service on the secretary of state.

C. Except when service is required under Paragraph B of this Article, notice of the signing of a ~~final~~ default judgment shall be mailed by the clerk of court to the defendant at the address where personal service was obtained or to the last known address of the defendant.

D. The clerk shall file a certificate in the record showing the date on which, and the counsel and parties to whom, notice of the signing of the judgment was mailed.

Article 2002. Annulment for vices of form; time for action

A. A final judgment shall be annulled if it is rendered:

(1) Against an incompetent person not represented as required by law.

(2) Against a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction, or against whom a valid ~~final~~ default judgment has not been taken.

(3) By a court which does not have jurisdiction over the subject matter of the suit.

B. Except as otherwise provided in Article 2003, an action to annul a judgment on the grounds listed in this Article may be brought at any time.

Article 4904. ~~Final default~~ Default judgment in parish and city courts

A. In suits in a parish court or a city court, if the defendant fails to answer timely, or if he fails to appear at the trial, and the plaintiff ~~proves his~~ establishes a prima facie case by competent and admissible evidence, a ~~final~~ default judgment in favor of the plaintiff may be rendered. ~~No preliminary default is necessary.~~

B. ~~The plaintiff may obtain a final default judgment only by producing relevant and competent evidence which establishes a prima facie case.~~ When the suit is for a sum due on an open account, promissory note, negotiable instrument, or other conventional obligation, prima facie proof may be submitted by affidavit. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

C. When the sum due is on an open account, promissory note, negotiable instrument, or other conventional obligation, a hearing in open court shall not be required unless the judge in his discretion directs that such a hearing be held. The plaintiff shall submit to the court the proof required by law and the original and not less than one copy of the proposed ~~final~~ default judgment. The judge shall, within seventy-two hours of receipt of such submission from the clerk of court, sign the proposed ~~final~~ default judgment or direct that a hearing be held. The clerk of court shall certify that no answer or other pleading has been filed by the defendant. The minute clerk shall make an entry showing the dates of receipt of proof, review of the record, and rendition of the ~~final~~ default judgment. A certified copy of the signed ~~final~~ default judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing of the default judgment shall be given as provided in Article 1913.

Comments – 2021

(a) The change to Paragraph A of this Article makes the burden of proof to obtain a default judgment in parish and city courts consistent with the burden of proof that is imposed in district court pursuant to Article 1702.

(b) Paragraph C of this Article was amended to make this provision consistent with Article 1702(E) concerning the requirements of Article 1913.

Article 4921. ~~Final default~~ Default judgment; justice of the peace courts; district courts with concurrent jurisdiction

A. If the defendant fails to answer timely, or if he fails to appear at the trial, and the plaintiff ~~proves his~~ establishes a prima facie case by competent and admissible evidence, a ~~final~~ default judgment in favor of the plaintiff may be rendered. ~~No preliminary default is necessary.~~

B. ~~The plaintiff may obtain a final default judgment only by producing relevant and competent evidence which establishes a prima facie case.~~ When the suit is for a sum due on an open account, promissory note, negotiable instrument, or other conventional obligation, prima facie proof may be submitted by affidavit. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

Comments – 2021

The change to Paragraph A of this Article makes the burden of proof to obtain a default judgment in justice of the peace courts and district courts with concurrent jurisdiction consistent with the burden of proof that is imposed in district court pursuant to Article 1702.

Article 4921.1. Demand for trial; abandonment; applicability

A. After the lapse of fifteen days from the date the answer to the suit is filed pursuant to Article 4920, any party may make written demand to have the case set for trial. The judge shall give notice of trial within forty-five days of the answer being filed. The court shall issue notice of trial to be held within forty-five days of that date.

B. Notwithstanding the three-year period for abandonment as provided by Article 561, if the parties fail to take any step in the prosecution or defense of the action for a period of one year, the action shall otherwise be subject to the procedures for abandonment as provided by Article 561, provided that the court has jurisdiction over the subject matter.

C.(1) Notwithstanding the provisions of Paragraph A of this Article, the justice of the peace or clerk may set the matter for trial upon filing of a petition. The date, time, and location of the trial shall be contained in the citation. The first scheduled trial date shall be not more than forty-five days, nor less than ten days, from the service of the citation. If the defendant appears, he need not file an answer unless ordered to do so by the court. If a defendant who has been served with citation fails to appear at the time and place specified in the citation, the judge may enter a ~~final~~

default judgment for the plaintiff in the amount proved to be due. If the plaintiff does not appear, the judge may enter an order dismissing the action without prejudice.

(2) If a matter has been set for trial pursuant to Subparagraph (1) of this Paragraph, no ~~final~~ default judgment shall be rendered prior to the trial date.

Article 5095. Same; defense of action

The attorney at law appointed by the court to represent a defendant shall use reasonable diligence to inquire of the defendant, and to determine from other available sources, what defense, if any, the defendant may have, and what evidence is available in support thereof.

Except in an executory proceeding, the attorney may except to the petition, shall file an answer or other pleading in time to prevent a ~~final~~ default judgment from being rendered, may plead therein any affirmative defense available, may prosecute an appeal from an adverse judgment, and generally has the same duty, responsibility, and authority in defending the action or proceeding as if he had been retained as counsel for the defendant.

R.S. 13:3205. Default judgment; hearings; proof of service of process

No ~~preliminary default or final~~ default judgment may be rendered against the defendant and no hearing may be held on a contradictory motion, rule to show cause, or other summary proceeding, except for actions pursuant to R.S. 46:2131 et seq., until thirty days after the filing in the record of the affidavit of the individual who has done any of the following:

(1) Mailed the process to the defendant, showing that it was enclosed in an envelope properly addressed to the defendant, with sufficient postage affixed, and the date it was deposited in the United States mail, to which shall be attached the return receipt of the defendant.

(2) Utilized the services of a commercial courier to make delivery of the process to the defendant, showing the name of the commercial courier, the date, and address at which the process was delivered to the defendant, to which shall be attached the commercial courier's confirmation of delivery.

(3) Actually delivered the process to the defendant, showing the date, place, and manner of delivery.

R.S. 13:4990. Diligence in locating co-owners; known co-owners made parties

In any judicial proceeding in which real property is sought to be partitioned upon the trial of the cause upon the merits or upon ~~confirmation of any preliminary~~ rendering a default judgment therein, due proof shall be made of a diligent effort on the part of the plaintiff to locate all co-owners of the property to be partitioned and that all known co-owners have been made parties thereto.

~~R.S. 23:1316. Answer or other pleading, failure to file; preliminary default~~

~~If a defendant in the principal or incidental demand fails to answer or file other pleadings within the time prescribed by law or the time extended by the workers' compensation judge, and upon proof of proper service having been made, preliminary default may be entered against him. The preliminary default shall be obtained by written motion.~~

R.S. 23:1316.1. Confirmation of preliminary default Default judgment

~~A.(1) A preliminary default on behalf of any party at interest must be confirmed by proof of the demand sufficient to establish a prima facie case. If no answer or other pleading is filed timely, this confirmation may be made after two days, exclusive of holidays, from the entry of the preliminary default. If a defendant in the principal or incidental demand fails to answer or file other pleadings within the time prescribed by law or the time extended by the workers' compensation judge, and the plaintiff establishes a prima facie case by competent and admissible evidence and proof of proper service is made, a default judgment may be rendered against the defendant.~~

~~(2) If a party has made an appearance of record in the case, notice that the plaintiff intends to obtain a default judgment shall be sent by certified mail to counsel of record for the party who failed to answer, or if there is no counsel of record, to the party who failed to answer, at least seven days, exclusive of holidays, before a default judgment may be rendered.~~

~~(3) If an attorney for the party has contacted the plaintiff or the plaintiff's attorney in writing concerning an action after it has been filed, notice that the plaintiff intends to obtain a default judgment shall be sent by certified mail to the attorney for the party who failed to answer at least seven days, exclusive of holidays, before a default judgment may be rendered.~~

B. A prima facie case shall include but not be limited to proof of the following:

(1) The employee's average weekly wage.

(2) The existence of an employer-employee relationship at the time of the work-related accident.

(3) The occurrence of an accident arising out of and in the course of the employment, or the existence of an occupational disease.

(4) Entitlement to benefits under the provisions of this Chapter.

C. Medical evidence shall include oral testimony or certified medical records from all treating and all examining health care providers. All other evidence may be presented by sworn affidavit.

Effective Date: For default judgments rendered on or after January 1, 2022

APPENDIX: RESEARCH MEMORANDUM ON PRELIMINARY DEFAULT

I. Background

Once a defendant is served with a petition, the defendant has 15 days to file responsive pleadings.² If a defendant fails to respond within that time period, a default judgment may be entered against him.³ Securing a default judgment is generally a two-step process initiated by a plaintiff moving for an entry of default judgment (i.e., preliminary default).⁴ This simple motion can be made orally or in writing, is routinely granted, and consists merely of a minute entry into the record.⁵ A defendant is not entitled to notice of the entry of preliminary default unless he has previously made an appearance, in which case notice must be sent to a defendant by certified mail at least seven days before the default is confirmed.⁶ In cases where a defendant has failed to make an appearance, a moving party must wait only two days from entry of the preliminary default before proceeding to the second step of the default judgment process – confirmation of the default.⁷ Confirming the default involves establishing a *prima facie* case.⁸ In city or parish courts, the preliminary default step of the default judgment process does not exist.⁹ Once the applicable time to answer has elapsed, a plaintiff may move for a final judgment of default subject to the same proof and notice requirements under Articles 1702 and 1913 of the Code of Civil Procedure.¹⁰

II. Relevant Federal Statutes

*a. Federal Rules of Civil Procedure Rule 12(a)*¹¹

(a) Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

² LA. CODE OF CIV. P., Art. 1001.

³ BLAINE G. LECESNE, LOUISIANA CIVIL PROCEDURE CASES AND MATERIALS 273 (Matthew Berger, et al. eds., 2d ed. 2015).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 274

⁸ *Id.*

⁹ *Id.* n. 81.

¹⁰ *Id.*

¹¹ Fed. R. Civ. P. 12(a).

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) United States and Its Agencies, Officers, or Employees Sued in an Official Capacity. The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) United States Officers or Employees Sued in an Individual Capacity. A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

b. Federal Rules of Civil Procedure Rule 55¹²

Generally

Under Rule 55 of the Federal Rules of Civil Procedure, and in many states that have rules patterned after Rule 55, obtaining a default judgment is a two-step process that begins with asking the clerk of court to enter the default (i.e., an “entry of default.”) This is a ministerial act of the clerk that formally establishes that a party is in default and requires no notice to the opposing party. Once in default, a defendant is no longer able to answer the complaint or otherwise respond to the complaint.

At any time after entry of default, the moving party can proceed to the second step of the default judgment process; asking for the entry of judgment by default. This can be accomplished in one of two ways. If damages are liquidated and the party has not appeared, the clerk may enter that judgment, without notice to the defendant or a hearing. If the party has appeared before defaulting, or if damages are not liquidated, the district court judge must consider the request to enter default judgment, holding a hearing if necessary and providing notice to the defaulting party.

¹² Fed. R. Civ. P. 55.

Language of Rule 55

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) Entering a Default Judgment.

(1) By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) Judgment Against the United States. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

III. Sample Survey of 30 Jurisdictions

Many jurisdictions have adopted some form of Rule 55 of the Federal Rules of Civil Procedure. The first set below are jurisdictions that most closely parallel Rule 55 at the federal level. The second set are those jurisdictions that most drastically deviate from the Federal Rules of Civil Procedure. For reference, Louisiana would fall into the second set of states in this schema.

First Set:

A. Alabama

- a. Rule 55 of the Alabama Rules of Civil Procedure is very similar to Rule 55 of the Federal Rules of Civil Procedure. The differences relate to setting aside of defaults and elimination of Federal Rule 55(a) relating to default against the United States and replacement with a reference to proof required in certain default cases against infants, incompetents, etc. The rule also eliminates the requirements of notice prior to entry of judgment by default when the default arises from failure to appear on the day the case is set for trial.¹³

B. Alaska

- a. Rule 55 of the Alaska Rules of Civil Procedure is very similar to Rule 55 of the Federal Rules of Civil Procedure. However, unlike Rule 55 at the federal level, in Alaska, the party seeking default must serve an “application for default” upon all parties, at which point the defendant is given 7 days before a party can even move forward to the first step in the default judgment process (i.e., entry of default.)¹⁴

C. Arizona

- a. Rule 55 of the Arizona Rules of Civil Procedure is very similar to Rule 55 of the Federal Rules of Civil Procedure. However, unlike Rule 55 at the federal level, in Arizona, notice of the entry of default (i.e., step 1) is required.¹⁵

D. Colorado

- a. Rule 55 of the Colorado Rules of Civil Procedure is the same as Rule 55 of the Federal Rules of Civil Procedure.¹⁶

E. Delaware

- a. Rule 55 of the Hawaii Rules of Civil Procedure is the same as Rule 55 of the Federal Rules of Civil Procedure, except that if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing, as opposed to the 7-day requirement at the federal level.¹⁷

F. District of Columbia

- a. Rule 55 of the District of Columbia Rules of Civil Procedure was substantially amended as recently as 2018 such that it is very similar to Rule 55 at the federal level. However, in the District of Columbia, the entrance of default (the first step of the default judgment process) does not take effect until 14 days after the default it is entered. Additionally, Rule 55 specifies

¹³ ALA. R. CIV. P. 55. <https://judicial.alabama.gov/docs/library/rules/cv55.pdf>

¹⁴ ALASKA R. CIV. P. 55. <https://public.courts.alaska.gov/web/rules/docs/civ.pdf>

¹⁵ ARIZ. R. CIV. P. 55. [https://govt.westlaw.com/azrules/Document/NDE87B410893B11E690E48A9987F5DD49?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/Document/NDE87B410893B11E690E48A9987F5DD49?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

¹⁶ COLO. R. CIV. P. 55. <https://leg.colorado.gov/sites/default/files/images/olls/crs2018-court-rules.pdf>

¹⁷ DEL. R. CIV. P. 55. https://www.courts.delaware.gov/rules/pdf/superior_civil_rules_2016.pdf

that a party has 60 days to move for entry of a default judgment after default is entered.¹⁸

G. Hawaii

- a. Rule 55 of the Hawaii Rules of Civil Procedure is the same as Rule 55 of the Federal Rules of Civil Procedure, except that if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing, as opposed to the 7-day requirement at the federal level.¹⁹

H. Indiana

- a. Rule 55 of the Indiana Rules of Civil Procedure is the same as Rule 55 of the Federal Rules of Civil Procedure, except that if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing, as opposed to the 7-day requirement at the federal level.²⁰

I. Maine

- a. Rule 55 of the Maine Rules of Civil Procedure closely tracks Rule 55 at the federal level. However, there are additional requirements where judgment is sought on a negotiable obligation and in foreclosure actions that Rule 55 at the federal level does not specify.²¹

J. Massachusetts

- a. Rule 55 of the Massachusetts Rules of Civil Procedure is the same as Rule 55 of the Federal Rules of Civil Procedure, except that if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 14 days before the hearing, as opposed to the 7-day requirement at the federal level.²²

K. Minnesota

- a. Rule 55 of the Minnesota Rules of Civil Procedure is the same as Rule 55 of the Federal Rules of Civil Procedure, except that if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 14 days before the hearing, as opposed to the 7-day requirement at the federal level.²³

L. Montana

- a. Rule 55 of the Montana Rules of Civil Procedure is the same as Rule 55 of the Federal Rules of Civil Procedure.²⁴

¹⁸ D.C. R. Civ. P. 55. <http://www.dccourts.gov/sites/default/files/rules-superior-court/DR%20Rule%2055.%20Default%20Default%20Judgment%20or%20Order.pdf>

¹⁹ HAW. R. CIV. P. 55. https://www.courts.state.hi.us/docs/court_rules/rules/hrcp.pdf

²⁰ IND. R. CIV. P. 55. https://www.in.gov/judiciary/rules/trial_proc/#_Toc25572092

²¹ ME. R. CIV. P. 55. https://www.courts.maine.gov/rules_adminorders/rules/text/MRCivPPlus/RULE%2055.pdf

²² MASS. R. CIV. P. 55. <https://www.mass.gov/rules-of-civil-procedure/civil-procedure-rule-55-default>

²³ MINN. R. CIV. P. 55. https://www.revisor.mn.gov/data/revisor/court_rules/cp/cp-55_2019-12-05_02-32-13/cp-55.pdf

²⁴ MONT. R. CIV. P. 55. <https://leg.mt.gov/bills/mca/25/20/25020007550.htm>

M. New Mexico

- a. New Mexico’s version of default judgment tracks closely to the Federal Rules of Civil Procedure. However, unlike Rule 55 at the federal level, in New Mexico, in all cases the party entitled to a judgment by default must apply to the court (i.e., the clerk cannot enter default judgment.) Additionally, if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing, as opposed to the 7-day requirement at the federal level.²⁵

N. Ohio

- a. Rule 55 of the Ohio Rules of Civil Procedure parallels Rule 55 at the federal level, except the first step (entry of default) is eliminated (i.e., it is merely a one-step process.)²⁶

O. Rhode Island

- a. Rule 55 of the Rhode Island Rules of Civil Procedure is the same as Rule 55 of the Federal Rules of Civil Procedure, except that if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 10 days before the hearing, as opposed to the 7-day requirement at the federal level.²⁷

P. Tennessee

- a. Tennessee’s version of default judgment tracks closely to the Federal Rules of Civil Procedure. However, unlike Rule 55 at the federal level, in Tennessee, in all cases the party entitled to a judgment by default must apply to the court (i.e., the clerk cannot enter default judgment.) Additionally, if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 5 days before the hearing, as opposed to the 7-day requirement at the federal level.²⁸

Q. Utah

- a. Rule 55 of the Utah Rules of Civil Procedure parallels Rule 55 at the federal level, except it appears that no notice is required, even if the defendant made an appearance.²⁹

R. West Virginia

- a. Rule 55 of the West Virginia Rules of Civil Procedure parallels Rule 55 at the federal level, except if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least

²⁵ N.M. R. CIV. P. 1-055. <https://casetext.com/rule/new-mexico-court-rules/new-mexico-rules-of-civil-procedure-for-the-district-courts/article-7-judgment/rule-1-055-default>

²⁶ OHIO. R. CIV. P. 55. <http://www.supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf>

²⁷ R.I. R. CIV. P. 55. <https://www.courts.ri.gov/efiling/PDF/Rules-Superior Court Rules of Civil Procedure.pdf>

²⁸ TENN. R. CIV. P. 55. <https://www.tncourts.gov/rules/rules-civil-procedure/5501>

²⁹ UTAH. R. CIV. P. 55. <https://www.utcourts.gov/resources/rules/urcp/view.html?title=Rule%2055%20Default.&rule=urcp055.html>

3 days before the hearing, as opposed to the 7-day requirement at the federal level.³⁰

S. Wyoming

- a. Rule 55 of the Wyoming Rules of Civil Procedure exactly parallels Rule 55 at the federal level.³¹

Second Set:

a. Arkansas³²

How is Arkansas different from FRCP?

- i. Arkansas' Rule 55 eliminates the Federal Rules' first step (i.e., entry of default) making it a one-step process to obtain a default judgment. Additionally, Arkansas Rule 55 permits only the court to enter default judgment, as opposed to the FRCP where in some cases the clerk of court can enter the judgment. Finally, if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing, as opposed to the 7-day requirement at the federal level.

Language of Arkansas Rule 55

- ii. ***(a) When Entitled.*** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, judgment by default may entered by the court.
- iii. ***(b) Manner of Entering Judgment.*** 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. If the party against whom judgment by default is sought has appeared in the action, he (or if appearing by representative, his representative) shall be served with the written notice of the application for judgment at least 3 days prior to the hearing on such application. 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 hearing as it deems necessary and proper and may direct a trial by jury.
- iv. ***(c) Setting Aside Default Judgments.*** The court may, upon motion, set aside a default judgment previously entered for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) the judgment is void; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or (4) any other reason justifying relief from the operation of the judgment. The party seeking to have the judgment set aside must demonstrate a meritorious

³⁰ W. VA. R. CIV. P. 55. <http://www.courtswv.gov/legal-community/court-rules/civil-procedure/VII.html#rule55>

³¹ WYO. R. CIV. P. 55. https://www.courts.state.wy.us/wp-content/uploads/2017/05/WYOMING_RULES_OF_CIVIL_PROCEDURE.pdf

³² ARK. R. CIV. P. 55.

defense to the action; however, if the judgment is void, no other defense to the action need be shown.

- v. **(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 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).
- vi. **(e) When Presented.** A motion for default judgment may be presented to the court in vacation and at any place in the district or circuit.
- vii. **(f) Remand From Federal Court.** No judgment by default shall be entered against a party in an action removed to federal court and subsequently remanded if that party filed an answer or a motion permitted by Rule 12 in the federal court during removal.

b. California³³

How is California different from FRCP?

- i. California's default judgment provisions focus on the required elements for a motion for default judgment rather than the default judgment process itself. It does not appear that the non-moving party needs to be placed in default, nor does it seem that the clerk can enter default judgment on its own.

Language of California Rule 3.1800

ii. ***Rule 3.1800. Default Judgments***

- 1. ***(a) Documents to be submitted.*** A party seeking a default judgment on declarations must use mandatory Request for Entry of Default (Application to Enter Default) (form CIV-100), unless the action is subject to the Fair Debt Buying Practices Act, Civil Code section 1788.50 et seq., in which case the party must use mandatory Request for Entry of Default (Fair Debt Buying Practices Act) (form CIV-105). In an unlawful detainer case, a party may, in addition, use optional Declaration for Default Judgment by Court (form UD-116) when seeking a court judgment based on declarations. The following must be included in the documents filed with the clerk:

- a. (1) Except in unlawful detainer cases, a brief summary of the case identifying the parties and the nature of the plaintiff's claim;
- b. (2) Declarations or other admissible evidence in support of the judgment requested;
- c. (3) Interest computations as necessary;
- d. (4) A memorandum of costs and disbursements;
- e. (5) A declaration of nonmilitary status for each defendant against whom judgment is sought;
- f. (6) A proposed form of judgment;

³³ CAL. R. CIV. P. 3.1800. <https://www.courts.ca.gov/cms/rules/index.cfm?title=three>

- g. (7) A dismissal of all parties against whom judgment is not sought or an application for separate judgment against specific parties under Code of Civil Procedure section 579, supported by a showing of grounds for each judgment;
- h. (8) Exhibits as necessary; and
- i. (9) A request for attorney fees if allowed by statute or by the agreement of the parties.

2. **(b) Fee Schedule.** A court may by local rule establish a schedule of attorney’s fees to be used by that court in determining the reasonable amount of attorney’s fees to be allowed in the case of a default judgment.

c. Florida³⁴

How is Florida different from FRCP?

- i. Like at the federal level, obtaining a default judgment in Florida is a two-step process. However, unlike the FRCP Rule 55, only the court can enter default judgment. Additionally, notice of the application of default must be served on a party in default who has “file[d] any document after the default is entered,” which is also dissimilar to the Federal Rules of Civil Procedure because notice of the entry of default (step 1) is not required under any circumstance.

Language of Rule 1.500. Defaults and Final Judgments Thereon

- ii. **(a) By the Clerk.** When a party against whom affirmative relief is sought has failed to file or serve any document in the action, the party seeking relief may have the clerk enter a default against the party failing to serve or file such document.
- iii. **(b) By the Court.** When a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or any applicable statute or any order of court, the court may enter a default against such party; provided that if such party has filed or served any document in the action, that party must be served with notice of the application for default.
- iv. **(c) Right to Plead.** A party may plead or otherwise defend at any time before default is entered. If a party in default files any document after the default is entered, the clerk must notify the party of the entry of the default. The clerk must make an entry on the progress docket showing the notification.
- v. **(d) Setting aside Default.** The court may set aside a default, and if a final judgment consequent thereon has been entered, the court may set it aside in accordance with rule 1.540(b).
- vi. **(e) Final Judgment.** Final judgments after default may be entered by the court at any time, but no judgment may be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other representative who has appeared in it or unless the court has made an order under rule 1.210(b) providing that no representative is necessary for the infant or incompetent. If it is necessary

³⁴ FLA. R. CIV. P. 1.500.

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 to enable the court to enter judgment or to effectuate it, the court may receive affidavits, make references, or conduct hearings as it deems necessary and must accord a right of trial by jury to the parties when required by the Constitution or any statute.

d. Kentucky³⁵

How is Kentucky different from FRCP?

- i. Kentucky's Rule 55 eliminates the Federal Rules' first step (i.e., entry of default), making it a one-step process to obtain a default judgment. Additionally, Kentucky Rule 55 permits only the court to enter default judgment, as opposed to the FRCP where in some cases the clerk of court can enter the judgment. Finally, if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing, as opposed to the 7-day requirement at the federal level.

Language of Kentucky Rule 55

- ii. ***Rule 55.01. Judgment*** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply to the court therefor. If the party against whom judgment by default is sought has appeared in the action, he, or if appearing by representative, his representative shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. The motion for judgment against a party in default for failure to appear shall be accompanied by a certificate of the attorney that no papers have been served on him by the party in default. 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, without a jury, shall conduct such hearings or order such references as it deems necessary and proper, unless a jury is demanded by a party entitled thereto or is mandatory by statute or by the Constitution. A party in default for failure to appear shall be deemed to have waived his right of trial by jury.
- iii. ***Rule 55.02 Setting Aside Default*** For good cause shown the court may set aside a judgment by default in accordance with Rule 60.02.
- iv. ***Rule 55.03 Plaintiffs, Counterclaims, 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

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<https://govt.westlaw.com/kyrules/Browse/Home/Kentucky/KentuckyCourtRules/KentuckyStatutesCourtRules?guid=N399BDA30A79211DAAB1DC31F8EB14563&transitionType=Default&contextData=%28sc.Default%29>

counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54.03.

- v. **Rule 55.04. Judgment Against the Commonwealth or the United States**
No judgment by default shall be entered against the Commonwealth or an officer or agency thereof or against the United States of America or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the Court.

e. Maryland³⁶

How is Maryland different from FRCP?

- i. Like at the federal level, obtaining a default judgment in Maryland is a two-step process. However, unlike the FRCP Rule 55, not only is the court the one who must enter the default judgment (step 2), it must also place the non-moving party in default. It is worth noting that the court, like the clerk of court at the federal level, has no discretion in placing the non-moving party in default. Unlike the FRCP Rule 55, the non-moving party must be given notice that he was placed in default, no matter if he made an appearance or not. Moreover, and unlike the FRCP Rule 55 where the clerk of court's "entry of default" effectively blocks the non-moving party from curing the deficiency that led to the default, in Maryland the non-moving party is given 30 days after being placed in default to file a motion explaining the failure to plead. It is unclear if the moving party can proceed to the next step of the default judgment process during that 30-day period.

Language of Maryland Rule 2-613

- ii. **(a) Parties to Whom Applicable.** In this Rule, the term "plaintiff" includes counter-plaintiffs, cross-plaintiffs, and third-party plaintiffs, and the term "defendant" includes counter-defendants, cross-defendants, and third-party defendants.
- iii. **(b) Order of Default.** If the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default. The request shall state the last known address of the defendant.
- iv. **(c) Notice.** Promptly upon entry of an order of default, the clerk shall issue a notice informing the defendant that the order of default has been entered and that the defendant may move to vacate the order within 30 days after its entry. The notice shall be mailed to the defendant at the address stated in the request and to the defendant's attorney of record, if any. The court may provide for additional notice to the defendant.
- v. **(d) Motion by Defendant.** The defendant may move to vacate the order of default within 30 days after its entry. The motion shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim.
- vi. **(e) Disposition of Motion.** If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and

³⁶ MD. RULES 2-613.

that it is equitable to excuse the failure to plead, the court shall vacate the order.

- vii. **(f) Entry of Judgment.** If a motion was not filed under section (d) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment and (2) that the notice required by section (c) of this Rule was mailed. If, in order to enable the court to enter judgment, 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 matter, the court, may rely on affidavits, conduct hearings, or order references as appropriate and, if requested, shall preserve to the plaintiff the right to trial by jury.
- viii. **(g) Finality.** A default judgment entered in compliance with this Rule is not subject to the revisory power under Rule 2-535(a) except as to the relief granted.

f. Mississippi³⁷

How is Mississippi different from FRCP?

- i. Like at the federal level, obtaining a default judgment in Mississippi is a two-step process. However, unlike the FRCP Rule 55, only the court can enter default judgment. Additionally, if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing, as opposed to the 7 day requirement at the federal level.

Language of Mississippi Rule 55

- ii. **(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.
- iii. **(b) Judgment.** In all cases the party entitled to a judgment by default shall apply to the court therefor. If the party against whom judgment by default is sought has appeared in the action, he (or if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three days prior to the hearing of such application; however, judgment by default may be entered by the court on the day the case is set for trial without such three days' notice. 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 hearing with or without a jury, in the court's discretion, or order such references as it deems necessary and proper.

³⁷ Miss. R. Civ. P. 55. https://courts.ms.gov/research/rules/msrulesofcourt/rules_of_civil_procedure.pdf

- iv. **(c) *Setting Aside Default.*** For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).
 - v. **(d) *Plaintiffs, Counter-Claimants, and 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 counter-claim. In all cases a judgment by default is subject to the limitation of Rule 54(c).
 - vi. **(e) *Proof Required Despite Default in Certain Cases.*** No judgment by default shall be entered against a person under a legal disability or a party to a suit for divorce or annulment of marriage unless the claimant establishes his claim or rights to relief by evidence, provided, however, that divorces on ground of irreconcilable differences may be granted pro confesso as provided by statute.
- g. North Dakota³⁸

How is North Dakota different from FRCP?

- i. North Dakota Rule 55 eliminates the Federal Rules' first step (i.e., entry of default), making it a one-step process to obtain a default judgment. Additionally, North Dakota Rule 55 permits only the court to enter default judgment (specifically, the court instructs the clerk to enter the judgment), as opposed to the FRCP where in some cases the clerk of court can enter the judgment without court direction. Finally, if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with a motion for judgment, like at the federal level, but it is unclear how far in advance that notice must be served.

Language of North Dakota Rule 55

- ii. **(a) *Entry.*** If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise appear and the failure is shown by affidavit or otherwise, the court may direct the clerk to enter an appropriate default judgment in favor of the plaintiff and against the defendant as follows:
 1. If the plaintiff's claim against a defendant is for a sum certain or a sum that can be made certain by computation, the court, on affidavit of the amount due and on production of the written instrument, if any, on which the claim is based, may direct the entry of judgment.
 2. In all other cases, the court, before directing the entry of judgment, must require the necessary proof to enable it to determine and grant any relief to the plaintiff. To this end, the court may:
 - a. Hear evidence and assess damages;
 - b. Direct a reference for an accounting or for taking testimony or for a determination of the facts; or
 - c. Submit any issue of fact to a jury.
 3. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian or other

³⁸ N.D. R. Civ. P. 55. <https://www.ndcourts.gov/legal-resources/rules/ndrcivp/55>

representative who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with a motion for judgment. Notice must be served with the motion and must comply with N.D.R.Ct. 3.2(a).

4. When service of the summons has been made by published notice, or by delivery of a copy outside the state, default judgment must not be entered until the plaintiff, if required by the court, has filed a court-approved bond that conforms to a court order regarding the restitution of property obtained from the judgment if a defense is later permitted and sustained. A bond is not required in actions involving the title to real estate or to foreclose mortgages or other liens.
- iii. **(b) Judgment Against the State.** A default judgment may be entered against the state, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.
- h. South Carolina³⁹
- How is South Carolina different from FRCP?***
 - i. Like at the federal level, obtaining a default judgment in South Carolina is a two-step process. However, unlike the FRCP Rule 55, only the court can enter default judgment. Additionally, notice of the application of default must be served on a party in default before a judgment is entered no matter if they have made an appearance or not, which is unlike the Federal Rules of Civil Procedure where such notice is only required where an appearance was made.

Language of South Carolina Rule 55

- ii. **(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 upon the calendar (file book.)
- iii. **(b) Judgment.** Judgment by default may be entered as follows:
 1. ***Cases Involving Liquidated Damages or Sum Certain Amounts.*** When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain, or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

³⁹ S.C. R. Civ. P. 55. <https://www.sccourts.org/courtreg/displayRule.cfm?ruleID=55.0&subRuleID=&ruleType=CIV>

2. ***All Other Cases.*** In all other cases, the party entitled to a judgment by default shall apply to the court therefor; but not judgment by default shall be entered against a minor or incompetent person unless represented in the action by a guardian ad litem who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application. 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 hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefor has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute. Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party has whether or not such party has appeared in the action.
3. ***Attorneys Fees.*** If a party seeks to recover attorneys fees in connection with a default judgment, a hearing pursuant to subdivision (b)(2) of this rule shall be required unless: (i) the party seeking attorneys fees specified in the motion for default judgment that such motion includes a request that the court award attorneys fees and also files an affidavit of attorneys fees; (ii) notice of such motion and affidavit is provided to the defaulted party by first class mail to the last known address of such party; and (iii) no objection is filed by the opposing party within 10 days of service of such motion and affidavit.
4. ***Judgment After Service by Public; Affidavit; Undertaking.*** In actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined on oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attached has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication. Before judgment is rendered the plaintiff shall, unless the court in its discretion dispenses with the same, cause to be filed an undertaking in such amount as shall be ordered by the court with security to be

approved by the court or the clerk thereof, that the plaintiff will abide the order of the court touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under, or by virtue of, such judgment, in event the defendant or his representative shall apply and be admitted to defend the action and shall succeed in such defense.

- iv. **(c) Setting Aside Default.** For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).
- v. **(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 pleading a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitation of Rule 54(c),.
- vi. **(e) Judgment Against the State and Certain Other Parties.** No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof, against minors, incompetents, or parties to a suit for divorce or annulment of marriage or against a party upon whom service of summons was made by publication and who did not subsequently make appearance in the action, or in any in rem action, unless the claimant establishes his claim to relief by evidence satisfactory to the Court.

i. Texas⁴⁰

How is Texas different from FRCP?

- i. Texas provisions on default judgment eliminates the Federal Rules' first step (i.e., entry of default), making it a one-step process to obtain a default judgment. Additionally, Texas permits only the court to enter default judgment, as opposed to the FRCP where in some cases the clerk of court can enter the judgment without court direction. Finally, the only time notice is required in Texas' default judgment process is when the final or interlocutory default judgment is rendered by the court.

Language of Rule 239

- ii. ***Rule 239. Judgment by Default.*** Upon such call of the docket, or at any time after a defendant is required to answer, the plaintiff may in term time take judgment by default against such defendant if he has not previously filed an answer, and provided that the return of service shall have been on file with the clerk for the length of time required by Rule 107.
- iii. ***Rule 239a. Notice of Default Judgment.*** At or immediately prior to the time an interlocutory or final default judgment is rendered, the party taking the same or his attorney shall certify to the clerk in writing the last known mailing address of the party against whom the judgment is taken, which certificate shall be filed among the papers in the cause. Immediately upon the signing of the judgment, the clerk shall mail written notice thereof to the

⁴⁰ TEX. R. CIV. P. 239. <https://www.txcourts.gov/media/1055394/trcp-20150901.pdf>

party against whom the judgment was rendered at the address shown in the certificate, and note the fact of such mailing on the docket. The notice shall state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date of the signing of the judgment. Failure to comply with the provisions of this rule shall not affect the finality of the judgment.

j. Vermont⁴¹

How is Vermont different from FRCP?

- i. Vermont's Rule 55 differs substantially from FRCP Rule 55, in that it eliminates the first step of the process (i.e., entry of default by the clerk of court) and requires the court to consider all motions for judgment (i.e., the clerk can never enter the judgment on its own.) Additionally, the rules have specific examples of how the rule might apply, for instance, in the case of an action based on credit card debt.

Language of Vermont Rule 55

- ii. ***(a) Motion for Default Judgment.*** When a party against whom a judgment for affirmative relief is sought by complaint, cross-claim, counterclaim, or other pleading has failed to plead or otherwise defend, the party seeking the affirmative relief may file a motion for a default judgment.
- iii. ***(b) Plaintiffs, Counterclaimants, Cross-Claimants.*** The provisions of this rule apply whether the party seeking 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).
- iv. ***(c) Judgment.***
1. ***Affidavits Required.*** The court shall not enter judgment by default against a party who has not appeared in the action until the moving party files an affidavit made on personal knowledge and setting forth facts as to liability and damages. The court shall not enter judgment by default against a minor or incompetent person unless represented in the action by a guardian, conservator, or other such representative who has appeared therein. The moving party must state in an affidavit whether the opposing party is at least 18 years of age, and whether the moving party has any knowledge as to the competency of the opposing party.
 2. ***When Claim Is for a Sum Certain and Opposing Party Has Not Appeared.*** If the moving party's claim is for a sum certain or for a sum which can by computation be made certain, and the opposing party is not a minor or incompetent, without notice or hearing and upon affidavit of the amount due, the court may shall enter judgment for that amount and costs.
 3. ***When Defendant Has Not Appeared and Claim Not for a Sum Certain, or for Other Reasons.*** If the defendant has not appeared in the action and the claim is not for a sum certain, or if it is otherwise

⁴¹ VT. R. CIV. P. 55.

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 as it deems necessary and proper before entering judgment.

4. ***When the Opposing Party Has Appeared.*** If the party against whom judgment by default is sought has appeared in the action judgment may be entered by the judge after hearing, upon at least 7 days' written notice served by the clerk.
5. ***Affidavits Required by Servicemembers Civil Relief Act.*** Notwithstanding the foregoing, the court shall not enter judgment by default until the filing of an affidavit as required by section 201(b)(1) of the Servicemembers Civil Relief Act, 50 U.S.C. app. 521, stating whether or not the opposing party is in military service and showing necessary facts to support the affidavit or stating that the moving party is unable to determine whether or not the opposing party is in military service. If it appears that the opposing party is in military service, the court shall take appropriate action as provided in that Act.
6. ***Failure to Appear at Trial.*** In those cases in which a party has appeared in the action but has failed to appear at a duly noticed trial on the merits, any other party seeking affirmative relief may either waive trial and move for a default judgment or proceed to trial. If the party seeking affirmative relief obtains judgment based on evidence submitted at trial, that judgment shall be deemed a default judgment solely for the purposes of Rule 55(d), Rule 62(b) and Vermont Rule of Appellate Procedure 4. If the party seeking affirmative relief chooses to file a motion for default judgment, a hearing shall be scheduled on the motion pursuant to paragraph (4).
7. ***Credit Card Debt.*** In actions based on a credit card debt, a plaintiff's motion for default judgment shall include a copy of the contract or other documentary evidence of the original debt, which must contain a signature of the defendant. If no such signed writing evidencing the original debt ever existed, then a copy of the last statement generated when the credit card was actually used for purchase or other competent evidence of the existence of the debt must be included. The motion must also contain a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain at least the last four digits of the original account number of the debt purchased or other identifying information uniquely associated with the account and must show the debtor's name associated with that account number.

- v. **(d) Setting Aside a Default Judgment.** The court may set aside its order granting a motion for a default judgment for good cause, and it may set aside a final default judgment under Rule 60(b).
 - vi. **(e) Judgment Against the State.** The court shall not enter judgment by default against the State of Vermont or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.
- k. Washington⁴²

How is Washington different from FRCP?

- i. Washington's Rule 55 eliminates the Federal Rules' first step (i.e., entry of default), making it a one-step process to obtain a default judgment. Additionally, Washington Rule 55 permits only the court to enter default judgment, as opposed to the FRCP where in some cases the clerk of court can enter the judgment. Moreover, unlike at the federal level, a party who has appeared may file a responsive pleading before the hearing on the motion for default. Finally, if the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 5 days before the hearing, as opposed to the 7-day requirement at the federal level.

Language of Washington Rule 55

ii. Entry of Default

1. ***Motion.*** When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made.
2. ***Pleading After Default.*** Any party may respond to any pleading or otherwise defend at any time before a motion for default and supporting affidavit is filed, whether the party previously has appeared or not. If the party has appeared before the motion is filed, the party may respond to the pleading or otherwise defend at any time before the hearing on the motion. If the party has not appeared before the motion is filed the party may not respond to the pleading nor otherwise defend without leave of court. Any appearances for any purpose in the action shall be for all purposes under this rule 55.
3. ***Notice.*** Any party who has appeared in the action for any purpose shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion, except as provided in
4. rule 55(f)(2)(A).

⁴² WASH. R. CIV. P. 55. https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_55_00_00.pdf

5. **Venue.** A motion for default shall include a statement of the basis for venue in the action. A default shall not be entered if it clearly appears to the court from the papers on file that the action was brought in an improper county.
- iii. **Entry of Default Judgment.** As limited in rule 54(c), judgment after default may be entered as follows, if proof of service is on file as required by subsection (b)(4):
 1. **When Amount Certain.** When the claim against a party, whose default has been entered under section (a), is for a sum certain or for a sum which can by computation be made certain, the court upon motion and affidavit of the amount due shall enter judgment for that amount and costs against the party in default, if the party is not an infant or incompetent person. No judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian or guardian ad litem. Findings of fact and conclusions of law are not necessary under this subsection even though reasonable attorney fees are requested and allowed.
 2. **When Amount Uncertain.** 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 as are deemed necessary or, when required by statute, shall have such matters resolved by a jury. Findings of fact and conclusions of law are required under this subsection.
 3. **When Service by Publication or Mail.** In an action where the service of the summons was by publication, or by mail under rule 4(d)(4), the plaintiff, upon the expiration of the time for answering, may, upon proof of service, apply for judgment. The court must thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or the plaintiff's agent to be examined on oath respecting any payments that have been made to the plaintiff, or to anyone for the plaintiff's use on account of such demand, and may render judgment for the amount which the plaintiff is entitled to recover, or for such other relief as the plaintiff may be entitled to.
 4. **Costs of Proof of Service.** Costs shall not be awarded and default judgment shall not be rendered unless proof of service is on file with the court.
 - iv. **Setting Aside Default**
 1. **Generally.** For good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with rule 60(b).
 2. **When Venue Is Improper.** A default judgment entered in a county of improper venue is valid but will on motion be vacated for

irregularity pursuant to rule 60(b)(1). A party who procures the entry of the judgment, shall in the vacation proceedings, be required to pay to the party seeking vacation the costs and reasonable attorney fees incurred by the party in seeking vacation if the party procuring the judgment could have determined the county of proper venue with reasonable diligence. This subsection does not apply if either:

- a. the parties stipulate in writing to venue after commencement of the action, or
 - b. the defendant has appeared, has been given written notice of the motion for an order of default, and does not object to venue before the entry of the default order.
- v. ***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).

IV. Conclusion

Louisiana’s concept of preliminary default is not unknown either to the Federal Rules of Civil Procedure or to other states. Still, Louisiana’s process of obtaining a default judgment is unlike the Federal Rules of Civil Procedure and those states that have modeled their default judgment provisions around FRCP Rule 55.

	Louisiana	FRCP
<i>Generally</i>	<ul style="list-style-type: none"> • 15 days to answer complaint • Default judgment is a two-step process 	<ul style="list-style-type: none"> • 21 days to answer complaint • Default judgment is a two-step process
<i>First Step</i>	<p>(1) Preliminary Default</p> <ul style="list-style-type: none"> • Simple motion made orally or in writing • Mere minute entry in the record • Defendant not entitled to notice unless he has made an appearance, in which case 7 days required • Even if no appearance, a moving party must wait 2 days after the first step before proceeding to the second step 	<p>(1) Entry of Default</p> <ul style="list-style-type: none"> • Clerk of court must enter default • No notice required • No time period before proceeding to second step
<i>Second Step</i>	(2) Confirmation of Default	(2) Entry of Default Judgment

	<ul style="list-style-type: none">• Have to establish a <i>prima facie</i> case	<ul style="list-style-type: none">• If liquidated damages/sum certain and no appearance has been made, clerk of court may enter judgment without notice.• If not liquidated damages/sum uncertain OR if an appearance has been made by the defaulting party, court may enter judgment, but there is a 7-day notice requirement.
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