

## Alabama Rules of Civil Procedure

### VII. JUDGMENT

#### Rule 55.

##### Default.

(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 the party's default. The clerk's entry of default may be made electronically.

(b) *Judgment.* Judgment by default may be entered as follows:

(1) BY THE CLERK. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if the defendant is not a minor or incompetent person.

(2) BY THE COURT. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered (A) against a minor, or (B) against an incompetent person, unless the minor or the incompetent person is represented in the action by a general guardian or other representative as provided in Rule 17(c) 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 application for judgment at least three (3) days prior to the hearing on such application, provided, however, that judgment by default may be entered by the court on the day the case is set for trial without such three (3) 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 hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury pursuant to the provisions of Rule 38.

(c) *Setting aside default.* In its discretion, the court may set aside an entry of default at any time before judgment. The court may on its own motion set aside a judgment by default within thirty (30) days after the entry of the judgment.

The court may also set aside a judgment by default on the motion of a party filed not later than thirty (30) days after the entry of the judgment.

(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 pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) *Proof required despite default in certain cases.* No judgment by default shall be entered against minors, incompetents, or parties to an action for divorce or annulment of marriage unless the claimant establishes the party's claim or right to relief by evidence.

(dc) *District Court Rule.* Rule 55 applies in the district courts, except that (1) the reference to a jury in Rule 55(b)(2) is deleted; (2) the time period of thirty (30) days in Rule 55(c) is reduced to fourteen (14) days in all cases except for unlawful-detainer actions subject to appeal under §6-6-350, Ala. Code 1975, and actions for eviction as defined in §35-9A-141(5), Ala. Code 1975, in which actions the thirty-(30-)day time period is reduced to seven (7) calendar days; (3) the provisions dealing with an action for divorce or annulment of marriage at Rule 55(e) are deleted; and (4) a party shall not be deemed in default if the party has served an appearance in the form of a motion to dismiss.

[Amended 5-16-83, eff. 7-1-83; Amended 1-23-84, eff. 3-1-84; Amended eff. 10-1-95; Amended eff. 10-24-2008; Amended 5-29-2009, eff. 7-1-2009; Amended eff. 11-28-2012.]

### **Committee Comments on 1973 Adoption**

This rule is very similar to Federal Rule 55. The differences relate to setting aside of defaults and elimination of Federal Rule 55(e) 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 eliminates the requirement 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. Also, when read in conjunction with Rule 38, a jury demand having previously been filed by a party now in default is deemed waived upon default in failing to appear in person or by counsel at the trial.

Rule 55(a) authorizes the clerk to enter defaults upon the civil docket when the party fails "to plead or otherwise defend". Consequently, a party who

has appeared can be in default for failing to file subsequent pleadings or otherwise defend. Note, however, that special notice is required when a judgment by default is sought against a party who has appeared and the claim against him is not one capable of being handled by the clerk under Rule 55(b)(1) but is to be entered only by the court under Rule 55(b)(2). Of course, the distinctions between judgment by default and judgment nil dicit, early recognized in *Grigg v. Gilmer*, 54 Ala. 425 (1875) do not survive these rules. Since these rules apply to one form of action, the equitable counterpart to a default at law, the decree pro confesso, becomes a default under these rules.

Rule 55(b)(1) allows the clerk to enter default judgment only when the claim is for a sum certain or a sum which can by computation be made certain.

Rule 55(b)(2) relegates the entry of the default judgment to the court in all other cases. This portion of the rule provides for three days notice prior to entry of default judgment, when the defendant has once appeared. Note, however, the three day notice is not applicable when the act of default is the failure to appear when the case is set for trial. This rule does not alter the present law with respect to the prohibition against the entry of default against an infant.

The rule permits the resolution without a jury when default has occurred. Under Tit. 7, § 260, Code of Alabama, the plaintiff could withdraw his jury demand when a default occurred but if the defendant had appeared and demanded a jury and then defaulted, former practice afforded no method of non-jury determination. This rule treats a default as a waiver of a prior jury demand. Of course, a plaintiff who has demanded a jury can withdraw his jury demand upon the default of the opposing party.

Rule 55(c) differs from the Federal Rule. It has no express reference to Rule 60, Relief From Judgment or Order, as does the Federal counterpart. This was eliminated in order to insure the court's power to set aside a default judgment in thirty days in an instance where Rule 60 might not afford justification. No time limit is expressed with respect to an entry of default. Of course, Rule 60 becomes available when more than thirty days has passed since the entry of the judgment by default.

Rule 55(d) makes clear that the provisions of this rule are available as to defaults on the various forms of claims for relief available under these rules.

Rule 55(e) is generally based upon Equity Rule 32 as to proof in default divorce cases, see Rules 43(a) and 53.

**Committee Comments to Amendment to Rule 55(c)  
Effective March 1, 1984**

Under Rule 55(c) as originally promulgated, the trial court had 30 days from the date of a default judgment in which to set it aside; if the court took no action within that period, then the more rigid requirements of Rule 60(d) governed an attempt to set aside the default judgment. *Wiggins v. Tuscaloosa Warehouse Groceries, Inc.*, 396 So.2d 91 (Ala.1981). The amendment of March 1, 1984, continues the power of the court to set aside a default judgment within 30 days on its own motion, but it is intended to insure also that when a party has filed a motion for relief from default judgment, the court can act on the motion beyond the 30 days, so long as the motion is filed within 30 days after the entry of the default judgment. See also the corresponding amendment to Rule 59.1, which expressly places Rule 55(c) motions to set aside default judgment within the 90-day limitation of Rule 59.1. Thus, the effect of these two amendments is that a Rule 55(c) motion to set aside a default judgment can be ruled upon beyond the 30 days, but if not ruled upon within the 90 days allowed by Rule 59.1, will be deemed denied at the end of the 90-day period.

**Committee Comments to October 1, 1995,  
Amendment to Rule 55**

The amendment is technical. No substantive change is intended.

**Committee Comments to Amendment to Rule 55(a)  
Effective October 24, 2008**

This amendment makes provision for the clerk's entry of default to be made electronically. If the application for entry of default and application for default judgment are submitted to the judge electronically, entry of default and the default judgment may be entered by the judge.

**Committee Comments to the July 1, 2009,  
Amendment to Rule 55(dc)**

All judgments entered by a district court in unlawful-detainer actions, residential and commercial, are subject to the 2006 amendment to § 6-6-350, Ala. Code 1975, which reduced the appeal time from 14 to 7 days for appeals of such judgments to the circuit court. Rule 55(dc) has been amended to require postjudgment motions filed in unlawful-detainer actions by a party under this rule to be filed within the seven-day appeal period. If filed within that period such

motions will be subject to the provisions of Rule 59.1(dc) regarding the disposition of posttrial motions. In view of the seven-day period for taking an appeal, the amendment also reduces to seven days the time within which the court may, on its own motion, set aside a default judgment in an unlawful-detainer action.

**Committee Comments to Amendment to Rule 55(dc)  
Effective November 28, 2012**

Issues have been raised regarding the applicability in the district court of certain rules of procedure to possessory actions for eviction under the Alabama Uniform Residential Landlord and Tenant Act, Ala. Code 1975, §35-9A-101 et seq., as amended, and to possessory actions for unlawful detainer under Ala. Code 1975, §6-6-310(2). This amendment addresses those issues.

First, language has been added to the (dc) provision of Rule 55 to make it clear that the exception therein applies to both eviction and unlawful-detainer actions. Second, with regard to computation of time in eviction and unlawful-detainer actions, the amendment makes it clear that the exclusion in Rule 6(a) of Saturdays, Sundays, and legal holidays for the computation of periods of less than 11 days has no application to the computation of any time periods in the district court in possessory actions for eviction or unlawful detainer and that "day" means "calendar day" in those computations.

**District Court Committee Comments**

Reference to trial by jury at Rule 55(b)(2) is, of course, inappropriate for district court practice, in view of the absence of provision for jury trials. References to the provisions for suits for divorce or annulment of marriage at Rule 55(e) are inappropriate, because of the unavailability of such relief in the district court.

Motions for relief from default or default judgment within the fourteen days (Rule 55(c) as modified by Rule 55(dc)) should be denied only under the most extraordinary circumstances, in view of the limited time in which a defendant must serve an answer in the district court.

**Note from the reporter of decisions:** The order amending effective October 24, 2008, Rule 3, Rule 4, Rule 5, Rule 6, Rule 11, Rule 55, Rule 58, Rule 59.1, Rule 77, and Rule 79, and adopting effective October 24, 2008, the Committee Comments to Amendment to Rule 3(b) Effective October 24, 2008; Committee Comments to Amendments to Rule 4 Effective October 24, 2008;

Committee Comments to Amendments to Rule 5 Effective October 24, 2008; Committee Comments to Amendments to Rule 6 Effective October 24, 2008; Committee Comments to Amendment to Rule 11 Effective October 24, 2008; Committee Comments to Amendment to Rule 55(a) Effective October 24, 2008; Committee Comments to Amendments to Rule 58 Effective October 24, 2008; Committee Comments to Amendment to Rule 59.1 Effective October 24, 2008; Committee Comments to Amendments to Rule 77(d) Effective October 24, 2008; and the Committee Comments to Addition of Rule 79(e) Effective October 24, 2008, is published in that volume of *Alabama Reporter* that contains Alabama cases from 994 So. 2d.

**Note from the reporter of decisions:** The order amending, effective July 1, 2009, Rule 52(dc), Rule 55(dc), Rule 58(b), and Rule 59(dc), and adopting effective July 1, 2009, the Committee Comments to the July 1, 2009, Amendment to Rule 52(dc), the Committee Comments to the July 1, 2009, Amendment to Rule 55(dc), and the Committee Comments to the July 1, 2009, Amendment to Rule 59(dc) is published in that volume of *Alabama Reporter* that contains Alabama cases from 7 So. 3d.

**Note from the reporter of decisions:** The order amending, effective November 28, 2012, Rule 6(dc), Rule 12(dc), Rule 52(dc), Rule 55(dc), Rule 59(dc), and Rule 62(dc), and adopting the Committee Comments to the Amendment to Rule 6(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 12(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 52(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 55(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 59(dc) Effective November 28, 2012, and the Committee Comments to the Amendment to Rule 62(dc) Effective November 28, 2012, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_\_ So. 3d.