



IN THE SUPREME COURT OF ALABAMA

March 20, 2023

ORDER

IT IS ORDERED that Rule 55(b)(2), Alabama Rules of Civil Procedure, be amended to read in accordance with Appendix A to this order;

IT IS FURTHER ORDERED that the Committee Comments to Amendment to Rule 55(b)(2) Effective May 1, 2023, be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the amendment to Rule 55(b)(2) and the adoption of the Committee Comments thereto are effective May 1, 2023; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 55:

"Note from the reporter of decisions: The order amending Rule 55(b)(2), Alabama Rules of Civil Procedure, and adopting the Committee Comments thereto, effective May 1, 2023, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d."

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Witness my hand and seal this 20th day of March, 2023.

Megan B. Rhodebeck

**Clerk of Court,
Supreme Court of Alabama**

**FILED
March 20, 2023

Clerk of Court
Supreme Court of Alabama**



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APPENDIX A

Rule 55(b)(2), Ala. R. Civ. P.

(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 court shall conduct a hearing on the application for judgment, and the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment and the hearing thereon 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.



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APPENDIX B

Committee Comments to Amendment to Rule 55(b)(2) Effective May 1, 2023

An issue has been identified regarding whether a hearing is required on an application or motion for a default judgment if the party against whom a default judgment is sought has appeared. In *Ex parte Living by Faith Christian Church*, [Ms. 1190872, Nov. 5, 2021] __ So. 3d __ (Ala. 2021), the Alabama Supreme Court determined that Rule 55(b)(2) was ambiguous with regard to this issue. As amended, Rule 55(b)(2) now requires that a hearing be conducted on an application or motion for a default judgment if the opposing party has appeared and that notice of both the application or motion and the hearing thereon must be served on the opposing party. For the definition of "appearance" in the context of default, the Committee directs practitioners to *Progress Industries, Inc. v. Wilson*, 52 So. 3d 500 (Ala. 2010).