

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
MAINE RULES OF CIVIL PROCEDURE

2022 Me. Rules 05

Effective: October 11, 2022

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure are adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in the understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 5(a) of the Maine Rules of Civil Procedure is amended to read as follows:

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, notice of change of attorneys, pretrial memorandum, demand, offer of judgment, designation of record and statement of points on appeal, and similar paper shall be served upon each of the parties no later than the date on which the paper is filed with the court, but no service need be made on parties in default for failure to appear except that (1) pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4, and (2) when applicable, a copy of a request for default or default judgment must be mailed as set forth in Rule 55(f).

Advisory Note – October 2022

Subdivision (a) is amended to insert subdivision number (1) and incorporate a new subdivision (2), which references the requirements of Rule 55(f).

2. Rule 55 of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 55. DEFAULT

(a) Entry.

(1) *By the Clerk.* 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, except that the clerk may not enter a default in a:

(A) foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes;

(B) collection action filed pursuant to Title 32, Chapter 109-A of the Maine Revised Statutes and brought by a "debt buyer" as therein defined;
or

(C) debt collection action based on credit card or student loan debt filed pursuant to Title 32, Chapter 109-A of the Maine Revised Statutes and brought by a "debt collector" as therein defined.

Nor may the clerk enter a default if otherwise prohibited from doing so by statute or these rules.

~~(1) *Foreclosure Actions.* No default or default judgment shall be entered in a foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes except after review by the court and determination that (i) the service and notice requirements of 14 M.R.S. § 6111 and these rules have been strictly performed, and (ii) the plaintiff has properly certified proof of ownership of the mortgage note and produced evidence of the mortgage note,~~

~~the mortgage, and all assignments and endorsements of the mortgage note and the mortgage.~~

(2) *By the Court.* The court may enter a default in any case type, including those listed in subdivision (1)(A) through (C) above, unless prohibited from doing so by statute or these rules.

(b) Judgment. Subject to the limitations of Rule 54(c), 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 shall, upon request of the plaintiff and upon affidavit of the amount due and affidavit that the defendant is not a minor or incompetent person, enter judgment for that amount and costs against the defendant, if the defendant has been defaulted and has failed to appear. The clerk may not enter a default judgment in a foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes; a collection action filed pursuant to Title 32, Chapter 109-A of the Maine Revised Statutes and brought by a "debt buyer" as therein defined; or a debt collection action based on credit card or student loan debt filed pursuant to Title 32, Chapter 109-A of the Maine Revised Statutes and brought by a "debt collector" as therein defined.

(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 against a minor or incompetent person unless represented in the action by a guardian, guardian ad litem, conservator, or other such representative 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 in the same manner and subject to the same response requirements as for motions pursuant to Rule 7; provided that, if the reason for default is a party's failure to appear at trial, such notice need be served only if ordered by the court. 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 in the Superior Court accord a right of trial by jury to the plaintiff if the plaintiff so requests.

(3) Foreclosure Actions. No default judgment shall be entered in a foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes except after review by the court and determination that (i) the plaintiff has strictly complied with the service and notice requirements of 14 M.R.S. § 6111 and these rules, and (ii) the plaintiff has certified proof of its ownership of the mortgage note and produced evidence of the mortgage note, the mortgage, and all assignments and endorsements of the mortgage note and the mortgage.

(4) Collection Actions. No default judgment may be entered in a collection action filed pursuant to Title 32, Chapter 109-A of the Maine Revised Statutes and brought by a “debt buyer” as therein defined or based on alleged student loan or credit card debt and brought by a “debt collector,” as that term is defined in Title 32, Chapter 109-A, except after review by the court and determination that the plaintiff has strictly complied with all applicable provisions of law, including those specifically expressed in Title 32.

(35) Judgment on Negotiable Obligation. No judgment by default shall be entered upon a claim based on a negotiable instrument or other negotiable obligation unless an original or copy of the instrument or obligation is filed with the clerk or unless the court for cause shown shall otherwise direct on such terms as it may fix.

(46) Affidavit Required. Notwithstanding the foregoing, no judgment by default shall be entered until the filing of an affidavit made by the plaintiff or the plaintiff’s attorney, on the affiant’s own knowledge, setting forth facts showing that the defendant is not a person in military service as defined in the “Service Members Civil Relief Act” of 2003, as amended, except upon order of the court in accordance with that Act, and setting forth facts showing that venue was properly laid at the place where the action was brought.

(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).

(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~~ that has pleaded a cross-claim or counterclaim.

(e) Collections Fee. A request or motion for a default that seeks a judgment for a sum certain, or for a sum that can, by computation of costs and interest, be made certain, shall be accompanied by a fee set in the Court Fees Schedule which shall be paid when the request or motion is filed. The fee payment requirement shall apply only when a judgment of \$10,000 or more is sought.

(f) Notice Required. A request for default or default judgment must include a statement that the plaintiff has mailed a copy of the request to the party against whom the default or default judgment is sought at that party's residential address if known. This subdivision does not apply when that party's residential address is not known or when the court has approved service by alternate means under Rule 4(g).

Advisory Note – October 2022

Amendments to subdivisions (a) and (b) are adopted for purposes of complying with new legislation. *See* 32 M.R.S. §§ 11019-11021.

Subdivision (a) is amended to provide exceptions to clerks' authority to enter defaults.

Subdivision (b) is amended to preclude clerks from entering default judgments in certain foreclosure actions, debt-buyer collection actions, and collection actions brought by "debt collectors" pursuant to Title 32, Chapter 109-A of the Maine Revised Statutes based on credit card or student loan debt. The provision regarding foreclosure actions formerly in subdivision (a) is moved and amended to become subdivision (b)(3), applicable to the entry of default judgments. A new subdivision (b)(4) is added to apply to debt-buyer collection actions and debt collectors' actions based on student loan or credit card debt.

Former subdivisions (b)(3) and (b)(4) are renumbered as (b)(5) and (b)(6).

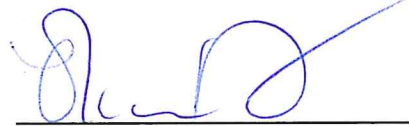
Subdivision (d) is amended to account for the reality that some parties are entities and not individuals.

Subdivision (f), requiring the provision of notice of an application for default or default judgment, is added.

All other amendments are for stylistic purposes.

Dated: September 22, 2022

FOR THE COURT,*



VALERIE STANFILL
Chief Justice

ANDREW M. MEAD
JOSEPH M. JABAR
ANDREW M. HORTON
CATHERINE R. CONNORS
RICK E. LAWRENCE
Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.