

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

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

RULE 55. DEFAULT

(a) Entry. Default may be entered as follows:

(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 sent a copy of the request to the party against whom a default or default judgment is sought at the address noted on that party's entry of appearance (or if appearing by representative, the address of the party's representative), or if none has been filed, the address where the party was served. If the court approved an alternate means of service for the complaint under Rule 4(g)(1)(i), notice is complete upon mailing a copy of the notice to the identified dwelling house or place of abode. If the court approved service by publication under Rule 4(g)(1)(ii), no notice is required to be sent. If the court approved electronic service under Rule 4(g)(1)(iii), the notice shall be delivered electronically in the approved manner. If the court approved service by any other means, the notice shall be provided using the same approved means.

Advisory Note – ____ 2022

Amendments to subdivisions (a) and (b) are adopted for purposes of complying with new legislation. See P.L. 2021, ch. 245 (to be codified at 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.