

Civil Matters: Default, Extending Time, Confessions of Judgment

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Default

What is it?

When a defending party fails to respond to a pleading, the claimant may be able to obtain judgment in his favor without going through the litigation process – *judgment by default*.



2

Default

Rule of Civil Procedure 55



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Default

- Applies when party fails to:
 - Answer complaint
 - Reply to counterclaim
 - Answer cross-claim
 - Answer third party claim



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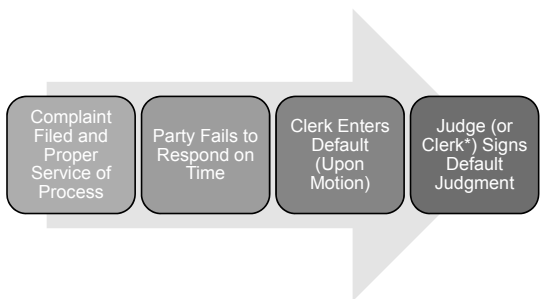
Default

- 2 steps
 - Entry of Default
 - Default Judgment



5

Default



*In certain circumstances



6



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Entry

• Entry of Default

- An official entry in the record that a party has failed to plead and allegations are deemed admitted
- Claimant presents motion to clerk for entry
 - Must demonstrate that party was properly served and has not filed responsive pleading.
 - No affidavit required. Record before the court should demonstrate the relevant dates.
 - *If Rule 12 motion or motion for extension of time is pending, no entry of default.*

Default

• Default Judgment

- Clerk may sign when:
- Entry of default has been made
 - Amount shown by verified pleading or affidavit
 - Defaulting party has never made appearance
 - Defaulting party not infant or incompetent, nor the State of North Carolina (or agency or officer)
 - Claim is for a “sum certain” or “can by computation be made certain”

Default Judgment

“Sum certain” or “can by computation be made certain”

- Where contract makes clear what is due and/or interest can be calculated easily
 - Promissory notes
 - Bills of sale
- Typically will not apply in tort actions (personal injury, defamation, fraud, etc.)

Default Judgment

“Debt buyers” must show, by authenticated business records:

- (1) The original account number.
- (2) The original creditor.
- (3) The amount of the original debt.
- (4) An itemization of charges and fees claimed to be owed.
- (5) The original charge-off balance, or, if the balance has not been charged off, an explanation of how the balance was calculated.
- (6) An itemization of post charge-off additions, where applicable.
- (7) The date of last payment.
- (8) The amount of interest and the basis for the interest charged.

See AOC Legal Memorandum dated 9.25.09.

Default Judgment

When in doubt, send to judge.

Question

- Pro se plaintiff brings motion for entry of default and default judgment against her former husband.
- You check the record, and note that husband was properly served the complaint by publication.
- The complaint is verified and shows husband owes \$8,000 under written contract.
- May you enter default? Default judgment?

Default Judgment

Service by publication

- Where the responding party is served by publication, clerk may not enter default judgment unless moving party posts bond as set by clerk.
- Bond should suffice to cover harm to responding party should default judgment later be set aside.

Question

- Attorney brings you a motion for entry of judgment and default judgment.
- Complaint is a declaratory judgment action against the NC DOT.
- Complaint seeks declaration that DOT does not have a right of way adjacent to Plaintiff's land.
- DOT has been duly served and has failed to respond within 60 days.
- Default judgment?

Default Judgment

- Only applicable to cases for affirmative relief, not to declaratory judgment actions.
- No default against State, agencies of State, and officers sued in official capacity.



Default Judgment



Multiple defendants

- If all have been served and all failed to respond: May enter default judgment against all.
- If all have been served, and at least one has answered:
 - Has complaint alleged joint liability or joint and several liability?
 - If J&S liability (most prom. notes), default judgment against non-responding party is allowed.
 - If J liability only, no default judgment against non-responding party until liability of the other defendants has been adjudicated.

Setting Aside

- Entry of default: Clerk may set aside entry of default "for good cause shown" if default judgment has not been entered.
- Default Judgment: Clerk may set aside default judgment if
 - Clerk entered default judgment (not a judge); and
 - Clerk holds hearing; and
 - Moving party shows grounds under Rule 60(b). (Excusable neglect, no actual notice; order is void, etc.)

Handout: Default Judgment Exercise

Extending Time

Rule of Civil Procedure 6(b)

Extending Time

- Clerk may extend time for parties to perform certain acts beyond time allowed in Rules of Civil Procedure.
 - Most common: To answer complaint; to respond to discovery requests

Extending Time

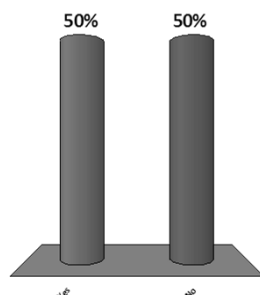
- Clerk may only extend time if deadline has not already passed.
- If it has passed, motion must go to judge for decision.
- No authority to extend deadlines in other statutes (outside the Rules of Civil Procedure).

Question

- Judge Smith has entered judgment against John after a bench trial.
- Rule 52 allows John 10 days to make a motion to Judge Smith to amend the judgment.
- On the 9th day, John files a motion for extension of time to make the Rule 52 motion to Judge Smith.

May you approve the request?

1. Yes
2. No



Extending Time

- Neither clerk nor judge (nor parties by agreement) may extend time to take action under Rules 50(b), 52, 59(b), (d), (e), and 60(b).

Confessions of Judgment

Rule of Civil Procedure 68.1

Confessions of Judgment

- What is a confession of judgment?
 - A person may “confess” to the court, without a lawsuit being filed, that he or she owes money to another.
 - Plaintiff must consent.

Confessions of Judgment

- Procedure:
 - Prospective signs sworn or verified statement authorizing entry of judgment against him or her in amount stated
 - Statement names prospective plaintiff, county of residence, defendant, county of residence, and states why the money is owed.
 - Upon proper filing, clerk enters judgment in amount confessed and docketed judgment as in other cases.

Confessions of Judgment

- Should only be entered in county where defendant resides or has real property or county where plaintiff resides.
- Filing fee: G.S. 7A-308(3).