

## **RULE 4:43. Default**

### **4:43-1. Entry of Default**

If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or court order, or if the answer has been stricken with prejudice, the clerk shall enter a default on the docket as to such party. Except where the default is entered on special order of the court, the moving party shall make a formal written request of the clerk for the entry of the default, supported by the attorney's affidavit. The affidavit shall recite the service of the process and copy of complaint on the defendant or defendants (if more than one, naming them), the date of service as appears from the return of the process, and that the time within which the defendant or defendants may answer or otherwise move as to the complaint, counterclaim, cross-claim, or third-party complaint has expired and has not been extended. The request and affidavit for entry of default shall be filed together within 6 months of the actual default, and the default shall not be entered thereafter except on notice of motion filed and served in accordance with R. 1:6 on the party in default. If defendant was originally served with process either personally or by certified or ordinary mail, the attorney obtaining the entry of the default shall send a copy thereof to the defaulting defendant by ordinary mail addressed to the same address at which defendant was served with process.

Note: Source-R.R. 4:56-1(a) (b) (c) (d); amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 12, 2002 to be effective September 3, 2002.

### **4:43-2. Final Judgment by Default**

After a default has been entered in accordance with R. 4:43-1, except as otherwise provided by R. 4:64 (foreclosures), but not simultaneously therewith, a final judgment may be entered in the action as follows:

- **(a) By the Clerk.** If 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 setting forth a particular statement of the items of the claim, their amounts and dates, a calculation in figures of the amount of interest, the payments or credits, if any, and the net amount due, shall sign and enter judgment for the net amount and costs against such defendant, if not a minor or mentally incapacitated person. If prejudgment interest is demanded in the complaint the clerk shall add that interest to the amount due provided the affidavit of proof states the date of defendant's breach. If the judgment is based on a document of obligation that provides a rate of interest, prejudgment interest shall be calculated in accordance therewith; otherwise it shall be calculated in accordance with Rule 4:42-11(a). If the claim is founded upon a note, check or bill of exchange or is evidenced by entries in the plaintiff's book of account, or other records, a copy thereof shall be attached to the affidavit. If the application for entry of default judgment is made after the expiration of six months following the entry of default, notice thereof shall be given to the defendant by ordinary mail, and proof of service thereof shall accompany the application.
- **(b) By the Court.** By the Court. In all other cases, except Family Part matters recognized by Part V of these Rules, the party entitled to a judgment by default shall apply to the court therefor by notice of motion pursuant to R. 1:6, served on all parties to the action, including the defaulting defendant or the representative who appeared for the defaulting defendant. No judgment by default shall be entered against a minor or mentally incapacitated person unless that person is represented in the action by a guardian or guardian ad litem who has appeared therein. If, 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 allegation by evidence or to make an

investigation of any other matter, the court, on its own motion or at the request of a party on notice to the defaulting defendant or defendant's representative, may conduct such proof hearings with or without a jury or take such proceedings as it deems appropriate. The notice of proof hearing shall be by ordinary mail addressed to the same address at which process was served unless the party entitled to judgment has actual knowledge of a different current address for the defaulting defendant. Proof of service of the notice of motion and notice of any proof hearing shall certify that the plaintiff has no actual knowledge that the defaulting defendant's address has changed after service of original process or, if the plaintiff has such knowledge, the proof shall certify the underlying facts. In tort actions involving multiple defendants whose percentage of liability is subject to comparison and actions in which fewer than all defendants have defaulted, default judgment of liability may be entered against the defaulting defendants but such questions as defendants' respective percentages of liability and total damages due plaintiff shall be reserved for trial or other final disposition of the action. If application is made for the entry of judgment by default in deficiency suits or claims based directly or indirectly upon the sale of a chattel which has been repossessed, the plaintiff shall prove before the court the description of the property, the amount realized at the sale or credited to the defendant and the costs of the sale. In actions for possession of land, however, the court need not require proof of title by the plaintiff. If application is made for the entry of judgment by default in negligence actions involving property damage only, proof shall be made as provided by R. 6:6-3(c).

- **(c) Conformance of Judgment With Pleading; Service of Judgment.** Whether entered by the clerk or the court, the final judgment shall not be different in kind nor exceed the amount demanded in the pleading, except that in continuing causes, installments coming due after the filing of the pleading but before entry of judgment may be added to the amount of the demand stated in the pleading. Within seven days after receipt of the executed judgment from the court, the proponent of the judgment shall serve a copy thereof on the defaulting defendant as required by R. 1:5-2 except that service may be made by ordinary mail alone.
- **(d) Failure to Apply for Judgment Within Four Months.** If a party entitled to a judgment by default fails to apply therefor within four months after the entry of the default, the court shall issue a written notice in accordance with R. 1:13-7(a).

Note: Source - R.R. 4:55-4 (first sentence), 4:56-2(a) (b) (first three sentences) (c), 4:79-4. Paragraph (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 15, 1982 to be effective September 13, 1982; text and paragraph (a) amended January 19, 1989 to be effective February 1, 1989; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraphs (b) and (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (d) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 12, 2002 to be effective September 3, 2002; introductory text and paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended and paragraph (d) caption and text amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended September 11, 2006 to be effective immediately; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; paragraph (b) amended July 9, 2008 to be effective September 1, 2008.

#### **4:43-3. Setting Aside Default**

A party's motion for the vacation of an entry of default shall be accompanied by (1) either an answer to the complaint and Case Information Statement or a dispositive motion pursuant to Rule 4:6-2, and (2) the filing fee for an answer or dispositive motion, which shall be returned if the motion to vacate the entry of default is denied. 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 4:50.

Note: Source-R.R. 4:56-3; amended July 9, 2008 to be effective September 1, 2008.

#### **4:43-4. Plaintiffs, Counterclaimants, Cross-Claimants**

The provisions of R. 4:43 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.

**Note:** Source-R.R. 4:56-4 (first sentence).