

STATE OF VERMONT  
VERMONT SUPREME COURT  
MAY TERM, 2009

**Order Promulgating Amendment to the Vermont Rules of Civil Procedure**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 55(b)(1) of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

**RULE 55. DEFAULT**

\* \* \* \* \*

**(b) Judgment.**

(1) *Application; Affidavit.* The party entitled to a judgment by default shall apply to the court therefor; ~~but n.~~ No judgment by default shall be entered against a party who has not appeared in the action until the filing of an affidavit made on personal knowledge and setting forth facts as to liability and damages. No judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian, conservator, or other such representative who has appeared therein.

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**Reporter's Notes—2009 Amendment**

Rule 55(b)(1) is amended to provide that judgment by default may not be entered against a defendant who has not appeared until the party seeking judgment has filed an affidavit as to liability and damages. The purposes of the amendment are to give greater assurance that the party is entitled to a default judgment and to reduce the need to set aside default judgments under Rule 55(c).

The affidavit must be on personal knowledge, whether of the party seeking judgment, the party's attorney, or another person. The affidavit will serve as the required affidavit of the amount due under Rule 55(b)(2) when a party has not appeared and the claim is for a sum that is certain or readily computable. The affidavit may be considered by the court in determining whether it is necessary

to hold a hearing or order a reference under Rule 55(b)(3) when a party has not appeared and the amount of damages or another matter is in issue. The requirement of an affidavit does not apply when a default judgment is sought under Rule 55(b)(4) or (6) against a party who has appeared in the action. Appearance has given the defaulting party the opportunity to challenge claims of liability and damages. In any event, there will either be a hearing on notice under Rule 55(b)(4) or, if the default is nonappearance at trial, the party seeking the judgment may elect to go to trial under Rule 55(b)(6).

2. That this rule, as amended is prescribed and promulgated to become effective on July 6, 2009. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 7<sup>th</sup> day of May, 2009.

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice