

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 921

Short Title: Amend Rule 55.

(Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUDGMENT BY DEFAULT TO BE ENTERED BY THE
JUDGE WITHOUT A HEARING SUBJECT TO CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 55(b) reads as rewritten:

"(b) Judgment. – 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 upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if ~~he~~ the defendant has been defaulted for failure to appear and if ~~he~~ the defendant is not an infant or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

In all cases wherein, pursuant to this rule, the clerk enters judgment by default upon a claim for debt which is secured by any pledge, mortgage, deed of trust or other contractual security in respect of which foreclosure may be had, or upon a claim to enforce a lien for unpaid taxes or assessments under G.S. 105-414, the clerk may likewise make all further orders required to consummate foreclosure in accordance

1 with the procedure provided in Article 29A of Chapter 1 of the General
2 Statutes, entitled "Judicial Sales."

3 (2) By the Judge. –

4 a. In all other cases the party entitled to a judgment by default shall
5 apply to the judge therefor; but no judgment by default shall be
6 entered against an infant or incompetent person unless
7 represented in the action by a guardian ad litem or other such
8 representative who has appeared therein. If the party against
9 whom judgment by default is sought has appeared in the action,
10 ~~he~~that party (or, if appearing by representative, ~~his~~the
11 representative) shall be served with written notice of the
12 application for judgment at least three days prior to the hearing
13 on such application. If, in order to enable the judge to enter
14 judgment or to carry it into effect, it is necessary to take an
15 account or to determine the amount of damages or to establish
16 the truth of any averment by evidence or to take an investigation
17 of any other matter, the judge may conduct such hearings or
18 order such references as ~~he~~the judge deems necessary and proper
19 and shall accord a right of trial by jury to the parties when and as
20 required by the Constitution or by any statute of North Carolina.
21 If the plaintiff seeks to establish paternity under Article 3 of
22 Chapter 49 of the General Statutes and the defendant fails to
23 appear, the judge shall enter judgment by default.

24 b. A motion for judgment by default may be decided by the court
25 without a hearing if:

- 26 1. The motion specifically provides that the court will decide
27 the motion for judgment by default without a hearing if
28 the party against whom judgment is sought fails to serve a
29 written response, stating the grounds for opposing the
30 motion, within 30 days of service of the motion; and
31 2. The party against whom judgment is sought fails to serve
32 the response in accordance with this sub-subdivision."

33 Section 2. This act becomes effective October 1, 1999, and applies to causes
34 of action commenced on or after that date.