

RULE 1.500 | DEFAULTS AND FINAL JUDGMENTS THEREON

(a) By the Clerk. When a party against whom affirmative relief is sought has failed to file or serve any document in the action, the party seeking relief may have the clerk enter a default against the party failing to serve or file such document.

(b) By the Court. When a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or any applicable statute or any order of court, the court may enter a default against such party; provided that if such party has filed or served any document in the action, that party must be served with notice of the application for default.

(c) Right to Plead. A party may plead or otherwise defend at any time before default is entered. If a party in default files any document after the default is entered, the clerk must notify the party of the entry of the default. The clerk must make an entry on the progress docket showing the notification.

(d) Setting aside Default. The court may set aside a default, and if a final judgment consequent thereon has been entered, the court may set it aside in accordance with rule 1.540(b).

(e) Final Judgment. Final judgments after default may be entered by the court at any time, but no judgment may be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other representative who has appeared in it or unless the court has made an order under rule 1.210(b) providing that no representative is necessary for the infant or incompetent. If 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 to enable the court to enter judgment or to effectuate it, the court may receive affidavits, make references, or conduct hearings as it deems necessary and must accord a right of trial by jury to the parties when required by the Constitution or any statute.



Court Commentary

1984 Amendment. Subdivision (c) is amended to change the method by which the clerk handles papers filed after a default is entered. Instead of returning the papers to the party in default, the clerk will now be required to file them and merely notify the party that a default has been entered. The party can then take whatever action the party believes is appropriate.

This is to enable the court to judge the effect, if any, of the filing of any paper upon the default and the propriety of entering final judgment without notice to the party against whom the default was entered.

