THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED AMENDMENT TO CRLJ 55—DEFAULT

O R D E R

NO. 25700-A-1463

The District and Municipal Court Judges' Association, having recommended the suggested amendment to CRLJ 55—Default, and the Court having approved the suggested amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendment as attached hereto is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2023.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2023. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 15th day of July, 2022.

For the Court

González, C.J.

GR 9 COVER SHEET

Suggested Amendment to
WASHINGTON STATE COURT RULES:
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION

CRLJ 55
DEFAULT

A. **Name of Proponent:** District & Municipal Courts Judges' Association (DMCJA)

B. **Spokesperson:** Judge Michael J. Finkle, Member, DMCJA Rules Committee

C. **Purpose:** CRLJ 55(f) sets out the procedures for a motion for default judgment when the defendant has not appeared and more than one year has elapsed from the date of service of the summons and complaint. The current court rule only references service of the summons. The current version of the rule does not expressly state that a motion for default judgment under that subsection must be noted for hearing. CRLJ 55(f)(2)(iv), applicable if the plaintiff initially served process by publication, clearly requires the plaintiff to note the motion for a hearing. This could have been an oversight on the original drafters part or intentional as service by publication under CRLJ 55 (b)(3) requires an examination upon oath. Nevertheless, the absence of such a clear requirement in CRLJ 55(f)(2)(i)-(iii) can cause confusion.

There are two reasons for the request. First, the way the rule is currently drafted can cause counsel and/or judges to avoid setting motions for default for a hearing when more than one year has passed since personal service. King County District Court recently received approximately 8 motions (all from the same law firm) seeking default judgments without a hearing. This spurred several hours of research by the judge handling the matter. That could have been avoided with a simple rule change. Second, King County Superior Court has seen fit to adopt a local rule (LCR 55(a)(1) that expressly requires a nearing. If CR 55 (similar to CRLJ 55) was clear, the local rule would be unnecessary.

The proposed amendment to CRLJ 55(f)(1) would not change the existing rule; it would only make it clear. King County's local rule can only be considered valid if it clarifies the state rule. If it changes it, then it is invalid. While passage of a Superior Court local rule is not binding authority, it is a good indicator that the proposed clarification would be consistent with the current rule.

The only two cases that the DMCJA is aware of that remotely discuss this issue mention that the plaintiffs noted hearings, but do not say whether a hearing was required. Those cases are: *Brooks v. University City, Inc.*, 154 Wn.App. 474 (2010); and *Dubois v. Kapuni*, 71 Wn.App. 621 (1993). The two cases certainly support the notion that a hearing is necessary, but they are not directly on point.

For the foregoing reasons, the DMCJA is requesting that the Supreme Court amends CRLJ 55(f)(1) to clarify the process for seeking a default judgment when service occurred more than one year before.

D. **Hearing:** A hearing is not recommended.

E. **Expedited Consideration:** Expedited consideration is not requested.

CRLJ 55 DEFAULT

(a) Entry of Default.

(1) *Motion*. When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made.

(2) *Pleading After Default*. Any party may respond to any pleading or otherwise defend at any time before a motion for default and supporting affidavit is filed, whether the party previously has appeared or not. If the party has appeared before the motion is filed, he may respond to the pleading or otherwise defend at any time before the hearing on the motion. If the party has not appeared before the motion is filed he may not respond to the pleading nor otherwise defend without leave of court. Any appearances for any purpose in the action shall be for all purposes under this rule 55.

(3) *Notice*. Any party who has appeared in the action for any purpose, shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion, except as provided in subsection (f)(2)(i).

(4) *Venue*. A motion for default shall include a statement of the basis for venue in the action. A default shall not be entered if it clearly appears to the court from the papers on file that the action was brought in an improper district.

(b) Entry of Default Judgment. As limited in rule 54(c), judgment after default may be entered as follows, if proof of service is on file as required by subsection (b)(4):

(1) *When Amount Certain*. When the claim against a party, whose default has been entered under section (a), is for a sum certain or for a sum which can by computation be made certain, the court upon motion and affidavit of the amount due shall enter judgment for that amount and costs against the party in default, if he is not an infant or incompetent person. No judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian or guardian ad litem. Findings of fact and conclusions of law are not necessary under this subsection even though reasonable attorney fees are requested and allowed.

(2) *When Amount Uncertain*. If, in order 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 averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as are deemed necessary or, when required by statute, shall have such matters resolved by a jury. Findings of fact and conclusions of law are required under this subsection.

(3) *When Service by Publication or Mail*. In an action where the service of the summons was by publication, or by mail under rule 4(d)(4), the plaintiff, upon the expiration of the time for answering, may, upon proof of service, apply for judgment. The court must thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to anyone for his use on account of such demand, and may render judgment for the amount which he is entitled to recover, or for such other relief as he may be entitled to.

(4) *Costs and Proof of Service*. Costs shall not be awarded and default judgment shall not be rendered unless proof of service is on file with the court.

(c) Setting Aside Default.

(1) *Generally*. For good cause shown and upon such terms as the court deems just, 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 60(b).

(2) *When Venue Is Improper*. A default judgment entered in a district of improper venue is valid but will on motion be vacated for irregularity pursuant to rule 60(b)(1). A party who procures the entry of the judgment shall, in the vacation proceedings, be required to pay to the party seeking vacation the costs and reasonable attorney fees incurred by the party in seeking vacation if the party procuring the judgment could have determined the district of proper venue with reasonable diligence. This subsection does not apply if either (i) the parties stipulate in writing to venue after commencement of the action, or (ii) the defendant has appeared, has been given written notice of the motion for an order of default, and does not object to venue before the entry of the default order.

(d) Plaintiffs, Counterclaimants, Cross Claimants. The provisions of this rule 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. In all cases a judgment by default is subject to the limitations of rule 54(c).

(e) Judgment Against State. [Reserved.]

(f) How Made After Elapse of Year.

(1) *Notice*. When more than 1 year has elapsed after service of summons with no appearance being made, the court shall not sign an order of default or enter a judgment until a notice of the time and place of the hearing on the application for the order or judgment is served on the party in default, not less than 10 days prior to the entry. Proof by affidavit of the service of the notice shall be filed before entry of the judgment.

(2) *Service*. Service of notice of the time and place on the application for the order of default or default judgment shall be made as follows:

(i) by service upon the attorney of record;

(ii) if there is no attorney of record, then by service upon the defendant by certified mail with return receipt of said service to be attached to the affidavit in support of the application; or

(iii) by a personal service upon the defendant in the same manner provided for service of process.

(iv) If service of notice cannot be made under sections (i) and (iii), the notice may be given by publication in a newspaper of general circulation in the county in which the action is pending for one publication, and by mailing a copy to the last known address of each defendant. Both the publication and mailing shall be done 10 days prior to the hearing.