

In the
Indiana Supreme Court

CAUSE NUMBER: 94S00-1003-MS-128



ORDER AMENDING INDIANA RULES OF TRIAL PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Trial Rule 55 and Appendix A-2 are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

...

Rule 55. Default

(A) **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise comply with these rules and that fact is made to appear by affidavit or otherwise, the party may be defaulted by the court.

(B) **Default judgment.**

In all cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against a person (1) known to be an infant or incompetent unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein; or (2) entitled to the protections against default judgments provided by the Servicemembers Civil Relief Act, as amended (the "Act"), 50 U.S.C. appx. § 521, unless the requirements of the Act have been complied with. See Ind. Small Claims Rule 10(B)(3). If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by a representative, his representative) shall be served with written notice of the application for judgment at least three [3] days prior to the hearing on such application. 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

prior to entry of judgment on attorney's fees.

OR

is not seeking attorney's fees.

Plaintiff believes that defendant is not a minor or an incompetent individual

If the defendant is an individual, plaintiff states and declares that:

Defendant is not on active military service. Plaintiff's statement that Defendant is not on active military service is based upon the following facts:

_____.

OR

Plaintiff is unable to determine whether or not Defendant is not on active military service military service.

("Active military service" includes fulltime duty in the military (including the National Guard and reserves) and, for members of the National Guard, service under a call to active service authorized by the President or Secretary of Defense. For further information, see the definition of "military service" in the Servicemembers Civil Relief Act, as amended, 50 U.S.C.A. Appx. § 521.)

I swear or affirm under the penalties of perjury that the foregoing representations are true.

Dated: _____ Signature of Affiant: _____

These amendments shall take effect January 1, 2011.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Public Defender's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the

Michie Company; and Thomson Reuters. The Clerk is also directed to post this Order to the Court's website.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 28th day of October, 2010.

/s/Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

SHEPARD, C. J., and DICKSON, SULLIVAN, and RUCKER, JJ., concur.

DAVID, J., not participating.