

## **SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

### **Notice of Proposed Amendments to Superior Court Rules of Civil Procedure**

The District of Columbia Superior Court Rules Committee recently completed review of proposed amendments to Superior Court Rules of Civil Procedure 8, 40-III, 55, and 56. The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved unless, after consideration of comments from the Bar and the public, the proposed amendments are withdrawn or modified.

Written comments must be submitted by February 11, 2022. Comments may be emailed to [Laura.Wait@dccsystem.gov](mailto:Laura.Wait@dccsystem.gov) or may be mailed to:

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All comments submitted in response to this notice will be available to the public. New language is underlined, and deleted language is stricken through.

## **Rule 8. General Rules of Pleading**

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; ~~and~~

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief; ~~and~~

(4) in an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, any information required by D.C. Code § 28-3814.

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### COMMENT TO 2022 AMENDMENTS

This rule has been amended to highlight the pleading requirements included in emergency, temporary, and permanent legislation amending D.C. Code § 28-3814.

### COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 8*, as amended in 2007 and 2010. In addition to stylistic changes, "discharge in bankruptcy" is deleted from the list of affirmative defenses. As explained in the Advisory Committee Notes to the 2010 federal amendment:

Under *11 U.S.C. § 524 (a)(1) and (2)*, a discharge voids a judgment to the extent that it determines a personal liability of the debtor with respect to a discharged debt. The discharge also operates as an injunction against commencement or continuation of an action to collect, recover, or offset a discharged debt. For these reasons it is confusing to describe discharge as an affirmative defense. But § 524 (a) applies only to a claim that was actually discharged. Several categories of debt set out in *11 U.S.C. § 523 (a)* are excepted from discharge. The issue whether a claim was excepted from discharge may be determined either in the court that entered the discharge or—in most instances—in another court with jurisdiction over the creditor's claim.

### COMMENT

Identical to *Federal Rule of Civil Procedure 8*.

## Rule 40-III. Collection and Subrogation Cases

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### (b) PARTICULAR PLEADING REQUIREMENTS.

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#### (3) *Prejudgment Interest.*

(A) *In General.* If the plaintiff's claim includes a claim for prejudgment interest, the complaint must include:

- (i) the prejudgment interest rate;
- (ii) the date from which the interest has run;
- (iii) the total dollar amount of prejudgment interest already accrued as of a date specified by the plaintiff and not more than 30 days prior to the filing of the action; and
- (iv) if applicable, a statement that the amount of prejudgment interest is only good through the stated date and that the amount will increase after that date as interest continues to accrue.

(B) *Closed or Charged-Off Account.* In actions based on accounts described in Rule 40-III(a)(1) that have been closed or charged off, the term "prejudgment interest" refers only to interest added or charged to the account after the account closing or charge-off.

(4) *Consumer Debt.* In an action initiated by a debt collector to collect consumer debt as defined in D.C. Code § 28-3814, the plaintiff must include any information required by D.C. Code § 28-3814.

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### COMMENT TO 2022 AMENDMENTS

This rule has been amended to highlight the new pleading requirements included in emergency, temporary, and permanent legislation amending D.C. Code § 28-3814.

### COMMENT TO 2021 AMENDMENTS

Section (a) was amended to more clearly define which cases are covered by this rule. As used in this rule, "charge off" means the act of a creditor that treats an account receivable or other debt as a loss or expense because payment is unlikely.

Former sections (d) and (f) concerning magistrate judges were deleted because Rule 73 addresses consent and withdrawal of consent.

Former section (e) was deleted as unnecessary in light of the 2021 amendments to Rule 16, which clarify that the only provisions of Rule 16 that do not apply to cases to which Rule 40-III applies are the provisions of Rule 16(b)(2) concerning praecipes in lieu of appearance. Under Rule 16, a magistrate judge handling a collection or subrogation case will ascertain the status of the case at the outset and exercise the discretion granted by Rule 16 to enter a scheduling order appropriate to the specific case.

Former section (g) was deleted because other rules address the provisions of copies of papers to judges.

#### COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

## Rule 55. Default; Default Judgment

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### (b) ENTERING A DEFAULT JUDGMENT.

(1) *By the Clerk.* Except in an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, if the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request—must enter judgment for that amount and costs against a defendant who has been defaulted for not responding as provided in Rule 12 if:

(A) the plaintiff filed and served a verified complaint or an affidavit verifying the complaint at least 21 days prior to the request for judgment;

(B) the verified complaint or affidavit sets out the sum claimed to be due, exclusive of all set-offs and defenses;

(C) the request for judgment is made no more than 60 days after default is entered; and

(D) the plaintiff, at the time of requesting the judgment, properly filed, for each defendant who is an individual, a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043).

(2) *By the Court.* In all other cases, and no more than 60 days after default is entered, the party must apply to the court for a default judgment either by motion or by praecipe, served on all parties, requesting the setting of an ex parte proof hearing.

(A) *Notice of Motion.* If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the motion at least 7 days before the hearing.

(B) Consumer Debt Collection Actions. In an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, the plaintiff must provide all documentation and information required by D.C. Code § 28-3814 prior to entry of default judgment.

~~(CB)~~ *Servicemembers Civil Relief Act Affidavit.* If the party against whom a default judgment is sought has not appeared in the action, a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043), must be filed for each defendant who is an individual before the court may enter a default judgment.

~~(DG)~~ *Hearings or Referrals.* The court may conduct hearings or make referrals—preserving any applicable statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(i) conduct an accounting;

(ii) determine the amount of damages;

(iii) establish the truth of any allegation by evidence; or

(iv) investigate any other matter.

(3) *Minors and Incompetents.* A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, committee, conservator, or other like fiduciary who has appeared.

(4) *Members of the Military; Military Status Unknown.* If the Civil Action Form 114 filed by the plaintiff under Rule 55(b)(1) or (2) indicates that the defendant is in the military or

that his or her military status is unknown, the court must follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (*50 U.S.C. § 3931*).

(5) *Dismissal*. A plaintiff's failure to comply with Rule 55(b)(1) or (2) will result in the dismissal without prejudice of the complaint.

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## COMMENT TO 2022 AMENDMENTS

[This rule has been amended to highlight new requirements included in emergency, temporary, and permanent legislation amending D.C. Code § 28-3814.](#)

## COMMENT TO 2017 AMENDMENTS

This rule continues to differ substantially from *Federal Rule of Civil Procedure 55*. However, this rule has been amended consistent with the 2007 stylistic changes to the federal rule, and it incorporates other 2007, 2009, and 2015 federal amendments. Specifically, in accordance with the 2007 federal amendments, former section (d) was eliminated. It included two provisions—one stating that Rule 55 applied to the described claimants, which was an incomplete list, and one reminding parties that Rule 54(c) limited the relief available for a default judgment. Also, time periods were revised in accordance with the 2009 federal amendments. Finally, consistent with 2015 amendments to the federal rule, the word “final” was added to the provision in subsection (c)(2) that indicated the court “may set aside a final default judgment under Rule 60(b).” This amendment helped to clarify the difference between a final default judgment that could be reviewed under Rule 60(b) and a default judgment that does not dispose of all of the claims. The latter is not final until the court directs entry under Rule 54.

## COMMENT

Paragraph (b)(1) has been revised to conform to the prior practice in the Court of General Sessions of requiring a verified complaint or affidavit stating the amount due before entry of default by the Clerk. Paragraph (b)(1) has been modified to add the requirement that plaintiff provide a proposed order with the request for judgment within 60 days after default is entered. A Form CA 114 in compliance with the Servicemembers Civil Relief Act (2003) (*50 U.S.C. App. § 501 et seq.*) must be filed in all cases, whether the default judgment is to be entered by the clerk or the Court, where defendant has failed to appear. A request for judgment under paragraph (b)(2) must now be made by way of a motion. Moreover, paragraph (c) has also been revised to conform to the prior practice in the Court of General Sessions of requiring a verified and sufficient answer before setting aside a default except in those cases in which the parties have entered into a settlement agreement or consent judgment or where either the movant asserts a lack of subject matter or personal jurisdiction or when the default was entered after the movant has filed an answer. In addition, paragraph (e) has been

revised to reflect reference to the District of Columbia as well as the United States and paragraph (b)(2) has been revised to refer to any "applicable statute" in place of "statute of the United States".

## **Rule 56. Summary Judgment**

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT.

(1) *In General.* A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(2) *Consumer Debt Collection Actions.* In an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, the plaintiff must provide all documentation and information required by D.C. Code § 28-3814 prior to entry of summary judgment.

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### COMMENT TO 2022 AMENDMENTS

This rule has been amended to highlight new requirements included in emergency, temporary, and permanent legislation amending D.C. Code § 28-3814.

### COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 56*, as amended in 2010, except that 1) a reference to local district court rules is omitted from the language in subsection (b)(1) and 2) subsection (b)(2), which is unique to the Superior Court rule, requires parties to submit statements of material facts with each material fact stated in a separate, numbered paragraph (a requirement previously found in Rule 12-I(k)). In 2010, the federal rule underwent substantial revisions in order to improve the procedures for presenting and deciding summary judgment motions, but the standard for granting summary judgment remained unchanged. Parties and counsel should refer to the Federal Rules of Civil Procedure Advisory Committee Notes for a detailed explanation of these amendments.

### COMMENT

Identical to *Federal Rule of Civil Procedure 56* except for the provision in paragraphs (a) and (b) of Rule 56 that the time period for filing the motion shall be set by Court order. For further requirements with respect to summary judgment procedure, see Rule 12-I(k).