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7
8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 In the Matter of:

Supreme Court No. R-25-

11 **PETITION TO AMEND RULES 4**
12 **AND 55(a) OF THE ARIZONA**
13 **RULES OF CIVIL PROCEDURE**

PETITION

14 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the “State Bar”) hereby petitions the Court to : (1) amend Rule 55(a) of
16 the Arizona Rules of Civil Procedure, as proposed in the clean and redlined drafts
17 attached as Exhibits 1 and 2; and (2) make non-substantive conforming changes to
18 Rule 4, as proposed in the clean and redlined drafts attached as Exhibits 3 and 4.

19 The proposed amendments relate primarily to Rule 55(a). They are designed
20 to clarify the procedure for obtaining entry of default and to require additional notice
21 to the party claimed to be in default regarding the party’s opportunity to prevent
22 default from becoming effective. The State Bar also proposes several non-
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1 substantive technical changes to Rule 55(a) to clarify ambiguities and
2 inconsistencies in the existing language.

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4 In addition to proposing changes to Rule 55(a), this petition proposes
5 conforming changes to Rule 4. Rule 55 was recently amended to clarify that, to
6 prevent entry of default from becoming effective, a party claimed to be in default
7 must “plead or otherwise defend” within the applicable deadline. Rule 4 contains
8 different and unclear language that requires a party against whom relief is sought to
9 “appear and defend” within the applicable deadline. The proposed revisions to Rule
10 4 would harmonize that rule with Rule 55 and further clarify that a party who merely
11 “appears” following service of a summons on them must still “plead or otherwise
12 defend.”
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15 **I. ISSUES THIS PETITION IS INTENDED TO ADDRESS**

16 **A. Rule 55(a)**

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18 A member of the State Bar contacted the Civil Practice and Procedure
19 Committee (“CPPC”) regarding a perceived deficiency in Rule 55(a). The member
20 questioned whether Rule 55 should require a party requesting entry of default to
21 expressly notify the party claimed to be in default that failure to plead or otherwise
22 defend within 10 days of the application would result in default becoming effective.
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24 As currently drafted, the rule does not require any notice regarding the consequences
25 of failing to plead or otherwise defend, or even notice that action must be taken

1 within a specific timeframe. Because many parties who are the subject of an
2 application for entry of default are unrepresented and do not have a working
3 knowledge of the Civil Rules, they are unlikely to appreciate that they have an
4 opportunity to prevent default from becoming effective or the consequences of
5 failing to do so.
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7 The CPPC formed a subcommittee to investigate the member's concern and,
8 in the course of doing so, identified several additional issues that warranted
9 consideration.
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11 First, the current structure of Rule 55(a) is difficult to follow. The rule is
12 divided into subsections that discuss, in order, the general concept of a default, an
13 application for entry of default, a separate notice to the party claimed to be in default,
14 then, in two different subsections, the concept that default (although entered) may
15 not become effective. This structure makes the rule difficult to understand, both for
16 parties requesting entry of default and parties claimed to be in default. The concept
17 that default does not become effective until 10 days after an application for entry of
18 default is filed is particularly problematic and confusing because it is not a
19 commonly used process.¹
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24 ¹ Federal Rule of Civil Procedure 55, for example, makes default effective
25 immediately upon filing proof of default. *See* Fed. R. Civ. P. 55(a) (“When a party
against whom a judgment for affirmative relief is sought has failed to plead or

1 Second, the rule makes it easy for a party requesting entry of default not to
2 provide adequate notice to the party claimed to be in default. As drafted, the rule
3 only requires the party requesting entry of default to provide mailed notice to the
4 defaulting party, “[i]f the party requesting entry of default knows the whereabouts
5 of the party claimed to be in default.” The “whereabouts of the party” is an
6 ambiguous and undefined term. And because it is in a conditional clause (*i.e.*, “if
7 the party requesting entry of default knows the whereabouts . . .”), parties requesting
8 entry of default can easily avoid providing notice to the party claimed to be in default
9 by feigning ignorance of the other party’s actual “whereabouts.” In the same vein,
10 the rule fails to account for the reality that most people can be contacted by means
11 other than physical mailing.
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15 Third, as this petition demonstrates, the language surrounding the process for
16 requesting entry of default is cumbersome. “The party against whom default is
17 sought,” and the “the party seeking entry of default,” are long titles that, if used more
18 than once in a sentence, make the sentence difficult to follow. The current rule is
19 therefore cumbersome and may not provide clear guidance in the rare event a non-
20 lawyer consults the rules upon receiving a notice of entry of default.
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25 otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must
enter the party’s default.”).

1 **B. Rule 4**

2 Before January 1, 2024, Rule 55 allowed a court to enter judgment against a
3 party who had been defaulted “for not appearing.” Effective January 1, 2024, the
4 rule was amended to state that judgment could be entered against a party who failed
5 to timely “plead or otherwise defend.” This change was intended both to make Rule
6 55 internally consistent and consistent with Rule 12, which sets the deadline for a
7 party to “plead or otherwise defend” after being served with a summons and
8 complaint.
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11 Although the amendment corrected an inconsistency between Rule 55 and
12 Rule 12, Rule 4 still contains references to an “appearance” as the event that avoids
13 default. In particular, Subsections (b)(1)(d) and (b)(1)(e) say a summons must state
14 the deadline for a party to “appear and defend” and explain the consequences if the
15 served party does not timely “appear and defend.” Rule 4 thus remains inconsistent
16 with both Rule 12 and the amended Rule 55.
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20 **II. PROPOSED RULE CHANGES**

21 **A. Rule 55(a)**

22 1. Clarifying the Process

23 The first proposed change to Rule 55(a) is to clarify how the default process
24 works by deleting Subsections (a)(4) and (a)(5) and moving the substance of those
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1 Subsections to the general discussion about default in Subsection (a)(1). Explaining
2 the delayed effectiveness of an entered default at the beginning of the rule is both
3 more logical than the current fragmented structure and provides better notice to
4 unsophisticated parties who may not otherwise sift through the rule to find the same
5 information buried in Subsections (a)(4) and (a)(5).
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7 The new Subsection (a)(1) would therefore add the following bolded language
8 to explain both that the default – although entered – does not become effective for
9 10 days, and that the default will not become effective if the party claimed to be in
10 default pleads or otherwise defends within 10 days after the application is filed:
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12 (1) *Generally*. If a party against whom a judgment for affirmative
13 relief is sought has failed to plead or otherwise defend as provided in
14 these rules, default may be obtained under the procedures set forth in
15 this rule. **Default is effective 10 days after an application for entry
16 of default is filed pursuant Rule 55(a)(2). If, within those 10 days,
17 the party claimed to be in default pleads or otherwise defends as
18 provided in these rules, default does not become effective, and the
19 court may not enter a default judgment against that party.**

18 2. Requiring Express Notice of Rights and Consequences

19 The next proposed change is to require applications for default to include a
20 notice to the party claimed to be in default regarding the consequences of failing to
21 plead or otherwise defend and the time available to cure the default. In particular, a
22 new paragraph will be added to Subsection (a)(2) (which sets forth what must be
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1 included in an application for entry of default), requiring applications for entry of
2 default to include the following language in bolded 13-point typeface:

3
4 Pursuant to Arizona Rule of Civil Procedure 55(a)(2), an application
5 has been filed requesting entry of default against [insert party name].
6 If [insert party name] pleads or otherwise defends within 10 days after
7 the application was filed, default does not become effective, and the
8 court may not enter a default judgment against that party. The 10-day
9 period begins the day after the application was filed with the court, it
10 does not include Saturdays, Sundays, or holidays, and no additional
11 time is added for service by mail.

12 Because the application for entry of default must be served on the party
13 claimed to be in default and, if known, that party's counsel, *see* Ariz. R. Civ. P.
14 55(a)(3), including this notice in the application itself will avoid forcing the party
15 claimed to be in default to consult Rule 55 upon receipt of the application to
16 understand the opportunity to prevent default from becoming effective and the
17 consequences of failing to do so. This new notice will also avoid a trap for the
18 unwary with respect to calculating the 10-day cure period, which would otherwise
19 require the party claimed to be in default to both be aware that there is a separate
20 rule explaining how to calculate time, *see* Ariz. R. Civ. P. 6(a), and to separately
21 consult that rule.

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1 3. Improving the Notice Provision

2 The notice that will be included in an application for entry of default if this
3 petition is adopted can serve its purpose only if the party claimed to be in default
4 actually receives the application. This petition thus seeks to amend Subsection
5 (a)(3)(A) in several ways that will make it more likely the party claimed to be in
6 default will receive the application for entry of default.
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8 First, the proposed amendment will impose an express burden on the party
9 requesting entry of default to make a “good faith effort” to provide notice of the
10 application for entry of default to the party claimed to be in default. The good faith
11 standard is well established under the rules and Superior Court judges will be well-
12 suited to evaluate whether a particular party’s effort to notify the party claimed to be
13 in default is sufficient to meet its burden.
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15 Second, the proposed amendment recognizes that, in modern society, most
16 people are better reached by email than by standard mail. The amendment thus
17 requires parties requesting entry of default to send the application to both the last
18 known mailing address of the party claimed to be in default and any email address
19 the requesting party has a “reasonable belief” the party claimed to be in default uses.
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21 Third, consistent with the requirement to email the party claimed to be in
22 default, the proposed amendment will require the party requesting entry of default
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1 to mail and email the application to any attorney known to be representing the party
2 claimed to be in default in the same or a related matter.

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4 4. Technical and Conforming Changes

5 In the process of addressing the proposed notice requirements outlined above,
6 the State Bar noticed several inconsistencies in the existing language that the
7 proposed amendment seeks to resolve. For example, Subsection (a) is currently
8 titled “Entering a Default,” but the title of Subsection (a)(2) is titled “Application
9 for Default,” without any reference to the applicable procedural device (*i.e.*, “entry”
10 of default). The petition therefore seeks to amend the titles of Subsection (a) to
11 “Entering Default” and Subsection (a)(2) to “Application for Entry of Default.” The
12 operative language that is currently located in Subsection (a)(4) and (a)(5), which
13 the amendment proposes moving to Subsection (a)(1), contained similar
14 inconsistencies that are also corrected in the proposed amendment.
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17 The only other notable change is that the proposed amendment would delete
18 the current Subsection (a)(2)(E), regarding a statement in the application for entry
19 of default about the whereabouts of the party claimed to be in default, because that
20 topic is better addressed in the current Subsection (a)(2)(C). Given the proposed
21 change to that Subsection, the current Subsection (a)(2)(E) is redundant and
22 unnecessary.
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1 effective. The proposed amendments will also harmonize Rule 4 with prior changes
2 to Rule 55, regarding the steps a party must take (*i.e.*, to plead or otherwise defend)
3 to avoid entry of default. The State Bar of Arizona respectfully requests that both
4 rules be amended as set forth above.
5

6 RESPECTFULLY SUBMITTED this 10th day of January, 2025.
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10 Lisa M. Panahi
11 General Counsel
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13 Electronic copy filed with the
14 Clerk of the Supreme Court of Arizona
15 this 10th day of January, 2025.

16 by: PSequin
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Exhibit 1 Clean

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

Rule 55. Default; Default Judgment

(a) Entering Default.

(1) *Generally.* If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided in these rules, default may be obtained under the procedures set forth in this rule. Default is effective 10 days after an application for entry of default is filed pursuant Rule 55(a)(2). If, within those 10 days, the party claimed to be in default pleads or otherwise defends as provided in these rules, default does not become effective, and the court may not enter a default judgment against that party.

(2) *Application for Entry of Default.* A party requesting entry of default must file a written application that:

(A) identifies the party claimed to be in default;

(B) states that the identified party has failed to plead or otherwise defend within the time allowed by these rules;

(C) provides the last-known mailing address for the identified party or states that no such mailing address is known;

(D) identifies any attorney known to represent the identified party in the action in which default is requested or in a related matter or states that no such attorney is known;

(E) attaches a copy of the Rule 4(g) proof of service, establishing the date and manner of service on the party claimed to be in default; and

(F) includes the following language in bold font of no less than 13 point typeface: “Pursuant to Arizona Rule of Civil Procedure 55(a)(2), an application has been filed requesting entry of default against [insert party name]. If [insert party name] pleads or otherwise defends within 10 days

after the application was filed, default does not become effective, and the court may not enter a default judgment against that party. The 10-day period begins the day after the application was filed with the court, it does not include Saturdays, Sundays, or holidays, and no additional time is added for service by mail.” [Reference rule and comment?]

(3) *Notice*. Notice must be provided as follows:

(A) *To the Party*. A party requesting entry of default must make a good faith effort to provide notice of the application for entry of default to the party claimed to be in default, even if the party claimed to be in default is represented by an attorney who has entered an appearance in the action. To comply with this obligation, the party requesting entry of default must mail a copy of the application for entry of default to the last-known mailing address for the party claimed to be in default. If the party requesting default has a reasonable belief that the party claimed to be in default can be contacted by email, that party must also transmit the application for entry of default via such means.

(B) *To the Attorney for a Represented Party*. If the party requesting the entry of default knows that the party claimed to be in default is represented by an attorney in the action in which default is requested or in a related matter, that party must also mail and email a copy of the application to that attorney, whether or not that attorney has formally appeared in the action. A party requesting the entry of default is not required to make affirmative efforts to determine the existence or identity of an attorney representing the party claimed to be in default.

(C) *Time of Notice*. Any required notice under Rule 55(a)(3)(A) or (B) must be mailed or transmitted on the date that the application is filed, or as soon as practicable thereafter.

(D) *To Other Parties*. An application for entry of default must be served on all other parties who have appeared in the action, as provided in Rule 5(c).

(b) Default Judgment.

(1) *Default Judgment by Motion Without Hearing*.

(A) Generally. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the court--on the plaintiff's motion, with an affidavit showing the amount due and without a hearing--may enter judgment for that amount and costs against a defendant who has been defaulted for failure to plead or otherwise defend and who is not a minor, an incapacitated person, or an adult in need of protection.

(B) Fee Award--Specific Amount Stated. A default judgment entered under Rule 55(b)(1) may include an award of reasonable attorney's fees if the claim states a specific sum of attorney's fees that will be sought if judgment is rendered by default, and:

- (i) the amount of the award is supported by affidavit;
- (ii) the award is allowed by law; and
- (iii) the award does not exceed the amount demanded in the claim.

(C) Fee Award--No Specific Amount Stated. If the claim requests an award of attorney's fees, but does not specify the amount of fees that will be sought if judgment is rendered by default, a default judgment entered under Rule 55(b)(1) may include an award of reasonable attorney's fees only if:

- (i) an affidavit establishes the reasonable amount of the fee award;
- (ii) the defendant has not entered an appearance in the action; and
- (iii) the award is allowed by law.

(2) *Default Judgment by Hearing.*

(A) Generally. If Rule 55(b)(1) does not apply, the party must apply to the court for a default judgment.

(B) Default Against a Minor, an Incapacitated Person, or an Adult in Need of Protection. A default judgment may be entered against a minor, an incapacitated person, or adult in need of protection only if the person's parent, conservator, or guardian--as specified in Rule 17(g)-- has appeared.

(C) Notice. 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 application for default judgment at least 3 days before the hearing. The notice must include the date, time, and place of the hearing.

(D) Hearings and Referrals. The court may conduct hearings or make referrals--preserving any 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) *Conformity with the Demand.* A judgment by default must not be different in kind from, or exceed in amount, that prayed for in a pleading's demand for judgment.

(c) Setting Aside a Default or a Final Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) Judgment Against the State. A default judgment may be entered against the State of Arizona or one of its officers or agencies only if, after a hearing, the claimant establishes a claim or right to relief by evidence that satisfies the court.

(e) Plaintiffs, Counterclaimants, and Cross-claimants. The provisions of Rule 55 apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a crossclaim or counterclaim.

Exhibit 2 Redline

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

Rule 55. Default; Default Judgment

(a) Entering ~~a~~ Default.

(1) *Generally*. If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided in these rules, default may be obtained under the procedures set forth in this rule. Default is effective 10 days after an application for entry of default is filed pursuant Rule 55(a)(2). If, within those 10 days, the party claimed to be in default pleads or otherwise defends as provided in these rules, default does not become effective, and the court may not enter a default judgment against that party.

(2) *Application for Entry of Default*. A party ~~seeking~~requesting entry of default must file a written application that:

(A) identifies the party ~~against whom~~claimed to be in default ~~is sought~~;

(B) states that the identified party has failed to plead or otherwise defend within the time allowed by these rules;

(C) provides ~~a current~~the last-known mailing address for the identified party ~~claimed to be in default or, if none~~ or states that no such mailing address is known, ~~so states~~;

(D) identifies any attorney known to represent the identified party ~~claimed to be in default~~ in the action in which default is ~~sought~~requested or in a related matter, ~~or states that no such attorney is known~~;

~~(E) if applicable, states that the party requesting the entry of default does not know the whereabouts of a party claimed to be in default, or the identity and address of an attorney known to represent the party in the action or a related action; and~~

~~(E)~~ attaches a copy of the Rule 4(g) proof of service, establishing the date and manner of service on the party claimed to be in default; and

(F) includes the following language in bold font of no less than 13 point typeface: “Pursuant to Arizona Rule of Civil Procedure 55(a)(2), an application has been filed requesting entry of default against [insert party name]. If [insert party name] pleads or otherwise defends within 10 days after the application was filed, default does not become effective, and the court may not enter a default judgment against that party. The 10-day period begins the day after the application was filed with the court, it does not include Saturdays, Sundays, or holidays, and no additional time is added for service by mail.”

(3) *Notice.* ~~For any default entered under Rule 55(a)(1), notice~~ Notice must be provided as follows:

(A) To the Party. ~~If the~~ A party requesting ~~the~~ entry of default ~~knows the whereabouts of the party claimed~~ must make a good faith effort to be in default, a copy provide notice of the application for entry of default ~~must be mailed~~ to the party claimed to be in default, even if the party claimed to be in default is represented by an attorney who has entered an appearance in the action. To comply with this obligation, the party requesting entry of default must mail a copy of the application for entry of default to the last-known mailing address for the party claimed to be in default. If the party requesting default has a reasonable belief that the party claimed to be in default can be contacted by email, that party must also transmit the application for entry of default via such means.

(B) To the Attorney for a Represented Party. If the party requesting the entry of default knows that the party claimed to be in default is represented by an attorney in the action in which default is ~~sought~~ requested or in a related matter, that party must also mail and email a copy of the application ~~also must be mailed~~ to that attorney, whether or not that attorney has formally appeared in the action. A party requesting the entry of default is not required to make affirmative efforts to determine the existence or identity of an attorney representing the party claimed to be in default.

(C) Time of Notice. Any required notice under Rule 55(a)(3)(A) or (B) must be mailed or transmitted on the date that the application is filed, or as soon as practicable ~~after its filing~~ thereafter.

(D) To Other Parties. An application for entry of default must be served on all other parties who have appeared in the action, as provided in Rule 5(c).

~~(4) *A Default's Effective Date.* The filing of the application for default constitutes the entry of default. A default is effective 10 days after the application for entry of default is filed.~~

~~(5) *Effect of Responsive Pleading.* A default will not become effective if the party claimed to be in default pleads or otherwise defends as provided in these rules within 10 days after the application for entry of default is filed.~~

(b) Default Judgment.

(1) Default Judgment by Motion Without Hearing.

(A) Generally. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the court--on the plaintiff's motion, with an affidavit showing the amount due and without a hearing--may enter judgment for that amount and costs against a defendant who has been defaulted for failure to plead or otherwise defend and who is not a minor, an incapacitated person, or an adult in need of protection.

(B) Fee Award--Specific Amount Stated. A default judgment entered under Rule 55(b)(1) may include an award of reasonable attorney's fees if the claim states a specific sum of attorney's fees that will be sought if judgment is rendered by default, and:

(i) the amount of the award is supported by affidavit;

(ii) the award is allowed by law; and

(iii) the award does not exceed the amount demanded in the claim.

(C) Fee Award--No Specific Amount Stated. If the claim requests an award of attorney's fees, but does not specify the amount of fees that will be sought if judgment is rendered by default, a default judgment entered under Rule 55(b)(1) may include an award of reasonable attorney's fees only if:

(i) an affidavit establishes the reasonable amount of the fee award;

- (ii) the defendant has not entered an appearance in the action; and
- (iii) the award is allowed by law.

(2) *Default Judgment by Hearing.*

(A) Generally. If Rule 55(b)(1) does not apply, the party must apply to the court for a default judgment.

(B) Default Against a Minor, an Incapacitated Person, or an Adult in Need of Protection. A default judgment may be entered against a minor, an incapacitated person, or adult in need of protection only if the person's parent, conservator, or guardian--as specified in Rule 17(g)-- has appeared.

(C) Notice. 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 application for default judgment at least 3 days before the hearing. The notice must include the date, time, and place of the hearing.

(D) Hearings and Referrals. The court may conduct hearings or make referrals--preserving any 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) *Conformity with the Demand.* A judgment by default must not be different in kind from, or exceed in amount, that prayed for in a pleading's demand for judgment.

(c) Setting Aside a Default or a Final Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) Judgment Against the State. A default judgment may be entered against the State of Arizona or one of its officers or agencies only if, after a hearing, the claimant establishes a claim or right to relief by evidence that satisfies the court.

(e) Plaintiffs, Counterclaimants, and Cross-claimants. The provisions of Rule 55 apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a crossclaim or counterclaim.

Exhibit 3 Clean

(Please note: deletions are reflected by strikethrough and additions are reflected by underline.)

RULE 4. SUMMONS

.....

(b) Contents; Replacement Summons.

(1) *Contents.* A summons must:

(A) name the court and the parties;

(B) be directed to the party to be served;

(C) state the name and address of the attorney of the party serving the summons or--if unrepresented--the party's name and address;

(D) state the time within which the defendant must plead or otherwise defend;

(E) notify the party to be served that a failure to plead or otherwise defend may result in a default judgment against that party for the relief demanded in the pleading;

(F) state that “requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding”;

(G) be signed by the clerk; and

(H) bear the court's seal.

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(f) Accepting or Waiving Service; Voluntary Appearance. There are two ways to accomplish service with the assent of the served party--waiver and acceptance. A party also may voluntarily appear without being served.

.....

(3) *Voluntary Appearance.*

(A) In Open Court. A party on whom service is required may, in person or by an attorney or authorized agent, enter an appearance in open court. The appearance must be noted by the clerk on the docket and entered in the minutes. A party who voluntarily appears must also plead or otherwise defend within the time limits set by these rules to avoid entry of default or default judgment pursuant to Rule 55.

(B) By Responsive Pleading. The filing of a pleading responsive to a pleading allowed under Rule 7 constitutes an appearance by the party.

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Exhibit 4 Redline

(Please note: deletions are reflected by strikethrough and additions are reflected by underline.)

RULE 4. SUMMONS

.....

(b) Contents; Replacement Summons.

(1) *Contents*. A summons must:

(A) name the court and the parties;

(B) be directed to the party to be served;

(C) state the name and address of the attorney of the party serving the summons or--if unrepresented--the party's name and address;

(D) state the time within which the defendant must ~~appear and plead or~~ otherwise defend;

(E) notify the party to be served that a failure to ~~appear and plead or~~ otherwise defend ~~will~~may result in a default judgment against that party for the relief demanded in the pleading;

(F) state that “requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding”;

(G) be signed by the clerk; and

(H) bear the court's seal.

.....

(f) Accepting or Waiving Service; Voluntary Appearance. There are two ways to accomplish service with the assent of the served party--waiver and acceptance. A party also may voluntarily appear without being served.

.....

(3) *Voluntary Appearance.*

(A) In Open Court. A party on whom service is required may, in person or by an attorney or authorized agent, enter an appearance in open court. The appearance must be noted by the clerk on the docket and entered in the minutes. [A party who voluntarily appears must also plead or otherwise defend within the time limits set by these rules to avoid entry of default or default judgment pursuant to Rule 55.](#)

(B) By Responsive Pleading. The filing of a pleading responsive to a pleading allowed under Rule 7 constitutes an appearance by the party.

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