

A company incorporated and headquartered in State A sued a plumber domiciled in State B in a federal court in State A, alleging that the plumber had negligently installed pipes in a manner that resulted in \$250,000 in damage to the company's headquarters building. In response to the complaint, the plumber filed a motion to dismiss for lack of personal jurisdiction. The court denied the motion. Thereafter, the plumber did not file an answer or any other response to the company's action.

Sixty days after the court's order denying the motion to dismiss, the company asked the clerk to enter the plumber's default, and the clerk did so. The company applied to the court for the entry of a default judgment and notified the plumber three days before the default-judgment hearing. After an ex parte hearing in which the court received evidence on the damages amount, the court entered a default judgment for the full amount sought. Ten days later, the plumber filed a motion to set aside the default judgment.

Is the court likely to grant the plumber's motion?

- A. No, because the court could fix the amount of damages without hearing the plumber's evidence.
- B. No, because the plumber failed to defend against the company's action for default judgment.
- C. Yes, because the plumber was not given adequate notice of the hearing on the company's application for the entry of a default judgment.
- D. Yes, because the State A federal court lacked personal jurisdiction over the plumber as a State B citizen.

## Explanation:

Under Federal Rule of Civil Procedure (FRCP) 55, there are two steps for securing a default judgment—ie, a judgment entered when the defendant has failed to [timely serve an answer](#). The first step requires that the **court clerk** enter a **default on the record** once it is shown that the defendant failed to timely serve an answer—due within 14 days after an [FRCP 12 motion](#) (eg, challenging personal jurisdiction) is denied.

The second step requires that a default judgment be entered by the clerk *or* the court. The **court** may enter a **default judgment** even if:

- the plaintiff's claim is *not* for a sum certain
- the defendant is a minor or legally incompetent *or*
- the defendant has **appeared by filing a motion** (as seen here) or otherwise acting before the court.

But if the defendant has appeared, the defendant must be **served with written notice** of the plaintiff's application for default judgment at least **seven days before a hearing** on the matter. Here, the company notified the plumber of its application only *three* days before the hearing. Therefore, the entry of default judgment was improper, and the plumber's motion to set aside that judgment will likely be granted.

**(Choice A)** The court could have fixed the amount of damages—which could be made certain by calculation—without hearing the plumber's evidence had he received proper notice.

**(Choice B)** Although the plumber failed to defend against the company's action for default judgment, he had made an appearance by filing a motion to dismiss. As a result, he was entitled to seven days' notice.

**(Choice D)** Although the plumber is a State B citizen, the State A federal court had [personal jurisdiction](#) because the plumber's minimum contacts with State A—working on the company's building—gave rise to the claim.

## Educational objective:

To obtain a default judgment against a defendant who has appeared before the court, the plaintiff must serve the defendant with written notice of the default-judgment application at least seven days before a hearing on the matter.

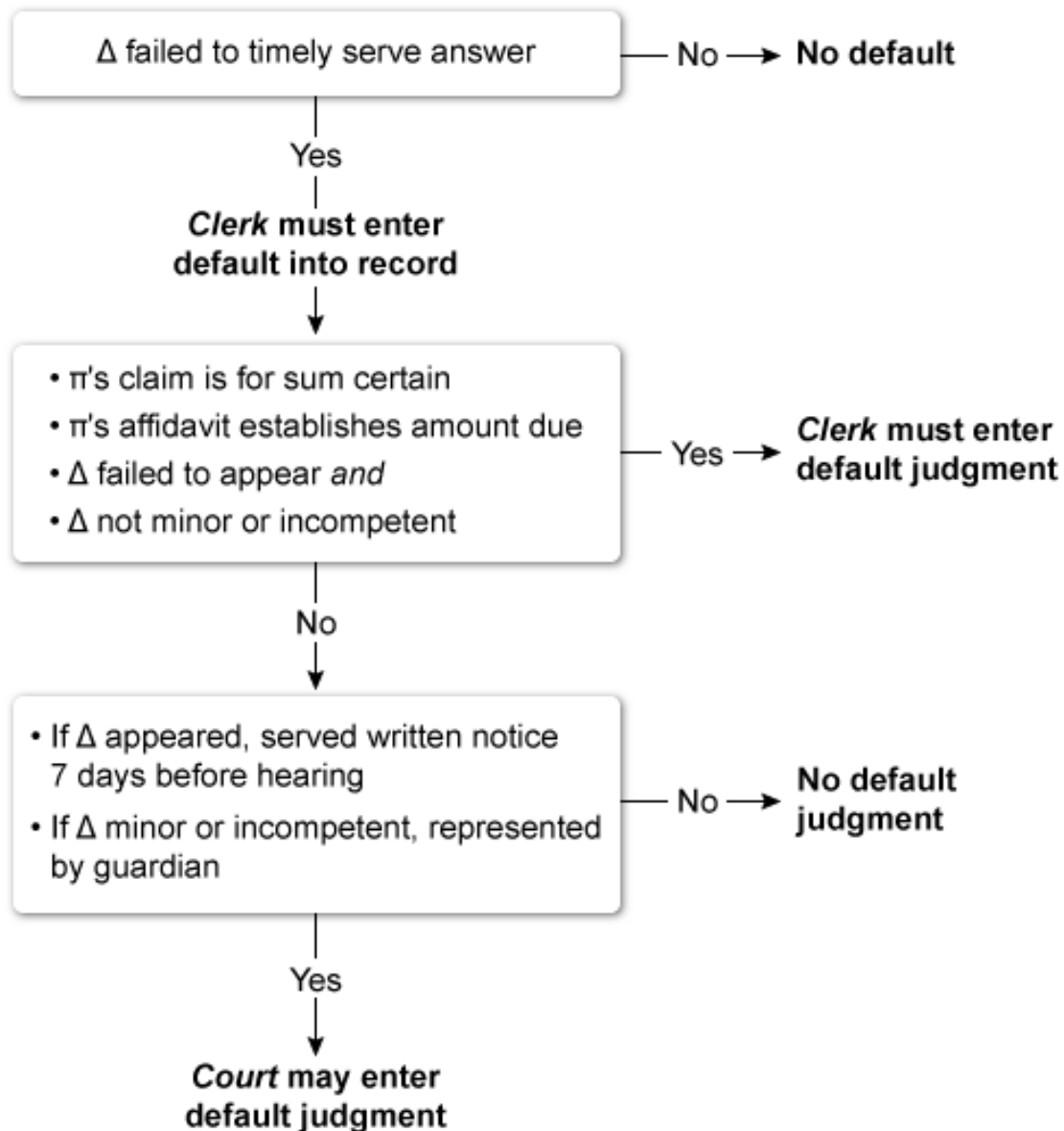
## References

- Fed. R. Civ. P. 55 (default judgments).

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## Entering default judgment



Δ = defendant; π = plaintiff

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