

RULES OF THE SUPREME COURT OF VIRGINIA
PART THREE
PRACTICE AND PROCEDURE IN CIVIL ACTIONS

Rule 3:19. Default.

(a) *Failure Timely to Respond.* — A defendant who fails ~~timely~~ to timely file a responsive pleading as prescribed in Rule 3:8 is in default. A defendant in default is not entitled to notice of any further proceedings in the case, ~~including notice to take depositions,~~ except that as provided in subsection (c) below; and -written notice of any further proceedings must be given to counsel of record, if any, until default judgment is entered against such defendant. The defendant in default is deemed to have waived any right to trial of issues by jury.

(b) *Relief from Default.* — Prior to the entry of judgment, for good cause shown the court may grant leave to a defendant who is in default to file a late responsive pleading. Relief from default may be conditioned by the court upon such defendant reimbursing any extra costs and fees, including attorney fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

(c) *Default Judgment and Damages.* —

(1) Except in suits for divorce or annulling a marriage, the court will, on motion of the plaintiff, enter judgment for the relief appearing to the court to be due. Written notice of such motion must be mailed to the defendant's last known address, if known or reasonably available to plaintiff or plaintiff's counsel, or otherwise to the service-of-process address for defendant. If plaintiff is unable to provide such notice, the motion must contain a certification that plaintiff has made reasonable, good faith, efforts to provide notice to the defendant. When service of process is effected by posting, no judgment by default will be entered until the requirements of Code § 8.01-296(2)(b) have been satisfied.

(2) If the relief demanded is unliquidated damages, the court will hear evidence and fix the amount thereof, unless the plaintiff demands trial by jury, in which event, a jury will be impaneled to fix the amount of damages.

(3) If a defendant participates in the hearing to determine the amount of damages such defendant may not offer proof or argument on the issues of liability, but may (i) object to the plaintiff's evidence regarding damages, (ii) offer evidence regarding the quantum of damages, (iii) participate in jury selection if a jury will hear the damage inquiry, (iv) submit proposed jury instructions regarding damages, and (v) make oral argument on the issues of damages.

(d) *Relief from Default Judgment.* —

(1) *Within 21 Days.* — During the period provided by Rule 1:1 for the modification, vacation or suspension of a judgment, the court may by written order relieve a defendant of a default judgment after consideration of the extent and causes of the defendant's delay

in tendering a responsive pleading, whether service of process and actual notice of the claim were timely provided to the defendant, and the effect of the delay upon the plaintiff. Relief from default may be conditioned by the court upon the defendant reimbursing any extra costs and fees, including attorney fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

(2) *After 21 Days.* — A final judgment no longer within the jurisdiction of the trial court under Rule 1:1 may not be vacated by that court except as provided in Virginia Code §§ 8.01-428 and 8.01-623.

Last amended by Order dated June 9, 2023; effective August 8, 2023.