



# Litigation Update – Potential Obstacle to Default Judgment

August 4, 2009

Rule 55.01 of the Minnesota Rules of Civil Procedure can be a useful tool for matters in which a party has failed to plead or otherwise defend within the time allowed by permitting judgment to be entered by default. But the efficiency of a default judgment may be lost when service of the summons is made by personal delivery outside the State of Minnesota or by published notice. In such cases, Rule 55.01(d)—a little known rule that may prove to be a trap for the unwary—provides that judgment by default may not be entered until the plaintiff has filed a bond, approved by court order, along with conditions for the restitution of property collected or obtained from the defendant if the action is thereafter successfully defended.<sup>1</sup>

Based on the rule's requirements, there are several issues that make default judgments less effective when dealing with out-of-state parties. First, the rule provides very little guidance for courts in setting a bond amount. As a result, there is uncertainty regarding the application procedure, as well as the increased costs and expenses in obtaining a bond. Second, the rule requires a plaintiff to post a bond before it is even known whether or not the default judgment will ultimately be collectible. Therefore, the rule may present serious obstacles for creditors in relatively small collection matters in which the solvency of the debtor is somewhat questionable.

In many cases, application to the court for a bond may be a viable option for obtaining a default judgment against an out-of-state party. But in other cases, the filing of a bond conditioned on the return of property obtained by post-judgment collection efforts may be an uncertain and costly option. Parties should therefore understand the rule's implications when crafting a litigation strategy at the commencement of the action and consider the following alternatives that may be more effective:

## **1. Serving an agent within the state**

This option may be used by plaintiffs who deal with companies registered to do business within the state and have appointed agents for purposes of in-state service of process. If the out-of-state party has not already appointed an agent, parties may consider drafting contractual language requiring the foreign party to make such an appointment and consent to service through the party's designated agent.

## **2. Filing a motion for summary judgment**

Another procedural option would be to bring a motion for summary judgment. If an out-of-state defendant



has not served a responsive pleading or otherwise defended, it is unlikely that the party will respond to a motion for summary judgment. And because rule 55.01(d) applies only to default judgments, summary judgment under rule 56 of the Minnesota Rules of Civil Procedure may prove much less expensive than a bond.

### **3. Commencing the action in the party's home state**

In many instances, judgment creditors will seek to enforce the judgment by removing it to the judgment debtor's home state. Because enforcement of a foreign judgment may require retaining local counsel, parties may consider hiring such counsel to commence the action in the foreign jurisdiction and avoid the impact of rule 55.01(d) altogether.

Awareness of Rule 55.01(d), as well as alternatives to the rule's strict bonding requirements, may assist counsel in avoiding unnecessary time and expense when pursuing default judgments against out-of-state parties.

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<sup>1</sup>Rule 55.01(d) does not apply in actions involving title to real estate or actions to foreclose mortgages.

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