

## **Rule 12. Proceedings by the Court**

(a) **CALLING THE CALENDAR.** After the judge or magistrate judge completes the introductory statement, the clerk must call the cases scheduled for that day to determine which parties are present.

(b) **ENTRY OF A DEFAULT WHEN DEFENDANT FAILS TO APPEAR.**

(1) *In General.* When the plaintiff or the plaintiff's attorney is present and neither the defendant nor anyone purporting to speak on behalf of the defendant is present, the court must enter a judgment by default in favor of the plaintiff in the amount of any liquidated damages or enter a default subject to ex parte proof as to the amount of any unliquidated damages alleged in the statement of claim if:

(A) the court determines that proper service was made on the defendant; and

(B) the plaintiff has submitted a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043).

(2) *Actions for Property Damage.* In actions for property damage only, proof of unliquidated damages may be presented by affidavit as provided in Civil Rule 55-II.

(c) **REMEDIES WHEN PLAINTIFF FAILS TO APPEAR.** If the plaintiff fails to appear without prior notice to the court, the court may:

(1) dismiss the action for want of prosecution with or without prejudice;

(2) allow the defendant to proceed to trial on the merits; or

(3) continue the case for further proceedings on a later date.

(d) **REMEDIES WHEN BOTH PARTIES FAIL TO APPEAR.** If both parties fail to appear without prior notice to the court, the court may:

(1) dismiss the action without prejudice;

(2) continue the case; or

(3) make any other just and proper disposition that justice requires.

(e) **CONDUCT OF THE TRIAL.** If the parties fail to settle the controversy, the court must proceed with a trial on the merits of the case. The parties and witnesses must be sworn. The court must conduct the trial in a manner that does substantial justice between the parties according to the rules of substantive law and is not bound by the provisions or rules of practice, procedure, pleading, or evidence, except the provisions relating to privileged communications.

## **COMMENT TO 2018 AMENDMENTS**

This rule has been amended to reflect changes in the preliminary procedures and to include the requirement of a Servicemembers Civil Relief Act form. The rule also includes default provisions previously found in Rule 11; the provisions were modified to indicate that the court, not clerk, would enter a default judgment.