

CIVIL COURT OF THE CITY OF NEW YORK

CIVIL COURT DIRECTIVE
Subject: Entry of Default Judgments

Class: DRP-224
Category: LT-20

**Eff. Date: October 12,
2022**

BACKGROUND:

Previously issued DRP-191A requires that petitioners seeking judgments in nonpayment proceedings where tenants failed to answer submit an affidavit of merit in support of their applications for default judgments and warrants. This affidavit must be submitted by an individual with personal knowledge of the facts and should include information sufficient to enable the Court to determine if a default judgment is appropriate.

It continues to be our practice to follow RPAPL §741, which refers to CPLR § 3020(d) and provides that if a petition was verified by the attorney for the party, it would be acceptable for the entry of a default judgment. In Sella Propers. v. DeLeon, 25 Misc. 3d 85 (App. Term 2d Dep’t 2009), the Appellate Term found that an attorney verified petition is sufficient to satisfy RPAPL §741. However, entry of a default judgment requires a petition or an affidavit sworn to by an individual with personal knowledge of the facts. Since this issue has not been decided to the contrary in the Appellate Term, First Department, the clerks are directed to follow Sella in the First Department also, until the Appellate Court in the First Department addresses the issue otherwise.

In addition, the Legislature has since enacted the Emergency Rent Assistance Program (“ERAP”) at L. 2021, c. 56, Part BB, Subpart A, as amended by L. 2021, c. 417, Part A. ERAP provides for a stay of any eviction proceeding against a household who has applied for benefits under the program “pending a determination of eligibility.” L. 2021, c. 56, part BB, subpart A, §8, as amended by L. 2021, c. 417, Part A, §9. Administrative Orders 158/22 and 244/21 imposed upon landlords an obligation to submit notice of a known ERAP application to the Court in accordance with prior administrative orders.

Based on the above case law, statutory requirements, and statewide Administrative Orders, we now direct the following:

DIRECTIVE:

1. A petition or affidavit of facts verified by *the party’s attorney is not sufficient* for the entry of a default judgment unless the attorney has personal knowledge of the facts and states this in the petition or affidavit. **The affidavit of default may be made by the attorney if the attorney specifically affirms personal knowledge.**

2. Applications for default judgments must be accompanied by an affidavit from a person with personal knowledge. Any individual with personal knowledge of the facts may verify the affidavit.

3. Applications for default judgments that are not accompanied by an affidavit from a person with personal knowledge should be returned with a notation that they can be resubmitted with the appropriate affidavit.

4. Affiants submitting affidavits in support of applications for default judgments must affirmatively aver that they have not been made aware of the pendency of an ERAP application by an occupant of the premises for which possession is sought. This directive does not impose a requirement that an applicant for a default judgment make an investigation.

5. This Directive supersedes DRP-191A, which is hereby rescinded.

Date: October 12, 2022

/s/
Hon. Carolyn Walker-Diallo
Administrative Judge
Civil Court of the City of New York