

### Fact Pattern:

Chip has called your law firm after returning from a year long vacation backpacking around Europe. Apparently, upon his return home, he discovered a Complaint and Summons naming him as a defendant and an application for entry of default. According to the Complaint, the Plaintiff, Phil seeks damages for an automobile accident which occurred just before Chip left the country.

Chip tells you that the Summons says that it was left at his house with his house sitter, Emily. Chip tells you that Emily is a foreign exchange student from Korea and does not speak, read, or write any English.

Chip is also adamant that the accident was not his fault. He tells you that he was parked at a stop light when Phil hit him from behind. Chip believes that Phil received a speeding ticket for the accident, but is not entirely sure.

You have agreed to represent Chip. You call the clerk's office and find out that the file contains a Complaint, which was filed on May 15, a Summons which was filed on May 30 that indicates that personal service was accomplished by leaving a copy with an adult at the Defendant's home, an application for Entry of Default, and an Entry of Default dated July 30. The clerk also tells you that a Default Judgment has not been entered.

You review your civil procedure rule book and stumble upon Rule 55(c), which provides as follows:

SETTING ASIDE DEFAULT. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

### Questions:

1. Was the Entry of Default proper and why?
2. What steps would you take to set aside the Entry of Default?  
Discuss fully.

### Example Answer:

1. Summons and Service of Process

The method of process must be proper under the forum's rules and the method must be constitutional Under the Federal Rules of Civil Procedure, a Summons must: (A) name the court and the parties; (B) be directed to the defendant; (C); state the name and address of the Plaintiff's attorney or –if unrepresented—of the plaintiff; (D) state the time within which the defendant

must appear and defend; (E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant or the relief demanded in the complaint; (F) be signed by the clerk; and (G) bear the court's seal. Here, the facts do not indicate if all elements of a proper summons are present. However, assuming all elements of a proper summons are present, the next issue is then whether service was proper.

A process server can leave the summons and complaint at defendant's home address with any suitable adult. Chip is likely to argue that Emily is not a suitable adult because she does not speak English. Additionally, if Emily was visibly a minor, he would argue that she was not a suitable adult. Nevertheless, if the process server signed an affidavit of service, the entry of the default was likely proper.

## 2. Setting Aside the Default

According to Rule 55(c), for good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). Fortunately, a default judgment has not yet been entered accordingly, Chip must just show "good cause" to set aside the default. Generally, good cause can be established by showing (1) whether the default was willful; (2) whether setting aside the default would prejudice the adversary; and (3) whether a meritorious defense is presented. The decision on whether to grant relief from the entry of default is left to the sound discretion of the district court as it is in the best position to assess the individual circumstances of a given case and to evaluate the credibility and good faith of the parties.

Chip appears to have a good defense to the case and the default was only entered because he went on a year-long vacation and did not originally receive the Complaint and Summons. A court is likely to set aside the Default.