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I. INTRODUCTION

The current default judgment system is filled with problems. Default judgments are routinely set aside based upon the party’s “excusable neglect”1 for failing to timely answer. In such cases, the defaulting party’s negligence is essentially condoned because the non-defaulting party is not properly compensated for the delay and the defaulting party is not adequately reprimanded. Even after obtaining a default judgment, the non-defaulting party may have its victory disappear if a motion to set aside is filed shortly thereafter. On the other hand, some parties involved in litigation are ambushed with a default based on improper service. By sitting on the judgment without giving notice or attempting to collect, the non-defaulting party can even manipulate the one-year cutoff date in Rule 60 of the Federal Rules of Civil Procedure regarding the arguments that can be made in the motion to set aside.2 Fortunately, there are some simple solutions to improve the default judgment framework.

II. HISTORY OF DEFAULT JUDGMENTS

The major components of the current default judgment framework have been in place since adoption of the Federal Rules of Civil Procedure

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1. Excusable neglect can include the illness or death of a party or counsel, confusion resulting from the withdrawal of counsel, difficulties because the defendant is from out-of-state, misunderstandings between multiple defendants, clerical error, miscalculation of time, or honest mistakes. See infra Part III.C.2.

2. See Fed. R. Civ. P. 60(c)(1).
in the 1930s.\textsuperscript{3} The enactment of Rule 55\textsuperscript{4} of the Federal Rules of Civil Procedure represented “the joining of the equity decree \textit{pro confesso} . . . and the judgment by default.”\textsuperscript{5} Thus, a brief look at the history of default judgments from both the equitable and legal side is instructive.

The equitable decree \textit{pro confesso} can be traced back to the days of the Roman Emperor Justinian.\textsuperscript{6} The initial English practice was to allow a decree \textit{pro confesso} only if the defendant “had appeared but failed to file an answer after a demurrer was overruled.”\textsuperscript{7} The default was not applied broadly because the courts were cautious to accept as true every “fruitful fancy . . . a counsel could invent, suggest, or put into a bill.”\textsuperscript{8} If the defendant failed to appear, the plaintiff had to request an order of sequestration against the defendant’s real and personal property (thus preventing the defendant from entering or using his property).\textsuperscript{9} If the defendant still failed to appear, the court would hold him in contempt.\textsuperscript{10} Only once the defendant was forced to finally appear, “either to release the sequestration or to fulfill the contempt order,” was a decree \textit{pro confesso} available.\textsuperscript{11}

English practice concerning default judgments was changed drastically in 1732 with the enactment of the Process Act.\textsuperscript{12} The Process Act stated that a court could issue an equitable decree \textit{pro confesso} even if the defendant did not appear.\textsuperscript{13} The Act required that,

\begin{quote}
upon good showing to the court by plaintiff, the court could: first, place and publish the process in the London Gazette; second, publish the process on “some Lord’s Day, immediately after divine service, in the parish church of the parish;” and finally, post the process at some public place in the jurisdiction of the court.\textsuperscript{14}
\end{quote}

The court could now enter a decree \textit{pro confesso} after the plaintiff established that service had been published in accordance with the statute.\textsuperscript{15}

\begin{itemize}
\item[4.] \textsc{Fed. R. Civ. P. 55}.
\item[5.] \textsc{Fed. R. Civ. P. 55} advisory committee’s note.
\item[6.] Hardin, supra note 3, at 134.
\item[7.] \textit{Id}.
\item[8.] Hawkins v. Crook, (1729) 24 Eng. Rep. 860 (Ch.) 860; 2 P. Wms. 556 (Eng.).
\item[9.] Hardin, supra note 3, at 134.
\item[10.] \textit{Id.} at 135.
\item[11.] \textit{Id}.
\item[12.] \textit{Id}.
\item[13.] The Process Act, 1732, 5 Geo. 2, c. 25 (Eng.).
\item[14.] Hardin, supra note 3, at 135 (citations omitted).
\item[15.] \textit{Id}.
\end{itemize}
Once such a decree was entered, the defendant had seven years in which to appear.\textsuperscript{16} If the defendant did not petition to set aside the decree within seven years, the decree remained “absolutely confirmed.”\textsuperscript{17}

The early American system, including the Federal Equity Rules of 1822, followed the Process Act English model for a decree \textit{pro confesso}:

By our rules a decree \textit{pro confesso} may be had if the defendant, on being served with process, fails to appear within the time required; or if, having appeared, he fails to plead, demur, or answer to the bill within the time limited for that purpose; or if he fails to answer after a former plea, demurrer, or answer is overruled or declared insufficient.\textsuperscript{18}

Once a decree \textit{pro confesso} was entered, the court was to “decree upon the naked allegations of the complainant’s bill, and give the relief proper to the case.”\textsuperscript{19} The court could rule on “distinct and positive” allegations but had to receive additional proof when the allegations were “defective or vague.”\textsuperscript{20} After a decree \textit{pro confesso} was entered, the defendant was absolutely barred from any challenge that was not apparent on the face of the bill.\textsuperscript{21}

On the law side, courts of common law were allowed to enter a decree of \textit{nil dicit} when the defendant had failed to plead, regardless of whether he or she had appeared.\textsuperscript{22} Thus, the distinguishing feature of the decree \textit{nil dicit} was the court’s ability to find a defendant in default for failing to file even without an appearance.\textsuperscript{23} Defined literally, the term \textit{nil dicit} means “he says nothing”\textsuperscript{24} and has also been viewed as “the technical form of judgment to be rendered where the defendant has entered a general appearance, but has failed to plead, or where, having pleaded, his or her plea has been stricken out or is withdrawn or abandoned and no further defense is made.”\textsuperscript{25} The U.S. Supreme Court explained that, where a default \textit{nil dicit}
was obtained, “judgment is immediately given in debt, or in all cases where the thing demanded is certain; but where the matter sued for consists in damages, a judgment interlocutory is given; after which a writ of inquiry goes to ascertain the damages, and then the judgment follows.”

The equitable *pro confesso* and the legal *nil dicit* were generally recognized as being quite similar. The United States Supreme Court noted that “[t]he method in equity of taking a bill *pro confesso* is consonant to the rule and practice of the courts at law, where . . . the defendant makes default by *nil dicit*.” The analogy between the *nil dicit* proceeding in law and the *pro confesso* proceeding in equity “is obvious and striking.” As noted above, the two doctrines were ultimately combined in Rule 55 of the Federal Rules of Civil Procedure.

### III. The Current Default Judgment Framework

#### A. Purpose of Default Judgment

The purpose of default judgments is to protect a diligent party, “lest he be faced with interminable delay and continued uncertainty as to his rights” whenever “the adversary process has been halted because of an essentially unresponsive party.” The theory behind default judgments is that, by its failure to timely answer, the defaulting party implicitly “admits the cause of action is valid, admits [it] has no defense, and consents to suffer judgment.” When these presumptions turn out to be inaccurate, the default judgment stands as a penalty for the party’s failure to comply with the procedural rules and deadlines to answer.

Default judgments are also subject to competing policy considera-


27. *Id.* at 111 (quoting Bills Taken Pro Confesso, 22 Eng. Rep. at 154 n.3; 2 Eq. Cas. Abr. at 179 n.3) (internal quotation marks omitted).

28. *Id.*

29. For more on the current rules of civil procedure pertaining to default judgments, see *infra* Part III.B.


32. *Id.*
“[I]t is necessary for the court to balance what are at times conflicting policy goals: the need for prompt and efficient handling of litigation in the federal courts by sound application of the Rules of Civil Procedure, and the attainment of a just resolution of the particular dispute before the court.” On one hand, the court’s procedural rules must be respected and enforced:

One of the basic purposes of the Rules of Federal Procedure is to secure the “speedy” determination of pending litigation. Since Magna Carta, delay has been recognized as *pro tanto* denial of justice. In Shakespeare’s Hamlet “the law’s delay” is condemned. The evil is an old one. It has merely become more widespread as the number of pending cases has increased in our urban civilization. Theoretically and ideally, the object of procedural rules is to accord a plaintiff the same relief which he would receive if the case were decided immediately at the moment of filing. For the wrong (if any) has then occurred; the remedy should also be available at the same time. Calendar control by the Courts and the setting of fixed dates for the various steps to be taken in the course of litigation are among the means by which it is sought to eliminate delay. The bar must realize, and we declare it as emphatically as we can, that these dates fixed by law, rule, or court order mean something. They are not empty formalities.

In the words of Judge Posner, “[t]he threat of default is one of the district judges’ most important tools for obtaining compliance with litigation schedules.” When delay and noncompliance are condoned, the courts are unable to effectively manage their overburdened dockets.

The competing policy consideration is the judicial preference for just resolution of disputes on the merits. Since courts prefer to decide cases on

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33. *See* Bankers Mortg. Co. v. United States, 423 F.2d 73, 77 (5th Cir. 1970) (indicating that courts must preserve the balance between the “sanctity of final judgments” and the desire that “justice be done in light of all the facts”).

34. Gray v. John Jovino Co., 84 F.R.D. 46, 47 (E.D. Tenn. 1979) (citing 6 WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 55.10 (2d ed. 1978)); *see also* Gomes v. Williams, 420 F.2d 1364, 1366 (10th Cir. 1970) (recognizing that the judicial preference for trial on merits “is counterbalanced by considerations of social goals, justice and expediency, a weighing process which lies largely within the domain of the trial judge’s discretion”).

35. Canup v. Miss. Valley Barge Line Co., 31 F.R.D. 282, 283 (W.D. Pa. 1962) (citations omitted); *see also* Nelson v. Coleman Co., 41 F.R.D. 7, 9 (D. S.C. 1966) (“[T]he process of the court is neither to be disregarded or ignored. If this were not so, the orderly administration of justice would lack its most important policing feature.”).

36. Anilina Fabrique de Colorants v. Aakash Chems. & Dyestuffs, Inc., 856 F.2d 873, 882 (7th Cir. 1988) (Posner, J., dissenting); *see also* 10A WRIGHT, MILLER & KANE, supra note 21, § 2693 (stating that entries of default and default judgment “are significant weapons for enforcing compliance with the rules of procedure and therefore facilitate the speedy determination of litigation”).

37. *Anilina*, 856 F.2d at 882.
the merits, the entry of a default judgment is not favored by the law. “In [the] final analysis, a court has the responsibility to do justice between man and man; and general principles cannot justify denial of a party’s fair day in court except upon a serious showing of willful default.”

State courts also follow this general rule.

B. Rules of Civil Procedure

Under the Federal Rules of Civil Procedure, default judgments are governed by Rule 55 and Rule 60. One issue that practitioners (and even some judges) tend to confuse is the difference between a “default” and a “default judgment.” The court clerk enters a default when a party fails to file an appropriate responsive pleading. “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” The most common situation involving the entry of default occurs when a named defendant fails to file an answer after being served. It is important to note that a default always precedes a de-

38. See, e.g., Gomes, 420 F.2d at 1366 (“The preferred disposition of any case is upon its merits and not by default judgment.”); Exxon Corp. v. Thomason, 504 S.E.2d 676, 677 (Ga. 1998) (recognizing a “strong public policy . . . favoring resolution of cases on the merits”).

39. See, e.g., In re Jones Truck Lines, Inc., 63 F.3d 685, 688 (8th Cir. 1995) (noting that default judgment should be a “rare judicial act”); Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n, 874 F.2d 274, 276 (5th Cir. 1989) (“Default judgments are a drastic remedy, not favored by the Federal Rules and resolved to by courts only in extreme situations.”); Charlton L. Davis & Co., P.C. v. Fedder Data Ctr., Inc., 556 F.2d 308, 309 (5th Cir. 1977) (“Judgments by default are drastic remedies and should only be resorted to in extreme situations.”); Affanato v. Merrill Bros., 547 F.2d 138, 140 (1st Cir. 1977) (“[D]efault judgment is . . . a drastic sanction that should be employed only in an extreme situation.”).


41. See, e.g., Johnson v. Am. Nat'l Red Cross, 569 S.E.2d 242, 246 (Ga. Ct. App. 2002), aff’d 578 S.E.2d 106 (Ga. 2003); McCain v. Dauzat, 791 So. 2d 839, 843 (Miss. 2001) (“Default judgments are not favored,” and reasonable doubt “should be resolved in favor . . . of [hearing the case on its merits].”); Parsons v. Consol. Gas Supply Corp., 256 S.E.2d 758, 762 (W. Va. 1979) (“[W]e have established as a basic policy that cases should be decided on their merits, and consequently default judgments are not favored and a liberal construction should be accorded a Rule 60(b) motion to vacate a default order.”).


44. Entry of default under Rule 55(a) would also apply to plaintiffs failing to answer a counterclaim and third-party defendants failing to answer a third-party complaint.
fault judgment, and the entry of default does not include an award of damages.

Once the clerk has entered a default, a default judgment can be pursued. There are two ways to procure a default judgment. First, the court clerk may enter default judgment when the “plaintiff’s claim is for a sum certain or a sum that can be made certain by computation.” Second, the court may enter judgment when the amount in dispute is not for a sum certain. At this stage, the court may hold a hearing to “(A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter.” As to damages, “[a] default judgment must not differ in kind from, or exceed in amount, what [was] demanded in the pleadings.”

Once a pleading has been properly served, Rule 55(b)(2) provides the only notice requirement in the default judgment framework: “If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing.”


45. Although a default judgment is also available as a discovery sanction under Rule 37(b)(2)(vi), that situation involves different policy considerations and is therefore outside the scope of this Article.

46. FED. R. CIV. P. 55(b)(1). This method also requires an affidavit showing the amount due, but it is not available when the defaulting party is a minor or an incompetent person. Id.

47. FED. R. CIV. P. 55(b)(2).

48. Id. Additionally, in order to protect the interests of a minor or incompetent person, such a party must be represented by a guardian or conservator during this process. Id.

49. FED. R. CIV. P. 54(c).

50. FED. R. CIV. P. 55(b)(2). Surprisingly, the moving party is not required to give any form of notice to the defaulting party for the entry of default under Rule 55(a) or for a default judgment under Rule 55(b)(1). Even the court clerk is not required to give notice to the defaulting party. The Rules indicates that “[i]mmediately after entering an order or
common scenario, a defendant fails to file a timely answer to a complaint. When such a situation occurs, the defendant has not “appeared personally or by a representative,” so no additional notice is required under Rule 55(b)(2).51

Rule 55 also provides the basic rule for how an entry of default or a default judgment may be set aside: “The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).”52 Rule 60(b) states:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.53

As to timing, “[a] motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after judgment, the clerk must serve notice of the entry . . . on each party who is not in default for failing to appear.” FED. R. CIV. P. 77(d)(1). However, the non-defaulting party would have to give notice to any other parties in the litigation, but not the defaulting party, as to any motions filed. See FED. R. CIV. P. 5(a)(1)(D) (requiring written motions to be served on all parties); FED. R. CIV. P. 5(a)(2) (“No service is required on a party who is in default for failing to appear.”).

51. In extraordinary circumstances, a party can “appear” without filing a responsive pleading. See Lutomski v. Panther Valley Coin Exch., 653 F.2d 270, 271 (6th Cir. 1981) (finding a conversation between defendant’s counsel and plaintiff’s counsel concerning the suit to be sufficient to constitute appearance); Charlton L. Davis & Co., P.C. v. Fedder Data Ctr., Inc., 556 F.2d 308, 309 (5th Cir. 1977) (determining that letters and phone calls from defendant’s counsel constituted appearance); FROF, Inc. v. Harris, 695 F. Supp. 827, 830 (E.D. Pa. 1988) (finding that a single letter from defendant’s attorney to plaintiff’s attorney was an appearance); Dalminter, Inc. v. Jessie Edwards, Inc., 27 F.R.D. 491, 492 (S.D. Tex. 1961) (finding that a defendant’s letter to plaintiff constituted an appearance).

52. FED. R. CIV. P. 55(c).

53. FED. R. CIV. P. 60(b).
the entry of the judgment or order or the date of the proceeding. 

C. Case Law on Setting Aside Default Judgments

1. Factors to be Considered

When hearing a motion to set aside a default judgment, the court will consider a number of factors. The federal courts have identified as many as seven distinct factors:

(1) whether the default was willful; (2) whether setting it aside would prejudice the adversary; (3) whether a meritorious defense is presented; (4) the nature of the defendant’s explanation for the default; (5) the good faith of the parties; (6) the amount of money involved; (7) the timing of the motion.

Courts apply the same factors to a motion to set aside entry of default and to a motion to set aside default judgment; however, the factors are construed more liberally in a motion to set aside a mere entry of default.

In listing the factors, federal courts are split on whether the effective-

54. FED. R. CIV. P. 60(c)(1).
55. This motion is also sometimes referred to as a motion to vacate the judgment.
56. KPS & Assocs. v. Designs by FMC, Inc., 318 F.3d 1, 12 (1st Cir. 2003). Factors considered by state courts tend to be quite similar. See, e.g., Parsons v. Consol. Gas Supply Corp., 256 S.E.2d 758, 762 (W. Va. 1979) (holding that the court must consider the following factors: “(1) The degree of prejudice suffered by the plaintiff from the delay in answering; (2) the presence of material issues of fact and meritorious defenses; (3) the significance of the interests at stake; and (4) the degree of intransigence on the part of the defaulting party.”). In Georgia, the factors considered are:

[F] whether and how the opposing party will be prejudiced by opening the default; whether the opposing party elected not to raise the default issue until after the time . . . had expired for the defaulting party to open default as a matter of right; and whether the defaulting party acted promptly to open default upon learning no answer had been either filed or timely filed.


(1) [t]he nature and legitimacy of a defendant's reasons for default, i.e., whether a defendant has good cause for default; (2) whether the defendant has a colorable defense to the merits of the claim, and (3) the nature and extent of prejudice that a plaintiff would suffer if default is set aside.

Chassaniol v. Bank of Kilmichael, 626 So. 2d 127, 135 (Miss. 1993).
57. Berthelsen v. Kane, 907 F.2d 617, 620 (6th Cir. 1990) (“The same considerations exist when deciding whether to set aside either an entry of default or a default judgment, but they are to be applied more liberally when reviewing an entry of default.”). The underlying rationale is the respect for the finality of judgments.
ness of alternative sanctions should be considered.\textsuperscript{58} On one hand, the Third and Fourth Circuits have expressly recognized alternative sanctions as a factor that the district court must take into account.\textsuperscript{59} While not rejecting alternative sanctions outright, the other circuits have not found this factor to be significant.\textsuperscript{60} As discussed below, the effectiveness of alternative sanctions is an important factor that every court should consider when hearing a motion to set aside default judgment.\textsuperscript{61}

2. The Excusable Neglect Standard

Under Rule 60(b)(1), a default judgment may be set aside for “excusable neglect.” Prior to 1993, two distinct standards had developed with respect to what type of conduct constituted excusable neglect.\textsuperscript{62} The Second, Third, Sixth, and Ninth Circuits took “the stance that a court should vacate a default judgment except upon a showing of willful or culpable conduct or bad faith on the part of the movant.”\textsuperscript{63} This liberal view is based on the judicial preference for trial on the merits and a broad construction of Rule 60 to accomplish justice.\textsuperscript{64} Under the liberal standard, excusable neglect can include the illness or death of a party or counsel, confusion resulting from the withdrawal of counsel, difficulties for out-of-state defendants, misunderstandings between multiple defendants, clerical error, miscalculation of

\textsuperscript{58} While there may be some overlap between Rule 37 and Rule 55 regarding the sanction issue, this essay is limited to the policy considerations of Rule 55 and the failure to timely answer.

\textsuperscript{59} Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 73–74 (3d Cir. 1987); United States v. Moradi, 673 F.2d 725, 728 (4th Cir. 1982).

\textsuperscript{60} See KPS, 318 F.3d at 12 (1st Cir.); SEC v. McNulty, 137 F.3d 732, 738 (2d Cir. 1998); Swaim v. Moltan Co., 73 F.3d 711, 722 (7th Cir. 1996); Compania Interamericana Export-Import, S.A. v. Compania Dominicana De Aviacion, 88 F.3d 948, 951 (11th Cir. 1996); In re Jones Truck Lines, Inc., 63 F.3d 685, 687 (8th Cir. 1995); Info. Sys. & Networks Corp. v. United States, 994 F.2d 792, 795 (Fed. Cir. 1993); FDIC v. Daily, 973 F.2d 1525, 1529 (10th Cir. 1992); Berthelsen, 907 F.2d at 620 (6th Cir.); Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986); United States v. One Parcel of Real Property, 763 F.2d 181 (5th Cir. 1985); Jackson v. Beech, 636 F.2d 831, 836 (D.C. Cir. 1980).

\textsuperscript{61} See infra Part V.C.


\textsuperscript{63} Id. at 1624–25 (citing Am. Alliance Ins. Co. v. Eagle Ins. Co., 92 F.3d 57, 61 (2nd Cir. 1996); Amernational Indus. v. Action-Tungsram, Inc., 925 F.2d 970, 978 (6th Cir. 1991); Meadows v. Dominican Republic, 817 F.2d 517, 521–22 (9th Cir. 1987); Gross v. Stereo Component Sys., 700 F.2d 120, 124 (3rd Cir. 1983)).

\textsuperscript{64} Id. at 1625.
time, or honest mistakes. 65

On the other hand, the Fifth, Seventh, Eighth, and Tenth Circuits defined excusable neglect “narrowly and expressly reject[ed] requests to vacate default judgments that result from mere carelessness or negligence.” 66 This strict view is based on “ensuring finality of judgments, promoting judicial efficiency, deterring inappropriate behavior and holding clients accountable for the acts of their agent.” 67 Under the strict standard, the following conduct did not constitute excusable neglect: miscommunication with a party’s insurance company, 68 failing to open mail containing service of process before taking a vacation, 69 and missing deadlines due to counsel’s heavy caseload and scheduling conflicts. 70

In 1993, the United States Supreme Court discussed the “excusable neglect” standard in the context of Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure. 71 In short, the Court held that excusable neglect includes the failure to comply with a filing deadline that is attributable to negligence. 72 The Court stated that “Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party’s control.” 73 As such, the Court rejected the strict view, discussed above, that excusable neglect should only apply to circumstances beyond the party’s control and that attorney negligence is always an insufficient ground. 74 As to the requirement that the neglect be “excusable,” the Court established a balancing test which requires an equitable determination “taking account of all relevant circumstances surrounding the party’s omission.” 75 These factors include “the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial

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65. 10A WRIGHT, MILLER & KANE, supra note 21, § 2695 (collecting cases).
67. Weathersbee, supra note 62, at 1639.
68. Davis v. Safeway Stores, Inc., 532 F.2d 489, 490 (5th Cir. 1976).
69. CJC Holdings, Inc. v. Wright & Lato, 979 F.2d 60, 64 (5th Cir. 1992).
70. Pryor v. U.S. Postal Serv., 769 F.2d 281, 287 (5th Cir. 1985).
72. Id. at 394–95.
73. Id. at 388.
74. Id. at 391–92, 395.
75. Id. at 395.
proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith."76

While its holding was limited to the bankruptcy rules, the Pioneer Court noted that the concept of “neglect” for purposes of Federal Rule of Civil Procedure 60(b)(1) “encompass[es] situations in which the failure to comply with a filing deadline is attributable to negligence.”77 Immediately following the Pioneer decision in 1993, the courts expressed some doubts regarding the proper “excusable neglect” standard for the Federal Rules of Civil Procedure. 78

In 1996, the Supreme Court stated that the Pioneer analysis also applies to “excusable neglect” in Rule 4 of the Federal Rules of Appellate Procedure.79 Following this additional guidance that Pioneer is not limited to the bankruptcy context, every federal circuit court has now extended the Pioneer test for excusable neglect to Rule 60(b)(1) of the Federal Rules of Civil Procedure. 80 Under Pioneer, the bar is quite low when it comes to

76. Id.
77. Id. at 394.
78. See, e.g., United States v. RG & B Contractors, Inc., 21 F.3d 952, 956 (9th Cir. 1994) (assuming arguendo that Pioneer applied in the context of Rule 60(b)).
proving excusable neglect.\textsuperscript{81}

\section*{3. Timing of the Motion to Set Aside}

While the court must consider a number of factors when ruling on a motion to set aside default judgment, the timing of the motion is usually of critical importance.\textsuperscript{82} The timing of the motion is itself often listed as a factor to consider.\textsuperscript{83} In addition, the time involved always colors the remaining factors. Generally, when the motion to set aside is filed shortly after the default judgment, (1) the default was likely not willful; (2) the adversary faces little prejudice; (3) the defaulting party’s explanation is more plausible; and (4) the defaulting party likely acted in good faith.\textsuperscript{84} When the motion to set aside is filed long after the default judgment, (1) the de-

\textsuperscript{81}See, e.g., Cheney, 71 F.3d at 850 (holding that carelessness and oversight constitute excusable neglect). However, the states remain free to set their own standards and define excusable neglect as used in their own rules. See, e.g., Ga. Code Ann. \textsection 9-11-60(d)(2) (2006) (stating that a judgment may be set aside for “[f]raud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant”); Carter v. Ravenwood Dev. Co., 549 S.E.2d 402, 404 (Ga. Ct. App. 2001) (defining excusable neglect to exclude gross negligence).

\textsuperscript{82}See, e.g., Cheney, 71 F.3d at 850 (holding that carelessness and oversight constitute excusable neglect). However, the states remain free to set their own standards and define excusable neglect as used in their own rules. See, e.g., Ga. Code Ann. \textsection 9-11-60(d)(2) (2006) (stating that a judgment may be set aside for “[f]raud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant”); Carter v. Ravenwood Dev. Co., 549 S.E.2d 402, 404 (Ga. Ct. App. 2001) (defining excusable neglect to exclude gross negligence).

\textsuperscript{83}See, e.g., KPS \& Assocs. v. Designs by FMC, Inc., 318 F.3d 1, 12 (1st Cir. 2003); Swaim v. Moltan Co., 73 F.3d 711, 722 (7th Cir. 1996); Compania Interamericana Export-Import, S.A. v. Compania Dominicana De Aviacion, 88 F.3d 948, 951 (11th Cir. 1996); In re Jones Truck Lines, Inc. v. Foster’s Truck \& Equip. Sales, Inc., 63 F.3d 685, 687 (8th Cir. 1995).

fault likely was willful; (2) the adversary faces significant prejudice; (3) the
defaulting party’s explanation is less plausible; and (4) the defaulting party
probably did not act in good faith.  

In this author’s review of the published cases and in general practice,
the timing of the motion to set aside creates the following results. A motion
to set aside default judgment filed within one month of the judgment is
almost always granted. When the motion is filed within three months of
the default, the defaulting party generally prevails. Motions to set aside


86. See, e.g., Seven Elves, 635 F.2d at 399 (noting motion was filed within twelve days of learning of default judgment); Patapoff, 267 F.2d at 864 (noting appellant moved to vacate ten days after order); Reynal, 153 F.2d at 931–32 (noting motion was filed within thirty days of default); FOC Fin., 612 F. Supp. 2d at 1083 (noting Defendant filed motion two days after default was entered); Owens-Illinois, 191 F.R.D. at 529 (noting appellant moved to vacate three days after it learned of default); Caruso, 78 F.R.D. at 588 (noting motion was filed less than one month after default entered); Nicholson, 200 F. Supp. at 206 (setting aside default when motion was filed seventeen days after default was entered).

A similar result is reached in states, such as West Virginia, that have adopted Rules
of Civil Procedure that closely follow the federal system. See, e.g., Delapp, 584 S.E.2d at
906 (noting motion was filed within two days of default); Waters, 489 S.E.2d at 276 (noting
motion was filed within eleven days of default); Evans, 457 S.E.2d at 524 (noting appellant’s
motion was filed within one month of learning of default); Hanson, 415 S.E.2d at 610
(noting motion was filed within twenty-five days of default).

Though still modeled on the federal framework, some states do not use a one-year
cutoff in Rule 60 and thus do not fit neatly into the present analysis. For example, Missis-
sippi includes a six-month cutoff date. However, even Mississippi courts recognize that a
motion to set aside default judgment is virtually guaranteed to be granted when made within
one month. See Cunningham v. Mitchell, 549 So. 2d 955, 958 (Miss. 1989) (granting motion
after twenty-nine days).

Other states have created their own specific rules as to timing. See, e.g., GA. CODE
ANN. § 9-11-60(f) (2006) (stating that motion to set aside judgment must be brought within
three years unless ground is lack of jurisdiction); VA. CODE ANN. § 8.01-428 (2007) (estab-
lishing that, after 21 days have passed, default judgment can be set aside only on the follow-
ing grounds: “(i) fraud on the court, (ii) a void judgment, (iii) on proof of an accord and sa-
tisfaction, or (iv) on proof that the defendant was, at the time of service of process or entry of
judgment, a person in the military service of the United States”).

87. See, e.g., Allen Russell Publ’g., Inc. v. Levy, 109 F.R.D. 315, 319 (N.D. Ill. 1985) (granting relief after nine weeks); United States v. 96 Cases of Fireworks, 244 F. Supp. 272, 273 (N.D. Ohio 1965) (noting that only seven weeks passed between default and motion to
default judgment filed between three and six months have achieved mixed results. The defaulting party generally loses when he or she files a motion after more than six months. So long as the court has jurisdiction, it is virtually impossible for a defaulting party to prevail after twelve or more months have passed because of the one-year cutoff found in Rule 60(c) for arguing excusable neglect, new evidence, or fraud.

Under Rule 60(c), a defaulting party can only argue the following grounds after "more than a year after the entry of the judgment": the judgment is void; the judgment has been satisfied, released, discharged, or is based on an earlier judgment that has been reversed or vacated; or any other reason that justifies relief. Reading Rule 60 in its entirety, the phrase "any other reason that justifies relief" cannot possibly include the argu-
ments of excusable neglect, new evidence, or fraud.93

IV. PROBLEMS WITH THE CURRENT SYSTEM FROM A PRACTITIONER’S POINT OF VIEW

From a practitioner’s point of view, the present default judgment system has significant problems for both non-defaulting parties and defaulting parties. As noted above, excusable neglect is the most common ground for setting aside a default judgment since the courts have developed a rather liberal standard.94 When arguing that its failure to timely answer was due to excusable neglect, the defaulting party concedes that it is to blame and, in many instances, that it acted negligently. When the court sets aside the default judgment due to excusable neglect, the defaulting party usually faces little or no adverse consequence for its failure to comply with the Rules of Civil Procedure and its negligent conduct.95 As one commentator has noted:

The drafters did not intend the rule to be, nor should it be, a license for parties and their counsel to disregard process or procedural rules with impunity, to fail to exercise due diligence in regard to litigation, or to impede the

93. Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P’ship, 507 U.S. 380, 393 (1993) (stating that the “provisions [of Rule 60(b)] are mutually exclusive, and thus a party who failed to take timely action due to ‘excusable neglect’ may not seek relief more than a year after the judgment by resorting to subsection (6)”).

94. See supra Part III.C.2.

95. See 10A WRIGHT, MILLER & KANE, supra note 21, § 2693 (“Although many judges speak of the importance of compliance with the rules, the punitive value of imposing a default often is subordinated to a preference for a trial on the merits.”).
efforts of other litigants vigorously pursuing their cases. To condone such behavior makes a mockery of Rule 60(b). 

When a properly obtained default judgment is set aside, counsel for the non-defaulting party is not compensated for his time in obtaining the default, and the court’s time is wasted as the entire litigation returns to square one, i.e., the filing of a responsive pleading.

After the default judgment has been entered, the prevailing party still has the Sword of Damocles hovering over its head. The default judgment will likely be set aside if the defaulting party files its motion within three months and will almost always be set aside if the motion is filed within one month.

One could argue that pre-judgment interest is a sufficient remedy for the non-defaulting party when a default judgment is set aside; interest is accruing on his or her damages during the months that the trial was delayed. However, there are two errors in such an argument. First, most civil cases will ultimately end in a settlement, and thus a binding order with pre-judgment interest is rarely entered on the court record. Second, the issue of fault remains unsettled when a default judgment is set aside. Accordingly, the non-defaulting party is not guaranteed pre-judgment interest every time that a default judgment is set aside. While pre-judgment interest may be somewhat of a factor in settlement negotiations, the possible recovery of pre-judgment interest is neither a sufficient remedy to the non-defaulting party nor a sufficient sanction to the defaulting party.

Defaulting parties (or at least parties allegedly in default) face problems with the current framework as well. One example is defaults based on improper service. The premise of a default is that the party failed to answer after being served. Obviously, that party should only be deemed liable if it fails to answer after being properly served. However, one of the litigants often moves for entry of a default and a default judgment based on improper service. If the court allows this type of conduct to continue unchecked, parties will simply file an answer, regardless of whether service was prop-

96. Weathersbee, supra note 62, at 1646.
97. See supra notes 86–87 and accompanying text.
98. Of course, parties often waive formal service of process under Federal Rule of Civil Procedure 4(d). Under Federal Rule of Civil Procedure 12(a)(1)(A), the defendant has either twenty-one days or sixty days to answer, depending on whether he or she waives service.
99. This scenario is especially troubling given that many parties allegedly in default also fail to appear at the hearing (or challenge the default) since notice is not required.
er, rather than risk a default.\textsuperscript{100} Thus, there is also no incentive for the party seeking redress to go to the trouble of rendering proper service when improper service achieves the same result. While a default judgment based on improper service would eventually be set aside under Rule 60(b)(4),\textsuperscript{101} the current system does not properly discourage counsel from effecting improper service.

Perhaps the most troubling problem facing the defaulting party is manipulation of the one-year cutoff date for making certain arguments in the motion to set aside.\textsuperscript{102} As discussed above, the cutoff date found in Federal Rule of Civil Procedure 60(c) plays a substantial role in whether a motion to set aside default judgment will be granted.\textsuperscript{103} When the defaulting party fails to file its motion within the one-year timeframe, the default judgment will almost always be upheld.\textsuperscript{104} The prevailing party generally has multiple years (even decades in some states) to collect on a judgment,\textsuperscript{105} so the prevailing party does not have to begin its collection attempts right away. This situation is exacerbated by the fact that the defaulting party is not entitled to receive notice from the court that a final judgment has been entered against it.\textsuperscript{106} What should happen if the non-defaulting party intentionally attempted to manipulate the one-year cutoff date of Rule 60?\textsuperscript{107}

In \textit{Hartwell v. Marquez}, the West Virginia Supreme Court noted its concern over that possible scenario.\textsuperscript{108} After receiving the plaintiff’s complaint, the defendant’s insurer failed to timely answer.\textsuperscript{109} The plaintiff then obtained an entry of default and a default judgment, with damages being calculated by the court under Rule 55(b)(2).\textsuperscript{110} After the judgment was entered, plaintiff’s counsel took no action until the Rule 60 cutoff date.

\textsuperscript{100} In practice, a motion to dismiss for insufficient process or insufficient service of process under Federal Rule of Civil Procedure 12(b) simply results in proper service at a later date and increased costs.

\textsuperscript{101} \textit{Fed. R. Civ. P. 60(b)(4)}.

\textsuperscript{102} \textit{Fed. R. Civ. P. 60(c)(1)}. Some states have adopted a version of Rule 60 with a cutoff date other than one-year. \textit{See, e.g., Miss. R. Civ. P. 60(b)} (providing for a six-month cutoff date).

\textsuperscript{103} \textit{See supra} notes 91–92 and accompanying text.

\textsuperscript{104} \textit{See supra} note 91 and accompanying text.

\textsuperscript{105} \textit{See, e.g., W. Va. Code Ann. § 38-3-18(a) (2005)} (giving the prevailing party a ten-year, renewable period to collect on judgment).

\textsuperscript{106} \textit{See Fed. R. Civ. P. 77(d)(1)}.

\textsuperscript{107} \textit{Hartwell v. Marquez, 498 S.E.2d} 1, 4 n.5 (W. Va. 1997).

\textsuperscript{108} \textit{Id.} at 3.

\textsuperscript{109} \textit{Id.} at 4, 10.
Just after the cutoff date, plaintiff’s counsel began the collections process. The Hartwell Court noted that “[t]his delay was apparently calculated to limit [the defaulting party’s] options under the provisions of W. VA. R. CIV. P. 60(b).” While such a delay did not technically violate any statutory or court rule, the West Virginia Supreme Court “strongly urge[d]” practitioners to avoid the practice. In addition, the Hartwell Court implied that such conduct likely violates the ethical rules of conduct for attorneys.

V. HOW TO IMPROVE THE DEFAULT JUDGMENT FRAMEWORK

While the current default judgment framework suffers from a number of ills, the system could be greatly improved with a few simple changes. These changes include amending Rule 55 to allow for the recovery of attorney’s fees, making attorney’s fees a condition to setting aside a default judgment, considering alternative sanctions as a factor, and viewing failure to execute within one year as a factor under Rule 60(b)(6). Although attor-
ney’s fees are generally not awarded under the American rule,116 making such an award available within the court’s discretion for default judgments would encourage compliance with procedural rules, reduce the prejudice suffered by the non-defaulting party when a default judgment is set aside, and punish failure to comply with procedural rules without imposing the drastic remedy of a default judgment.

A. Amend Rule 55 to Allow for the Recovery of Attorney’s Fees

It is certainly nothing new for a rule of civil procedure to allow the judge to award reasonable attorney’s fees. For example, the court may order an award of attorney’s fees when a party violates Rule 11,117 submits an improper discovery document,118 impedes or frustrates the fair examination in a deposition,119 fails to appear for a deposition,120 or imposes an undue burden through the use of a subpoena.121

Rule 37 regarding motions to compel the production of documents would serve as a good model. Rule 37 gives the judge discretion to award attorney’s fees to either party depending on whether the motion to compel is granted or denied.122 Using Rule 37 as a guide, Rule 55(c) should be amended to include the following language:

The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).

1. If the Motion to Set Aside Is Granted. If the motion to set aside is granted, the court may, after giving an opportunity to be heard, require the non-defaulting party to pay the defaulting party’s reasonable expenses incurred in making the motion, including attorney’s fees, or require the defaulting party to pay the non-defaulting party’s reasonable expenses incurred in obtaining the default or default judgment, including attorney’s fees. But the court must not order this payment if the party’s action was substantially justified or other circumstances make an award of expenses unjust.

2. If the Motion to Set Aside Is Denied. If the motion to set aside is de-
nied, the court may, after giving an opportunity to be heard, require the de-
faulting party to pay the non-defaulting party’s reasonable expenses in-
curred, including attorney’s fees, in (i) obtaining the default or default
judgment, and (ii) opposing the motion to set aside. But the court must not
order this payment if the motion to set aside was substantially justified or
other circumstances make an award of expenses unjust.123

Rule 55 should be amended to give judges discretion to award a rea-
sonable attorney’s fee to either party.124 Attorney’s fees should be consid-
ered on a case-by-case basis. In cases involving clearly improper service,
attorney’s fees could be awarded to the allegedly defaulting party.125 When
the court sets aside a default judgment for excusable neglect, attorney’s
fees could be awarded to the non-defaulting party to compensate counsel
for obtaining the default judgment and to reduce the prejudice on the non-
defaulting party. If the federal version of Rule 55 is amended to allow at-
torney’s fees, most states will likely follow suit. However, if Rule 55 is not
amended on the federal level, the individual states should take it upon
themselves to amend their own versions of Rule 55.

B. Attorney’s Fees as a Condition to Setting Aside Default Judgment

Under the current framework, a number of courts have set aside a de-
fault judgment only upon the condition that the defaulting party be respon-
sible for the non-defaulting party’s related attorney’s fees.126 Reasonable

123. Granted, such an amendment is not necessary in the circuits, as discussed infra
Parts V.B–C, that use attorney’s fees as a condition to setting aside default judgment or con-
sider the availability of lesser sanctions as a factor. However, a number of circuits and
states do not use these methods. Amending Rule 55 would be a quick, nationwide solution
that would not require piecemeal implementation by the courts.

124. Rule 55 covers both defaults and default judgments whereas Rule 60 is the contro-
ling standard for setting aside all types of judgment. In other words, all defaults must run
through Rule 55. However, amending Rule 60 would solve the attorney’s fee issue for de-
fault judgments, but not mere defaults. In addition, allowing attorney’s fees for the setting
aside of judgments based on excusable neglect, fraud, etc. would also make sense.

125. Attorney’s fees would not be warranted for a technically improper service that was
made in good faith.

126. See, e.g., Coon v. Grenier, 867 F.2d 73, 79 (1st Cir. 1989); Weary v. Sailorman,
Fidelity & Guar. Co. v. Petroleo Brasileiro S.A., 220 F.R.D. 404, 407 (S.D.N.Y. 2004);
Goodwin v. Roper Indus., Inc., 113 F.R.D. 53, 55 (D. Me. 1986); Leab v. Streit, 584 F.

Although not modeled on the federal rules, Virginia allows the court to use recovery of
attorney’s fees as a condition when setting aside a default judgment. VA. SUP. CT. R.
3:19(d)(1).
conditions may be imposed in granting a motion to set aside default judgment, and the condition most commonly imposed is that the defaulting party must reimburse the non-defaulting party for costs incurred because of the default.127 After all, Rule 60(b) states that the court may set aside a judgment “[o]n motion and just terms.”128 As the Ninth Circuit has explained:

By conditioning the setting aside of a default, any prejudice suffered by the non-defaulting party as a result of the default and the subsequent reopening of the litigation can be rectified. . . . [T]he most common type of prejudice is the additional expense caused by the delay, the hearing on the Rule 55(c) motion, and the introduction of new issues. Courts have eased these burdens by requiring the defaulting party to provide a bond to pay costs, to pay court costs, or to cover the expenses of the appeal. The use of imposing conditions can serve to “promote the positive purposes of the default procedures without subjecting either litigant to their drastic consequences.”129

In addition, this method is not overly burdensome on all defaulting parties since it is only invoked on a case-by-case basis.130 Imposing a reasonable attorney’s fee as a condition “can be used to rectify any prejudice suffered by the non-defaulting party as a result of the default and the subsequent reopening of the litigation.”131 Again, the court should have broad discretion given the vast possibility of factual scenarios involved, rather than automatically awarding attorney’s fees in every case.132

128. FED. R. CIV. P. 60(b).
130. See Na Pali Haweo Cmtv. Ass’n v. Grande, 252 F.R.D. 672, 674 (D. Haw. 2008) (recognizing the availability of attorney’s fees but choosing not to award them); Pall Corp. v. Entegris, Inc., 249 F.R.D. 48, 52 (E.D.N.Y. 2008) (refusing to grant attorney’s fees based on court’s discretion).
131. 10A WRIGHT, MILLER & KANE, supra note 21, § 2700 (noting that prejudice to a non-defaulting party usually takes the form of an “additional expense caused by the delay, the hearing on the Rule 55(c) motion, and the introduction of new issues”).
132. See id. (“The use of conditions also permits the court to be responsive to the special problems raised by particular situations in order to avoid possible inequities.”).
C. Consider Alternative Sanctions as a Factor

A split of authority exists on whether alternative sanctions, such as costs and attorney’s fees, should be considered as a factor when hearing a motion to set aside default judgment. The Third and Fourth Circuits have expressly stated that the district court must consider alternative sanctions as a factor. The other circuits, however, have not ruled out alternative sanctions from consideration. When hearing a motion to set aside default judgment, every court should consider the effectiveness of alternative sanctions as one of the factors. This is particularly true in federal courts where persuasive authorities from other circuits are routinely cited.

An informative case is Burton v. Continental Casualty Company out of the District Court for the Southern District of Mississippi. The Burton court cited the Fourth Circuit’s factors for setting aside a default judgment, including the effectiveness of alternative sanction, rather than the Fifth Circuit’s factors. Similarly, the District Court for the Southern District of Florida quoted the Eleventh Circuit’s general case law on default judgments, then cited the Third Circuit factors (including alternative sanctions), and ultimately imposed attorney’s fees on the defaulting party. The factors a court decides to use, regardless of which circuit they come from, are “simply means of identifying circumstances which warrant the finding of ‘good cause’ to set aside a default.” Since alternative sanctions have not been ruled out, more courts, both state and federal, should follow these persuasive authorities and consider the effectiveness of alternative sanctions as a factor when ruling on a motion to set aside default judgment.

D. Failure to Execute Within One Year as a Factor Under Rule 60(b)(6)

One of the most troubling problems with the current default judgment framework is the possible manipulation of the one-year cutoff of Rule 60. To solve this conundrum, the courts should proceed under Rule 60(b)(6) when the non-defaulting party sits on the judgment for more than one year without contacting the defaulting party. This would be akin to the equi-

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133. See supra Part III.C.1.
134. See supra note 59 and accompanying text.
136. Id. at 657.
138. Id. at *12 (quoting Lexington Lasercomb I.P.A.G. v. Unger, 234 F.R.D. 701, 702 (S.D. Fla. 2006)).
139. One could also argue in favor of requiring the non-defaulting party to give additional notice to the defaulting party. However, this author does not find such an argument com-
table doctrine of unclean hands. In essence, the prevailing party’s failure to execute on the judgment within one year should be considered by the courts as a factor towards “any other reason that justifies relief” under Rule 60(b)(6). In certain situations, the defaulting party should be allowed to argue excusable neglect, newly discovered evidence, or fraud despite the technical one-year cutoff date if the non-defaulting party fails to contact the defaulting party within one year of the judgment. After all, Rule 60(b)(6) “provides a grand reservoir of equitable power to do justice in a particular case.”

A good example of this approach can be found in Byron v. Bleakley.
The defaulting party moved to vacate the judgment after two years had passed. Even though the defaulting party’s grounds may have appeared to constitute excusable neglect at first glance, there were additional factors at play: (1) affidavits established a possible meritorious defense; (2) the action was brought one day from the expiration of the statute of limitations; (3) the defaulting party was no longer engaged in the active conduct of that line of business; and (4) plaintiff made no attempt to execute on the judgment until eighteen months had passed. Specifically, the court chose to “view the matter with special care” given the lack of any attempt to collect on the judgment by the one-year cutoff date.

Using the Rules to the best advantage of one’s client is good advocacy and the court casts no aspersions on plaintiff’s counsel. But where the net result of adhering to the letter of the Rules is to thwart rather than to promote justice, the court must be wary of their rigid application. . . . [I]n an unusual case such as this the court should not be handicapped by the Rules, which are to be construed liberally to achieve justice.

With all of these factors in mind, the court set aside the default judgment as “any other reason that justifies relief” under Rule 60(b)(6). More courts should accept the logic and reasoning of Byron and consider the lack of execution within one year as a factor under Rule 60(b)(6).

VI. CONCLUSION

The current default judgment framework is fraught with problems and inequities, including procedural violations on both sides that often go unchecked. The primary remedy to these ills is amending Rule 55 of the Federal Rules of Civil Procedure to allow the court discretion in awarding attorney’s fees. The court needs to have the authority to award attorney’s fees to the non-defaulting party or to the allegedly defaulting party based on the facts of each case. If Rule 55 is not amended, both state and federal

144. Id. at 414.
145. Id. at 415.
146. Id.
147. Id. at 415–16 (citations omitted).
148. Id. at 416. For the improper, laissez faire approach, see Allison v. Boondock’s, Sundecker’s & Greenthumb’s, Inc., 673 P.2d 634, 638 (Wash. Ct. App. 1983) (refusing to set aside default judgment despite finding that the non-defaulting party’s counsel “used the civil rules to her advantage [by] waiting more than a year to execute the judgment.”).
courts should consider attorney’s fees as a condition or a factor to setting aside the default judgment. In addition, the courts should take into account the prevailing party’s failure to execute on the judgment within one year as a factor towards “any other reason that justifies relief” under Rule 60(b)(6). With these improvements implemented, there will be fewer faults with the default judgment system.