

CIVIL COURT OF THE CITY OF NEW YORK

CIVIL COURT DIRECTIVE

**Subject: Entry of Default Judgments
(Reissued for clarification)**

**Class: DRP-191-A
Category: LT-20
Eff. Date: July 14, 2010**

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BACKGROUND:

It has long been our practice to follow RPAPL § 741 which refers to CPLR § 3020(d), that if a petition was verified by the attorney for the party, it would be acceptable for the entry of a default judgment. A recent Appellate Court decision, Sella Propers. V DeLeon, 25 Misc 3D 85, Second Department, 2009, 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 First Department, the clerks are directed to follow "Sella" in the First Department also, until the First Department addresses the issue otherwise.

Based on the above case and practice annotation, 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 says 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 judgment 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 judgment 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.

7/14/10

Date

Fern Fisher

Deputy Chief Administrative Judge
New York City Courts