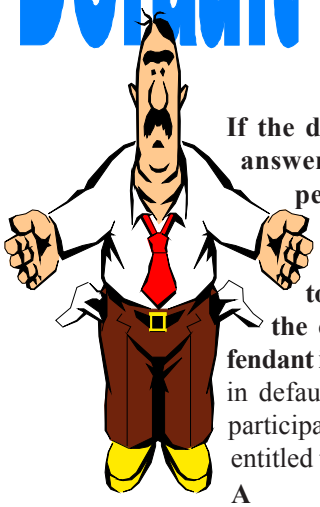
Default or failure to answer



If the defendant fails to file his answer within the prescribed period of time, then the plaintiff may file a motion, with due notice to the defendant, asking the court to declare the defendant in default. (Once declared in default, the defendant cannot participate in the hearings but he is entitled to all notices.)

Defaults are not allowed in legal separation, annulment, or declaration of the nullity of marriage.

A

If the motion is granted, then the court issues an order of default and renders its judgment, unless it requires the plaintiff to submit his evidence (in ex-parte proceedings before the court itself or a commissioner).

Before the judgment is rendered, the defendant may file a motion under oath to set aside the order of default upon proof that his failure to answer was due to fraud, accident, mistake or excusable neglect (also known as FAME), and that he has a meritorious defense.

B

If the motion to set aside the order of default is denied, then the plaintiff presents his evidence ex-parte.

If the plaintiff proves his allegations, then the court renders judgment by default. (The defendant however still has some remedies available in this kind of situation)

If the plaintiff is not able to prove his allegations, then the court dismisses the case.

C

The order of default may be set aside on terms imposed by the judge. The defendant then files his answer. The case is then set for pre-trial (upon motion of the plaintiff).

Effect of a partial default - when a complaint states a common cause of action against several defendants, some of whom answer and the others do not, but the answer alleges a common defense, the court shall try the case against all upon the answer thus filed and render judgment upon the evidence presented.

A judgment rendered against a party declared in default shall not exceed the amount or be diferent in kind from that prayed for, nor award unliquidated damages.

