

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CUMMINGS, MCLOREY, DAVIS & ACHO, PLC,

Plaintiff/Counter-Defendant-Appellee,

v

JAMEL WHITE,

Defendant/Counter-Plaintiff-  
Appellant.

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UNPUBLISHED

December 21, 2021

No. 352765

Wayne Circuit Court

LC No. 18-014221-CK

Before: BOONSTRA, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

The trial court entered a default judgment against Jamel White when he did not appear for a settlement conference. Given the court’s failure to follow proper procedure in entering a default judgment, we vacate the judgment and remand for further proceedings consistent with this opinion.

**I. BACKGROUND**

Jamel White retained Cummings, McLorey, Davis & Acho, PLC to represent him in two civil suits. Cummings later filed suit against White for failing to pay an outstanding balance of \$35,836.48 owed under the retainer agreement. Representing himself, White denied the allegations raised by Cummings and filed a legal malpractice countercomplaint.

On January 11, 2019, the court entered a scheduling order setting August 2019 as the “case evaluation month” and providing that the settlement conference would take place 42 days after case evaluation. On June 20, 2019, the court advised the parties via email that the case evaluation and settlement conference dates had been adjourned. The email notified the parties that case evaluation would occur on September 10 and the settlement conference on October 22. This notice was also provided automatically by the Wayne Circuit Court Truefiling system.

It appears that case evaluation either did not occur on September 10, or was conducted over two days, the second being October 8. There is no notice of adjournment in the record moving case evaluation from September 10 to October 8, and no notice to appear on October 8. The register of actions indicates that case evaluation occurred on October 8 and that the award was not

accepted. However, at the settlement conference, counsel for Cummings indicated that case evaluation took place that day—“October 15th.” White later asserted that he attended the case evaluation by phone; counsel for Cummings countered that White did not appear, that attending by phone was not permitted, and that no one on the case evaluation panel was on the phone during the proceeding.

At 2:49 p.m. on October 7, Truefiling sent an automatic notice to the parties that the court entered an order “adjourning” the settlement conference to October 15. This notice was also sent via U.S. Mail. Twelve minutes later, at 3:01, Cummings’s counsel emailed White, stating that the court had contacted her office to reschedule the settlement conference. Counsel listed three dates suggested by the court—October 15, 16, or 17—and asked White to respond with his preferred date by October 8. Counsel further advised that once the conference was rescheduled, the court would send a new notice directly to White. The next TrueFiling notification White received from the court arrived at 3:15 p.m. and contained a proof of service.

Cummings’s counsel appeared for the settlement conference on October 15, but White did not. Counsel informed the court that she had not had contact with White “since about March” and that White had not responded to her emails “regarding case evaluation or the scheduling of this settlement conference.” Counsel further stated that White did not participate in case evaluation or respond to the award notification. Counsel therefore moved for a default under MCR 2.401(G)<sup>1</sup> and requested a judgment of \$35,836.48. The court granted the motion and entered a default.

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<sup>1</sup> MCR 2.401(G) permits the entry of a default when a party fails to attend a settlement conference as follows:

(1) Failure of a party or the party’s attorney or other representative to attend a scheduled conference or to have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement, as directed by the court, may constitute a default to which MCR 2.603 is applicable or a ground for dismissal under MCR 2.504(B).

(2) The court shall excuse a failure to attend a conference or to participate as directed by the court, and shall enter a just order other than one of default or dismissal, if the court finds that

(a) entry of an order of default or dismissal would cause manifest injustice;  
or

(b) the failure was not due to the culpable negligence of the party or the party’s attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

On October 22, Cummings filed a preprinted form seeking an entry of default and judgment for a sum certain. That day, White received a TrueFiling notice that Cummings had requested a default judgment and that the court had “accepted” the judgment, which then was awaiting only signature by the court. On October 25, the court signed the form and entered a default judgment.

On November 12, 2019, White moved for rehearing or reconsideration. White asserted that he received no notice of the October 15 settlement conference and had not been provided with seven days’ notice of the default judgment as required by the court rules. He claimed that he first received notice of the application for a default judgment on October 24. The court ultimately denied White’s motion.

White now appeals.

## II. ANALYSIS

The trial court erred in entering a default judgment where neither the court nor Cummings provided White with the required seven days’ notice.

MCR 2.603(B)(1)(a)(i) and MCR 2.603(B)(1)(b) provide that a party requesting a default judgment must give seven days’ notice to the opposing party if the opposing party “has appeared in the action.” “If the defaulted party has appeared, the notice may be given in the manner provided by MCR 2.107.” MCR 2.603(B)(1)(c). “The purpose of the notice requirement is to apprise the defaulting party of the possibility of entry of judgment so that he may have an opportunity to participate in any hearing necessary to ascertain the amount of damages or other form of remedy to be granted.” *Perry v Perry*, 176 Mich App 762, 767; 440 NW2d 93 (1989).<sup>2</sup> “If the default is entered for failure to appear for a scheduled trial,” however, notice is not required. MCR 2.603(B)(1)(d).

White appeared in this action; he filed an answer and counterclaims. Trial had yet to occur, so the exception of subsection (d) does not apply. As such, White was entitled to seven days’ notice of the default judgment before it was entered. The TrueFiling notice was not sent to White until October 22, 2019. The trial court entered the default judgment only three days later. This violated MCR 2.603(B)(1).

When a default judgment is entered in violation of MCR 2.603(B)(1), the defaulted party need not show good cause or establish a meritorious defense to prevail in setting the judgment aside. The lack of notice amounts to a due process violation.

“It is patently unfair to compel a party to demonstrate a meritorious defense in order to get a default judgment set aside when the manner in which the default judgment was entered constituted a denial of due process. A party is entitled to due process

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<sup>2</sup> Cases decided before November 1, 1990 are not binding precedent, MCR 7.215(J)(1), but they may be considered as persuasive authority. *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2012).

regardless of the merits of his claim or defense.” [*Perry*, 176 Mich App at 770, quoting *Petroff v Petroff*, 88 Mich App 18, 20; 276 NW2d 503 (1979).]

Given the absence of seven days’ notice in this case, the court’s error violated White’s right to due process. White is not required to establish prejudice to be entitled to relief. We must vacate the default judgment and remand for continued proceedings.

On remand, Cummings may again request a default judgment based on White’s failure to appear for the case evaluation and settlement conference. Should Cummings do so, the record must be settled and certain questions answered. Specifically, the correct date(s) of the case evaluation should be placed on the record, as well as proof of service of the notice of that proceeding. The court must also address MCR 2.401(G)(2), which limits the court’s authority to dismiss an action or enter a default against a party who fails to appear for a settlement conference.

We vacate the default judgment and remand this case for further proceedings. We do not retain jurisdiction.

/s/ Mark T. Boonstra  
/s/ Elizabeth L. Gleicher  
/s/ Anica Letica