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Friday, February 15, 2002  
PAUL and THERESA KUHLMAN,

No. 99-13899

[Debtor](#)  (s).

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AMY RODNEY, et al.,

[Plaintiff](#)  (s),

v.

A.P. No. 00-01120

THERESA KUHLMAN,

[Defendant](#)  (s).

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### **Memorandum on Motion for Relief From Default**

In state court child custody proceedings, plaintiff Amy Rodney was appointed to represent the minor child. Initially, the court ordered debtor Theresa Kuhlman and the child's father to bear the expense of Rodney's services evenly.

On June 23, 2000, the state court modified its earlier order. After considering the allocation of Rodney's fees based on the ability of each household to pay, the court determined that "the best way to allocate the fees is in terms of the behavioral contribution of each parent to the need for the attorney for the child and also based on actions which elongated the trial." The court then ordered Kuhlman to pay 80% of the fees. The issue in this [adversary proceeding](#)  is whether Rodney's fees are nondischargeable pursuant to § 523(a)(5) of the [Bankruptcy](#)

[Code](#) .

In November, 2000, the court denied Rodney's motion for summary judgment on the grounds that it could not tell from the record what portion of Kuhlman's obligation was based on need and what portion was based on her misconduct. Ironically, only that portion which is based on need is nondischargeable under § 523(a)(5) of the Bankruptcy Code.

On July 30, 2001, Kuhlman failed to appear at a regularly-scheduled status conference. The court directed that her default be entered, and her default was entered by the clerk on August 2, 2001. She was properly served by the clerk.

On December 18, 2001, Rodney applied for a default judgment. She included evidence that the state court had clarified its award to specify that 50% of the fees were assessed to Kuhlman on the basis of need and an additional 30% were assessed as a sanction. The proposed form of judgment, which the court signed on December 19, 2001, and was entered on December 27, 2001, declared that the 50% based on need was nondischargeable.

Kuhlman now seeks relief from default and vacation of the default judgment. She has produced no evidence of a viable defense to the action; with the clarification by the state court, there is no defense. Her only argument is that the court should not have ordered the entry of her default because she had filed an answer. There is no merit to this argument.

Rule 16(f) of the Federal Rules of Civil Procedure - applicable to bankruptcy cases by FRBP 7016 - provides that if no appearance is made at a status conference the court may make as a sanction any of the orders provided in FRCP 37(b)(2)(B), (C), (D). FRCP 37(b)(2)(C) specifically authorizes rendering of a judgment by default.

Since Kuhlman has demonstrated neither excusable neglect for failing to appear at the status conference nor a viable defense to the action, her motion for relief from default will be denied. Counsel for Rodney shall submit an appropriate form of order.

Dated: February 15, 2002

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Alan Jaroslovsky

U. S. [Bankruptcy Judge](#) 

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