

GUIDELINES FOR OBTAINING A DEFAULT JUDGMENT
Wichita Cases - 4/30/14

Step 1 - Motion For Entry Of Default - Fed. R. Civ. P. 55(a)

The procedure for entry of default and entry of default judgment is governed by Fed. R. Civ. P. 55 as made applicable to adversary proceedings by Fed. R. Bankr. P. 7055.

D. Kan. LBR 5075.1 authorizes the Clerk to sign and enter default in adversaries. Entry of default is a procedural formality, and a prerequisite to the issuance of a default judgment. A Motion for Entry of Default by Clerk can be filed after a defendant has been properly served with a summons and the Complaint, and has failed to answer within the time required (30 days for all defendants; 35 days for the United States and its agencies). The Motion for Entry of Default by Clerk must be filed with an affidavit or unsworn declaration setting forth:

1. Date of issuance of the summons;
2. Date of service of the complaint;
3. Date of filing of an affidavit of service (*summons executed*);
4. Date a responsive pleading was due by virtue of Fed. R. Bankr. P. 7012 or an order of the Court (*answer due date or expiration of Clerk's Extension deadline*);
5. Statement that no answer or motion has been received by the date set by Fed. R. Bankr. P. 7012 or an order of the Court;
6. Statement that the party against whom default is requested is not a minor or incompetent person, as required by Fed. R. Civ. P. 55(b)(1); and
7. Statement, pursuant to the Servicemembers Civil Relief Act, "(A) stating whether or not the defendant is in the military service *and showing necessary facts to support the affidavit*; or (B) if the plaintiff is unable to determine whether or not the defendant is in the military service, stating the plaintiff is unable to determine whether or not the defendant is in the military service," and why plaintiff is unable to so determine. In other words, what good faith effort have you made to determine military status?¹

The Motion For Clerk's Entry Of Default will include as separate attachments (1) the affidavit or unsworn declaration and (2) the Clerk's Entry of Default form (sample attached). A Certificate of Service is not

¹The Servicemembers Civil Relief Act, 50 U.S.C. Appendix §521(b), requires plaintiffs to file an affidavit that states whether any individual defendant is in military service, or a statement that the plaintiff is unable to determine whether the individual defendant is in military service.

required for this motion. The motion is docketed in CM/ECF using the following docket event:

Adversary > Other > Request For Clerk's Entry of Default

Once the Clerk's Office staff are satisfied that Entry of Default is appropriate, they will complete the draft Clerk's Entry of Default form that is attached to the motion (if the draft is in acceptable form) and will docket it to the case.

Step 2 - Motion For Default Judgment - Fed R. Civ. P. 55(b)

A Motion for Default Judgment can be filed after the Clerk has entered the default. Counsel will be responsible for uploading an appropriate Order Granting Default Judgment for the Court's approval (by request of the Wichita Judges, Default Judgment Orders will not be Clerk signed).

Movant generally need not serve this motion on the defaulting defendant. One exception to not having to notice is if an attorney (or defendant, pro se) enters an appearance for a defendant, but then decides not to file an answer. In that case, plaintiff is required to serve a copy of the Motion for Default Judgment on the attorney (or pro se defendant) who appeared, and wait seven (7) days for a response. If no response is received, the movant may upload the proposed order.

The Motion for Default Judgment is docketed in CM/ECF using the following docket event:

Adversary > Motions > Default Judgment

The proposed Order Granting Default Judgment is uploaded in CM/ECF using the following docket event:

Adversary > Order Upload > Single Order Upload

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE:

Case No.

_____ Debtor(s).

Plaintiff,

v.

Adversary Case No.

_____ Defendant(s).

CLERK'S ENTRY OF DEFAULT

This matter comes before the Court on the plaintiff's motion (Dkt. ___) for entry of default by the Clerk of the Bankruptcy Court pursuant to Fed. R. Civ. P. 55(a) as made applicable to bankruptcy adversary proceedings by Fed. R. Bankr. P. 7055.

The plaintiff's motion and supporting affidavit state that proper service of the summons and complaint have been made upon defendant _____, that the defendant against whom default is requested is not a minor or incompetent person, that default judgment is not prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. App. § 521, that said defendant has failed to plead or otherwise defend, and the time for doing so has expired. Therefore, defendant _____ is in default.

Date: _____.

DAVID D. ZIMMERMAN, Clerk
United States Bankruptcy Court

Deputy Clerk