

JUDGE SOMERS
GUIDELINES FOR OBTAINING A DEFAULT JUDGMENT
Revised June 11, 2019

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

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

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 Request 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 or otherwise defend within the time required (generally 30 days for all defendants; 35 days for the United States and its agencies). The Request 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 Request for Clerk's Entry of Default will include as a separate attachment the affidavit or unsworn declaration. A Certificate of Service is not required for this request. The request 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 reviews the request and determines that it meets the guidelines set forth above, the **Clerk's Entry of Default** will be issued.

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

Counsel are requested to use the procedures of Fed. R. Civ. P. 55(b)(2) in all cases, including those where the conditions of Fed. R. Civ. P. 55(b)(1) are satisfied.

A Motion for Default Judgment can be filed after the Clerk has entered the Clerk's Entry of Default. Counsel will be responsible for uploading an appropriate Order Granting the Motion for Default Judgment for the Court's approval.

Movant generally need not serve this motion on the defaulting defendant *unless* an attorney (or defendant, pro se) enters an appearance and then fails to file an answer or other responsive pleading. 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 twenty-one (21) days for a response, pursuant to D. Kan. Rule 6.1(d)(2). 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

¹ The 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.