# JUDGE HERREN
# GUIDELINES FOR OBTAINING A DEFAULT JUDGMENT

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 Clerk's Entry of Default  - Fed. R. Civ. P. 55(a)

D. Kan. LBR 5075.1 authorizes the Clerk to sign and enter default in adversary proceedings. Entry of default is a procedural formality, and a prerequisite to the issuance of a default judgment. A request for Clerk's Entry of Default can be made after a defendant has been properly served with a summons and the complaint, and has failed to answer or file a responsive pleading within the time required by Fed. R. Bankr. P. 7012(a). The Request for Clerk's Entry of Default must be submitted 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 any 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 that 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]

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[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.

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 made and 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 (for entry of default) and determines it meets the guidelines set forth in Step 1, the **Clerk's Entry of Default** will be entered.

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

A Motion for Default Judgment may be filed requesting the Court to enter a default judgment, after the Clerk's Entry of Default has been entered. Counsel will be responsible for uploading an appropriate Order Granting Default Judgment for the Court's approval. The Court may schedule and conduct a hearing on the Motion under Fed. R. Civ. P. 55(b)(2) before entering default judgment.

Movant generally need not serve the Motion for Default Judgment on the defaulting defendant *unless* an attorney (or defendant, pro se) has appeared in the case. In that instance, movant is required to serve a copy of the Motion for Default Judgment on the attorney (or pro se defendant) who appeared. Movant must file a Notice of Hearing with Objection Deadline (setting the motion to a regular monthly motion docket) and Certificate of Service, allowing twenty-one (21) days' notice for a response or objection to the motion pursuant to D. Kan. Rule 6.1(d)(2). If no response or objection is received, the movant may upload the proposed order. Alternatively, movant may file a Notice of Hearing (setting the motion directly to hearing on a regular monthly motion docket) and Certificate of Service, giving the defendant and/or defendant's attorney who appeared at least seven (7) days' notice prior to the scheduled hearing as required by Fed. R. Civ. P. 55(b)(2).

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**