

**GUIDELINES FOR OBTAINING A DEFAULT JUDGMENT**  
**Wichita Cases - 4/30/14; Revised 7/20/18; Revised 7/30/18**

**Step 1 - Request 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 request for Entry of Default by Clerk can be made 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 request for Entry of Default by Clerk 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 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?<sup>1</sup>

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

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<sup>1</sup>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.

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 docket the Clerk's Entry of Default which creates a system-generated form for issuance upon the appropriate parties.

**Adversary > Court Events > Clerk's Entry of Default**

**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 fails 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**