

Default—Adversary Proceedings

Docketing Event

Adversary > Motions/Applications > Motion for Entry of Default

Adversary > Motions/Applications > Motion for Default Judgment

Negative Notice: N/A

Accompanying Orders: Yes. The Court will prepare the order on Motions for Entry of Default. The Movant will prepare the order on Motions for Default Judgment and Motions for Default Final Judgment.

Code and Rule References:

[Fed. R. Bankr. P. 7004](#)

[Fed. R. Bankr. P. 7055](#)

[Fed. R. Civ. P. 4](#)

[Fed. R. Civ. P. 54](#)

[Fed. R. Civ. P. 55](#)

[Local Rule 7001-1](#)

[Local Rule 7055-2](#)

[Local Rule 9013-1](#)

Fee: N/A

Applicable Chapters: 7, 11, 12, 13

Implemented: 2/9/16

Last Revision: 1/23/2018 9:55:57 AM

Description

When a defendant, counter-defendant, or cross-defendant in an adversary proceeding fails to timely respond to a complaint, counterclaim, or cross claim, they are in default. The plaintiff, counter-plaintiff, or cross-plaintiff may file a request to have the Clerk enter an Entry of Default and may file a Motion for Default Judgment.

Motion for Clerk's Entry of Default:

The process for reviewing and entering a Clerk's Entry of Default is a clerk's office function based entirely on the papers. A summons is issued when a complaint is filed. The summons notifies the defendant(s) that a response is required within a certain time limit. The summons states: "If you fail to respond to this summons, your failure will be deemed to be your consent to entry of a judgment by the bankruptcy court and judgment by default may be taken against you for the relief demanded in the complaint."

A motion for entry of default is filed when the defendant, counter-defendant, or cross-defendant has failed to timely respond. A party may request a default against one or more defendants in a multi-defendant complaint.

- ❖ **Note:** The party can request a default without requesting a judgment by default. This is often seen if there are multiple defendants. The plaintiff may wish to receive a default as soon as possible on one defendant while

pursuing action against the other defendants. The plaintiff later may request one judgment against all defendants.

Motion for Judgment by Default:

After the Clerk's Entry of Default, a Motion for Default Judgment may be filed and must meet specific requirements.

Filing Checklist: Motion for Entry of Default

1. Review the motion to determine if it:
 - Is signed;
 - Is properly served and includes a proper certificate of service;
 - Attorney's name and address are complete and consistent with the filing attorney's name and address in CM/ECF;
 - Includes an affidavit of non-military service (if default is requested against an individual);
 - Includes the following statements:
 - That service was duly effectuated in compliance with the Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr. P.");
 - That no extension of time was sought or obtained by the defendant;
 - That the defendant failed to file a responsive pleading or motion within the time specified; and
 - That the movant seeks an entry of default.
2. Review the docket to determine if the summons, the complaint, and a copy of Local Rule 7001-1 were served.
3. Review the docket to determine that service of the summons was timely.
 - Service must occur within seven days if within the United States.
 - ❖ **Note:** The seven-day requirement does not apply to service in a foreign country. Service requirements of parties in a foreign country are governed by Federal Rule of Civil Procedure 4(f).
4. Review service of the summons to determine that service is proper under Fed. R. Bankr. P. 7004.
5. Review the docket for the filing of an answer or other responsive pleading.
 - If no responsive pleading was filed, determine if the due date has expired.
 - ❖ **Note:** The time for filing an answer or responsive pleading is 30 days from the summons service date. For governmental parties, the time is 35 days. These times may be extended by an order on motion of a party. The due date will be reflected in the Summons Issued entry.

Filing Checklist: Motion for Default Judgment

1. Review the motion to determine if it:
 - Is signed;
 - Is properly served under Fed. R. Bankr. P. 7004 and includes a proper certificate of service;
 - Attorney's name and address are complete and consistent with the filing attorney's name and address in CM/ECF;

- Includes an attached affidavit in support of the allegations.
 - 2. Verify that a Clerk's Entry of Default was issued.
 - 3. Submit two orders:
 - One order that grants the motion; and
 - A default judgment.
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Forms

[Motion for Entry of Default by Clerk](#)

[Motion for Default Judgment](#)

[Affidavit in Support of Motion for Entry of Judgment by Default](#)

[Order Granting Motion for Final Judgment](#)

[Final Default Judgment](#)