

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. Civ. P. 55](#)

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

[Local Rule 7001-1](#)

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

[Local Rule 7055-2](#)

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

[Local Rule 9013-3](#)

Fee: N/A

Applicable Chapters: 7, 11, 12, 13

Implemented: 2/9/16

Last Revision: 10/15/2020 12:35:03 PM

Description

When a defendant in an adversary proceeding fails to timely respond to a complaint, counterclaim, or cross claim, they are in default. The plaintiff may file no later than 60 days after the complaint is filed, a Motion for Entry of Default and a Motion for Default Judgment. If the plaintiff requires additional time to file the motions, plaintiff must file a motion for extension of time.

Motion for Clerk's Entry of Default:

The process for reviewing and entering a 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 that a response is required within a certain time limit. If a defendant does not timely respond to the complaint, the plaintiff may request entry of a default against the defendant. A plaintiff may request a default against one or more defendants in a multi-defendant complaint.

Motion for Judgment by Default:

After entry of a Default, plaintiff may then file a Motion for Default Judgment. Motions for Default Judgment must include a sworn statement supporting the allegations of the complaint, cross-complaint, or third-party complaint. Movant must attach a proposed order granting the Motion for Default Judgment **and** proposed judgment.

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 a sworn statement 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 sworn statement 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.

Forms

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

[Motion for Default Judgment](#)

[Sworn Statement in Support Motion for Default Judgment](#)

[Order Granting Motion for Final Judgment](#)

[Final Default Judgment](#)