

Clerk's Entry of Default

On occasion, a party may request that the Clerk enter a default against a defendant. An Entry of Default is not required and **does not take the place of a default judgment**. The Clerk is permitted to enter a default only upon being presented with an affidavit or affirmation setting forth the facts. These facts should include:

1. Date of issuance of the summons;
2. Statement of whether the court fixed a deadline for serving an answer of motion, or whether the 30 (or 35) day time limit applies;
3. Date of service of the complaint;
4. Date of filing of an affidavit of service;
5. Statement that no answer or motion has been received with the time limit fixed by the court or by Federal Rule of Bankruptcy Procedure 7012(a);

The affidavit or affirmation should be filed with the court and must have a completed proposed Entry Of Default (Form B 2600) attached. The affidavit and proposed Entry of Default should be filed in CM/ECF using the *Request for Entry of Default and Affidavit* event which is available in the "Other" category of Adversary events.

NOTE: Failure to submit a proposed Entry of Default and an affidavit, which contains all the information listed above, will prevent the Clerk's office from completing an Entry of Default.

Applicable Law and Rules

1. Fed. R. Bankr. P. 7012(a) provides that the defendant in an adversary proceeding must serve an answer within 30 days of the issuance of the summons by the court, unless the court prescribes a different time. If the United States or an officer or agency of the United States is the defendant, an answer must be served within 35 days of the issuance of the summons. (Fed. R. Bankr. P. 9006 provides that if the last day is a Saturday, Sunday or legal holiday, the deadline is extended to the next business day following the Saturday, Sunday, or legal holiday.)
2. Rule 7012(b) incorporates by reference Fed. R. Civ. P. 12(b) – (h). These provisions permit the defendant to serve several types of motions, including a motion to dismiss the complaint, a motion for a more definite statement, and a motion to strike, in lieu of serving an answer.

3. Although Rule 7012(a) requires that the answer or motion be served, Fed. R. Civ. P. 5(d), incorporating Fed. R. Bankr. P. 7005, requires that all papers which are to be served also “shall be filed with the court within a reasonable time after service.” (emphasis added).
4. If the defendant serves neither an answer nor one of the motions described in Rule 12(b) – (h) within the time fixed by Rule 7012(a), the defendant is in default.
5. Fed. R. Bankr. P. 7055 incorporates by reference Fed. R. Civ. P. 55. This Rule provides that when the defendant is in default, the plaintiff may seek to have the clerk enter the default on the court docket. This entry of default is accomplished by the execution of form 2600.
6. The court may set aside an entry of default for good cause shown. Fed. R. Civ. P. 55(c), incorporating Fed. R. Bankr. P. 7055.

[PDF fillable Entry of Default Form B 2600](#)