

# Request for Default / Default Judgment

- A request for default is filed in an adversary case and is filed by the plaintiff against the defendant when the defendant has failed to answer the complaint, plead or defend. The Clerk can grant the request certifying that the defendant has failed to answer, plead or defend.
- A request for default judgment is filed in an adversary case by the plaintiff against the defendant. An entry of default must be entered prior to a default judgment being entered. The amount requested in the judgment must be a sum certain to each defendant. Pursuant to Federal Rule of Civil Procedures 55, default judgments can be entered by the Clerk if the request is a sum certain. If the amount requested is not a sum certain the plaintiff must apply via motion and the judgment will be entered by order of the Judge.

## **Request for Default**

A request for default can be filed at the expiration of the answering period (30 days from issuance of summons). The request must be filed and accompanied by the following documents:

1. Request must include ALL information in the caption EXACTLY as it appears on the complaint.
2. Affidavit signed by a notary that states that service was made on the defendant, that no answer was received and that the defendant is not an infant/juvenile, incompetent, or in the military.

Note: Pursuant to 28 U.S.C. Section 1746 – The attached statement does not need to be signed by a notary, provided it contains the following language: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date) (Signature)”.

3. Certificate of service showing service of the request for default.

## **Request for Default Judgment**

A request for default judgment can be filed after the Clerk's Entry of Default is filed or it can be filed simultaneously with the Request for Default. ***(the request for default judgment cannot be entered by the Clerk until after the default request is approved and only if the judgment amount is a sum certain for each defendant)*** The request must be filed and accompanied by the following documents:

1. Request must include ALL information in the caption EXACTLY as it appears on the complaint.
2. Certificate of Service for the Request for Default Judgment
3. A proposed judgment by default with an amount that is a sum certain per defendant.

Note: Pursuant to 28 U.S.C. 1961 the Clerk may grant post judgment interest ONLY if requested by the party. if the default judgment is not a sum certain or includes pre-judgment interest or expenses the Clerk cannot enter the judgment. The plaintiff will need to file by motion and the judgment will need to be entered by order of the court.