

Default and Default Judgment Practices in the District Courts

Prepared for the Judicial Conference Advisory Committee on Civil Rules

Emery G. Lee III and Jason A. Cantone

March 2024

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. While the Center regards the content as responsible and valuable, this publication does not reflect policy or recommendations of the Board of the Federal Judicial Center.

This report was produced at U.S. taxpayer expense.

Contents

Executive Summary	ii
Background	1
Approach.....	3
Rule 55(a) Defaults	3
Rule 55(b)(1) Default Judgments.....	6
Active Auditing of Potential Defaults and Default Judgments	9
APPENDIX A: Drafting of Rule 55.....	11
APPENDIX B: Court Statistics on Civil Cases Terminated by Default Judgment	23
APPENDIX C: Local Rules by Circuit and District	26

Executive Summary

The Advisory Committee on Civil Rules (Committee) requested the Federal Judicial Center (Center) to study actual practices with respect to Federal Rule of Civil Procedure 55, focusing on how many districts' practices differ from those outlined in the rule with respect to allocation of authority to clerks of court to enter defaults and default judgments.¹ Center researchers reviewed each district court's website (including procedures on the intranet sites when access was available), local rules, and recently entered default judgments. After reviewing these materials, Center researchers contacted court staff to inquire about district practices.

Rule 55(a) entry of defaults. Most districts follow the national rule: the clerk of court enters the default, with or without consultation between the clerk's office and chambers. In four districts, district judges enter defaults in the ordinary run of cases.

Rule 55(b)(1) entry of default judgments for a sum certain. District court practice varies with respect to this rule. First, Rule 55(b)(1) motions for default judgment are less common in some districts; several districts reported that "sum certain" motions are rarely filed. Second, in 34 districts, all motions for default judgment, including Rule 55(b)(1) motions, are referred to the assigned judge for determination. In another 18 districts, the clerk's office almost never enters a default judgment, even though there is no local rule or policy against doing so in sum certain cases.

Monitoring deadlines. In general, clerk's offices do not monitor answer deadlines in civil cases in a centralized, automated fashion. Courtroom deputies or law clerks often monitor deadlines in chambers, and deadlines can be monitored using reporting features in CM/ECF by chambers staff.

1. Minutes, Advisory Committee on Civil Rules, October 5, 2021 [hereinafter October 2021 Minutes], at 24, https://www.uscourts.gov/sites/default/files/final_-_minutes_civil_rules_committee_fall_2021_0.pdf.

Background

Rule 55 provides for a confusing two-step process for entry of defaults and default judgments. Before entry of a default judgment, a default must typically be entered. Rule 55(a) provides: “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Rule 55(b)(1) in turn provides:

If the plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff’s request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.²

Before entering a default, the clerk (or the clerk’s designee) must review both the affidavit submitted by the plaintiff and the docket to determine that the requirements for entering a default have been satisfied. Although this is usually routine, in some cases the clerk may be required to exercise some judgment (discretion) in deciding whether a nonanswering party is in default. The Committee reporter suggested that “a failure ‘to otherwise defend’ may not be apparent, since such events as pre-answer settlement negotiations or a request for an extension of time to answer often do not appear in the record.”³ Furthermore, questions may arise regarding service of process.

Cases sometimes refer to the clerk’s entry of default judgment under Rule 55(b)(1) as “automatic,”⁴ in line with the perception that duties of the clerks of court are primarily

2. In addition, Fed. R. Civ. P. 77(c)(2)(B) states that “the clerk may enter a default,” and Fed. R. Civ. P. 77(c)(2)(C) that “the clerk may enter a default judgment under Rule 55(b)(1).”

3. Agenda Book, Advisory Committee on Civil Rules, Mar. 29, 2022, at 317. It is not absolutely clear that pre-answer settlement negotiations are covered by the “otherwise defend” in Rule 55(a):

[W]hen a defendant makes a strategic choice to forego the filing of a timely response in an attempt to avoid litigation expense—and even if that choice is made in conjunction with an attempt to effect a settlement—it is well within the discretion of a district court to deem the default willful and refuse to set it aside.

Martie v. M&M Bedding, LLC, 528 F. Supp. 3d 1252, 1254 (M.D. Fla. 2021) (magistrate judge’s report and recommendation on motion to set aside default). *See also* *Annon Consulting, Inc. v. BioNitrogen Holdings Corp.*, 650 F. App’x 729, 732 (11th Cir. 2016) (holding that the district court did not abuse its discretion in granting default judgment when defendant’s “failure to file an answer was due to litigation strategy: to effect a settlement and avoid proceeding with the litigation”).

Even if settlement negotiations are ongoing, a party can still file, on the record, for an extension of time to answer. The magistrate judge in *Martie* viewed this as a matter of respect: “If M&M Bedding had an appropriate respect for the courts and legal process, it would have paid appropriate heed to the summons and timely filed either a response to the complaint or a motion for more time to respond.” 528 F. Supp. 3d at 1256. The footnote further elaborated on the appropriate procedures in such circumstances:

When pre-answer settlement negotiations appear likely to resolve the matter, defendants who have not appeared but are nevertheless mindful of their obligations to the Court request that plaintiff counsel file a joint motion to extend the answer deadline. But M&M Bedding held fast to its decision to act as if the deadline in the summons did not exist.

Id. at n.3.

4. *See, e.g.*, *Graham v. Forever Young Oregon, LLC*, No. 03:13-CV-01962-HU, 2014 WL 3512498, at *2 (D. Or. July 14, 2014) (“Because the court must conduct further investigation in order to determine the amount of damages, the court finds Graham has not met the requirements for automatic entry of default judgment by the Clerk of Court pursuant to Rule 55(b)(1).”); *Branch Banking & Tr. Co. v. PJ Servs. Catastrophe Sols., Inc.*, No. 1:12-CV-04351-AT, 2013 WL 12209837, at *1 (N.D. Ga. June 26, 2013) (“In addition, although Rule 55(b)(1) also allows for automatic

nondiscretionary,⁵ ministerial duties such as the keeping of records.⁶ But the practice of investing “a chief scribe, or secretary . . . with . . . judicial powers” is an old one, the historical source of equity courts in the Middle Ages.⁷ There is little question that, at times, clerks of court perform discretionary acts, and the clerks’ responsibilities under Rule 55 can straddle the line.⁸ The Committee’s reporter suggested that entering a default “is not purely a ministerial act.”⁹ Moreover, the clerk’s entering of a default judgment pursuant to Rule 55(b)(1) is less ministerial than the entry of default, as it may call for greater “responsibilities to inquire” into the facts of the case and to determine the amount of damages.¹⁰

As might be expected whenever discretion is involved, Rule 55 practices vary a great deal among district courts. The Committee’s questions regarding Rule 55 stemmed from the observation that some courts’ practices diverge from the letter of the rule. For example, as discussed at a Committee meeting, in the Northern District of Illinois, the clerk’s office does not typically enter defaults; instead, this is done only by the assigned judge. The same is true of Rule 55(b)(1) default judgments for a sum certain.¹¹

On a more fundamental level, the Committee reporter asked, “why was the rule written as it is?”¹² To help answer this question, Appendix A to this report excerpts the transcript of the Committee’s November 1935 meeting discussing a draft of what would become Rule 55, with extensive commentary on the varying practices in the states. From the excerpt, it appears that the Committee’s initial decision to authorize the clerk to enter default judgments for liquidated claims was based on existing state practices and a concern for efficiency. In terms of efficiency, then-Committee chair, former Attorney General of the United States William D. Mitchell, stated:

entry of default by the Clerk where the amount sought ‘can be made certain by computation,’ here Plaintiff failed to demonstrate such computation.”).

5. The lack of discretion is central to the definition of “ministerial”:

Of, relating to, or involving an act that involves obedience to instructions or laws instead of discretion, judgment, or skill; of, relating to, or involving a duty that is so plain in point of law and so clear in matter of fact that no element of discretion is left to the precise mode of its performance <the court clerk’s ministerial duties include recording judgments on the docket>.

Black’s Law Dictionary 1192 (11th ed. 2019).

6. *Cf. Hobby v. United States*, 468 U.S. 339, 344–45 (1984) (grand jury foreperson’s duties, including keeping records of grand jury proceedings, are ministerial). *See also Lucia v. SEC*, 138 S. Ct. 2044, 2057 (2018) (Thomas, J., concurring) (“The Founders considered individuals to be officers even if they performed only ministerial statutory duties—including recordkeepers, clerks, and tidewaiters (individuals who watched goods land at a customhouse).”). The words “clerical” and “clerk” share the same root.

7. Joseph Story, *Commentaries on Equity Jurisprudence, as Administered in England and America*, Vol. I, at 40 (1836, Arno Press 1972).

8. This seems to arise most often in the absolute immunity context, typically in suits against clerks in the state courts. *See Lowe v. Letsinger*, 772 F.2d 308, 312–13 (7th Cir. 1985) (“Courts have held that a court clerk enjoys absolute immunity in rare instances where he is performing nonroutine, discretionary acts akin to those performed by judges . . . such as setting bail” (citing *Williams v. Wood*, 612 F.2d 982, 985 (5th Cir. 1980); *Kane v. Yung Won Han*, 550 F. Supp. 120, 122–23 (E.D.N.Y. 1982); *Denman v. Leedy*, 479 F.2d 1097, 1098 (6th Cir. 1973))).

9. “Entering a default,” in the words of the Committee reporter, “is not purely a ministerial act.” *See* October 2021 Minutes, *supra* note 1, at 24.

10. *See id.* at 24.

11. *See id.* at 24–25 (“Judge Dow noted that in his court a judge enters the default as well as a default judgment.”).

12. *Id.* at 23. For a general discussion of the history of Rule 55, see Charles Alan Wright et al., *Federal Practice & Procedure Civ. § 2681* (2023).

Let us look at it from a practical standpoint. In the administration of justice, the courts are overworked. Now, we have two systems to choose from in the case of default on a liquidated sum under contract. Either you can take five or ten minutes of the court's time to make an order or under the other system, you would file an affidavit with the clerk for a liquidated claim where the demand is a sum certain and save five or ten minutes of the judge's time. Now, that is the practice. My experience has been that where you have this Code system in a liquidated claim in an action under contract for a sum certain and the clerk can enter judgment on an affidavit and no answer is filed. It works perfectly and saves five or ten minutes of the judge's time.

This sentiment was echoed by then-Committee member (another former Attorney General of the United States) George M. Wickersham: “Yes, there is no use using the time of the court. He does not use any more judgment in those cases than the clerk; and the defendant retains a remedy. He can make an application to the court to reopen the judgment.”

Appendix B to this report summarizes court data on default judgments terminating civil cases for fiscal years 1988–2023. Appendix C includes districts' local rules with respect to default judgments in civil cases.

Approach

Center researchers reviewed each district court's website (including procedures on the intranet sites when access was available), local rules, and default judgments, which were identified using the Civil Integrated Data Base (IDB). In addition, Center researchers reviewed the Administrative Office's District Clerk's Manual, a nonpublic resource that includes instructions for entry of defaults and default judgments. This report omits information drawn exclusively from nonpublic materials; however, members of the Committee may be able to access these materials, including the District Clerk's Manual, on JNet.

After reviewing these materials, Center researchers contacted court staff from every district by email to inquire about district practices; in most cases, the initial communication included the researchers' initial assessment of district practices, given the local rules and procedures as well as recent cases in which default judgments had been entered. Center researchers generally reached out to clerks of court or chief deputy clerks, but in a few cases, researchers contacted judges or court staff with whom they had previously worked. Most of the communications were conducted by email, but telephone interviews were conducted with some court staff. If initial inquiries were unsuccessful, follow-up emails were sent at least once to every district. Responses were received from 88 districts.

Rule 55(a) Defaults

Rule 55(a) specifies that the defaulting party's failure to “plead or otherwise defend” must be “shown by affidavit or otherwise.” This showing is almost always accomplished by an affidavit stating the grounds for the entry of default. For example, the affidavit form used in the Eastern District of Michigan requires the affiant to attest to the date and form of service, that the defaulting party has not pleaded or otherwise defended pursuant to Rule 12, and that the defaulting party is

not a minor, incompetent person, or member of the armed forces.¹³ These criteria follow those outlined in the District Clerk’s Manual.

In general, the clerk or clerk’s designee reviews the application and accompanying affidavit to ensure that the defaulting party was properly served, that the time to plead has passed, and that the defaulting party has not pleaded or otherwise defended. In some districts, instructions specify that the application should be forwarded to the assigned judge if there are questions regarding whether service of process was proper or whether the defendant in question has appeared in the case. The instructions related to determining proper service are more detailed in some districts than in others.

Many issues may arise in the review of an application for default. For example, extensions of time to file a responsive pleading may create some uncertainty regarding whether a particular defendant is in default. In at least one district, the instructions specify that, in the situation when an extension was granted but has since elapsed, the defendant has not defended the action, and in another district the instructions require the clerk’s office to check whether a motion for extension of time to answer has been filed. The affidavit found in the attorney handbook for the Western District of Pennsylvania (a public document), for example, specifically addresses whether the defendant’s time to answer or otherwise plead has been extended.¹⁴ The Central District of California clerk’s office uses a Notice of Deficiency form for both defaults and default judgments, and sets out more extensive reasons for why “[t]he Clerk cannot enter the requested Default”:

- No declaration as required by Fed. R. Civ. P. 55(a)
- No proof of service/waiver of service on file
- The name of the person served does not exactly match the person named in complaint
- Proof of Service is lacking required information
- Waiver of Service lacking the signature of the sender and/or the person acknowledging receipt
- Time to respond has not expired
- Answer and/or Motion for Summary Judgment and/or Motion to Dismiss on file
- Request for Entry of Default has been forwarded to the assigned judge
- Party dismissed from action
- Case terminated¹⁵

Clerks of court enter Rule 55(a) defaults in the overwhelming majority of districts, at least in routine civil cases, without a district judge’s order. Although there are circumstances in which

13. Eastern District of Michigan, Request for Clerk’s Entry of Default, https://www.mied.uscourts.gov/PDFFiles/Req_ClerksEntryDefault_PDF.pdf.

14. Western District of Pennsylvania, Attorney Handbook, at Appendix I. <https://www.pawd.uscourts.gov/sites/pawd/files/ATTORNYHANDBOOK.pdf>.

15. *E.g.*, Notice of Deficiency—Default/Default Judgment, LA Alliance for Human Rights v. City of Los Angeles, No. 2:20-cv-02291-DOC-KES (C.D. Cal. May 27, 2021) (doc. no. 322), <https://www.cacd.uscourts.gov/deficiency-re-notice-default-and-app-entry-default-judgment-document-322>.

district judges may order the entry of default¹⁶ in these districts (e.g., where questions regarding the service of a foreign defendant arise), the usual policy is for default to be entered by the clerk, consistent with the wording of Rule 55(a).

The Center’s review identified three districts in which defaults are entered by district judges in the ordinary run of cases—Illinois Northern, Puerto Rico, and Texas Southern.¹⁷ However, even in these districts, the practices of individual judges vary, as some judges prefer that the clerk’s office enter defaults in routine cases. In addition, district judge-entered defaults are the norm in the Urbana Division of Illinois Central; in the district’s other divisions (Peoria and Rock Island), defaults are typically entered by a magistrate judge.¹⁸ It is also likely that individual judges in other districts reserve to themselves the entry of defaults.

Moreover, in other districts the clerk’s office typically consults with chambers before entering Rule 55(a) defaults, even when no deficiencies appear on the face of the application. In our communications with districts, about a dozen respondents offered that consultation between the clerk’s office and chambers is typical prior to entry of default. Consultation with chambers does not necessarily mean consultation with the judge; in at least one district, internal operations procedures require the courtroom deputy to check with the judge’s law clerk prior to any entry of default. It is difficult to say exactly how widespread consultation between clerk’s office and chambers is, as it probably varies by judge as well as by district or office. One district judge offered that she is cautious about entering defaults, and that, in her experience, service is often the problem. For this reason, she reviews the *motions* for default, which show up on her daily CM/ECF report.

One final point on the entry of default: courts vary in how they describe the request for an entry of default. In some courts, the request is regularly designated as a motion for entry of default on the docket, even though it may be handled by the clerk of court. However, in many courts, it is called an application for entry of default (e.g., District of Arizona). As one interviewee explained, “motions” are directed to chambers in many districts’ CM/ECF systems, so requests for entry of default, which are directed to the clerk’s office, must be assigned another event type.¹⁹ In at least two districts’ CM/ECF systems, it is possible for a plaintiff to file either an application for default,

16. To be clear, district judges possess the authority to enter defaults. As the Second Circuit explained in *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114 (2d Cir. 2011), “Although Rule 55(a) contemplates that entry of default is a ministerial step to be performed by the clerk of court, a district judge also possesses inherent power to enter a default.” *Id.* at 128 (internal citations omitted).

17. The practice of judges routinely entering defaults seems to be *very* long-standing in at least two of these districts. For Northern Illinois, we were able to find this example, from the mid-1980s: “The default was entered pursuant to [Fed. R. Civ. P.] 55(a) which authorizes the clerk of the court, and impliedly the court itself, to enter a default against a nonresponding defendant. In its May 24 order, this court set prove-up of damages for September 5, 1985. . . .” *Allen Russell Pub., Inc. v. Levy*, 109 F.R.D. 315, 316 (N.D. Ill. 1985). Similarly, the policy was already in place in 1980 in Texas Southern, according to an internal memorandum shared with the authors.

18. *See, e.g.*, Order of Default, *Hudson Ins. Co. v. Rex Express Inc.*, No. 1:22cv01019 (C.D. Ill. Aug. 5, 2022) (docket entry 32) (order of default entered by magistrate judge in Peoria division). Arguably, entry of the default by a magistrate judge is more like entry by the clerk of court than entry by the district judge. Defaults are commonly ordered by magistrate judges in other districts, such as Oregon. *See, e.g.*, Order of Default, *Smith v. Opportunity Fin., LLC*, No. 3:22-cv-00140 (D. Or. Jan. 26, 2022) (docket entry 7) (“ORDER issued by Magistrate Judge Jolie A. Russo: Granting Plaintiff’s Motion for Entry of Default as to Defendant Opportunity Financial, LLC.”).

19. *See also* S.D.N.Y. CM/ECF R. 16.1, providing instructions for filing for entry of default. https://www.nysd.uscourts.gov/sites/default/files/pdf/ecf_rules/ECF%20Rules%2020221101%20FINAL.pdf.

which is directed to the clerk's office, or a motion for default, which is directed to the judge. This difference in nomenclature regarding what to call requests for entry of default carries through into other contexts. For example, a district's local rules may exempt certain motions from a general requirement of an accompanying memorandum of law and list "application for default" as one such motion.²⁰

Rule 55(b)(1) Default Judgments

Case law applying Rule 55(b)(1) is scarce, but reflects the rule's origin in debt-collection actions (as described in Appendix A).²¹ Regarding the sum certain requirement, "a claim is not a sum certain unless there is no doubt as to the amount to which a plaintiff is entitled as a result of the defendant's default."²² "Any damages that require exercise of the Court's discretion are not sum certain."²³ Specifically, Rule 55(b)(1) applies in contract disputes in which damages are "calculated by the method of computation provided in the agreement,"²⁴ such as where the agreement provides for liquidated damages,²⁵ and in cases involving "money judgments, negotiable instruments, or similar actions where the damages sought can be determined without resort to extrinsic proof."²⁶ In general, Rule 55(b)(1) does not apply in personal injury actions,²⁷

20. See, e.g., S.D. Fla. Civ. R. 7.1, https://www.flsd.uscourts.gov/sites/flsd/files/Local_Rules_Effective_120121_FINAL.pdf#page=22.

21. See *Collex, Inc. v. Walsh*, 74 F.R.D. 443, 450 (E.D. Pa. 1977) ("[T]he cases discussing the sum certain requirements of Rule 55 are few and far between and rather exiguous in their reasoning"); see also *Byrd v. Keene Corp.*, 104 F.R.D. 10, 12 (E.D. Pa. 1984) ("Relatively few cases have raised the question of what qualifies as a 'sum certain' for the purposes of Rule 55(b)."). These may be older cases, but the proposition for which they are cited still stands.

22. *KPS & Assocs., Inc. v. Designs By FMC, Inc.*, 318 F.3d 1, 19 (1st Cir. 2003).

23. *Genus Lifesciences Inc. v. Tapasaya Eng'g Works Pvt. Ltd.*, No. 20-3865, 2021 WL 5631771 (E.D. Pa. Nov. 29, 2021), at *2. Interestingly, computation is not discretionary, so prejudgment interest may be an available remedy in some Rule 55(b)(1) default judgments, as "a sum that can be made certain by computation." In diversity actions, the availability of prejudgment interest depends on state law, however, because courts have uniformly held the remedy to be substantive rather than procedural. See Dustin K. Palmer, Comment, *Should Prejudgment Interest Be a Matter of Procedural or Substantive Law in Choice-of-Law Disputes?*, 69 U. Chi. L. Rev. 705, 706 (2002) ("Federal courts . . . unanimously construe prejudgment interest rules as substantive under *Erie* . . . because of their outcome-determinative nature. Thus, federal courts follow the characterizations of the states in which they sit.") (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)). If, then, under state law the award of prejudgment interest is left to the discretion of the judge, applying equitable principles, it is not available in Rule 55(b)(1) default judgments entered by the clerk.

24. *Collex*, 74 F.R.D. at 451.

25. *Id.* at 450.

26. *Interstate Food Processing Corp. v. Pellerito Foods, Inc.*, 622 A.2d 1189, 1193 (Me. 1993). The First Circuit noted the "paucity" of case law applying Rule 55(b)(1) and thus relied in its analysis on "states whose rules of procedure mirror the Federal Rules," *KPS & Assocs.*, 318 F.3d at 19. See also *HB Prods., Inc. v. Falzan*, No. 19-00487, 2020 WL 3504427, at *3 (D. Haw., June 29, 2020) ("where extrinsic evidence is required, Rule 55(b)(1) does not apply"). See also *Banilla Games, Inc. v. AKS Va., LLC*, No. 3:22CV131, 2022 WL 16747288, at *1 (E.D. Va. Nov. 7, 2022) ("Generally, the principal and interest on a loan are sums certain within the meaning of Rule 55(b)(1).").

27. See *Byrd*, 104 F.R.D. at 12.

or when the plaintiff seeks reasonable attorney fees,²⁸ or statutory²⁹ or punitive damages.³⁰ As a result, litigants may move for Rule 55(b)(1) default judgment in cases when Rule 55(b)(2) would have been appropriate—i.e., when the claim is not for a sum certain.

Motions for default judgment pursuant to Rule 55(b)(1) appear to be much less common than motions pursuant to Rule 55(b)(2). In our canvas, 17 respondents, some in relatively large districts, offered that Rule 55(b)(1) motions are rarely filed in their districts. The scarcity of Rule 55(b)(1) motions in these districts creates uncertainty as to whether they follow the national rule—with the clerk’s office independently entering default judgments for sums certain—or treat all motions for default judgment as Rule 55(b)(2) motions, directed to the assigned judge. Indeed, in our canvas we found that, in many districts, the clerk’s office rarely, if ever, enters default judgments without the assigned judge’s approval, even when the district does not have a local rule or policy against the clerk’s office doing so. Overall, we found that 36 districts follow the national rule, 18 districts follow the national rule in theory (though in practice the clerk’s office rarely, if ever, enters default judgments), and 34 districts follow the judge-centered procedure of Rule 55(b)(2) for all default judgments.

In districts in which clerks of court do not routinely handle the entry of Rule 55(b)(1) default judgments, clerk’s offices and judges both expressed some hesitation regarding this delegation of responsibility. One chief deputy clerk stressed that the clerk’s office did not have a policy against entering default judgments; if a particular judge on the court directed it to do so, when appropriate, in her cases, the clerk’s office (and its staff) would do so, though with hesitation. In another district, the clerk of court noted that, although the court had no policy against the clerk’s office entering default judgments—indeed, there were local internal operating procedures for doing so—the clerk’s office had not, in fact, been doing so, but had instead been forwarding all such motions to the assigned judges’ chambers for resolution. This kind of “drift” away from the national rule to something like a de facto treatment of all motions for default judgment as Rule 55(b)(2) motions appears to be relatively common.

Some local rules acknowledge the practice of referring Rule 55(b)(1) motions to the district judge, even when the clerk of court is authorized to enter judgments. For example, the relevant local rules for North Carolina Eastern include the following proviso: “The clerk may submit any motion for default judgment to the presiding judge for review.”³¹ Similarly, the relevant local rule in Missouri Western states: “Notwithstanding the provisions of Federal Rule of Civil Procedure 55(b)(1), the Clerk of Court may refer any request for entry of default judgment to the Court for review prior to formal entry.”³²

28. *See* *Cennox Reactive Field Servs., LLC v. Cash Cloud, Inc.*, No. 6:22-CV-03274, at *1, 2022 WL 18411315, at *1 (W.D. Mo. Dec. 28, 2022) (“Federal courts have generally recognized that to the extent a party seeks to recover ‘reasonable attorney’s fees’ as it may be entitled to do in any given case, the party’s claim is not then for a ‘sum certain’ as that term is used in Rule 55(b)(1).”). *See also* *Branded Online Inc. v. Holden LLC*, No. 15-0390, 2016 WL 8849024, at *1 (C.D. Cal. Jan. 8, 2016); *Combs v. Coal & Mineral Mgmt. Servs., Inc.*, 105 F.R.D. 472, 475 (D.D.C. 1984).

29. *See* *Butler v. Experian Info. Sols.*, No. 14-07346, 2016 WL 4699702, at *1 n.2 (E.D. Pa. Sept. 7, 2016).

30. *See* *Royal v. Lee*, No. 1:17cv261, 2018 WL 10772683, at *1 (E.D. Va. Nov. 6, 2018).

31. E.D.N.C. Civ. R. 55.1(b)(2)(F).

32. W.D. Mo. Civ. R. 55.1(b)(2).

In districts in which clerks of court routinely enter Rule 55(b)(1) default judgments, the clerk's office instructions typically require that the docket be reviewed for entry of default pursuant to Rule 55(a) prior to entry of default judgment. In general, any discrepancy between the amount claimed in the complaint and in the supporting affidavits will defeat a motion for default judgment pursuant to Rule 55(b)(1).³³ This was a point made in interviews with clerk's office staff. In one large court, for example, motions for default judgment for a sum certain are reviewed to make sure that the amount claimed in the affidavit is the same as in the complaint; the amounts must match (and the computations be provided). The clerk's office will not go beyond what is in the complaint and affidavit. If in a sum certain case there is a discrepancy, the intake person would go to her supervisor, who would then send the motion to chambers. In another large court, the clerk's office instructions make clear that the amount included in the judgment must be the same as that sought in the complaint.

It may be useful to refer again to the Notice of Deficiency form used by the Central District of California clerk's office for both defaults and default judgments. For default judgments, the form provides the following reasons why "[t]he Clerk cannot enter the requested Default Judgment":

- No Entry of Default on File
- No declaration as required by Fed. R. Civ. P. 55(b)
- The name of the person for which Default Judgment is requested does not exactly match the person named in the complaint
- Amounts requested differ or exceed the amounts prayed for in the demand for judgment in the most recently filed complaint
- A declaration establishing the amount due must accompany the plaintiff's request for default judgment
- No judgment by default may be entered by the Clerk against the United States or an incompetent person. The Request for Entry of Default has been forwarded to the assigned Judge
- Amount sought is not for a sum certain or cannot be computed to a sum certain
- Attorney Fees sought not in compliance with Local Rule 55-3
- Amount sought for costs is incorrect
- Case terminated³⁴

33. *See* KPS & Assocs., Inc. v. Designs By FMC, Inc., 318 F.3d 1, 20 (1st Cir. 2003) ("the inconsistencies and inaccuracies in the complaint and the supporting affidavit amply demonstrate [that] KPS's claims are not capable of simple mathematical computation"); *see also* United States v. Simon, No. 4:17cv27, 2017 WL 6032955, at *1 (E.D. Va. Aug. 14, 2017) ("Rule 55(b)(1) is proper when the amount owed is calculable on the face of the documents presented"). *See also* Fed. R. Civ. P. 54(c) ("A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.").

34. Notice of Deficiency, *supra* note 15.

Active Auditing of Potential Defaults and Default Judgments

The Committee’s reporter also asked “whether there are courts in which the clerk actively audits the files for cases that seem to be in default, as opposed to waiting for a request from a party.”³⁵ The short answer is yes, the capability to monitor deadlines in cases exists, but districts’ practices in this area vary a great deal. Some clerk’s offices, and some judges, are more active in monitoring deadlines than others. A few courts indicated that it was primarily plaintiffs’ responsibility to note the passing of deadlines and to file an application for default.

CM/ECF includes the functionality (the Service and Answer Report) to enable court users in either the clerk’s office or chambers to generate case activity reports to identify cases in which service (90-day report) or answer (full report) deadlines have expired. The 90-day report lists cases in which defendants have not been served within 90 days of the complaint’s filing. The full report lists cases in which defendants have not yet filed an answer. The availability of these reporting features in CM/ECF is probably the primary means by which deadlines related to defaults are monitored.

As the CM/ECF Service and Answer Report shows, dockets can be monitored for both the filing of proofs of service³⁶ or for the filing of responsive pleadings. If a plaintiff fails to serve in a timely manner, the case may be dismissed for failure to prosecute. Even if the plaintiff serves in a timely manner, the court may dismiss for failure to prosecute if the plaintiff does not apply for a default against an unresponsive defendant. Rules 55 and 41(b) are thus related in spurring plaintiffs to move their cases forward. Consider, for example, Ohio Southern L.R. 55.1 (Defaults and Default Judgments):

- (a) If a party makes proper service of a pleading seeking affirmative relief but, after the time for making a response has passed without any response having been served and filed, that party does not request the Clerk to enter a default, the Court may by written order direct the party to show cause why the claims in that pleading should not be dismissed for failure to prosecute.
- (b) If a party obtains a default but does not, within a reasonable time thereafter, file a motion for a default judgment, the Court may by written order direct the party to show cause why the claims upon which default was entered should not be dismissed for failure to prosecute.
- (c) Nothing in this Rule shall be construed to limit the Court’s power, either under Fed. R. Civ. P. 41 or otherwise, to dismiss a case or one or more claims or parties for failure to prosecute.³⁷

35. October 2021 Minutes, *supra* note 1, at 25.

36. Fed. R. Civ. P. 4(m), “Time for Service,” requires the court to dismiss an action against a defendant that has not been served with 90 days after the complaint is filed. *See, e.g.,* Newbridge Sec. Corp. v. China Recycling Energy Corp., No. 2:22-cv-551 (D. Nev. June 30, 2022) (docket entry) (“NOTICE of intent to dismiss pursuant to FRCP 4(m). The *Complaint* in this action was filed on *3/31/2022.* To date no proper proof of service has been filed”).

37. S.D. Ohio L.R. 551, <https://www.ohsd.uscourts.gov/sites/ohsd/files/Local%20Rules%20Effective%202022-02-07.pdf#page=27>. For an example of the local rule in application, see Barber v. Xpert Restoration Columbus LLC, No. 2:22-cv-910 (S.D. Ohio June 2, 2022) (docket entry) (“SHOW CAUSE ORDER: Plaintiff is ORDERED to SHOW CAUSE why his claims against [defendant] should not be dismissed for want of prosecution WITHIN FOURTEEN (14) DAYS of the date of this Order unless he has applied for an entry of default”).

Consider an illustrative docket entry from Tennessee Eastern, which orders the plaintiff to show cause why the action should not be dismissed and provides that an application for entry of default may be filed instead of a response to the show-cause order:

ORDER TO SHOW CAUSE: The Court ORDERS Plaintiff TO SHOW CAUSE on or before September 1, 2022 why this action should not be dismissed under Federal Rule of Civil Procedure 41(b) for failure to prosecute. In lieu of responding to the Order to Show Cause, Plaintiff may file an application for default. A failure to timely respond to this Order or file an application for default will result in dismissal of this action. Show Cause Response due by 9/1/2022. . . .³⁸

Or a similar docket entry from the District of New Jersey:

Our records indicate that a proof of service has been filed in this civil action and that the time for ALL defendants to Answer has expired. You are hereby directed to move this civil action, by requesting that default be entered as to ALL DEFENDANTS or submitting an extension to answer out of time, within ten (10) days from the date hereof. Should you fail to do so, this action shall be listed for dismissal³⁹

A review of docket entries in default judgment cases found that show-cause orders similar to these are relatively common. Center researchers identified such show-cause orders (or similar filings) in 53 districts, or about 56%, with respect to service of process, the application for default, or motion for default judgment.⁴⁰ Moreover, there were filings in some cases that were excluded from these counts that could, under a more expansive definition, have been included—for example, the entry of default setting a deadline for filing of motion for default judgment, or an order to a defendant to answer or be found in default (in general, only orders directed at the plaintiff were included). It is not always clear whether the clerk’s office enters such orders independently or only alerts chambers to the issue. One clerk of court indicated that, even if someone in the clerk’s office noted a missed deadline, they would notify chambers, but that it would be up to chambers staff to take any further action.

Finally, there is also an ambiguity as to what counts as “the clerk,” or the clerk’s office. One of the more common responses in our canvas of districts was that case deadlines are monitored by the courtroom deputies. Courtroom deputies are employees of the clerk’s office who typically serve as liaisons between it and the chambers to which they are assigned. It is difficult to say whether the monitoring of deadlines by courtroom deputies is performed in chambers (the courtroom deputy may work closely with chambers) or the clerk’s office (the courtroom deputy is an employee of the clerk’s office).

38. *Ballard v. Resurgent Capital Servs., LP*, No. 2:22cv65 (E.D. Tenn. Aug. 18, 2022) (docket entry 6).

39. *Cruz v. Joergens*, No. 2:22-cv-259 (D.N.J. July 19, 2022) (docket entry).

40. From a PACER review, conducted by Center researchers, of the dockets of cases filed in the first six months of 2022 and terminated by default judgments.

APPENDIX A: Drafting of Rule 55

The following excerpt is taken from pages 214–34 of the first volume of the “Proceedings of Conference of Advisory Committee Designated by the United States Supreme Court to Draft Uniform Rules of Civil Procedure for the District Courts of the United States and the Supreme Court of the District of Columbia Under the Act of Congress Providing for Such Uniform or Unified Rules,” November 14, 1935.⁴¹ The primary interlocutors are members of the original Committee:

- William D. Mitchell, Chair, former attorney general, from New York
- Wilbur H. Cherry, Professor, University of Minnesota School of Law
- Charles E. Clark, Dean, Yale School of Law, committee member and reporter
- Robert C. Dodge, attorney from Boston, Massachusetts
- George Donworth, attorney from Seattle, Washington
- Monte E. Lemann, attorney from New Orleans, Louisiana
- Scott M. Loftin, attorney from Jacksonville, Florida
- Warren Olney, attorney from San Francisco, California
- Edson R. Sunderland, Professor, University of Michigan School of Law
- George M. Wickersham, former attorney general, from New York

Also speaking is Edward H. Hammond, an attorney from the Department of Justice. The Committee is reviewing a discussion draft of the rules.

Mr. Mitchell. But now about Rule 17, as to default. I was wondering whether this rule and all of these that we are considering make sufficient provision for default in practice by providing how the plaintiff shall prove the default and get a judgment entered without action by the court.

Mr. Lemann. Does not Rule 17 contemplate a pleading? Suppose I enter my appearance.

Dean Clark. Yes. Now, on the appearance, I had a rule that covers that, that filing an answer shall be an appearance. But in the case of other parties under Rule 16, they can enter their appearance. That is quite the point that Mr. Mitchell has in mind.

Mr. Mitchell. No. You say here if a defendant does not file an answer, the plaintiff may take a default against him. And therefore, the action shall be preceded with *ex parte*. Now, my experience has been that where there is lack of answer in default, the rule under the Code statutes should provide for the entry of judgment. And in cases where the claim is liquidated, the clerk enters the judgment. If it is an unliquidated claim, there has to be machinery provided for the ascertainment

41. The transcript of these proceedings is available at <https://www.uscourts.gov/rules-policies/archives/meeting-minutes/advisory-committee-rules-civil-procedure-november-1935-vol-i>.

of the amount of damages. And I was wondering whether the drafting committee has covered these alternatives.

Mr. Donworth. Do you think the clerk under any circumstances should have the right to enter a judgment? Under our practice, it is always done by the judge. I do not know how extensive the practice is, if it exists at all, about the clerk entering the real judgment.

Mr. Mitchell. Well, when I talked about the Code states, I was referring to states like Minnesota, Iowa, and North Dakota, and perhaps a number of those states in the Northwest. And their statutes provide that a case is in default, and the summons in the first place has to be either for a liquidated sum stated in the complaint, or an unliquidated damage claim. If it is an action on a note, for instance, for a specific sum, you file your affidavit with the clerk, following the answer, and the clerk pro forma enters judgment in the amount of the claim. But when the claim is an unliquidated claim for damages, for malicious prosecution or personal injury, then the statutes provide for the assessment of damages, and the clerk can enter judgment on default if the claim is of a liquidated type like a note.

Mr. Donworth. I see the distinction, but there is [a?] little difference in the two forms of action. But in any case, the proceeding is before the judge.

Dean Clark. Well, we did not cover that. We had a little hesitation about doing it. If the committee thinks it should be covered, of course it can be very easily done along the line suggested. The equity rules do not cover it. This is in effect the equity rules taken over. The equity rules say the order shall be taken *pro confesso*. Of course, that is if it is liquidated.

Professor Southerland. In our state, it is a question of how you ascertain it.

Mr. Mitchell. When a party or his lawyer is in default, I think it ought to be like a liquidated judgment.

Mr. Morgan. It ought to be covered one way or another.

Mr. Loftin. In our state, we also have the practice of entering judgment on liquidated damages. Do they do that in Massachusetts, Mr. Dodge?

Mr. Dodge. Yes.

Mr. Lehman. That is done by the clerk, is it?

Mr. Mitchell. Yes. The set of rules prepared by the bar association of the state of Minnesota provide, and it is generally the same in the Middle West: "Default judgments: It shall be the duty of the defendant to appear and file in the clerk's office a demurrer or answer to the complaint within twenty days after the service of the summons, or such additional time is allowed by law, unless the time shall be enlarged by stipulation of counsel or by a judgment by the court for cause shown. In default thereof, judgment may be entered as of course upon the filing of an affidavit of

no answer in actions upon contract for the payment of money only, in which there is a demand for some certain. In all other actions after default, the plaintiff may apply to the court to have the relief to which he is entitled, ascertained either by the court or by a jury or reference for that purpose and when so ascertained judgment may be entered therefore.” Now, that, generally speaking, is the problem I wanted to bring up, and I could not see anything here about it.

Dean Clark. We just did not make express provision as to how the court would fix the judgment. If it is to be done by the clerk, without action by the court, a few words here may be changed: “The plaintiff may take a default against him, and the action shall be proceeded in ex parte as to him, and the clerk may enter judgment for the appropriate relief, subject to the power of the court to reopen the case as here and after provided.”

Mr. Mitchell. They would apply to the judge in every case for default. Strike. In every case for judgment by default.

Mr. Morgan. Do I understand that in Louisiana the judge merely enters an order?

Mr. Lemann. We enter a judgment and the clerk gets in on the minutes, and two days later we appear and move to confirm that default. If it is a promissory note, we offer it in open court.

Mr. Morgan. And what does the judge do?

Mr. Lehman. The judge says, “Let there be judgment.”

Mr. Morgan. He signs the judgment.

Mr. Lehman. Yes, he signs the judgment, just like he does in a contested case.

Mr. Morgan. He does not in a contested case in many states.

Mr. Wickersham. Why is not the equity rule a good one to follow? It could be adapted to common law practice. If it is an equity case, the rule says the plaintiff may take an order as of course that the bill be taken *pro confesso*; that is, in other words, the decree that the defendant is in default and that judgment shall be entered.

Mr. Lemann. Is that not signed by the judge?

Mr. Wickersham. No, that means by the clerk. Now, when the bill is taken *pro confesso*, the court may proceed to final decree and so on. There you have got the distinction. First the decree *pro confesso*, which is taken in a common law action judgment by default, then, if there’s anything to be shown in the way of damages, that proceeds ex parte and the judge enters the final judgment.

Dean Clark. Yes, that is what follows. The only difference would be to put in the expression. We could have it as I have indicated and after the, “the action shall be proceeded in ex parte as to him and,” then put in this expression “and the court may proceed to final judgment.”

Mr. Mitchell. Well, under that rule, there is a question in my mind as how you will get judgment. Will you have to go to the court and get an order or get a judgment as a matter of form from the clerk?

Mr. Donworth. Under our practice, even on a promissory note, the twenty days have expired and you go into court one morning and the judge says, are there any motions? And you say, yes, I have an action in which the defendant is in default. It is always with the judge, but as I say, the other method is all right. We have followed the same practice in unliquidated cases as well as liquidated cases, except that the judge will require proof of an unliquidated claim and on a liquidated one, he would say, what is this about? And you would say a promissory note and he would give judgment.

Mr. Mitchell. I think the other raises the question as to who will settle what is to be done.

Mr. Lemann. In some cases it is done one way and in other places it is done in other ways.

Mr. Mitchell. That is what I am getting at.

Mr. Lemann. The usual rule may be for the clerk to do it and I can see where it would be objectionable to put it on the judge and perhaps we might compromise and fix it so that the clerk could enter what corresponds to *pro confesso* or preliminary default.

Mr. Wickersham. Well, if there is a default and there is no question of unliquidated damages and the action is on a promissory note, for example, why should not the order on that be entered by the clerk? For example, in Pennsylvania they have a practice by which a man who borrows \$500 and gives a promissory note, what we call a shirttail note, there is a provision that in the event of failure to pay, the maker of the note constitutes any attorney in the state as an attorney for the purpose of entering judgment against him, so that when that note becomes due, if it is not paid on presentation, any lawyer who is the holder of the note goes over to the court and presents the form, and the clerk signs and stamps it, and that is the judgment.

Mr. Lemann. Now is there to be a distinction in law cases and equity cases? In our state we have a preliminary judgment by default *pro confesso* and a final judgment. Now in law actions generally under the Code you do not have that.

Mr. Loftin. not where it is a liquidated sum under contract; that could not be equity.

Mr. Lemann. I understand that. Now so far as it is a tort action and there is a default—in case of personal injuries where the person was run over by an automobile, what happens?

Mr. Loftin. There would be no preliminary judgment.

Mr. Lemann. You would not get your judgment right off.

Mr. Lofton. That is it.

Mr. Lemann. Whereas, under our statute you would have a period of grace to come in and defend, except that equity allows a large period of grace and we allow a small one. Now, it seems to me that these uniform rules are intended to reconcile these differences; that is the first thing to decide.

Mr. Loftin. What good does that period of grace do?

Mr. Lemann. For instance, if you have a default taken, you had better go down and do something about it.

Mr. Loftin. In our state, you cannot enter judgment by default unless you have a notice. But in our state, the defendant never answered until you got a judgment against him. And then if he did not answer and the court passed a rule that they could put in a default judgment—and the legislature repealed that rule the next term, you see, it is just another reason for delay. I think interlocutory judgments are just a stench.

Mr. Mitchell. Let us look at it from a practical standpoint. In the administration of justice, the courts are overworked. Now, we have two systems to choose from in the case of default on a liquidated sum under contract. Either you can take five or ten minutes of the court's time to make an order or under the other system, you would file an affidavit with the clerk for a liquidated claim where the demand is a sum certain and save five or 10 minutes of the judge's time. Now, that is the practice. My experience has been that where you have this Code system in a liquidated claim in an action under contract for a sum certain and the clerk can enter judgment on an affidavit and no answer is filed. It works perfectly and saves five or 10 minutes of the judge's time.

Mr. Lemann. What would you do with unliquidated claims?

Mr. Mitchell. In unliquidated claims, you file an action and by court action, get the assessment of damages.

Mr. Lemann. You would have no period of grace.

Mr. Mitchell. No.

Mr. Lemann. Then what do you do with days of grace and equity if you are going to have but one system? I suppose that goes out.

Mr. Mitchell. Yes, that goes out. You could file an affidavit that no answer had been filed strike has been filed, and it shows a default, and the court goes on and has summary hearing to see whether you were entitled to the relief sought.

Mr. Lemann. But here you have a final judgment because you get that judgment right off the bat. Is that right?

Mr. Mitchell. No, there have been two decrees.

Dean Clark. I think there are two different questions that need that need not necessarily be taken up at one time. One is the question of the affidavit to be used with the clerk. The other is to use stamps, even if the clerk does it. Now, under the question of whether you have two steps, how about the situation where default is entered for something other than non-appearance? It is now provided in the rules that a failure to comply with the rules may result in the entry of a default semicolon. And then you should provide that notice must be given of that entry of default semicolon. In that case, you would not have it in two steps.

Mr. Morgan. You might have it in two steps. This notice might be merely to make a motion to have the judgment set aside, for neglecting, and so on.

Dean Clark. Yes.

Mr. Donworth. I would like to ask Mr. Mitchell to state the practice in Minnesota. Does it have to be on notice and does the court have to pass on it?

Mr. Mitchell. No.

Mr. Donworth. That is on a promissory note, or something of that kind.

Mr. Mitchell. That is an unliquidated claim for damages, such as damages for personal injury, and there you have to have the court rule on the amount.

Mr. Wickersham. Well, ought not the rule to set forth the proceedings when the suit is for a fixed sum of money?

Mr. Mitchell. Yes.

Mr. Wickersham. Whether or not it is unliquidated or for other relief?

Mr. Mitchell. Yes. You have a choice of putting it up to the court and getting an order from the court in every case. The other is to have in certain types of cases judgment entered by the clerk and in the other entered by the court.

Mr. Wickersham. Well, with regard to liquidated claims, where there is no question of judicial action in acting in the amount of relief to be granted, but it is a pure matter of computation, ought not that not to be entered as of course by the clerk. Then when you come to liquidated damages, you must have proceedings by the court, and when you come to the proceedings followed in equity, then you must have an injunction.

Mr. Mitchell. That is the Western Code system.

Mr. Wickersham. That is a logical system.

Mr. Mitchell. It works well and saves a lot of time for the court.

Mr. Wickersham. Yes, there is no use using the time of the court. He does not use any more judgment in those cases than the clerk; and the defendant retains a remedy. He can make an application to the court to reopen the judgment.

Dean Clark. I think it is quite all right; but I think that it's a definite change from the federal procedure. I suppose we can change the form of proof. In fact, I was rather inclined to argue in general that we could change the rules.

Mr. Morgan. I understand that is the rule.

Dean Clark. But as I understand the rule now, the clerk does not enter judgment.

Mr. Mitchell. If the court thinks it wants to be relieved of that, I see no reason why it should not be.

Mr. Lemann. In your federal courts, do the clerks enter judgment?

Mr. Dodge. No.

Mr. Lemann. On a liquidated claim?

Mr. Dodge. No, it has to be approved by the judge.

Mr. Lemann. And the judge signs the order?

Mr. Dodge. He does not sign anything; he directs action.

Mr. Donworth. How about Minnesota? Does the judge perform the action?

Dean Clark. Well, I am more familiar with it in our state. In our state courts, it is done. The federal court clerk says he never enters the order.

Mr. Morgan. He follows the usual rule that he has got to have either a rule of the court or a statute. Otherwise, the clerk has no power to enter judgment.

Mr. Donworth. How about a foreclosure?

Mr. Mitchell. The rule is the same. A foreclosure action is heard on motion day.

Professor Sunderland. There are two steps on that.

Mr. Mitchell. Not two steps in a foreclosure. You get an order for a judgment of foreclosure. Of course, there is a second rule. I think when he reaches that stage, the thing for him to do is take a rest. He cannot do the impossible. It is a matter of discretion.

....

Mr. Lemann. How would it do to pass this with the understanding that the reporter will make an investigation as to the actual practice in the federal courts with regard to entering judgments and report on that at our next session? I do not at all oppose the idea of entering judgment on liquidated claims if that is done. I do say that this is not, that that is not usually done in federal courts today.

Mr. Olney. It is done in our courts.

Mr. Wickersham. Would not the court follow the local practice?

Mr. Olney. Certainly it is done in California.

Dean Clark. It is not a uniform practice. I wonder if it would not necessarily follow the Uniformity Act anyway. It is a matter of evidence.

Mr. Mitchell. My attention has been called by Mr. Hammond to the fact that the federal courts follow the state practice and in our state they do allow default in liquidated cases. It follows the rule of Minnesota.

Dean Clark. Is there a local rule?

Mr. Mitchell. Yes, there is a local rule.

Mr. Morgan. We have a local federal court rule.

Mr. Mitchell. I thought we could find out from the secretary of this conference. You do not know Mr. Hammond, do you?

Mr. Hammond. No, I would not know that.

Mr. Dobie. Suppose the investigation shows that the practice is not uniform and under the Uniformity Act the court would not permit the clerk to enter judgment. We want the clerk to enter judgment in the case of liquidated claims. Is that the idea?

Mr. Morgan. The judge is willing to have it done where it is the federal court practice and saves considerable expense.

Mr. Olney. In what cases are they allowed to permit judgments to go without proper default? That means in those cases judgment is a purely ministerial thing and requires no judicial action in any sense but can be left to the clerk instead of being ordered by the judge. In cases of that kind I am not willing to permit judgment to go merely upon default. Judicial action is required and there should be some kind of a hearing before the judge and this should be along that line.

Mr. Mitchell. Yes, and we ought not to be hidebound by the practice. Where the system is entry of judgment by the clerk and it is an efficient and satisfactory one, we ought to insist upon it and not be too timid about upsetting the old system in the federal courts.

Mr. Lemann. Why not refer the question to the reporter with instructions to draft something along that line?

Mr. Mitchell. Well, is there any motion?

Mr. Morgan. Is there any doubt that this group thinks that where the claim for a liquidated amount, no judicial action is really necessary?

Mr. Lemann. I thought everybody was agreed upon about that but let us keep a record for the reporter. Let us make a record of that fact.

Mr. Mitchell. Suppose you make the motion to raise the question.

Mr. Lemann. Yes, I make that motion.

Mr. Morgan. I second the motion.

Dean Clark. Would you require then an affidavit or would it simply require a showing of the instrument of indebtedness?

Mr. Morgan. An affidavit of default.

Dean Clark. That is what I supposed. That is the plaintiff files an affidavit of indebtedness and shows the instrument if there is one.

Mr. Mitchell. That is right and then he gets a judgment by default.

Mr. Wickersham. Where the claim is in a fixed sum which is ascertainable by ready and easy computation.

Mr. Mitchell. Yes, you will find that in our Code.

Dean Clark. Yes, Judge Olney suggested that this was a ministerial act because there was nothing more than a default and he did not mean that it requires any kind of proof other than the affidavit.

Mr. Mitchell. Other than the affidavit; but I think you will find in many states that if it is on a note, you are required to file the document.

Mr. Cherry. That is by rule of the court.

Mr. Mitchell. That is a matter of detail that can be worked out. Well, the motion is clear. All in favor of that will signify by saying "aye." Those opposed, "no."

[The Minutes note the motion was voted upon and unanimously adopted.]

Mr. Lemann. I think the affidavit should also bring out the amount of difference.

Mr. Mitchell. It has to show, the form of affidavit, non-appearance, and I suppose they have to show the sum claimed, and that there is no appearance.

Mr. Olney. May I inquire if this affidavit that you have in mind is an affidavit as to the merits?

Mr. Mitchell. No.

Mr. Olney. That is the affidavit simply of default.

Mr. Mitchell. The affidavit states the sum under contract and gives the amount with interest and states that there is no appearance and no answer. And on that affidavit, the clerk makes entry and gives judgment for the exact sum.

Mr. Lemann. It is not an affidavit on the merits in the final sense.

Mr. Mitchell. No.

Mr. Lemann. You shake your head, so that is not settled.

Mr. Cherry. In Minnesota, you stick that in your bill of costs, but it is not sworn to.

Mr. Donworth. You make an affidavit of non-appearance.

Mr. Cherry. That is all.

Mr. Olney. If a man has not answered in the prescribed time, that is the end of the matter.

Mr. Mitchell. Yes, if he has not, that ends it.

Mr. Olney. The clerk adds the interest and includes it in the judgment.

Mr. Mitchell. Yes, it is purely a ministerial act.

Mr. Morgan. And the clerk also taxes the costs at that time. If a person is in default, he is not entitled to notice of default.

Mr. Lemann. Well, there are two kinds of claims. If it is a liquidated claim, you get it from the clerk. If it is an unliquidated claim, you get it from the judge.

Dean Clark. In cases where the judgment is not for failure to originally appear, but for some subsequent default . . .

Mr. Wickersham. (interposing) There should be an entry of an order from the judge.

Mr. Donworth. It is only for non-appearance.

Mr. Mitchell. There is only one thing, that your affidavit is merely for non-appearance. In New York, in the state procedure, you do not have to file a verified claim.

Mr. Wickersham. Of course you have to file a verified claim.

Mr. Mitchell. My impression is that is not as it is done in Minnesota.

Mr. Wickersham. In New York, the verified complaint sets forth a cause of action. If it is on a note, the proceeding is of the simplest character. Nevertheless, it is a verified pleading.

Dean Clark. Now the complaint does not have to be verified unless the clerk chooses. In this case, it would have to be verified.

Mr. Wickersham. In this case, it would have to be verified. Otherwise, he would have to go to court and prove his claim.

Mr. Mitchell. In Minnesota, the clerk can give judgment for the sum when an affidavit is filed.

Mr. Lemon. If the man does not come in and put in an appearance.

Mr. Morgan. Yes, you are answering it on his non-appearance, and not default. And by not answering the thing, he has personally confessed it; just as by answering only on allegation, you can take judgment on the other.

Dean Clark. I think in some respects, Minnesota is better than New York.

Mr. Wickersham. Mr. Hammond calls my attention to one variation of that rule in New York. You can serve a summons with notice, and that notice is a demand for a fixed sum with interest. In that case, you do not have to file a complaint if there is no appearance or answer; you can take judgment by default.

Dean Clark. Do you not have to file a verified complaint in that case?

Mr. Wickersham. No, that is a variation.

Mr. Mitchell. We can provide that he can file it where it is for a definite sum.

Mr. Wickersham. In New York, we have that variation of a summons on a note. That is, that in the summons he says, Take notice that the plaintiff demands the sum of ___ dollars with interest on such a date. Now, if there is no appearance and no answer to that, then you may enter judgment by default. But ordinary cases, you have to serve a complaint and verify it before you can get judgment.

Mr. Donworth. Well, this clause remains, by which, after mentioning these things, it says it may be rescinded or suspended by the court on special cause stated.

Mr. Cherry. In Minnesota, you issue a summons and you state the consequences of default. And if it is a liquidated amount that you will take judgment.

Mr. Wickersham. That is substantially the same as our notice in New York.

Mr. Morgan. If you say you are going to demand the relief stated in the complaint.

Mr. Mitchell. If you have a liquidated claim, then you could take judgment for a stated sum plus interest from a certain date. And it works very well.

APPENDIX B: Court Statistics on Civil Cases Terminated by Default Judgment

The following figures are based on data in the Civil Integrated Data Base (IDB),⁴² which is in turn based on data regularly reported to the Administrative Office of the U.S. Courts. The courts do not report data on entry of Rule 55(a) defaults, but they do report relevant information on civil cases terminated by default judgment. However, the reported data are not fine-grained enough to distinguish between Rule 55(b)(1) and (b)(2) defaults.

Over the last three decades, default judgments have declined both as a percentage of all civil terminations and in absolute terms. **Figure 1** shows the percentage of all civil terminations reported by the courts as default judgments and the percentage of civil terminations in which no responsive pleading was ever filed (“issue not joined”) reported as default judgments for fiscal years 1988–2023. Because default judgments are most likely in cases in which defendants never respond to the complaint, it makes sense to examine how many of the “issue not joined” terminations end with a default judgment. In the late 1980s, about 1 in every 10 civil terminations was a default judgment. In recent years, the comparable figure is 1 in every 50. No one, to our knowledge, has ever bemoaned the vanishing default judgment, but the rate at which civil cases terminate by default judgment has moved in the same direction as the rate at which civil cases terminate by jury trial since the late 1980s.

The same pattern can be seen in **Figure 2**, which shows the number of default judgments reported by the courts for fiscal years 1988–2023, limited to cases in which no responsive pleading was ever filed. Many default judgments in this period were reported in government collection actions (mostly defaulted student loan cases), which account for the large spikes in the solid line.⁴³ But even excluding collection actions, there is a clear decline in the number of default judgments reported by the courts over the period. In the most recent fiscal year, 2023, fewer than 2,800 default judgments were reported by the courts in civil terminations in which no responsive pleading was filed.

42. <https://www.fjc.gov/research/idb/civil-cases-filed-terminated-and-pending-sy-1988-present>.

43. See Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differences Between Individual and Organizational Litigants in the Disposition of Federal Civil Cases*, 57 *Stan. L. Rev.* 1275, 1287 (2005) (noting “the federal government’s use of the federal courts to collect on defaulted student loans” and the resolution of these cases through default judgments).

Figure 1: Default Judgments as Percentage of Civil Terminations, Fiscal Years 1988–2023
(Source: Civil Integrated Data Base)

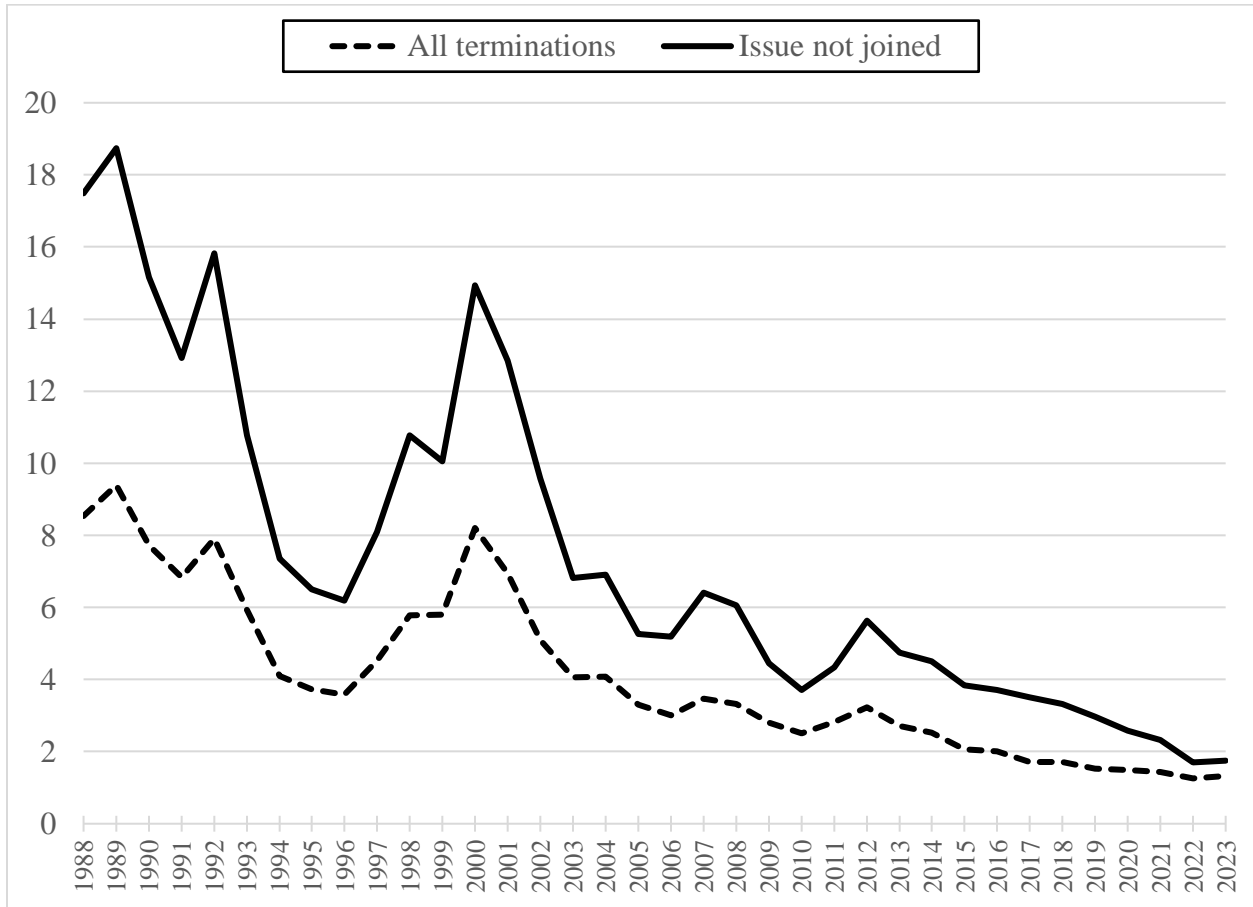
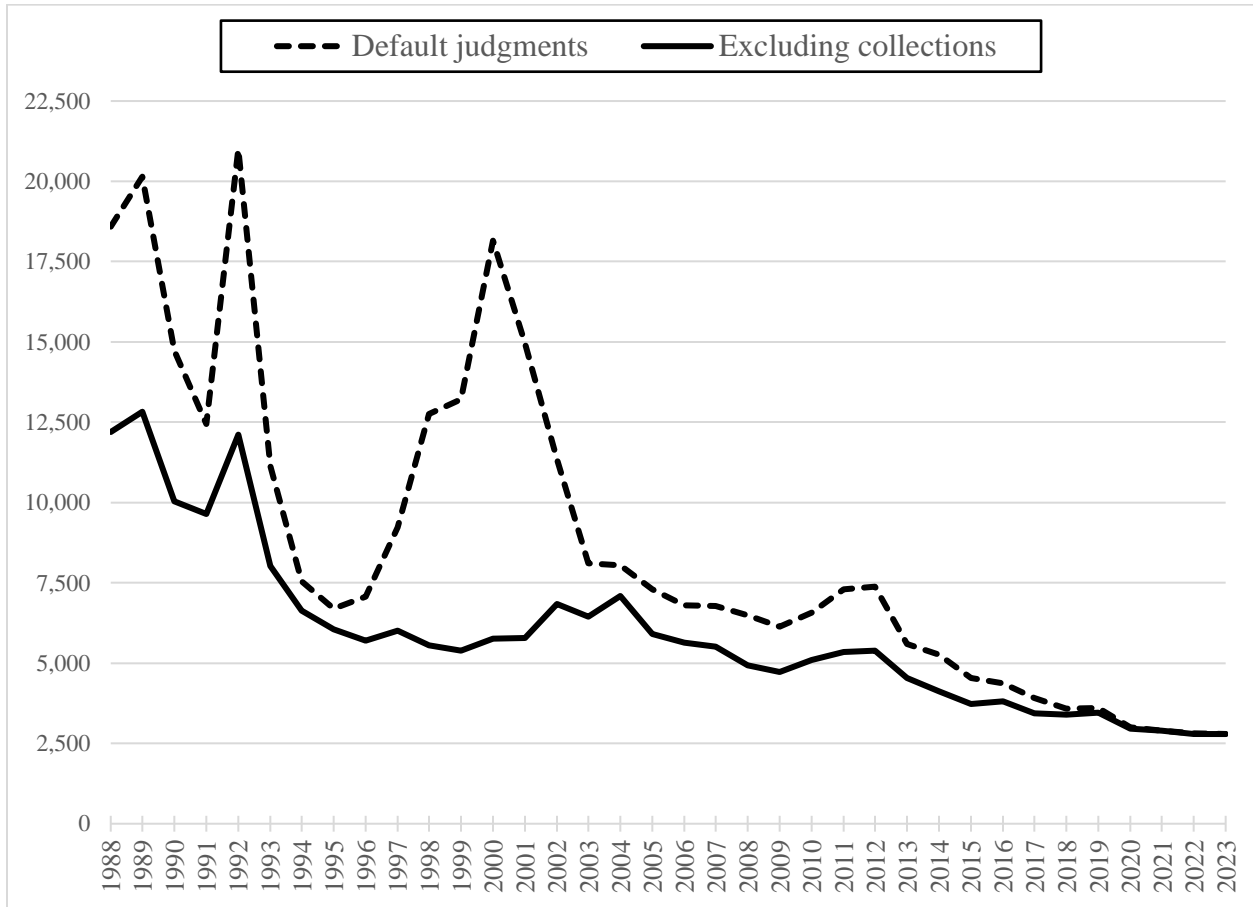


Figure 2: Counts of Default Judgments, Issue Not Joined Only, Fiscal Years 1988–2023
(Source: Civil Integrated Data Base)



APPENDIX C: Local Rules by Circuit and District

Local rule text is included if our search located a rule governing procedures in defaults and default judgments in civil cases, generally. More limited default and default judgment local rules are noted, and rules are quoted where deemed relevant.

DISTRICT OF COLUMBIA CIRCUIT

District of Columbia (90)

No local rule

https://www.dcd.uscourts.gov/sites/dcd/files/local_rules/Local%20Rules%20Mar_2022.pdf

FIRST CIRCUIT

District of Maine (00)

No local rule

<https://www.med.uscourts.gov/sites/med/files/LocalRules.pdf>

District of Massachusetts (01)

No local rule, but from the district's attorney handbook:

DEFAULT JUDGMENT: STANDING ORDER

The clerk's office may enter a Standing Order Regarding Motions for Default Judgment following the issuance of a notice of default. A sample of the Standing Order may be found on the court website.

https://www.mad.uscourts.gov/attorneys/pdf/Attorney_Handbook.pdf#page=26

<https://www.mad.uscourts.gov/resources/pdf/DefaultStandingOrder.pdf>

District of New Hampshire (02)

D.N.H. Civ. R. 55.1 Default

(a) Entry by Clerk. The clerk shall enter a default against any party who fails to respond to a complaint, crossclaim, or counterclaim within the time and in the manner provided by Fed. R. Civ. P. 12. The serving party shall give notice of the entry of default to the defaulting party by regular mail sent to the last known address of the defaulted party and shall certify to the court that notice has been sent.

(b) Damages. Any motion for a default judgment pursuant to Fed. R. Civ. P. 55(b) shall contain a statement that a copy of the motion has been mailed to the last known address of the party from whom such damages are sought. If the moving party knows, or reasonably should know, the identity of any attorney thought to represent the defaulted party, the motion shall also state that a copy has been mailed to that attorney.

(§ (a) amended 1/1/97; §§ (a) and (b) amended 1/1/01)

<https://www.nhd.uscourts.gov/pdf/2021%20Combined%20Local%20Rules.pdf#page=57>

District of Rhode Island (03)

D.R.I. Civ. R. 55 DEFAULT AND DEFAULT JUDGMENT

(a) Default. The Clerk shall enter a default upon an application by a party that conforms to the requirements of Fed. R. Civ. P. 55(a).

(b) Default Judgment. Not less than 14 days after filing of a motion for entry of default judgment made against a party not represented by counsel, the moving party shall file with the Court a certification that:

(1) The party against whom a default judgment is sought is not in the military service of the United States as defined by the Servicemembers Civil Relief Act of 2003, as amended; and

(2) Notice of the motion was sent to the party against whom the judgment is sought by first class mail and certified mail, return receipt requested, at the address where the party was served with process, and the party's last known address, if different. The certificate shall include the return receipt, or, if unavailable, a statement of the measures taken to attempt service and verify receipt by the defaulted party.

Effective 12/1/16: §§(a), (b), and (c) deleted; new §§(a) and (b) added. Effective 12/2/13: §(c) amended

https://www.rid.uscourts.gov/sites/rid/files/documents/LocalRules120119_0.pdf#page=100

District of Puerto Rico (04)

D.P.R. Civ. R. 55 DEFAULT

(a) Damages.

Any motion for a default judgment pursuant to Fed. R. Civ. P. 55(b) shall contain a statement that a copy of the motion has been mailed to the last known address of the party from whom such damages are sought. If the moving party knows, or reasonably should know, the identity of any attorney thought to represent the defaulted party, the motion shall also state that a copy has been mailed to that attorney.

(b) Collection or Foreclosure Actions.

Motions for default judgment in any civil action brought for the collection of monies or foreclosure of mortgage filed by a financial institution or government agency, shall be accompanied, when applicable, by the following documents:

(1) A verified statement of account signed by plaintiff's authorized representative, indicating the principal amount and interest due, plus any other amount to which the plaintiff is entitled;

(2) an affidavit or declaration under penalty of perjury as to the defendant's competency and military service;

(3) original or certified copies of all promissory notes;

(4) copies of all mortgage deeds;

(5) a certification from the Registry of the Property or a verified title search.

https://www.prd.uscourts.gov/sites/default/files/local_rules/20230714-USDCPR-Local-Rules.pdf

SECOND CIRCUIT

District of Connecticut (05)

No local rule

https://www.ctd.uscourts.gov/sites/default/files/Revised-Local-Rules-11-22-2021_0.pdf

New York Northern (06)

N.D.N.Y. Civ. R. 55.1 Clerk's Certificate of Entry of Default

A party applying to the Clerk for a certificate of entry of default pursuant to Fed. R. Civ. P. 55(a) shall submit an affidavit showing that (1) the party against whom it seeks a judgment of affirmative relief is not an infant, in the military, or an incompetent person (2) a party against whom it seeks a judgment for affirmative relief has failed to plead or otherwise defend the action as provided in the Federal Rules of Civil Procedure and (3) it has properly served the pleading to which the opposing party has not responded.

N.D.N.Y. Civ. R. 55.2 Default Judgment (amended January 1, 2022)

(a) By the Clerk. Prior to filing a request for a default judgment for a sum certain, the party must first obtain a Clerk's Certificate of Entry of Default as required by L.R. 55.1. When a party is entitled to have the Clerk enter a default judgment pursuant to Fed. R. Civ. P. 55(b)(1), the party shall submit, with the form of judgment, the Clerk's certificate of entry of default, a statement showing the principal amount due, not to exceed the amount demanded in the complaint, giving credit for any payments, and showing the amounts and dates of payment, a computation of the interest to the day of judgment, a per diem rate of interest, and the costs and taxable disbursements claimed. An affidavit of the party or the party's attorney shall be appended to the statement showing that

1. The party against whom it seeks judgment is not an infant or an incompetent person;
2. The party against whom it seeks judgment is not in the military service, or if unable to set forth this fact, the affidavit shall state that the party against whom the moving party seeks judgment by default is in the military service or that the party seeking a default judgment is not able to determine whether or not the party against whom it seeks judgment by default is in the military service;
3. The party has defaulted in appearance in the action;
4. Service was properly effected under Fed. R. Civ. P. 4;
5. The amount shown in the statement is justly due and owing and that no part has been paid except as set forth in the statement this Rule requires; and
6. The disbursements sought to be taxed have been made in the action or will necessarily be made or incurred.

The Clerk shall then enter judgment for principal, interest and costs. If, however, the Clerk determines, for whatever reason, that it is not proper for a sum certain default judgment to be entered, the Clerk shall forward the documents submitted in accordance with L.R. 55.2(a) to the assigned district judge for review. The assigned district judge shall then promptly notify the Clerk as to whether the Clerk shall properly enter a default judgment under L.R. 55.2(a).

(b) By the Court. Prior to filing a motion for default judgment, the party must first obtain a Clerk's Certificate of Entry of Default as required by L.R. 55.1. A party shall accompany a motion to the Court for the entry of a default judgment, pursuant to Fed. R. Civ. P. 55(b)(2), with a clerk's certificate of entry of default in accordance with Fed. R. Civ. P. 55(a), a proposed form of default judgment, and a copy of the pleading to which no response has been made. The moving party shall also include in its application an affidavit of the moving party or the moving party's attorney setting forth facts as required by L.R. 55.2(a).

https://www.nynd.uscourts.gov/sites/nynd/files/local_rules/Local%20Rules%202022_Final.pdf#page=56

New York Southern (07) and New York Eastern (08) share local rules

E.D.N.Y. & S.D.N.Y. Civ. R. 55.1. Certificate of Default

A party applying for entry of default under Fed. R. Civ. P. 55(a) shall file:

- (a) a request for a Clerk's Certificate of Default; and
- (b) an affidavit demonstrating that:
 - (1) the party against whom a notation of default is sought is not an infant, in the military, or an incompetent person;
 - (2) the party has failed to plead or otherwise defend the action; and
 - (3) the pleading to which no response has been made was properly served.

A proposed Clerk's Certificate of Default form must be attached to the affidavit.

COMMITTEE NOTE

The Committee believes that Local Civil Rule 55.1 is helpful in setting forth the contents of the affidavit to be submitted by a party seeking a certificate of default pursuant to Fed. R. Civ. P. 55(a).

2018 COMMITTEE NOTE

The revision to Local Rule 55.1 incorporates the revised ECF Rule requiring the electronic filing of a request for a Clerk's Certificate of Default.

E.D.N.Y. & S.D.N.Y. Civ. R. 55.2. Default Judgment

(a) By the Clerk. Upon issuance of a Clerk's certificate of default, if the claim to which no response has been made only sought payment of a sum certain, and does not include a request for attorney's fees or other substantive relief, and if a default judgment is sought against all remaining parties to the action, the moving party shall submit an affidavit showing the principal amount due and owing, not exceeding the amount sought in the claim to which no response has been made, plus interest, if any, computed by the party, with credit for all payments received to date clearly set forth, and costs, if any, pursuant to 28 U.S.C. § 1920.

(b) By the Court. In all other cases the party seeking a judgment by default shall apply to the Court as described in Fed. R. Civ. P. 55(b)(2), and shall append to the application:

- (1) the Clerk's certificate of default,
- (2) a copy of the claim to which no response has been made, and
- (3) a proposed form of default judgment.

(c) Mailing of Papers. Unless otherwise ordered by the Court, all papers submitted to the Court pursuant to Local Civil Rule 55.2(a) or (b) above shall simultaneously be mailed to the party against whom a default judgment is sought at the last known residence of such party (if an individual) or the last known business address of such party (if a person other than an individual). Proof of such mailing shall be filed with the Court. If the mailing is returned, a supplemental affidavit shall be filed with the Court setting forth that fact, together with the reason provided for return, if any.

COMMITTEE NOTE

Although Fed. R. Civ. P. 55(b) does not require service of notice of an application for a default judgment upon a party who has not appeared in the action, the Committee believes that experience has shown that mailing notice of such an application is conducive to both fairness and efficiency, and has therefore recommended a new Local Civil Rule 55.2(c) providing for such mailing.

https://www.nysd.uscourts.gov/sites/default/files/local_rules/2021-10-15%20Joint%20Local%20Rules.pdf#page=56

Western District of New York (09)

W.D.N.Y. Civ. R. 55 DEFAULT JUDGMENT

The procedure for Default Judgment under Fed.R.Civ.P. 55 is a two-step process: (a) entry of default by the Clerk of Court (Fed.R.Civ.P. 55(a)); and (b) entry of default judgment, by the Clerk of Court when the claim is for a sum certain pursuant to Fed.R.Civ.P. 55(b)(1) and by the Court in all other instances pursuant to Fed.R.Civ.P. 55(b)(2):

(a) Entry of Default. The documents required for obtaining entry of default are:

- (1) Request for Clerk's Entry of Default;
- (2) Affidavit (or Declaration) in Support of Request of Entry of Default;
- (3) Proposed form for Clerk's Entry of Default; and
- (4) A Certificate of Service indicating that these documents were served upon defendant.

(b) Default Judgment.

(1) By the Clerk of Court. A party entitled to a default judgment when the claim is for a sum certain, pursuant to Fed.R.Civ.P. 55(b)(1), shall submit to the Clerk of Court:

- (A) Request for Entry of Default Judgment for Sum Certain;
- (B) an affidavit by the party seeking default judgment or the party's attorney showing that: (i) the party against whom judgment is sought is not an infant or an incompetent person; (ii) the party has defaulted in appearance in the action; (iii) the amount shown by the statement is justly due and owing and no part thereof has been paid except as therein set forth; and (iv) the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred therein;
- (C) a statement showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, a computation of the interest to the day of judgment, and the costs and taxable disbursements claimed;

(D) a proposed judgment containing the last known address of each judgment creditor and judgment debtor and, if any such address is unknown, an affidavit by the party seeking default judgment or the party's attorney stating that the affiant has no knowledge of the address; and

(E) a Certificate of Service indicating that these documents were served upon the defendant. Upon confirming the submission is in compliance with the Federal and Local Rules, the Clerk of Court shall enter judgment for principal, interest, and costs.

(2) By the Court. An application to the Court for the entry of a default judgment, pursuant to Fed.R.Civ.P. 55(b)(2), shall reference and include the docket numbers of the Clerk's Entry of Default and the pleading to which no response has been made.

(c) Notwithstanding the above, the Court, on its own initiative, may enter default or direct the Clerk of Court to enter default.

<https://www.nywd.uscourts.gov/sites/nywd/files/2022%20Civil%20Local%20Rules%20FINAL%20with%20SIGNATURES.pdf#page=43>

District of Vermont (10)

D. Vt. Civ. R. Default Judgment.

(a) Clerk's Entry of Default. When a party is entitled to default judgment under Fed. R. Civ. P. 55(b)(1) or Fed. R. Civ. P. 55(b)(2), that party must first obtain a clerk's entry of default under Fed. R. Civ. P. 55(a). An application for a clerk's entry of default must include a statement explaining the basis for entitlement to an entry of default.

(b) By the Clerk.

(1) Documents to Submit. When a party is entitled to default judgment under Fed. R. Civ. P. 55(b)(1), that party must submit:

(A) an application for entry of default judgment;

(B) a proposed default judgment with a statement containing the following:

(i) the amount due, not exceeding the amount of the original demand; and crediting any payments, showing the amounts and dates of them;

(ii) a computation of accrued interest as of the proposed judgment date; and

(iii) any claimed costs and taxable disbursements.

(C) an affidavit containing the following:

(i) the party against whom judgment is sought is not an infant, an incompetent person, or in the military;

(ii) the party against whom judgment is sought has defaulted by not appearing or defending;

(iii) the amount shown in the statement is justly due and no amount has been paid except as stated; and

(iv) the disbursements sought to be taxed have been made or necessarily will be made in the future.

(2) Consultation and Referral to District Judge. If the clerk determines that it may not be appropriate to enter a default judgment under Fed. R. Civ. P. 55(b)(1), the clerk may confer with a district judge. The district judge will advise the clerk whether default judgment under Rule 55(b)(1) is appropriate. If such a judgment is not appropriate, the clerk shall so notify the applicant, who may then proceed to move for default judgment under Fed. R. Civ. P. 55(b)(2), in accordance with subsection (c).

(c) By the Court. When a party requests the court enter a default judgment, that party must submit the following documents:

- (1) a copy of the clerk's entry of default;
- (2) a motion for entry of default judgment; and
- (3) a proposed default judgment order.

<https://www.vtd.uscourts.gov/sites/vtd/files/LocalRules.pdf#page=34>

THIRD CIRCUIT

District of Delaware (11)

D. Del. Civ. R. 77.2. Orders and Judgments by the Clerk.

(a) Orders by the Clerk. The Clerk is authorized, without further direction of a judge, to sign and enter orders specifically delineated as allowed to be signed by the Clerk under the Fed. R. Civ. P., and also the following:

- (1) Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4.
- (2) Orders on consent noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default.
- (3) Orders of dismissal on consent, with or without prejudice, except in cases to which Fed. R. Civ. P. 23, 23.1 or 66 apply.
- (4) Orders entering default for failure to plead or otherwise defend in accordance with Fed. R. Civ. P. 55.

<https://www.ded.uscourts.gov/sites/ded/files/local-rules/District%20of%20Delaware%20LOCAL%20RULES%202016.pdf#page=35>

District of New Jersey (12)

No local rule (there is an *in rem* rule)

<https://www.njd.uscourts.gov/sites/njd/files/CompleteLocalRules.pdf>

Pennsylvania Eastern (13)

No local rule

<https://www.paed.uscourts.gov/sites/paed/files/documents/locrules/civil/cvrules.pdf>

Pennsylvania Middle (14)

No local rule (mentioned as a sanction)

<https://www.pamd.uscourts.gov/sites/pamd/files/LR120114.pdf>

Pennsylvania Western (15)

No local rule

<https://www.pawd.uscourts.gov/sites/pawd/files/lrmanual20181101.pdf>

Virgin Islands (91)

No local rule

https://www.vid.uscourts.gov/sites/vid/files/local_rules/LocalRulesofCivilProcedure2021.pdf

FOURTH CIRCUIT

Maryland (16)

D. Md. Civ. R. 108. JUDGMENTS

2. Default

a) Entry of Default

To obtain an entry of default pursuant to Fed. R. Civ. P. 55(a), the plaintiff must file a written request with the Court. This request shall contain the last known address of the defendant. Promptly upon the entry of default, the Clerk shall mail the entry of default to the defendant at the address stated in the request and to the defendant's attorney of record, if any, together with a notice informing the defendant that default has been entered and that the defendant may move to vacate the entry of default within 30 days.

b) Default Judgment

To obtain a default judgment pursuant to Fed. R. Civ. P. 55(b), the plaintiff must file a written request with the Court supported by an affidavit stating whether the defendant is a minor, an incompetent person, or in military service, with supporting facts pursuant to 50 U.S.C. § 3931(b)(1). If it appears that the defendant is a minor or an incompetent person, the Court shall not enter a default judgment unless a general guardian, conservator, or other fiduciary has appeared on behalf of the defendant. If it appears that the defendant is in military service, the Court shall not enter a default judgment until after it appoints an attorney to represent the defendant pursuant to 50 U.S.C. § 3931(b)(2).

<https://www.mdd.uscourts.gov/sites/mdd/files/LocalRules.pdf#page=39>

North Carolina Eastern (17)

E.D.N.C. Civ. R. 55.1 Entry of Default and Default Judgment

(a) Entry of Default by Clerk.

To obtain an entry of default pursuant to Fed. R. Civ. P. 55(a), a party must file a motion for entry of default and a proposed order. The moving party shall serve, in the manner provided in Fed. R. Civ. P. 5, any party that has failed to appear, and all other parties, with the motion for entry of default, and proposed order. Such service shall also be made on any attorney the moving party knows, or reasonably should know, represents the party against which default is sought. The motion shall be supported by an affidavit that describes with specificity how each allegedly defaulting party was served with process in a manner authorized by Fed. R. Civ. P. 4 and the date of such service. Following the 21-day response time provided under Local Civil Rule 7.1(f)(1), the motion shall be submitted to the presiding judge if it is opposed or if the allegedly defaulting party has filed a responsive pleading. Otherwise, the motion shall be referred to the clerk and if the clerk is satisfied that the moving party has effected service of process, the clerk shall enter a default.

(b) Default Judgment.

(1) General Requirements. Any motion for default judgment shall be served on every party that has appeared in the action and be supported by an affidavit stating that each party against which judgment is sought is not an infant, an incompetent person, or in the military service of the United States as defined in the Servicemembers Civil Relief Act of 2003, as amended.

(2) By the Clerk. A motion seeking default judgment pursuant to Fed. R. Civ. P. 55(b)(1) shall be accompanied by a proposed order and the supporting affidavit. If a party files a motion for default judgment prior to entry of default, the moving party must also serve the party against which default is sought pursuant to subsection (a) of this rule. The supporting affidavit shall show:

(A) the party against which judgment is sought has not appeared in the action;

(B) the principal amount due, giving credit for any payments and showing the amounts and dates of payment;

(C) the information enabling the principal amount due to be calculated as a sum certain, if it is not already a sum certain;

(D) the information enabling the computation of the interest to the date of judgment;

(E) the proposed post-judgment interest rate and the reasons for using it if the moving party claims that a post-judgment interest rate other than that provided by 28 U.S.C. § 1961 applies; and

(F) the amount of any costs claimed.

Additionally, if a claim is based on a contract, the moving party shall cite the relevant contract provisions in the motion for default judgment or supporting memorandum, if any, and file a copy of the contract as an attachment to the motion for default judgment. The clerk may submit any motion for default judgment to the presiding judge for review.

(3) By the Court. A motion seeking default judgment pursuant to Fed. R. Civ. B. 55(b)(2) shall include the docket entry number of the clerk's entry of default.

<https://www.nced.uscourts.gov/pdfs/Local%20Civil%20Rules%202023.pdf#page=58>

North Carolina Middle (18)

No local rule

https://www.ncmd.uscourts.gov/sites/ncmd/files/2021_June_21_CIVRulesEffective.pdf

North Carolina Western (19)

No local rule

https://www.ncwd.uscourts.gov/sites/default/files/local_rules/Revised_Local_Rules_1.pdf

South Carolina (20)

DISTRICT COURTS AND CLERKS

D.S.C. Civ. R. 55.01: Orders and Judgments. The clerk of court is authorized to enter judgments by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1) without further direction of the court pursuant to Fed. R. Civ. P. 58. However, such action may be suspended, altered, or rescinded by the court for good cause shown.

<https://www.scd.uscourts.gov/Rules/Civil%20Rules%20-%20Current.pdf#page=44>

Virginia Eastern (22)

No local rule (*in rem* actions)

<https://www.vaed.uscourts.gov/sites/vaed/files/LocalRulesEDVA.pdf>

Virginia Western (23)

No local rule

https://www.vawd.uscourts.gov/sites/Public/assets/File/court/local_rules.pdf

West Virginia Northern (24)

No local rule

https://www.wvnd.uscourts.gov/sites/wvnd/files/Local%20Rules%20-%20Final%20July%202010%20JPB_1.pdf

West Virginia Southern (25)

No local rule

<https://www.wvsd.uscourts.gov/court-info/local-rules-and-orders/local-rules>

FIFTH CIRCUIT

Louisiana Eastern (3L)

No local rule

https://www.laed.uscourts.gov/sites/default/files/local_rules/2022%20CIVIL%20RULES%20LAED%20w%20Amendments%203.1.22.pdf

Louisiana Middle (3N)

M.D. La. Civ. R. 41 - DISMISSAL OF ACTIONS

...

(b) Dismissal for Failure to Prosecute.

(1) A civil action may be dismissed by the Court for lack of prosecution as follows:

- (A) Where no service of process has been made within 90 days after filing of the complaint;
- (B) Where no responsive pleadings have been filed or no default has been entered within sixty days after service of process, except when Fed. R. Civ. P. 12(a)(3) applies or a dispositive motion is pending;

<https://www.lamd.uscourts.gov/sites/default/files/pdf/2022%20Local%20Rules%20Revisions%2008-18-2022.pdf#page=22>

M.D. La. Civ. R. 55 - DEFAULT

In addition to the provisions of Fed. R. Civ. P. 55, the following rules apply to default judgments:

- All requests for entry of default shall be made to the Clerk of Court in writing;
- The clerk shall provide notice of entry of default to each defendant or the defendant's attorney at the last known address;
- A judgment of default shall not be entered until fourteen days after entry of default.

<https://www.lamd.uscourts.gov/sites/default/files/pdf/2019LocalRules.pdf#page=30>

Louisiana Western (36)

W.D. La. Civ. R. 55 - DEFAULT

W.D. La. Civ. R. 55.1 Default Judgment

In addition to the provisions of FRCvP 55, the following rules apply to default judgments:

- A. All requests for entry of default shall be made to the clerk in writing;
 - B. The clerk shall mail by regular mail notice of entry of default to each defendant or his or her attorney at his or her last known address;
 - C. A judgment of default shall not be entered until 14 calendar days after entry of default.
- Amended June 28, 2002 and December 1, 2009

<https://www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/localrules.WDLA.2021Oct06.pdf#page=25>

Mississippi Northern (37)

No local rule (attachment and *in rem*)

<https://www.msnd.uscourts.gov/sites/msnd/files/forms/2021-%20MASTER%20COPY%20-%20CIVIL%20FINAL.pdf>

Mississippi Southern (38)

No general provision (*in rem* actions)

https://www.mssd.uscourts.gov/sites/mssd/files/2021_MASTER_COPY_CIVIL_FINAL.pdf

Texas Northern (39)

N.D. Tex. Civ. R. 55.1 Failure to Obtain Default Judgment.

If a defendant has been in default for 90 days, the presiding judge may require the plaintiff to move for entry of a default and a default judgment. If the plaintiff fails to do so within the prescribed time, the presiding judge will dismiss the action, without prejudice, as to that defendant.

N.D. Tex. Civ. R. 55.2 Default Judgments by the United States. [REPEALED]

N.D. Tex. Civ. R. 55.3 Request for Entry of Default by Clerk.

Before the clerk is required to enter a default, the party requesting such entry must file with the clerk a written request for entry of default, submit a proposed form of entry of default, and file any other materials required by Fed. R. Civ. P. 55(a).

<https://www.txnd.uscourts.gov/sites/default/files/documents/CIVRULES.pdf#page=23>

Texas Eastern (40)

No local rule (*in rem* actions)

https://www.txed.uscourts.gov/sites/default/files/HR_Docs/Local%20Rules%202021.pdf

Texas Southern (41)

No local rule, but referenced in

S.D. Tex. Civ. R. 5.5 Service of Pleadings and Other Papers. All motions must be served on all parties. Motions for default judgment must be served on the defendant-respondent by certified mail (return receipt requested). (Amended by General Order 2004-10, effective September 7, 2004.)

<https://www.txs.uscourts.gov/sites/txs/files/LR%20May%202020%20Reprint.pdf#page=7>

Texas Western (42)

W.D. Tex. Civ. R. 55 Failure to Obtain Default Judgment (Deleted)

[https://www.txwd.uscourts.gov/wp-content/uploads/Documents/Local%20Court%20Rules/Local%20Court%20Rules%20\(Full\)%20062421.pdf#page=3](https://www.txwd.uscourts.gov/wp-content/uploads/Documents/Local%20Court%20Rules/Local%20Court%20Rules%20(Full)%20062421.pdf#page=3)

SIXTH CIRCUIT

Kentucky Eastern (43) and Kentucky Western (44)

Joint local rules have no specific rule on defaults and default judgments

Eastern District of Michigan (45)

E.D. Mich. Civ. R. 55.1 Clerk's Entry of Default

Requests for, with affidavits in support of, a Clerk's Entry of Default shall contain the following information:

- (a) A statement identifying the specific defendant who is in default.
- (b) A statement attesting to the date the summons and complaint were served upon the defendant who is in default.
- (c) A statement indicating the manner of service and the location where the defendant was served.

<https://www.mied.uscourts.gov/altindex.cfm?pagefunction=localRuleView&lrnumber=LR55.1>

E.D. Mich. Civ. R. 55.2 Clerk's Entry of Judgment by Default

Requests for a Clerk's Entry of Judgment by Default must be accompanied by an affidavit which sets forth:

- (a) The sum certain or the information necessary to allow the computation of a sum certain.
- (b) The name of the defendant who is subject to default.
- (c) A statement that the defendant is not:
 - (1) an infant or an incompetent person, or
 - (2) in the military service.
- (d) A statement that a default has been entered because the defendant failed to plead or otherwise defend in accordance with Fed. R. Civ. P. 55(a).

COMMENT: The Clerk's Office has forms for requests for a Clerk's Entry of Judgment by Default and Affidavit of Sum Certain to assist parties and attorneys in complying with LR 55.2.

<https://www.mied.uscourts.gov/altindex.cfm?pagefunction=localRuleView&lrnumber=LR55.2>

Western District of Michigan (46)

No local rule

<https://www.miwd.uscourts.gov/court-info/local-rules-and-orders/local-civil-rules>

Ohio Northern (47)

No local rule

<https://www.ohnd.uscourts.gov/court-info/local-rules-and-orders>

Ohio Southern (48)

S.D. Ohio Civ. R. 55.1 Defaults and Default Judgments

(a) If a party makes proper service of a pleading seeking affirmative relief but, after the time for making a response has passed without any response having been served and filed, that party does not request the Clerk to enter a default, the Court may by written order direct the party to show cause why the claims in that pleading should not be dismissed for failure to prosecute.

(b) If a party obtains a default but does not, within a reasonable time thereafter, file a motion for a default judgment, the Court may by written order direct the party to show cause why the claims upon which default was entered should not be dismissed for failure to prosecute.

(c) Nothing in this Rule shall be construed to limit the Court’s power, either under Fed. R. Civ. P. 41 or otherwise, to dismiss a case or one or more claims or parties for failure to prosecute.

<https://www.ohsd.uscourts.gov/sites/ohsd/files/Local%20Rules%20Effective%202022-02-07.pdf#page=27>

Tennessee Eastern (49)

No local rule

<https://www.tned.uscourts.gov/sites/tned/files/localrules.pdf>

Tennessee Middle (50)

M.D. Tenn. Civ. R. 55.01 – MOTIONS FOR ENTRY OF DEFAULT.

Motions for entry of default under Fed. R. Civ. P. 55(a) must be accompanied by an unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 verifying: (i) proof of service; (ii) the opposing party’s failure to plead or otherwise defend; (iii) if the opposing party is an individual, that the opposing party is not a minor or incompetent person; and, (iv) if the opposing party is an individual, that the opposing party is not in the military service, as required by 50 U.S.C. § 3931(b)(1). Evidence from the Defense Manpower Data Center, or other reliable source, confirming that the opposing party is not in the military service must be appended to the unsworn declaration.

<https://www.tnmd.uscourts.gov/court-info/local-rules-and-orders/local-rules>

Tennessee Western (51)

No local rule

<https://www.tnwd.uscourts.gov/pdf/content/LocalRules.pdf>

SEVENTH CIRCUIT

Illinois Northern (52)

No default judgment rule but LR41.1, the “inactive cases” screening mechanism:

N.D. Ill. Civ. R. 41.1. Dismissal for Want of Prosecution or By Default

Cases which have been inactive for more than six months may be dismissed for want of prosecution. An order of dismissal for want of prosecution or an order of default may be entered if counsel fails to respond to a call of the case set by order of court. Notice of the court call shall

be by publication or as otherwise provided by the court. In the Eastern Division publication shall be in the Chicago Daily Law Bulletin unless the court provides otherwise.

https://www.ilnd.uscourts.gov/_assets/_documents/_rules/LRRULES.pdf#page=36

There is an *in rem* rule

https://www.ilnd.uscourts.gov/_assets/_documents/_rules/LRRULES.pdf#page=89

Illinois Central (53)

No local rule

<https://www.ilcd.uscourts.gov/sites/ilcd/files/November%201%2C%202021%20ILCD%20Local%20Rules%20%28Final%29%20%28Revisions%202.4.2022%29.pdf>

Illinois Southern (54)

S.D. Ill. Civ. R. 55.1 DEFAULT JUDGMENT

(a) Entry by Clerk. The Clerk of Court shall enter a default against any party who fails to respond to a complaint, crossclaim, or counterclaim within the time and in the manner provided by Federal Rule of Civil Procedure 12. The serving party shall give notice of the entry of default to the defaulting party by regular mail sent to the last known address of the defaulted party and shall certify to the Court that notice has been sent.

(b) Default Judgment. Any motion for default judgment pursuant to Federal Rule of Civil Procedure 55(b) shall contain a statement that a copy of the motion has been mailed to the last known address of the party from whom default judgment is sought. If the moving party knows, or reasonably should know, the identity of an attorney thought to represent the defaulted party, the motion shall also state that a copy has been mailed to that attorney.

<https://www.ilsd.uscourts.gov/Forms/2021LocalRules.pdf#page=27>

Indiana Northern (55)

No local rule

<https://www.innd.uscourts.gov/sites/innd/files/LocalRules11182019.pdf>

Indiana Southern (56)

No local rule

<https://www.insd.uscourts.gov/sites/insd/files/Local%20Rules%2012-1-21.pdf>

Wisconsin Eastern (57)

E.D. Wis. Civil L. R. 41. Dismissal of Actions.

...

(b) Dismissal Where No Answer or Other Pleading Filed. In all cases in which a defendant has failed to file an answer or otherwise defend within 6 months from the filing of the complaint and the plaintiff has not moved for a default judgment, the Court may on its own motion, after 21 days' notice to the attorney of record for the plaintiff, or to the plaintiff if pro se, enter an order dismissing the action for lack of prosecution. Such dismissal must be without prejudice.

https://www.wied.uscourts.gov/sites/wied/files/documents/Local_Rules_2010-0201_Amended_2022-0103.pdf#page=43

Wisconsin Western (58)

No local rule

<https://www.wiwd.uscourts.gov/local-rules>

EIGHTH CIRCUIT

Arkansas Eastern (60)

No local rule

https://www.are.uscourts.gov/sites/are/files/local_rules/All_LR.pdf

Arkansas Western (61)

No local rule

https://www.arwd.uscourts.gov/sites/arwd/files/local_rules/ARWD%20local%20rules.pdf

Iowa Northern (62) and Iowa Southern (63)

N.D. Iowa Civ. R. 41 DISMISSALS OF ACTIONS

a. Involuntary Dismissals. After giving the parties the notice prescribed in section (c) of this rule, the Clerk of Court will, in the following circumstances, enter an order dismissing a civil action without prejudice:

1. Where service has not been made on any defendant within 90 days after the filing of the complaint, and the plaintiff has failed to file a statement in writing within 97 days after the filing of the complaint setting forth good cause for why service has not been made; or
2. As to a particular defendant, where service has been made upon that defendant and neither an answer nor a request for other action has been filed as to that defendant within 30 days after the date the answer was due; or
3. Where a default has been entered and a motion for entry of judgment by default in accordance with Federal Rule of Civil Procedure 55(b) has not been made within 30 days after the entry of default, unless the plaintiff advises the Clerk of Court that further court action is necessary before a default judgment can be sought; or
4. Where a deadline set for the performance of any act required by the Federal Rules of Civil Procedure, the Local Rules, or an order of the court has been exceeded by more than 30 days and an extension of time has been neither requested nor granted.

<https://www.iasd.uscourts.gov/sites/iasd/files/Local%20Rules%20-%20Final%2012142020.pdf#page=42>

Minnesota (64)

No local rule

<https://www.mnd.uscourts.gov/court-info/local-rules-and-orders>

Missouri Eastern (65)

No local rule (*in rem* and as sanction).

https://www.moed.uscourts.gov/sites/moed/files/CMECF_localrule.pdf

Missouri Western (66)

W. D. Mo. Civ. R. 55.1 DEFAULT JUDGMENT

Obtaining a default judgment is a two-step process: (1) a party must first file a motion for entry of default and obtain a Clerk's Entry of Default, and (2) a party must then file a motion for default judgment.

(a) Entering a Default. Upon motion, the Clerk of Court shall enter the default of any party against whom a judgment for affirmative relief is sought and who has failed to plead or otherwise defend.

1. Notice Required. Written notice of the intention to move for entry of default must be provided to counsel or, if counsel is unknown, to the party against whom default is sought, regardless of whether counsel or the party have entered an appearance. Such notice shall be given at least 14 days prior to the filing of the motion for entry of default. If notice cannot be provided because the identity of counsel or the whereabouts of a party are unknown, the moving party shall inform the Clerk of Court in the declaration or affidavit.

2. Declaration or Affidavit Required. The moving party must show (a) that the party against whom default is sought was properly served with the summons and complaint in a manner authorized by Federal Rule of Civil Procedure 4; (b) that the party has failed to timely plead or otherwise defend; and (c) that proper notice of the intention to seek an entry of default, as described above, has been accomplished.

3. No Notice of Hearing Required. The Clerk shall enter default upon the filing of a properly supported motion for entry of default.

4. Court Review. Notwithstanding the provisions of Federal Rule of Civil Procedure 55(a), the Clerk of Court may refer any request for entry of default judgment to the Court for review prior to formal entry.

(b) Entering a Default Judgment.

1. Motion Practice. All applications and requests for default judgment shall be conducted by motion practice. No motion for default judgment shall be filed unless an entry of default has been entered by the Clerk of Court. By declaration or affidavit, the moving party must (A) specify whether the party against whom judgment is sought is an infant or an incompetent person and, if so, whether that person is represented by a general guardian, conservator, or other like fiduciary; and (B) attest that the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-597b, does not apply.

2. Court Review. Notwithstanding the provisions of Federal Rule of Civil Procedure 55(b)(1), the Clerk of Court may refer any request for entry of default judgment to the Court for review prior to formal entry.

https://www.mow.uscourts.gov/sites/mow/files/DC-Local_Rules.pdf#page=37

Nebraska (67)

D. Neb. Civ. R. 55.1 Default Judgment.

(a) Clerk's Entry of Default.

To obtain a clerk's entry of default under Federal Rule of Civil Procedure 55(a), a party must:

- (1) file a motion for the clerk's entry of default; and
- (2) e-mail a proposed clerk's entry of default to the clerk at clerk@ned.uscourts.gov. This clerk's entry of default should state that a default is being entered for failure to plead or otherwise defend under Federal Rule of Civil Procedure 55(a).

(b) Clerk's Entry of Default Judgment.

If a party requests the clerk to enter a default judgment under Federal Rule of Civil Procedure 55(b)(1), the party must:

- (1) file a motion for clerk's judgment by default;
- (2) file an affidavit (a) stating the amount, for a sum certain or that can by computation be made certain, and that does not exceed the amount asked for in the complaint plus the exact computation of interest and costs, and (b) stating that the defendant against whom judgment is to be entered is not an infant or incompetent person as stated in Federal Rule of Civil Procedure 55(b)(1); and
- (3) e-mail a proposed clerk's judgment for the clerk's signature to clerk@ned.uscourts.gov.

(c) Court's Entry of Default Judgment.

If a party requests a judgment from the court under Federal Rule of Civil Procedure 55(b)(2), the party must, after obtaining a clerk's entry of default under Federal Rule of Civil Procedure 55(a) and Nebraska Civil Rule 55.1(a):

- (1) file a motion for default judgment;
- (2) file an affidavit stating that the party against whom the default judgment is requested is (a) not an infant or incompetent person as stated in Federal Rule of Civil Procedure Rule 55(b)(2) or (b) meets the exceptions stated in Federal Rule 55(b)(2);
- (3) e-mail to the judge's chambers a proposed judgment; and
- (4) in cases in which damages must be proved, request an evidentiary hearing before the trial judge.

<https://www.ned.uscourts.gov/internetDocs/localrules/NECivR.2021.pdf#page=47>

North Dakota (68)

No local rule

https://www.ndd.uscourts.gov/lci/Local_Rules.pdf

South Dakota (69)

No local rule on procedures (mentioned in taxation of costs rule)

https://www.sdd.uscourts.gov/sites/sdd/files/local_rules/CIVIL%20RULES%20%202015.pdf

NINTH CIRCUIT

Alaska (7-)

D. Alaska Civ. R. 55.1 Entry of Default and Default Judgment

- (a) Entry of Default. Motions for entry of default must include proof of service of the complaint per Fed. R. Civ. P. 4 and notice to appearing parties.
- (b) Judgment Following Default.

(1) Attorney’s Fees. For purposes of Fed. R. Civ. P. 55(b)(1), a claim for “reasonable attorney’s fees” is not a claim for a sum certain.

(2) Supporting Evidence. Motions for judgment following entry of default must be supported by declarations and evidence establishing the right to relief, including but not limited to:

(A) calculations supporting the amount of judgment;

(B) relevant contract documents;

(C) the facts supporting any claim for prejudgment interest, including the applicable interest rate and calculation of interest due, see 28 U.S.C. § 1961;

(D) the facts supporting any claim for attorney’s fees, including the amount of fees sought, the actual time spent, and actual fees incurred; and

(E) compliance with the Service Members Civil Relief Act, 50 USC §§ 3901-4043.

https://www.akd.uscourts.gov/sites/akd/files/local_rules/Local_Civil_Rules_12-2020.pdf#page=39

Arizona (70)

No local rule

<https://www.azd.uscourts.gov/sites/azd/files/local-rules/Local%20Rules%20Master%20File%202023.pdf#page=119>

California Northern (71)

No local rule

https://www.cand.uscourts.gov/wp-content/uploads/2023/10/CAND_Civil_Local_Rules_10-19-2023.pdf

California Eastern (72)

No local rule (*in rem*)

<https://www.caed.uscourts.gov/caednew/assets/File/EDCA%20LOCAL%20RULES%20EFF%203-1-2022%20.pdf#page=211>

Central District of California (73)

C.D. Cal. Civ. R. 55-1 Default Judgments. When application is made to the Court for a default judgment, the application shall be accompanied by a declaration in compliance with F.R.Civ.P. 55(b)(1) and/or (2) and include the following:

(a) When and against what party the default was entered;

(b) The identification of the pleading to which default was entered;

(c) Whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative;

(d) That the Servicemembers Civil Relief Act (50 U.S.C. App. § 521) does not apply; and

(e) That notice has been served on the defaulting party, if required by F.R.Civ.P. 55(b)(2).

C.D. Cal. Civ. R. 55-2 Default Judgment - Unliquidated Damages. If the amount claimed in a judgment by default is unliquidated, the applicant may submit evidence of the amount of damages

by declarations. Notice must be given to the defaulting party of the amount requested. The party against whom judgment is sought may submit declarations in opposition.

C.D. Cal. Civ. R. 55-3 Default Judgment - Schedule of Attorneys' Fees. When a promissory note, contract or applicable statute provides for the recovery of reasonable attorneys' fees, those fees shall be calculated according to the following schedule:

<u>Amount of Judgment</u>	<u>Attorneys' Fees Awards</u>
\$0.01 - \$1,000	30% with a minimum of \$250.00
\$1,000.01 - \$10,000	\$300 plus 10% of the amount over \$1,000
\$10,000.01 - \$50,000	\$1200 plus 6% of the amount over \$10,000
\$50,000.01 - \$100,000	\$3600 plus 4% of the amount over \$50,000
Over \$100,000	\$5600 plus 2% of the amount over \$100,000

This schedule shall be applied to the amount of the judgment exclusive of costs. An attorney claiming a fee in excess of this schedule may file a written request at the time of entry of the default judgment to have the attorney's fee fixed by the Court. The Court shall hear the request and render judgment for such fee as the Court may deem reasonable.

https://www.cacd.uscourts.gov/sites/default/files/documents/LocalRules_Chap1_12_20_0.pdf#page=91

California Southern (74)

S.D. Cal. Civ. R. 55.1 Default Judgments

If plaintiff(s) fail(s) to move for default judgment within thirty (30) days of the entry of a default, the Clerk will prepare, with notice, an order to show cause why the complaint against the defaulted party should not be dismissed.

https://www.casd.uscourts.gov/_assets/pdf/rules/2021.07.5%20Local%20Rules.pdf#page=44

S.D. Cal. Civ. R. 77.2 Orders Grantable by Clerk

The Clerk is authorized to sign and enter orders specifically allowed to be signed by the Clerk under the Fed. R. Civ. P. and is, in addition, authorized to sign and enter the following orders without further direction of a judge:

a.

....

d. Orders entering default for failure to plead or otherwise defend in accordance with Fed. R. Civ. P. 55(b)(1).

https://www.casd.uscourts.gov/_assets/pdf/rules/2021.07.5%20Local%20Rules.pdf#page=54

Local rule for defaults in actions *in rem* (including maritime)

https://www.casd.uscourts.gov/_assets/pdf/rules/2021.07.5%20Local%20Rules.pdf#page=71

Guam (93)

D. Guam Civ. R. 77 Clerk's Authority.

(a) Orders Grantable by Clerk. The Clerk of Court is authorized to grant, sign, and enter the following orders without further direction by the Court. Any orders so entered may be suspended, altered, or rescinded by the Court for cause shown:

...

(2) Orders . . . entering defaults for failure to plead or otherwise defend, in accordance with Fed. R. Civ. P. 55, Federal Rules of Civil Procedure . . .

https://www.gud.uscourts.gov/sites/gud/files/civil_rules_effective_20190722_0.pdf#page=27

Hawaii (75)

No local rule

[https://www.hid.uscourts.gov/files/order532/2019_08_26_administrative_Order%20Amending%20the%20Local%20Rules%20eff%202019_09_01\(1\).pdf?PID=11&MID=47](https://www.hid.uscourts.gov/files/order532/2019_08_26_administrative_Order%20Amending%20the%20Local%20Rules%20eff%202019_09_01(1).pdf?PID=11&MID=47)

Idaho (76)

No local rule

https://www.id.uscourts.gov/content_fetcher/print_pdf_packet.cfm?Court_Unit=District&Content_Type=Rule&Content_Sub_Type=Civil

Montana (77)

No local rule (other than in prisoner cases)

https://www.mtd.uscourts.gov/sites/mtd/files/LocalRules_2022.pdf#page=34

Nevada (78)

D. Nev. Civ. R. 77-1. JUDGMENTS AND ORDERS GRANTABLE BY THE CLERK

...

(b) The clerk must:

...

(2) Enter default for failure to plead or otherwise defend under Fed. R. Civ. P. 55(a);

(3) Enter judgments by default in the circumstances authorized by Fed. R. Civ. P. 55(b)(1);

<https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Local-Rules-of-Practice-Amended-2020.pdf#page=78>

Northern Mariana Islands (94)

No local rule

<https://www.nmid.uscourts.gov/documents/localrules/LR20171101.pdf>

Oregon (79)

D. Or. Civ. R. 55-1 Conference Required Prior to Filing for Default

If the party against whom an order or judgment of default pursuant to Fed. R. Civ. P. 55 is sought has filed an appearance in the action, or has provided written notice of intent to file an appearance

to the party seeking an order or judgment of default, then LR 7-1 and LR 83-8 apply, and the parties must make a good faith effort to confer before a motion or request for default is filed.

Practice Tip: The requirement to confer is in addition to the requirement in Fed. R. Civ. P. 55(b)(2) that, “If a party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing.”

<https://www.ord.uscourts.gov/index.php/rules-orders-and-notice/local-rules/civil-procedure/1803-lr-55-default>

Specific cross-reference to this:

D. Or. Civ. R. 83-8 Cooperation Among Counsel

(a) Counsel must cooperate with each other, consistent with the interests of their clients, in all phases of the litigation process and be courteous in their dealings with each other, including matters relating to scheduling and timing of various discovery procedures.

(b) The Court may impose sanctions if it finds that counsel has been unreasonable in not accommodating the legitimate requests of opposing counsel. In a case where an award of attorney fees is applicable, the Court may consider lack of cooperation when setting the fee.

<https://www.ord.uscourts.gov/index.php/rules-orders-and-notice/local-rules/civil-procedure/1777-lr-83-rules-and-directives-by-the-district-court>

Washington Eastern (80)

E.D. Wash. Civ. R. 55 DEFAULT; DEFAULT JUDGMENT

Obtaining a default judgment is a two-step process: (1) a party must first file a motion for entry of default and obtain a Clerk’s Order of Default, and (2) a party must then file a motion for default judgment.

(a) Entering a Default. Upon motion, the Clerk of Court shall enter the default of any party against whom a judgment for affirmative relief is sought and who has failed to plead or otherwise defend. (1) Notice Required. Written notice of the intention to move for entry of default must be provided to counsel or, if counsel is unknown, to the party against whom default is sought, regardless of whether counsel or the party have entered an appearance. Such notice shall be given at least 14 days prior to the filing of the motion for entry of default. If notice cannot be provided because the identity of counsel or the whereabouts of a party are unknown, the moving party shall inform the Clerk of Court in the declaration or affidavit.

(2) Declaration or Affidavit Required. The moving party must show (a) that the party against whom default is sought was properly served with the summons and complaint in a manner authorized by Federal Rule of Civil Procedure 4; (b) that the party has failed to timely plead or otherwise defend; and (c) that proper notice of the intention to seek an entry of default, as described above, has been accomplished.

(3) No Notice of Hearing Required. The Clerk shall enter default upon the filing of a properly supported motion for entry of default.

(b) Entering a Default Judgment.

(1) Motion Practice. All applications and requests for default judgment shall be conducted by motion practice. No motion for default judgment shall be filed unless an order of default has been

entered by the Clerk of Court. A motion for default judgment shall be filed and noted for hearing in accordance with LCivR 7. By declaration or affidavit, the moving party must (A) specify whether the party against whom judgment is sought is an infant or an incompetent person and, if so, whether that person is represented by a general guardian, conservator, or other like fiduciary; and (B) attest that the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-597b, does not apply. (2) Court Review. Notwithstanding the provisions of Federal Rule of Civil Procedure 55(b)(1), the Clerk of Court may refer any request for entry of default judgment to the Court for review prior to formal entry.

(c) through (d) [Reserved]

<https://www.waed.uscourts.gov/sites/default/files/localrules/LocalCivilRules.pdf#page=25>

Washington Western (81)

W.D. Wash. Civ. R. 55 DEFAULT; DEFAULT JUDGMENT

(a) Entry of Default

Upon motion by a party noted in accordance with LCR 7(d)(1) and supported by affidavit or otherwise, the clerk shall enter the default of any party against whom a judgment for affirmative relief is sought but who has failed to plead or otherwise defend. The affidavit shall specifically show that the defaulting party was served in a manner authorized by Fed. R. Civ. P. 4. A motion for entry of default need not be served on the defaulting party. However, in the case of a defaulting party who has entered an appearance, the moving party must give the defaulting party written notice of the requesting party's intention to move for the entry of default at least fourteen days prior to filing its motion and must provide evidence that such notice has been given in the motion for entry of default.

(b) Judgment on Default

(1) No Default Judgment Absent a Default. No motion for judgment by default should be filed against any party unless the court has previously granted a motion for default against that party pursuant to LCR 55(a) or unless default otherwise has been entered.

(2) Supporting Evidence Required. Plaintiff must support a motion for default judgment with a declaration and other evidence establishing plaintiff's entitlement to a sum certain and to any nonmonetary relief sought.

(A) Plaintiff shall provide a concise explanation of how all amounts were calculated, and shall support this explanation with evidence establishing the entitlement to and amount of the principal claim, and, if applicable, any liquidated damages, interest, attorney's fees, or other amounts sought. If the claim is based on a contract, plaintiff shall provide the court with a copy of the contract and cite the relevant provisions.

(B) If plaintiff is seeking interest and claims that an interest rate other than that provided by 28 U.S.C. § 1961 applies, plaintiff shall state the rate and the reasons for applying it. For prejudgment interest, plaintiff shall state the date on which prejudgment interest began to accrue and the basis for selecting that date.

(C) If plaintiff seeks attorney's fees, plaintiff must state the basis for an award of fees and include a declaration from plaintiff's counsel establishing the reasonable amount of fees to be awarded, including, if applicable, counsel's hourly rate, the number of hours worked, and the tasks performed.

(3) By the Clerk. The clerk may not enter judgment by default in the case of a defaulting party who has entered an appearance, or who is an infant or incompetent, or who is or may be in the military service. In addition, a claim for “reasonable attorney’s fees” is not for a sum certain under Fed. R. Civ. P. 55(b)(1) unless the complaint states the amount of fees sought. Motions to have the clerk enter a default judgment shall be noted in accordance with LCR 7(d)(1). A motion for entry of default judgment by the clerk need not be served on the defaulting party.

(4) By the Court. In all other cases, including instances where a defaulting party has entered an appearance, is an infant or incompetent, or is or may be in the military service, a motion for entry of a judgment by default must be addressed to the court. If there has been no appearance in the action by the defaulting party, the motion shall be noted in accordance with LCR 7(d)(1), but it need not be served on the defaulting party and notice of the motion need not be given to the defaulting party. If the defaulting party has appeared, the motion shall be noted in accordance with LCR 7(d)(3), and service of all papers filed in support of the motion must be made at the defaulting party’s address of record and shall also be served by electronic means if available. In the absence of an address of record, service shall be made at the defaulting party’s last known address and shall also be served by electronic means if available. The court may conduct such hearing or inquiry upon a motion for entry of judgment by default as it deems necessary under the circumstances of the particular case.

<https://www.wawd.uscourts.gov/sites/wawd/files/WAWD%20All%20Local%20Civil%20Rules%20Clean%202022.pdf#page=97>

TENTH CIRCUIT

Colorado (82)

D. Colo. Civ. R. 55.1 DEFAULT JUDGMENT FOR A SUM CERTAIN

(a) Required Showing. To obtain a default judgment under Fed. R. Civ. P. 55(b)(1), a party shall show by motion supported by affidavit:

(1) that the defendant who has been defaulted:

(A) is not a minor or an incompetent person;

(B) is not in the military service, as set forth in the Servicemembers Civil Relief Act, 50 U.S.C. § 3931, Protection of Servicemembers Against Default Judgments;

(C) has not made an appearance; and

(2) the sum certain or the sum that can be made certain by computation.

(b) Form of Judgment. The moving party shall submit a proposed form of judgment that recites:

(1) the party or parties in favor of whom judgment shall be entered;

(2) the party or parties against whom judgment shall be entered;

(3) when there are multiple parties against whom judgment shall be entered, whether the judgment shall be entered jointly, severally, or jointly and severally;

(4) the sum certain consisting of the principal amount, prejudgment interest, and the rate of postjudgment interest; and

(5) the sum certain of attorney fees enumerated in the document on which the judgment is based.

http://www.cod.uscourts.gov/Portals/0/Documents/LocalRules/2021_Final_Local_Rules.pdf?ver=2022-02-16-135206-217#page=30

Kansas (83)

D. Kan. Civ. R. 77.2 ORDERS AND JUDGMENTS GRANTABLE BY CLERK

(a) Orders and Judgments. The clerk may grant the following orders and judgments without direction by the court:

...

(6) Entry of default and judgment by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1).

<https://ksd.uscourts.gov/sites/ksd/files/MASTER%20COPY%20updated%2010-25-23.pdf#page=55>

New Mexico (84)

No local rule

https://www.nmd.uscourts.gov/sites/nmd/files/local_rules/Local%20Rules%20of%20Civil%20Procedure%20Adopted%20October%20201%2C%202020_0.pdf

Oklahoma Northern (85)

N.D. Okla. Civ. R. 55 – Default; Default Judgment

N.D. Okla. Civ. R. 55-1 Procedure for Obtaining Default Judgment.

(a) Entry of Default by Court Clerk. To obtain an entry of default pursuant to Fed. R. Civ. P. 55(a), the party must provide the Court Clerk with a “Motion for Entry of Default by the Clerk.” The motion shall recite the facts that establish service of process, be accompanied by affirmations concerning non-military service, and state that the individual is neither an infant nor an incompetent person. Once a proper motion has been filed, the Court Clerk will prepare and enter default, after independently determining that service has been effected, that the time for response has expired, and that no answer or appearance has been filed.

(b) Entry of Default Judgment. In its discretion, the Court may set a hearing on the motion with respect to which notice shall be provided by the party moving for default judgment in accordance with the requirements of Fed. R. Civ. P. 55(b).

https://www.oknd.uscourts.gov/sites/default/files/madcap/Default.htm#lcvr55.htm%3FTocPath%3DCIVIL%2520RULES%7C_23

Oklahoma Eastern (86)

E.D. Okla. Civ. R. 55.1 Procedure For Obtaining Default Judgment.

(a) Entry of Default by Court Clerk. To obtain an entry of default pursuant to Fed. R. Civ. P. 55(a), the party must provide the Court Clerk with a “Motion for Entry of Default by the Clerk.” The motion shall recite the facts that establish service of process, and be accompanied by affirmations concerning non-military service and that the individual is neither an infant nor an incompetent person. Once a proper motion has been filed, the Court Clerk will prepare and enter default, after independently determining that service has been effected, that the time for response has expired and that no answer or appearance has been filed.

(b) Entry of Default Judgment. In cases where a plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, a plaintiff may request the Court Clerk to enter a default judgment under Fed.R.Civ.P. 55(b)(1). The plaintiff must file a motion for default judgment

accompanied by a concise brief, a form of judgment, and an affidavit (1) stating the amount for a sum certain or that can by computation be made certain and (2) stating that the defendant against whom judgment is to be entered is not an infant or an incompetent person. In all other cases, a party must apply to the Court for a default judgment pursuant to the provisions of Fed.R.Civ.P. 55(b)(2). In its discretion, the Court may set a hearing on a motion for default judgment with respect to which notice shall be provided by the party moving for default judgment in accordance with the requirements of Fed.R.Civ.P. 55(b)(2).

https://www.oked.uscourts.gov/sites/oked/files/Local_Civil_Rules.pdf#page=33

Oklahoma Western (87)

W.D. Okla. Civ. R. 55.1 Application for Default Judgment.

No application for a default judgment shall be entertained absent an affidavit in compliance with the Servicemembers Civil Relief Act.

https://www.okwd.uscourts.gov/wp-content/uploads/Local_Rules_05-26-2021.crs-edit.pdf#page=39

District of Utah (88)

D. Utah Civ. R. 55-1 DEFAULTS AND DEFAULT JUDGMENTS

The procedure for obtaining a default judgment under Fed. R. Civ. P. 55 is a twostep process: (a) entry of default by the clerk pursuant to Fed. R. Civ. P. 55(a); and (b) entry of default judgment, by the clerk when the claim is for a sum certain pursuant to Fed. R. Civ. P. 55(b)(1), and by the court in all other instances pursuant to Fed. R. Civ. P. 55(b)(2).

Entry of Default.

To obtain an entry of default pursuant to Fed. R. Civ. P. 55(a), a party must file a “motion for entry of default” and a proposed order. The motion must describe with specificity the method by which each allegedly defaulting party was served with process in a manner authorized by Fed. R. Civ. P. 4, and the date of such service. The clerk will independently determine whether service has been effected, that the time for response has expired, and that party against whom default is sought has failed to plead or otherwise defend. Should the clerk determine that entry of default is not appropriate for any reason, the clerk will issue an order denying entry of default. An order denying entry of default is reviewable by the court upon motion.

Default Judgment.

No motion for default judgment must be filed unless a certificate of default has been entered by the clerk. If a party obtains a certificate of default but does not, within a reasonable time thereafter, file a motion for default judgment, the court may direct the party to show cause why the claims upon which default was entered should not be dismissed for failure to prosecute.

(1) By the Clerk.

(A) In cases where a claim is for a sum certain or a sum that can be made certain by computation, a party may request the clerk enter a default judgment against any party other than the United States, its officers, or its agencies, by filing a motion for default judgment under Fed. R. Civ. P. 55(b)(1). The motion must clearly identify that the party is seeking default judgment from the clerk under Fed. R. Civ. P. 55(b)(1). The motion must be accompanied by a concise brief, a form of

judgment, and an affidavit stating: (i) the amount due; (ii) that the defendant has failed to appear; and (iii) that the defendant is not a minor or an incompetent person.

(B) If the clerk determines that it may not be appropriate to enter a default judgment under Fed. R. Civ. P. 55(b)(1), the clerk may confer with the presiding judge. The presiding judge will advise the clerk whether default judgment by the clerk is appropriate. If such a judgment is not appropriate, the motion for default judgment will be addressed by the presiding judge.

(2) By the Court. In all cases not falling under DUCivR 55-1(b)(1), a party must apply to the court for a default judgment in accordance with Fed. R. Civ. P. 55(b)(2). The motion for default judgment must include the clerk's certificate of default and a proposed form of default judgment. In cases against the United States, its officers, or its agencies, the claimant must establish a claim or right to relief by evidence that satisfies the court in compliance with Fed. R. Civ. P. 55(d). Upon receipt of the motion, the court may conduct further proceedings to enter or effectuate judgment as it deems necessary.

(3) Affidavit Required by Servicemembers Civil Relief Act. All motions for default judgment must be accompanied by an affidavit: (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

<https://www.utd.uscourts.gov/sites/utd/files/Dec%202021%20Civil%20Rules.pdf#page=64>

District of Wyoming (89)

No local rule

https://www.wyd.uscourts.gov/sites/wyd/files/local_rules/localrules-cv22.pdf

ELEVENTH CIRCUIT

Alabama Northern (26)

No local rule

<https://www.alnd.uscourts.gov/sites/alnd/files/ALND%20Local%20Rules%20Revised%202012-04-2019.pdf>

Alabama Middle (27)

No local rule

<https://www.almd.uscourts.gov/sites/default/files/forms/ALMD%20Local%20Rules.pdf>

Alabama Southern (28)

S.D. Ala. Civ. R. 41. Dismissal of Actions

...

(b) Dismissal Where No Answer or Other Pleading Filed. Whenever a served Defendant has failed to answer or otherwise defend within six (6) months from the filing of the complaint and the Plaintiff has not sought default and default judgment, the Court upon notice may dismiss the action for failure to prosecute, in accordance with applicable law.

<https://www.alsd.uscourts.gov/sites/alsd/files/local-rules.pdf#page=48>

In rem actions

<https://www.alsd.uscourts.gov/sites/alsd/files/local-rules.pdf#page=56>

Florida Northern (29)

No general local rule

Attachment actions:

https://www.flnd.uscourts.gov/sites/flnd/files/local_rules/local_rules_0.pdf#page=46

In rem actions:

https://www.flnd.uscourts.gov/sites/flnd/files/local_rules/local_rules_0.pdf#page=49

Florida Middle (3A)

M.D. Fla. Civ. R. 1.10 Filing Proof of Service of Process; Deadline for Default

(a) PROOF OF SERVICE. Within twenty-one days after service of a summons and complaint, a party must file proof of service.

(b) APPLICATION FOR A DEFAULT. Within twenty-eight days after a party's failure to plead or otherwise defend, a party entitled to a default must apply for the default.

(c) APPLICATION FOR A DEFAULT JUDGMENT. Within thirty-five days after entry of a default, the party entitled to a default judgment must apply for the default judgment or must file a paper identifying each unresolved issue — such as the liability of another defendant — necessary to entry of the default judgment.

(d) FAILURE TO ACT TIMELY. Failure to comply with a deadline in this rule can result in dismissal of the claim or action without notice and without prejudice.

https://www.flmd.uscourts.gov/sites/flmd/files/local_rules/flmd-united-states-district-court-middle-district-of-florida-local-rules.pdf#page=17

Florida Southern (3C)

Similar to Florida Northern—rules for attachments and *in rem* actions, no general rule

https://www.flsd.uscourts.gov/sites/flsd/files/Local_Rules_Effective_120121_FINAL.pdf#page=77

Georgia Northern (3L)

N.D. Ga. Civ. R. 55: DEFAULT

N.D. Ga. Civ. R. 55.1 MAGISTRATE JUDGES: DEFAULT JUDGMENTS

(A) Pretrial Matters on Reference from Judge. The magistrate judges may, in appropriate cases, enter default judgments and review motions to set aside default judgments.

https://www.gand.uscourts.gov/sites/gand/files/local_rules/NDGARulesCV_2.pdf#page=60

Georgia Middle (3G)

No local rule

https://www.gamd.uscourts.gov/sites/gamd/files//Local_Rules_3-7-22.pdf

Georgia Southern (3J)

No local rule

<https://www.gasd.uscourts.gov/court-info/local-rules-and-orders/local-rules>