

WAWB LOCAL RULE 7055-1: ENTRY OF DEFAULT AND DEFAULT JUDGMENT

Adrian Funston, Extern to Hon. Mary Jo Heston

A. INTRODUCTION

A default judgment is a ruling issued by a court in favor of a plaintiff when the defendant in a legal case fails to respond to a court summons or does not appear in court.¹ Moreover, the entry of a default judgment is warranted when a party does not plead or defend.

To obtain a default judgment, the moving party must first seek entry of default and then file a motion for default judgment.² In the Western District of Washington, the local rule governing default judgments is Local Rules W.D. Wash. Bankr. Rule 7055-1. Local Rules W.D. Wash. Bankr. Rule 7055-1, effective December 1, 2023, was amended to describe bankruptcy court procedure and was necessitated in part by the bankruptcy court's decision to no longer incorporate all the Local District Court rules in its Local Rules.³

Local Rules W.D. Wash. Bankr. Rule 7055-1 contains several features that can help minimize the economic burden and delay associated with bankruptcy disputes. This article provides best practice tips for obtaining a default judgment to reduce litigant costs and expedite the resolution of bankruptcy disputes in the Western District of Washington.

B. TIPS ON MOTION PRACTICE

1. Motion for Entry of Default and Default Judgment

Entry of default is distinct from a default judgment. A motion for entry of default is often filed separately from a motion for default judgment. Under Local Rules W.D. Wash. Bankr. Rule 7055-1, however, parties may pursue an expedited default judgment through a single motion requesting both entry of default and default judgment. The moving party may combine the motion for entry of default and the motion for a default judgment if the moving party specifically requests entry of default and default judgment.⁴ If a moving party chooses to file a combined motion, it must submit the order for entry of default and the default judgment as separate orders.⁵ When done properly, seeking both entry of default and default judgment in a combined motion saves time and effort for all parties.

¹ This article does not address default judgments entered for reasons other than failure to answer or respond to a complaint.

² Fed. R. Civ. P. 55(a), (b).

³ See [2023 LBR Summary of Changes](#).

⁴ Local Rules W.D. Wash. Bankr. 7055-1(b)(1).

⁵ Local Rules W.D. Wash. Bankr. 7055-1(b)(1).

2. Entry of Default

An entry of default must be entered before the entry of a default judgment. When the party against whom the movant seeks relief (1) fails to plead or otherwise defend, and (2) this failure is demonstrated by an affidavit submitted by the movant, the court shall enter the party's default. The affidavit must specifically show that the defaulting party was served in a manner authorized by Fed. R. Bankr. P. 7004.

a. Service Requirements

As a threshold matter, the moving party must first comply with summons and complaint service requirements. Fed. R. Bankr. P. 7004 adopts in large part the procedural requirements for service of process found in Fed. R. Civ. P. 4. However, there are many significant modifications contained in Fed. R. Bank. P. 7004 that apply to service of a summons and complaint in an adversary proceeding. For instance, in addition to the methods of service authorized by Fed. R. Civ. P. 4(e)-(j), Fed. R. Civ. P. 7004(b) provides for service by first class mail, and addresses the manner certain entities may be served including individuals, an infant or incompetent person, a domestic or foreign corporation or partnership or other unincorporated association, the United States, officer or agency of the United States, a state or municipal corporation or other governmental organization subject to suit, a debtor, or a United States Trustee. Further, to ensure compliance with Fed. R. Bankr. P. 7004(g) and (h), the moving party must submit proof of service to the court if applicable.⁶

The Local Rules establish an additional requirement for service. Specifically, Local Rules W.D. Wash. Bankr. Rule 7004-1 mandates that the plaintiff file a certificate of service within 14 days after the service of a summons and complaint has been completed. Although proof of service does not impact the validity of the service, it is advisable to submit proof of service with the complaint and summons promptly to avoid delays.

b. Noticing Requirements

Following proper service of the complaint, summons, and proof of service, the movant generally does not need to serve a motion upon the defaulting party. In most cases, the movant may obtain an entry of default ex parte. However, the movant must provide 21-days' notice in compliance with Local Rules W.D. Wash. Bankr. Rule 9013-1(d)(2)(F) when the defaulting party has made an appearance.⁷

⁶ See Fed. R. Bankr. P. 7004(g) (Serving a Debtor's Attorney); Fed. R. Bankr. P. 7004(h) (Service of Process on an Insured Depository Institution).

⁷ Local Rules W.D. Wash. Bankr. 7055-1(a).

3. Default Judgment

a. Substantive Requirements

After entry of default, the moving party may then request entry of default judgment. A motion for default judgment must be supported by admissible evidence to establish the truth of the allegations in the complaint.⁸ A declaration in support or a verified complaint can be sufficient.⁹ In the motion, the moving party must also: (1) provide a concise explanation of how all amounts were calculated using evidence; (2) state the rate and the reasons for applying an interest rate not provided by 28 U.S.C. § 1961, if so desired; and (3) state the basis for an award of attorney's fees and include a declaration, if so desired.¹⁰ The moving party should insert the desired interest rate, otherwise by default the federal rate shall apply pursuant to 28 U.S.C. § 1961.¹¹

Finally, as stated already, a default judgment must be submitted separately from the entry of a default.¹² The purpose of the rule is to determine when the time of the appeal begins to run. Accordingly, it is paramount to ensure that the moving party files its entry for default judgment last and separately from the entry of default.

b. Noticing Requirements

In some instances, a moving party may seek entry of a default judgment *ex parte*. When a defaulting party has not made an appearance, is not an infant or an incompetent, and is not in military service as defined by the Servicemembers Civil Relief Act (hereinafter "SCRA"), 50 U.S.C. § 3931(2)(A)-(C), the moving party may file the motion for the entry of an entry of default and for the entry of judgment *ex parte* in accordance with Local Bankruptcy Rule 9013-1(g).¹³ If, however, a defaulting party has entered an appearance, is an infant or incompetent, or is or may be in the military service, the motion must be noted in accordance with Local Bankruptcy Rule 9013-1.¹⁴ Further, in compliance with the SCRA, 50 U.S.C. § 3931, a default judgment may not be entered against an individual without an affidavit of non-military service. This, however, is only needed for the default judgment, not an entry of default.¹⁵

⁸ Local Rules W.D. Wash. Bankr. 7055-1(b)(2).

⁹ Local Rules W.D. Wash. Bankr. 7055-1(b)(2).

¹⁰ Local Rules W.D. Wash. Bankr. 7055-1(b)(2)(A)-(C).

¹¹ 28 U.S.C. § 1961.

¹² Fed. R. Bankr. P. 7058 ("Every judgment, including default judgments, entered in an adversary proceeding must be set forth in a separate document.")

¹³ Local Rules W.D. Wash. Bankr. 7055-1(b)(4).

¹⁴ Local Rules W.D. Wash. Bankr. 7055-1(b)(3).

¹⁵ See 50 U.S.C. § 3931(b)(1) ("[B]efore entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit . . .")

c. Prove-up Hearings

Despite the clerk's entry of default, an entry of default does not entitle the non-defaulting party to a default judgment as a matter of right.¹⁶ The Ninth Circuit follows a factors list in reviewing a motion for default judgment: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning the material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.¹⁷ Notably, because nondischargeability proceedings implicate a debtor's fresh start, a court may refuse to enter a default judgment if it determines that no justifiable claim has been alleged.¹⁸

The court has the discretion to require the moving party to not only plead a prima facie case but also establish a prima facie case at a "prove up" hearing before entering the default judgment.¹⁹ In other words, the court may require the plaintiff to offer evidence to render judgment in their favor. Practitioners also should review the chambers procedures page for the judge assigned to the case for any specific requirements established by that judge.

C. CONCLUSION

An entry of default is different from an entry of default judgment. The former is required before the latter, and entry of a default does not entitle the non-defaulting party to a default judgment as a matter of right. The moving party must consider not only Local Rules W.D. Wash. Bankr. Rule 7055-1, but also applicable Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and other Western District of Washington local rules, to ensure a proper and expedient default judgment against whom relief is sought.

¹⁶ See Local Rules W.D. Wash. Bankr. 7055-1(b)(4) ("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.")

¹⁷ *Senior's Choice v. Mattingly*, 2012 WL 315276, *2 (C.D. Cal. July 31, 2012) (citing *Eitel v. MCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986)).

¹⁸ *Doe v. Qi*, 349 F. Supp. 2d 1258, 1271 (N.D. Cal. 2004); *Lu v. Liu (In re Liu)*, 282 B.R. 904, 908 (Bankr. C.D. Cal. 2002).

¹⁹ *Cashco Fin. Servs., Inc. v. McGee (In re McGee)*, 2006 WL 3627216 (9th Cir. BAP Dec. 6, 2006).