

MOTIONS FOR DEFAULT JUDGMENT

Counsel should be reminded that a motion for default judgment in an adversary proceeding must be supported by the following:

1. Proof of proper service of process on the defendant(s) –
 - a. Proof may be in the form of a proof of service (set forth on reverse side of the Summons), certificate of service by counsel, affidavit, or certification by counsel.
 - b. Generally, service must be made within seven (7) days of the date of issuance of the Summons. The summons must specifically name the defendant against whom judgment is sought.
 - c. For proper service of the Summons, *see generally* FED. R. BANKR. P. 7004 and FED. R. CIV. P. 4. Some common service rules:
 - (i) Service upon the debtor must also be made upon debtor's counsel;
 - (ii) Service upon a business entity must be directed to an officer, managing or general agent, or other agent authorized to receive service of process;
 - (iii) With certain exceptions, service upon an FDIC insured financial institution must be made by certified mail on an officer of the institution;
 - (iv) Service upon the United States must include service upon the local US Attorney and upon the United States Attorney General.
2. If the defendant is an individual, an affidavit that the defendant is not a minor, incompetent or in the military service. 50 U.S.C. App. § 521.

3. An affidavit or certification of counsel that the defendant has not filed an answer and has otherwise failed to defend, and that counsel has not received from the defendant an answer or request for extension of time to respond. *See* FED. R. BANKR. P. 7055, FED. R. CIV. P. 55.

4. If the plaintiff is seeking a money judgment, the record must contain competent evidence of the specific amount due plaintiff. This may take the form of an affidavit attached to the motion or filed separately, relevant portions of transcript of sworn testimony (deposition, § 341 meeting, other evidentiary hearing), order of court, or similar.

See generally 10 MOORE'S FEDERAL PRACTICE ¶ 55.11 et seq., 55.40 (3d ed. 1997).

Relevant Adversary Procedure

When a Motion for Default and/or Default Judgment is filed pursuant to LR 9013, any pending Pre-Trial Conference will be set/continued to the Hearing Date as set forth in the Notice of Motion. If the Order granting Default and/or Default Judgment is entered, the PreTrial Conference will be cancelled. Counsel should submit the proper documentation/order to close the adversary proceeding at this time.