

DEFAULT

- Defaults are governed by Fed.R.Civ.P. 55; one thing often overlooked concerning defaults is that they involve a two-stage process:
 - The *entry of default* upon the determination that the defendant has not timely responded after service of the complaint [subsection (a)], and
 - The *entry of default judgment* thereafter [subsection (b)].
- The filing of two separate motions is generally required (motion for entry of Clerk's default and motion for default judgment).
- As to step one, the entry of default, it will not happen in the Eastern District of Missouri unless the return of service satisfies the Clerk and/or the Court that, consistent with the requirements of F.R.Civ.P. 4, good service was obtained or a valid waiver of service was made; where the process server's return does not include sufficient information to support that determination, a supplemental affidavit may be required.
- A proposed default judgment is a helpful submission along with a motion for default judgment, in order to clarify the particular relief sought.
- Some law to remember concerning defaults:
 - A defendant's default is generally treated as an admission of the facts pled in the complaint, except facts as to damages, which still must be proved, unless a sum certain.
 - Conclusions of law are not deemed admitted by default, so even where there is a default, in order for default judgment to be appropriate, the facts deemed admitted must support liability on the legal claim that is pled.
 - For either of these reasons, the Court may hold a hearing or oral argument on a motion for default judgment, if the briefing and affidavits and other documentary evidence submitted do not satisfy these issues.