

An investor sued a company's chief executive officer (CEO) for federal securities fraud in a federal court. The investor properly served process on the CEO, but the CEO did not file an answer or any other response.

Thirty days after service of process, the investor asked the clerk of the court to enter the CEO's default, which the clerk promptly did. The investor then submitted to the clerk a request for default judgment that included an affidavit stating that the CEO defrauded her of \$100,000. The clerk entered a default judgment for this amount. Twenty days later, the CEO learned of the default judgment and immediately filed a motion to set it aside because he was abroad when the default judgment was entered.

How will the court likely rule on the CEO's motion?

- A. Deny the motion, because a court may not set aside an entry of a default judgment.
- B. Deny the motion, because the clerk properly entered the default judgment.
- C. Grant the motion, because only a judge may enter a default judgment.
- D. Grant the motion, because the CEO was not notified of the request for default judgment.

### Explanation:

A default refers to a defendant's failure to [timely serve an answer](#) to a lawsuit, which is generally due within 21 days after the defendant is served with process. When the plaintiff shows this failure to the court clerk, the clerk must enter the defendant's default into the record of the case (as seen here). The default can then be entered as a default judgment by the clerk *or* the court **(Choice C)**. The **clerk *must* enter a default judgment** when:

- the plaintiff's claim is for a **sum certain**—ie, a specified or set amount—or a sum that can be made certain by calculation
- the plaintiff's request for default judgment includes an affidavit establishing the amount due
- the defendant **failed to appear**—ie, did not file a motion or otherwise act before the court—and
- the defendant is not legally incompetent or a minor.

Here, the investor filed an affidavit that claimed the CEO defrauded her of \$100,000—a sum certain. And since the CEO failed to appear and is not legally incompetent or a minor, the clerk properly entered a default judgment. Therefore, the court will likely deny the CEO's motion to set aside the default judgment.

**(Choice A)** A court may set aside the clerk's entry of *default* for good cause. And a court may set aside a default *judgment* for any reason justifying [relief from a final judgment](#)—none of which apply here.

**(Choice D)** If the defendant previously appeared before the court, the plaintiff must serve the defendant with written notice of the application for default judgment seven days before a hearing on the matter. But here, the CEO failed to appear, so no such notice was required.

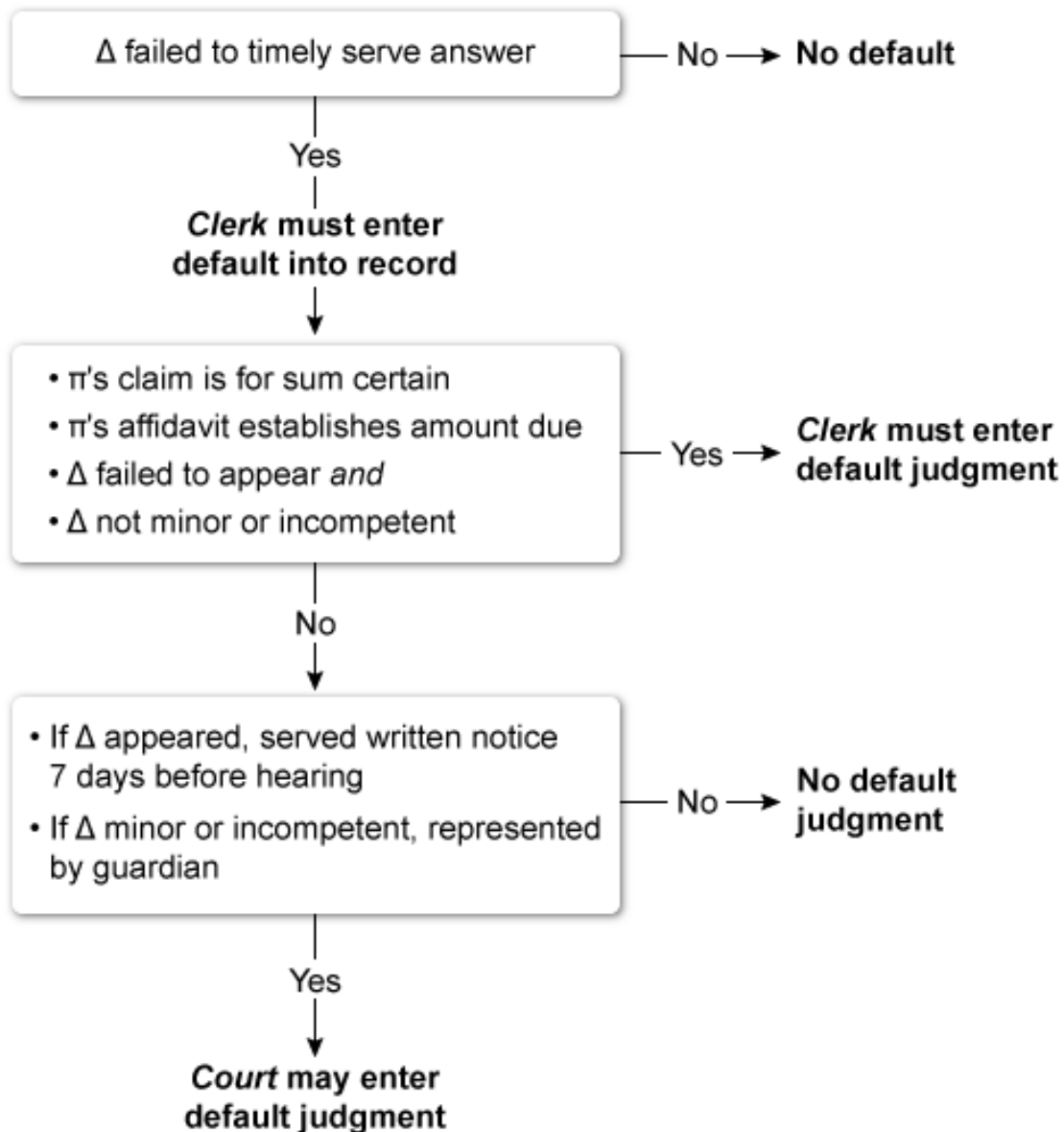
### Educational objective:

A court clerk must enter a default judgment when (1) the plaintiff's claim is for a sum certain, (2) the plaintiff's request for default judgment includes an affidavit establishing the amount due, (3) the defendant failed to appear, and (4) the defendant is not legally incompetent or a minor.

### References

- Fed. R. Civ. P. 55 (default judgments).

## Entering default judgment



Δ = defendant; π = plaintiff

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