

A drunken man confronted a heavyweight boxer in a bar, and a fight ensued. During the melee, the boxer struck the man's head and the man instantly died. The boxer was convicted of manslaughter and sentenced to 15 years in prison.

While the boxer was serving his sentence, the man's spouse brought a wrongful death suit against the boxer in federal court. The spouse sought \$10 million in damages for loss of future income and loss of companionship. The boxer was served with process while in prison, but he did not respond. Thirty days later, the spouse asked the clerk to enter the boxer's default, and the clerk did so. The spouse then applied to the clerk to enter a default judgment.

May the clerk enter a default judgment?

- A. No, because the boxer was not given notice of the spouse's application for the entry of default judgment.
- B. No, because the spouse did not seek a sum certain or attach an affidavit showing the amount due.
- C. Yes, because the boxer failed to appear.
- D. Yes, because the clerk may set damages at the amount demanded in the complaint.

### Explanation:

Federal Rule of Civil Procedure 55 provides a two-step process for a plaintiff to secure a default judgment. First, the clerk must enter the defendant's default into the record once the plaintiff shows that the defendant failed to **timely serve an answer**—as the boxer failed to do within 21 days after being served with process. Second, the court or the clerk may enter a **default judgment**. However, the **clerk is prohibited** from doing so if any of the following apply:

- The **defendant has appeared**—ie, filed a motion or otherwise acted before the court.
- The defendant is **legally incompetent** or a **minor**.
- The plaintiff's claim is **not for a sum certain** (ie, a specified or set amount) or sum that can be made certain by calculation.
- The plaintiff **failed to include an affidavit** establishing the amount due.

Here, the boxer did not appear, and there is no indication that he is legally incompetent or a minor. However, the spouse's request for \$10 million is *not* a sum certain and cannot be made certain by calculation. That is because the man's future earning potential and the value of his companionship are not specified or set amounts. Additionally, the spouse failed to attach an affidavit showing the amount due. Therefore, the clerk may not enter a default judgment **(Choice C)**.\*

\*The court may still enter a default judgment after the judge conducts a hearing to determine the proper amount of damages to award.

**(Choice A)** Had the boxer appeared, he would have been entitled to written notice at least seven days before the court conducted a hearing on the entry of default judgment.

**(Choice D)** The clerk may set damages at the amount demanded in the complaint when the claim is for a sum certain and an attached affidavit establishes the amount due—neither of which is seen here.

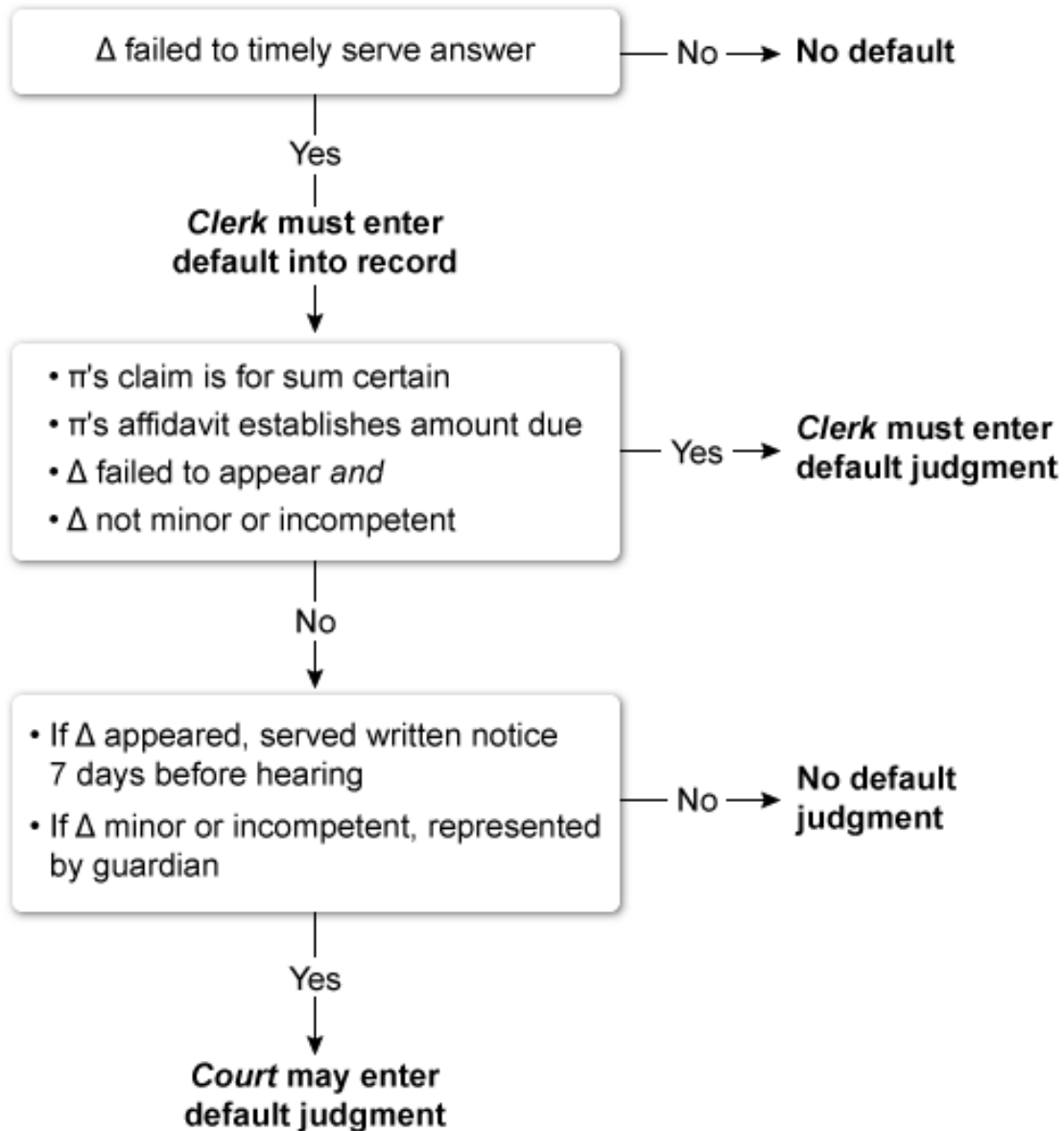
### Educational objective:

A default judgment may be entered by the clerk of the court unless: (1) the defendant has appeared, (2) the defendant is legally incompetent or a minor, (3) the plaintiff's claim is not for a sum certain or a sum that can be made certain by calculation, or (4) the plaintiff failed to include an affidavit establishing the amount due.

### References

- Fed. R. Civ. P. 55 (default judgments).
- 46 Am. Jur. 2d Judgments § 260 (2019) (explaining sum certain).

## Entering default judgment



Δ = defendant; π = plaintiff