

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JUL - 6 2026

Angela D. Caesar, Clerk
U.S. District & Bankruptcy Courts
for the District of Columbia

PETER BERNEGGER,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civil Action No. 1:25-cv-04072-
RBW

**PLAINTIFF'S MOTION FOR AN ORDER DIRECTING THE CLERK TO ENTER
DEFAULT UNDER FED. R. CIV. P. 55(a), OR IN THE ALTERNATIVE, FOR ENTRY
OF DEFAULT BY THE COURT**

Plaintiff Peter Bernegger respectfully moves this Court for an order directing the Clerk of Court to enter default against Defendant Federal Election Commission ("FEC" or "the Commission") pursuant to Federal Rule of Civil Procedure 55(a), or, in the alternative, for entry of default by the Court itself. Consistent with the Court's Minute Order, this Motion does not seek default judgment; it seeks only action on the predicate Rule 55(a) entry of default, which Plaintiff has twice requested from the Clerk by sworn declaration and which has been pending without action for more than ten weeks. Pursuant to Local Civil Rule 7(a), the points and authorities in support are incorporated in this Motion. Pursuant to Local Civil Rule 7(c), a proposed order accompanies this Motion. In support, Plaintiff states as follows:

BACKGROUND

1. This is an action under 52 U.S.C. § 30109(a)(8) challenging the Commission's failure to act on Plaintiff's sworn administrative complaint, MUR 8378, within the 120-day statutory period. The procedural history is established by the docket:

Date	Docket	Event
11/20/2025	Dkt. 1	Complaint for Declaratory and Injunctive Relief filed.
12/03/2025	Dkts. 3, 4, 6	Defendant FEC personally served by private process server; sworn Declarations of Service filed.
01/29/2026	Dkt. 7	Defendant files a Notice of Lack of Quorum, its only filing in this action.
02/02/2026	Dkt. 10, Ex. A	U.S. Attorney for the District of Columbia and Attorney General of the United States each served by certified mail; return receipts signed by their agents.
02/06/2026	Dkt. 9	First Amended Complaint filed (entered on the docket February 10, 2026).
02/20/2026	Dkt. 10	Notice to Court of Proof of Service filed with the USPS return-receipt cards. The Clerk's docket text states: "Answer due for ALL FEDERAL DEFENDANTS by 4/3/2026."
03/24/2026	Dkt. 12	Plaintiff's Motion for Entry of Default and Default Judgment filed; denied without prejudice by Minute Order directing that entry of default be sought by affidavit under Rule 55.
04/03/2026	—	Answer deadline expired. No answer, Rule 12 motion, or request for extension of time has been filed, then or since.
04/20/2026	Dkt. 13	Declaration in Support of Request for Clerk's Entry of Default under Fed. R. Civ. P. 55(a) filed (entered April 28, 2026), with a proposed Clerk's Entry of Default at page 6. This request remains pending.
05/05/2026	Dkt. 14	Plaintiff's Motion for Default Judgment filed with supporting memorandum, declaration, and exhibits.
06/15/2026	Dkt. 15	Plaintiff's second written request to the Clerk for action on the pending Dkt. 13 request.
Present	—	No entry of default has issued. The Dkt. 13 request has been pending for more than ten weeks.

2. Service of process is complete under Rule 4(i). Plaintiff (a) personally served the FEC on December 3, 2025 (Dkts. 3, 4, 6); (b) served the United States Attorney for the District of Columbia by certified mail addressed to the Civil Process Clerk, delivered February 2, 2026, in accordance with Fed. R. Civ. P. 4(i)(1)(A)(ii); and (c) served the Attorney General of the United States by certified mail, delivered February 2, 2026, in accordance with Fed. R. Civ. P. 4(i)(1)(B). The return receipts are docketed at Dkt. 10, Exhibit A. The Clerk's office credited this service in its own docket text: "Answer due for ALL FEDERAL DEFENDANTS by 4/3/2026."

3. The deadline to respond has long expired. Under Fed. R. Civ. P. 12(a)(2), a United States agency must serve an answer within 60 days after service on the United States Attorney. That period expired on April 3, 2026, the same date the Clerk's docket text identified. Under Fed. R. Civ. P. 15(a)(3), any required response to the First Amended Complaint (Dkt. 9) was due within the time remaining to respond to the original pleading or 14 days after service of the amended pleading, whichever is later. Both periods have lapsed. The Commission has filed no answer, no Rule 12 motion, and has neither requested nor obtained any enlargement of time under Rule 6(b). Today, three months have passed since the answer deadline expired.

4. The Commission's only filing, the January 29, 2026 Notice of Lack of Quorum (Dkt. 7), is not a responsive pleading and does not "otherwise defend" within the meaning of Rule 55(a). The Notice is not styled as an answer under Rule 8(b) or a motion under Rule 12; it admits or denies no allegation; it asserts no defense and requests no relief; it seeks no extension of time; and it predates the operative First Amended Complaint. Its sole stated purpose is to advise the Court that the Commission "lacks a quorum and is without the authority to litigate the merits of plaintiff's Complaint." Dkt. 7 ¶ 4.

THE PENDING RULE 55(a) REQUEST

5. In compliance with the Court's Minute Order denying Dkt. 12 and directing that entry of default be sought "via affidavit, not motion," Plaintiff filed a sworn Declaration in Support of Request for Clerk's Entry of Default under 28 U.S.C. § 1746 on April 20, 2026, entered on the docket on April 28, 2026 as Dkt. 13, together with a proposed Clerk's Entry of Default at page 6 of that filing, ready for execution.

6. On June 12, 2026, after the request had been pending approximately eight weeks, Plaintiff submitted a second written request asking that the pending Dkt. 13 request be presented to the

appropriate deputy clerk (filed June 15, 2026, Dkt. 15). As of the date of this Motion, no entry of default has issued and the request has been pending more than ten weeks.

7. Clarification of the record. Paragraph 6 of Plaintiff's Motion for Default Judgment (Dkt. 14) stated that the Clerk had entered default, citing Dkt. 13. That statement was in error: Dkt. 13 is Plaintiff's own declaration requesting entry of default, and the proposed entry at page 6 has not been executed. Plaintiff regrets the error and corrects it here. The pending Motion for Default Judgment (Dkt. 14) will ripen for decision once default is entered.

POINTS AND AUTHORITIES

8. Entry of default under Rule 55(a) is mandatory, not discretionary. The Rule provides: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a) (emphasis added). The required showing was made by the sworn declaration at Dkt. 13 and is confirmed by the docket itself.

9. The Court has authority to direct the Clerk to act or to enter default itself. Although Rule 55(a) assigns entry of default to the clerk as a ministerial act, a district judge also possesses the power to enter a default. See *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 128 (2d Cir. 2011); 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2682 (4th ed.) (the judge as well as the clerk may enter a default). This is a routine action: in *Campaign Legal Center v. FEC* (D.D.C.) the Clerk entered default against the quorum-less FEC.

10. Entry of default forecloses no defense. An entry of default under Rule 55(a) is an interlocutory, ministerial step. The Commission remains free to move to set aside the entry for good cause under Rule 55(c), and default judgment against an agency of the United States may issue only if Plaintiff

“establishes a claim or right to relief by evidence that satisfies the court.” Fed. R. Civ. P. 55(d).

Those safeguards are unaffected by the relief sought here.

11. Fed. R. Civ. P. 1, which directs that the rules be construed "to secure the just, speedy, and inexpensive determination of every action." A ministerial docket entry that has been pending more than ten weeks, on a fully documented record, is inconsistent with this rule.

12. Local Civil Rule 7(m). This Motion seeks action on a ministerial, nondispositive docket entry. Conferral with opposing counsel was not feasible in any meaningful sense: the Commission has formally represented to this Court that it lacks the quorum required to authorize the defense of this action (Dkt. 7), and no counsel has appeared beyond the filing of that Notice. A copy of this Motion is nonetheless being served by first-class mail on the FEC counsel of record listed on Dkt. 7.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Direct the Clerk of Court to enter default against Defendant Federal Election Commission forthwith, pursuant to Federal Rule of Civil Procedure 55(a), based on the pending sworn request at Dkt. 13;

B. In the alternative, enter default against Defendant Federal Election Commission by order of the Court;

C. Deem Plaintiff's pending Motion for Default Judgment (Dkt. 14) ripe for decision upon entry of default; and

D. Grant such other and further relief as the Court deems just and proper.

Dated: July 3, 2026

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'P. Bernegger', is written over a horizontal line.

Peter Bernegger, Plaintiff
1806 Brynnwood Trace
New London, WI 54961
Telephone: (920) 551-0510
Email: peter@electionwatch.info

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[PROPOSED] ORDER

Upon consideration of Plaintiff's Motion for an Order Directing the Clerk to Enter Default Under Fed. R. Civ. P. 55(a), or in the Alternative, for Entry of Default by the Court, the record herein, including the sworn Declaration in Support of Request for Clerk's Entry of Default (Dkt. 13), and it appearing that Defendant Federal Election Commission has failed to plead or otherwise defend as provided by Federal Rule of Civil Procedure 55(a), it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Clerk of Court shall enter default against Defendant Federal Election Commission pursuant to Federal Rule of Civil Procedure 55(a) forthwith; and it is further

ORDERED that Plaintiff's pending Motion for Default Judgment (Dkt. 14) shall be deemed ripe for decision upon the entry of default.

SO ORDERED.

Date: _____

REGGIE B. WALTON
United States District Judge

Pursuant to Local Civil Rule 7(k), the following persons are entitled to be notified of the entry of this Order:

Peter Bernegger, Plaintiff
1806 Brynnwood Trace
New London, WI 54961

Michael D. Contino, Lisa J. Stevenson, James D. McGinley, Shaina Ward
Counsel for Defendant Federal Election Commission
Office of General Counsel
1050 First Street, NE
Washington, DC 20463

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CERTIFICATE OF SERVICE

I, Peter Bernegger, Plaintiff, hereby certify that on July 3, 2026, a true and correct copy of the foregoing Plaintiff's Motion for an Order Directing the Clerk to Enter Default Under Fed. R. Civ. P. 55(a), or in the Alternative, for Entry of Default by the Court, together with the accompanying proposed order, was served by first-class U.S. Mail, postage prepaid, upon the following counsel of record for Defendant Federal Election Commission:

Michael D. Contino
Attorney for Defendant Federal Election Commission
Office of General Counsel
1050 First Street, NE
Washington, DC 20463

Dated: July 3, 2026

Respectfully submitted,



Peter Bernegger, Plaintiff
1806 Brynnwood Trace
New London, WI 54961
Telephone: (920) 551-0510
Email: peter@electionwatch.info

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