

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

PETER BERNEGGER,

Plaintiff,

v.

Civil Action No. 1:25-cv-04559-JEB

FEDERAL ELECTION COMMISSION,

Defendant.

**PLAINTIFF'S MOTION TO CORRECT THE RECORD UNDER FED. R. CIV. P. 60(a)  
AND FOR AN ORDER DIRECTING THE CLERK OF COURT TO ENTER DEFAULT  
UNDER FED. R. CIV. P. 55(a)**

Plaintiff Peter Bernegger respectfully moves this Court (1) to correct the record pursuant to Federal Rule of Civil Procedure 60(a) by striking the March 16, 2026 modification to Docket Entry 6, and (2) to issue an order directing the Clerk of Court to perform her duty under Federal Rule of Civil Procedure 55(a) to enter the default of Defendant Federal Election Commission ("FEC" or "Commission") upon Plaintiff's Affidavit for Default (Dkt. 10), which has been pending without action since April 20, 2026. In the alternative, Plaintiff requests a reasonable period to cure service under Rule 4(i)(4)(A). Pursuant to Local Civil Rule 7(a), the points and authorities in support are included in this motion. A proposed order is attached.

LOCAL CIVIL RULE 7(m) STATEMENT

Pursuant to LCvR 7(m), Plaintiff attempted in good faith to confer with counsel of record for the Commission, Michael D. Contino, Esq., by email on June 12, 2026, regarding the relief sought in this motion. Plaintiff did not receive a response.

## PROCEDURAL BACKGROUND

1. Plaintiff filed the Complaint on December 31, 2025 (Dkt. 1). The Clerk issued a summons as to the Federal Election Commission the same day. See Docket, 12/31/2025 (“Summons (1) Issued as to FEDERAL ELECTION COMMISSION”).

2. Service on the United States Attorney, Fed. R. Civ. P. 4(i)(1)(A)(i). On January 5, 2026, at 2:40 p.m., private process server Ambiko Wallace of Capitol Process Services, Inc. personally delivered the court-stamped Summons and the Complaint for Declaratory and Injunctive Relief, with exhibits, to the United States Attorney for the District of Columbia, c/o Civil Process Clerk, 601 D Street, NW, Washington, DC 20530, by serving Elena Haramalis, Paralegal Specialist, authorized to accept service. The process server’s sworn Declaration of Service was filed on January 20, 2026 (Dkt. 2).

3. Service on the Commission, Fed. R. Civ. P. 4(i)(2). On January 5, 2026, process server Givonna Stuart of Capitol Process Services, Inc. served the FEC, c/o Office of General Counsel, 1050 First Street, NE, Washington, DC 20463, by certified mail, return receipt requested, USPS Article No. 9414 8362 0855 1293 2122 69, with the Summons and Complaint with exhibits. Her sworn Affidavit of Service by Certified Mail is on the record (Dkt. 6, attachment).

4. The Commission has actual notice and appeared through counsel. On January 29, 2026, FEC counsel Michael D. Contino filed Defendant’s Notice of Lack of Quorum (Dkt. 3), stating that the Notice “is given for the sole purpose of notifying the Court that the Commission lacks a quorum and is without the authority to litigate the merits of plaintiff’s Complaint.” Dkt. 3 ¶ 4.

5. Plaintiff filed the First Amended Complaint on February 6, 2026 (Dkt. 5) and served it on Commission counsel.

6. Service on the Attorney General, Fed. R. Civ. P. 4(i)(1)(B), and additional mail service on the United States Attorney, Fed. R. Civ. P. 4(i)(1)(A)(ii). Plaintiff sent copies of the summons and of the complaint by certified mail, return receipt requested, to (a) the Attorney General of the United States, U.S. Department of Justice, Attn: Civil Process Clerk, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, USPS tracking no. 9590 9402 9434 5069 5677 96, and (b) the United States Attorney for the District of Columbia, Attn: Civil Process Clerk, 601 D Street, NW, Washington, DC 20530, USPS tracking no. 9590 9402 9434 5069 5677 89. The signed return-receipt cards establish delivery of both mailings on February 2, 2026. Plaintiff filed a sworn Notice to Court of Proof of Service documenting these mailings on February 20, 2026 (Dkt. 6), attaching the return-receipt cards as Exhibit A, together with an Affidavit of Mailing (Dkt. 7).

7. The docket text for Dkt. 6, as entered by the Clerk's office on February 27, 2026, stated: "Answer due for ALL FEDERAL DEFENDANTS by 4/3/2026."

8. On March 16, 2026, the Clerk's office, without motion, notice, or any challenge to service by any party, marked Dkt. 6 "ENTERED IN ERROR" and appended the notation: "Modified on 3/16/2026, summons not provided to U.S. Attorney and U.S. Attorney General (mg)." That modification removed the only answer deadline on the docket.

9. Plaintiff filed a further Affidavit of Service on March 9, 2026 (Dkt. 8).

10. On March 24, 2026, Plaintiff filed a Motion for Entry of Default and Default Judgment (Dkt. 9). By Minute Order of April 6, 2026, the Court denied the motion without prejudice, instructing that "[e]ntry of default is sought via affidavit, not motion, and default judgment may only be sought once default is entered."

11. Plaintiff complied. On April 20, 2026, Plaintiff filed the Affidavit for Default with a proposed Clerk's Entry of Default (Dkt. 10, entered April 22, 2026). The Clerk has neither entered default nor identified any deficiency in the fifty-three days since.

12. On May 5, 2026, Plaintiff filed a Motion for Default Judgment (Dkt. 11). By Minute Order of May 28, 2026, the Court denied it without prejudice because "[s]uch a motion cannot be filed until default is entered." On May 29, 2026, Plaintiff wrote to the Clerk of Court requesting action on Dkt. 10 or, alternatively, written notice of any technical defect so it could be promptly cured (Dkt. 12). No response has issued.

#### ARGUMENT

##### I. THE SWORN RECORD ESTABLISHES THAT SERVICE UNDER RULE 4(i) WAS COMPLETED.

13. To serve a United States agency, a party "must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency." Fed. R. Civ. P. 4(i)(2). To serve the United States, a party must "deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought," or to a designated employee, Fed. R. Civ. P. 4(i)(1)(A)(i), and "send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.," Fed. R. Civ. P. 4(i)(1)(B).

14. A summons issues as to the named defendant, here the Commission. Fed. R. Civ. P. 4(a)(1)(B), 4(b). The United States Attorney and the Attorney General are not parties; under Rule 4(i)(1) they receive a copy of the summons directed to the defendant agency, together with a copy of the complaint. No separate summons directed to the United States Attorney or to the Attorney General is required by the Rule, and none could properly issue because neither is a defendant.

15. Each required step is documented by sworn proof already on the record: delivery of the court-stamped summons and complaint to the United States Attorney's authorized agent on January 5, 2026 (Dkt. 2, sworn declaration of process server); certified mailing of copies of the summons and complaint to the Attorney General and to the United States Attorney's civil-process clerk, delivered February 2, 2026 (Dkt. 6 and Exhibit A return receipts; Dkt. 7); and certified mailing to the Commission itself on January 5, 2026 (Dkt. 6, attachment, sworn affidavit of process server). The Commission unquestionably received the summons and complaint: its counsel appeared and filed Dkt. 3 on January 29, 2026.

16. Under Rule 12(a)(2), a United States agency must serve an answer "within 60 days after service on the United States attorney." Measured from the January 5, 2026 personal service (Dkt. 2), the Commission's answer was due March 6, 2026. Measured even from the February 2, 2026 certified-mail delivery, the answer was due April 3, 2026, which is precisely the deadline the Clerk's office itself computed in the original Dkt. 6 docket text. Either way, the deadline passed months ago, and no answer, Rule 12 motion, or extension request has ever been filed.

## II. THE MARCH 16, 2026 DOCKET MODIFICATION IS A MISTAKE IN THE RECORD THAT SHOULD BE CORRECTED UNDER RULE 60(a).

17. Rule 60(a) provides: "The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice." Fed. R. Civ. P. 60(a).

18. The March 16, 2026 notation that the "summons [was] not provided to U.S. Attorney and U.S. Attorney General" is contradicted by the sworn record. Dkt. 2 is a process server's declaration, under penalty of perjury, of personal delivery of the summons and complaint to the United States Attorney. Dkt. 6 is Plaintiff's sworn notice that copies of the summons and complaint were mailed by certified mail to both the Attorney General and the United States

Attorney, with signed return receipts attached. No party ever moved to quash service, and the Commission has never contested service. To the extent the notation rests on the premise that a separate summons must issue to the United States Attorney or to the Attorney General, that premise is mistaken as a matter of law, as shown in Part I above.

19. Plaintiff therefore asks the Court to strike the March 16, 2026 modification, to reinstate Dkt. 6 and Dkt. 7 nunc pro tunc, and to deem service under Rule 4(i) complete on the record as follows: the United States Attorney on January 5, 2026 (and again February 2, 2026); the Attorney General on February 2, 2026; and the Commission on January 5, 2026.

**III. WITH THE RECORD CORRECTED, RULE 55(a) MAKES ENTRY OF DEFAULT MANDATORY, AND THE COURT SHOULD DIRECT THE CLERK TO PERFORM THAT DUTY.**

20. Rule 55(a) 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 duty is ministerial and nondiscretionary once the failure is shown. The Clerk and her deputies exercise their powers and perform their duties under the direction of the Court. See 28 U.S.C. § 956.

21. The required showing was made by the Affidavit for Default filed April 20, 2026 (Dkt. 10), exactly as this Court’s April 6, 2026 Minute Order directed. The Commission’s Notice of Lack of Quorum (Dkt. 3) is not an answer, not a Rule 12 motion, and not a request for an extension; by its own terms it was filed “for the sole purpose” of advising the Court that the Commission “is without the authority to litigate the merits.” Dkt. 3 ¶ 4.

22. A failure to plead or otherwise defend, shown by affidavit, is all that Rule 55(a) requires. That showing stands un rebutted on this docket: the deadlines under Rules 12(a)(2) and 15(a)(3) have long expired, no answer or Rule 12 motion has been filed, no extension has been

sought or granted, and the only filing by the Commission disclaims any intention to defend. Plaintiff therefore respectfully requests an order directing the Clerk of Court to enter the Commission's default on the docket pursuant to Rule 55(a) and the pending Affidavit for Default (Dkt. 10). Plaintiff acknowledges that an entry of default is not a default judgment, and that any default judgment against the Commission may be entered only by the Court upon evidence that satisfies it. Fed. R. Civ. P. 55(b), (d).

IV. IN THE ALTERNATIVE, THE COURT MUST ALLOW A REASONABLE TIME TO CURE UNDER RULE 4(i)(4)(A).

23. If the Court concludes that any component of Rule 4(i) service remains incomplete, Rule 4(i)(4)(A) provides that the Court "must allow a party a reasonable time to cure its failure to . . . serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States." Plaintiff served the United States Attorney on January 5, 2026 (Dkt. 2), so the cure provision applies as of right. Plaintiff stands ready to re-mail copies of the summons and operative complaint to any office the Court identifies within seven days of an order so directing.

CONCLUSION AND RELIEF REQUESTED

24. For the foregoing reasons, Plaintiff respectfully requests that the Court enter the attached proposed order: (a) striking the March 16, 2026 modification to Dkt. 6 and reinstating Dkt. 6 and Dkt. 7 nunc pro tunc, Fed. R. Civ. P. 60(a); (b) deeming service complete under Rule 4(i) as set forth above; (c) directing the Clerk of Court to enter the default of Defendant Federal Election Commission forthwith pursuant to Rule 55(a) and Dkt. 10; and (d) in the alternative, setting a reasonable period to cure service under Rule 4(i)(4)(A); together with any further relief

the Court deems just.

Respectfully submitted,



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Dated: June 12, 2026