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## INFORMATION SHEET: AFFIDAVIT FOR DEFAULT JUDGMENT

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*Mag. Civil Rule 10; W. Va. Code §50-4-10; 50 U.S.C. APPENDIX §520*

This is a brief explanation of the process of obtaining a judgment in magistrate court when the defendant has not answered or appeared, which is called a default judgment. To start the process you must file a default judgment affidavit form [form SCA-M429/10-96] which can be obtained from the magistrate clerk's office. There are two things in particular that you need to be aware of when filling out the default judgment affidavit form.

**PROOF OF RELIEF:** At number 4 of the affidavit for default judgment form, you have 3 choices regarding the damages you are seeking, from which you are to select one:

- (a) For the amount of \$ \_\_\_\_\_ , as alleged due and owing in the complaint and still due and owing;
- (b) For the amount of \$ \_\_\_\_\_ , which is the amount of \$ \_\_\_\_\_ as alleged in the complaint reduced by the amount of \$ \_\_\_\_\_ paid since the suite was instituted; OR
- (c) For an amount that can be made certain by computation

Please be aware that choice (c) means more than you have alleged damages for a certain dollar amount in your complaint. Item (c) should only be marked if the amount of damages you are seeking to recover cannot be reasonably disputed, is settled with respect to amount, has been ascertained and agreed upon by you and the defendant, or is fixed by operation of law. If you mark choice (c), then the magistrate **MAY** not hold a hearing before deciding whether to render a default, or the magistrate **MAY** decide that the information in the court record indicates that choice (a) or (b) really applies so a hearing should be scheduled.

If you mark choices (a) or (b), then a hearing will be scheduled. At this hearing you and the defendant will be given an opportunity to introduce evidence supporting why the relief you are requesting is proper. You should be prepared to present evidence such as receipts, bills or estimates to prove that the amount of damages you are requesting is appropriate.

**Military Status of the Defendant:** Item 6 of the default judgment affidavit form gives you 3 choices regarding the military status of the defendant from which you have to select one:

- (a) the defendant is in military service;
- (b) the defendant is not in military service; OR
- (c) the plaintiff is unable to determine whether or not the defendant is in military service.

If you mark that the defendant is in military service or that you are unable to determine whether or not the defendant is in military service, then federal law [50 U.S.C. Appendix §520] does not permit a court to render a default judgment in this case unless you present evidence that the defendant is not in military service or unless you seek the appointment of an attorney to protect the defendant's interest.

The appointment of an attorney is not automatic under the federal law. To start the process of having an attorney appointed you must file the "Notice: Request for Appointment of Counsel" form [SCA-M420NP/5-97] which can be obtained from the magistrate clerk's office.

If you do not request that an attorney be appointed or if you do not submit evidence that the defendant is not in the military and if your case is not active for more than 6 months, then your case will be dismissed. If your case should be dismissed because it has been inactive for more than 6 months, you can file suit again and you will have to pay filing fees for the new case.

If you mark that the defendant is **not** in the military service, then you need not do anything more than submit the completed affidavit for default judgment to the clerk of the court where your case is pending. The court will notify you about what will happen next in your case.