

DEFAULT JUDGMENT PRO SE GUIDE

This page explains what a default judgment is and when you can move the court for a default judgment. Please review Civil Procedures in Title 4, Rule 55 of the Rosebud Sioux Tribe Law and Order Code.

PURPOSE. The forms are to be used when you have filed your complaint with the court and the opposing party has been served with the summons and complaint and the opposing party has failed to answer or defend the action in the time period specified by law (30 days). It can also be used when you counterclaimed against a plaintiff and the plaintiff has failed to reply to your counterclaim in the time period specified by law.

FORMS INVOLVED. The first form is a **Motion for Default Judgment**. The second form is an **Affidavit** that you need to attach to the Motion. The third form is a **Notice of Intent to Take Default Judgment**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court and then file the original with the appropriate court and mail a copy to the opposing party or their attorney.

How to file a Motion, Affidavit and Notice of Intent to take Default Judgment. You must file your motion, affidavit and notice of intent by filing the original with the court and by mailing a copy to the opposing party if they are not represented by legal counsel or to their attorney if the opposing party is represented. Get a court date and time from clerk setting your case for hearing on your motion for default judgment and file the Notice of Intent to take Default Judgment and mail a copy to the opposing party or to their attorney if the opposing party is represented.

BURDEN OF PROOF. You as the moving party have the burden of showing the following to the court:

1. That the opposing party is in default for failing to answer your summons and complaint in the time required by law. If you filed your summons and complaint in the Rosebud Sioux Tribal Courts defendant is required to file an **Answer** to your summons and complaint within 30 days or defendant is in default. This is easily done. The court file should contain a return of service by the person who served the defendant with the summons and complaint and the date of such service. If the opposing party appears at the default hearing and wants to defend the action, the court will make the decision on whether to grant your motion for default judgment. If the court grants your default judgment you win or prevail on your claim. If the court allows the defaulting party to defend the action the case will go to trial.
2. If the court finds that the opposing party is in default, the court will grant you a judgment. That is to say that the court will likely give you what you ask for in your complaint. If you are asking for money damages the court may make you prove the money amount at the default hearing.

HOW TO DEFEND AGAINST A MOTION FOR DEFAULT JUDGMENT

If you receive a **Motion for Default Judgment** and you want to fight against a default judgment you must appear at the motion hearing for default judgment. The judge will ask you why you did not answer the opposing party's summons and complaint. You will need to tell the judge that you contest the opposing party's complaint and ask the court to allow you to answer. The court will then make a decision on whether to allow a default judgment. If the court grants the default judgment the court will enter a judgment against you. If the court denies the default judgment, the court will allow you to defend against the action and may allow you to file a late answer.