

NEWS FROM THE CLERK OF THE U.S. DISTRICT COURT
December 17, 2010

PROPOSED REVISIONS TO CRIMINAL LOCAL RULES: The District Court Judges have conditionally approved revisions to the Criminal Local Rules and to Civil Local Rule 5.2 subject to review by the Federal Practice and Procedure Committee and approval by the Eighth Circuit. You can review the proposals on our website at: www.sdd.uscourts.gov. If you have any comments regarding these changes please forward them by December 23rd to Jon Sogn at jsogn@lynnjackson.com.

DEFAULT AND DEFAULT JUDGMENT: Rule 55 of the Federal Rules of Civil Procedure has created confusion among practitioners. In our district, we view the entry of default judgment as a two-step process. The first step involves entry of default under Rule 55(a), which is entered by the clerk. The second step involves entry of default judgment under subsection (b), which may be entered by the clerk under (b)(1) or by the court under (b)(2). When a party files for default judgment under Rule 55(b) and default has not yet been entered, we construe it as a motion for clerk's entry of default. On a related note, there are separate CM/ECF events under motions. If you're filing for relief under Rule 55(a), you should select Entry of Default. If you're filing for relief under subsection (b), you should select Default Judgment.

DOCUMENTS FILED LATE IN THE DAY: If you know that you will be filing a document at the eleventh hour, please give my office a heads up so that we can notify chambers. If you file documents after 5:00 p.m., you run the risk that the judge will not consider the submission until the following business day.

CERTIFICATES OF SERVICE: Rule 5(d)(1) of the Federal Rules of Civil Procedure provides that disclosures under Rule 26(a)(1) and (2), and discovery requests and responses under Rules 30, 31, 33, 34, and 36 must not be filed until they are used in the action. Although most attorneys are aware of this rule, there is confusion with respect to the necessity of filing a certificate of service establishing that these documents were served on opposing counsel. I would suggest that you refrain from filing a certificate of service until the underlying document is filed, and that the certificate appear at the end of the document rather than as a separate pleading consistent with Civil Local Rule 5.1(B)(3).