

## **NEWS FROM U.S. DISTRICT COURT**

**August 9, 2019**

**CRIMINAL APPEALS:** Did you know that if you represent a defendant in a criminal case in district court, there's a presumption that you will serve as appellate counsel if the case is appealed? Eighth Circuit Local Rule 27B provides that "trial counsel, whether retained or appointed, shall represent the defendant on appeal, unless the Court of Appeals grants permission to withdraw." In most cases, a motion to withdraw will only be granted upon a showing of good cause.

If you were privately retained but your client is unable to bear the cost of an appeal, you should file a motion to appeal in forma pauperis (IFP) with the district court when the notice of appeal is filed. Eighth Circuit Plan to Expediate Criminal Appeals § III (A)(2). The motion to appeal IFP should include, as an attachment, a completed CJA23 financial affidavit. If the district court grants IFP, the Eighth Circuit will automatically appoint you as appellate counsel; there is no need to file a motion for appointment of counsel.

**MOVING FOR A DEFAULT JUDGMENT:** This is a two-step process. First, you need to move for entry of default under Rule 55(a) of the Federal Rules of Civil Procedure. The Clerk of Court will enter the party's default. Second, after the clerk enters default, you need to move for a default judgment under Rule 55(b). There are two separate motion events in CM/ECF. To file for relief under subsection (a), select [motion for] Entry of Default. For relief under subsection (b), select [motion for] Default Judgment.

Rule 55(a) requires the Clerk to enter default 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. In addition to showing a party has failed to plead or otherwise defend, the affidavit should also contain a statement that the defendant is not in the military, as required by 50 U.S.C. app. § 521.