

7.9 (455A) Defaults and orders thereon.

7.9(1) Defaults defined. A party shall be in default when it fails to timely file a pleading within the time prescribed for filing of a pleading. Any party shall be in default when it fails to comply with an order of the presiding officer.

7.9(2) How entered. If the party is in default, the presiding officer on motion of the adverse party shall enter the default against the party.

7.9(3) Order issued. Whenever a party fails to timely file a pleading, or any party fails to comply with an order of the presiding officer and default is entered, the relief requested by the party moving for default may be granted in an order.

7.9(4) Setting aside default. On motion and for good cause shown, the presiding officer may set aside a default or order thereon for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. The motion must be filed promptly after the discovery of the grounds, but in no case shall the motion be filed more than ten days after receipt of the order.

7.9(5) Appeal of denial of motion to set aside default.

a. The exclusive remedy for an order based on default shall be a timely motion to set aside default and if denied, followed by an appeal to the agency having jurisdiction of the matter. The appeal is limited to the grounds for denial of the motion to set aside default. Review is limited to whether the denial of the motion was arbitrary or capricious and whether there is a showing of good cause to set aside default due to mistake, inadvertence, surprise, excusable neglect or avoidable casualty.

b. Upon a finding by the agency of good cause, the default shall be set aside. The hearing shall be completed, with proper notice, before appeal on the subject matter of the case shall be permitted.

