

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

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**GUIDELINES FOR PREPARING ORDERS**

Note: Please refer to each judge's web page for any additional requirements specific to that judge. To get to the judges' web pages from court home page, access "Court Information", then "Judges' Information".

**I. In general.**

Orders should follow the following general outline:

A. Title. Include in the title a description of the order.

1. For example:
  - a. "Order Modifying Automatic Stay in Favor of Creditor, Rock Solid Bank"
  - b. "Order Allowing Claim No. 9"
2. Note especially--The title "Order" is insufficient. It provides no help when searching the docket for a particular order.
3. Also note - Proposed orders submitted pursuant to the Court's direction should be in a form that can be signed and entered by the Court without modification. Do not include the word "proposed" in the title of the order.
4. Orders addressing agreed matters should include in the title that the matter is agreed.
5. See also Local Rule 9072-1.

B. Introduction. Always begin with how the matter comes before the Court. See Local Rule 9072-1(C). If a hearing was held, always include the date of the hearing.

1. For example:
  - a. "On [date], [party] filed an "ex parte" motion for ..."
  - b. "On [date], the Court conducted a hearing on [party]'s motion for ..."
  - c. "Without holding a hearing, the Court considered the matter on the papers submitted..."

C. The decision or determination. Next recite what happened and the reasons why the Court is entering the order.

1. Avoid the use of the word "default". That is a F.R.Civ.P. 55 term of

art. If the Court has directed a response to a motion and the respondent has failed to respond, then the Court will grant the motion because the respondent has not opposed the motion. Simply recite all of this as the reason for the order.

2. If the Court's oral ruling at the hearing is to constitute the basis for its decision, simply recite that.
3. For example:
  - a. If Rule 52 findings and conclusions are required: "The Court made findings of fact and conclusions of law stated orally and recorded in open court".
  - b. If Rule 52 findings and conclusions are not required: "For the reasons stated orally and recorded in open court that shall constitute the decision of the Court, ..."
4. If the matter is before the court as an agreed matter, the body of the order should state that the matter is an agreed matter.

D. The disposition. Next state what the Court ruled.

1. For example:
  - a. "The motion is granted".
  - b. "The objection is sustained".

E. The relief. Next state the relief that flows from the disposition.

1. For example:
  - a. "Accordingly, the complaint is dismissed without prejudice to the right of the plaintiff to file an amended complaint within ten days of the date of notice of the entry of this order, failing which the complaint will stand and be taken as dismissed with prejudice without further order".
  - b. "Accordingly, Claim No. 9 filed by Rock Solid Bank is disallowed in its entirety".
2. If there are different components to the relief ordered, these should be described in separately numbered paragraphs, for example:

"Accordingly, it is  
ORDERED AS FOLLOWS:

  - a. Defendant's Motion to Dismiss Count I of the Complaint is granted.
  - b. Plaintiff shall have ten days to file an amended complaint.
  - c. Defendant's Motion for Sanctions is denied.

F. The date. Do not send in an order with the date filled in. In the closing, state that relief is ORDERED in the Southern District of Florida on \_\_\_\_\_ (date left blank for entry by court) \_\_\_\_\_. (See Local Rule 9072-1(D)).

- G. Widow clauses. The signature page must contain text of the order. The Court will not sign a page that has nothing but its signature at the top.
- H. Service information. If an order reflects that not more than 5 parties, including the proponent, are to be furnished copies, the names and complete mailing addresses of all parties that are to receive copies of the order when entered should be typed at the end of the order. If more than 5 parties are to be furnished copies of an order, only the proponent's complete mailing address must be typed at the end of the order. See Local Rules 5005-1(G)(2) and 9072-1(F).
- I. Memorandum decisions and final judgments. In addition to the foregoing, memorandum decisions and associated final judgments should be submitted on 3.5" floppy disks in WordPerfect 6/7/8/9/10 format as well as in hard copy form.
- J. Copies and envelopes. Service copies of the order and stamped addressed envelopes for service must also be submitted. See Local Rule 5005-1(G)(1).

## **II. Special problems -- orders granting relief from the stay.**

Stay relief orders typically require greater specificity:

- A. The relief. State precisely what relief is provided: state what it is that the creditor can do.
  - 1. For example:
    - a. "Accordingly, the automatic stay is modified to permit [creditor movant] to commence and prosecute a mortgage foreclosure action in state court against real property, the legal description of which is ..."
    - b. "Accordingly, the automatic stay is modified to permit [movant] to take possession of and sell its collateral more fully described as ..."
  - 2. Note especially:
    - a. What the creditor can do is specifically stated. Generalities, such as "to enforce its rights", are not sufficient.
    - b. The property must be described specifically.
- B. The in rem limitation. If the scope of relief is limited to in rem only and not in personam against the debtor, so specify.
  - 1. For example: "The relief granted here permits the creditor to [seek and obtain an in rem judgment] [take action] against the property only and does not permit the creditor to seek or obtain in personam relief

against the debtor".

**III. Judgments and orders, especially (but not limited to) those in adversary proceedings.**

- A. The federal rules make a significant distinction between a decision and a judgment. The rules further provide that the judgment be set forth in a separate document, not added to the end of a decision. Bankruptcy Rule 9021; F.R.Civ.P. 58. This is called the separate judgment rule.
- B. Examples of decisions include:
  - 1. Findings of fact and conclusions of law entered under F.R.Civ.P. 52.
  - 2. An order granting a motion for summary judgment under F.R.Civ.P. 56.
  - 3. An order granting a motion for judgment by default under F.R.Civ.P. 55.
- C. A decision must include the reasons of fact and law that cause the court to grant the relief requested. In a money judgment situation, the decision should contain the amount to which the plaintiff is entitled and how it is calculated. On appeal, the reviewing authority will look to the decision to see why the trial court entered the judgment on appeal. If there are no reasons, or if the reasons are insufficiently stated, the judgment may be reversed summarily.
- D. The decision should contain words like:
  - 1. "In accordance with Bankruptcy Rule 9021, the Court is contemporaneously entering a separate judgment".
  - 2. "Counsel for the plaintiff is directed to submit a separate judgment for consideration and entry by the Court".
- E. The judgment should then generally be in the form contained in F.R.Civ.P. Form 32 appropriately modified. However, it should be prepared for entry by the Court and not for entry by the clerk.
- F. The federal rules also include a single judgment rule. If the complaint seeks relief against multiple parties or involves multiple claims, one judgment only is entered after all of the claims against all of the parties have been determined. Bankruptcy Rule 7054(a); F.R.Civ.P. 54(b). In this event, there may be several decisions entered by the Court throughout the course of the proceeding upon which the single judgment, entered at the end, is based. In extraordinary circumstances, but only with express determinations and directions, the Court may direct entry of judgment when fewer than all claims are determined. Id.

- G. Post-judgment interest is controlled by 28 U.S.C. § 1961, not the Florida statutes. If you are entitled to post-judgment interest, recite in the judgment that the plaintiff is "owed \$\_\_\_\_\_ in principal plus interest at the rate of (determine federal interest rate and fill it in here)% from (date certain) to (date of judgment)". Leave a blank line in the judgment for entry of the amount. Determine the applicable federal interest rate and provide a memorandum indicating the amount owed if the judgment is entered on a particular date.
1. The memorandum shall conform to the following example:
    - a. Memorandum on interest  
3 May 1995 - \$1,070.00  
4 May 1995 - \$1,098.15  
5 May 1995 - \$1,136.21
- H. The Court may grant costs to the prevailing party pursuant to Bankruptcy Rule 7054(b) and Local Rule 7054-1. The amount of costs is not included in the text of the judgment. After the entry of judgment, the party entitled to costs may file a Local Form "Bill of Costs" (LF-41). 28 U.S.C. § 1920; Bankruptcy Rule 7054(b); Bankruptcy Rule 9021; F.R.Civ.P. 58. If you are aggrieved by the clerk's action in taxing costs, file a motion to review the clerk's taxation of costs. Bankruptcy Rule 7054(b); Local Rule 7054-1(E).
- I. Motions for judgment by default after a default has been entered pursuant to F.R.Civ.P. 55 shall be submitted in accordance with Local Rule 7055-1. Remember especially that attorneys fees must be specifically alleged, Bankruptcy Rule 7008(b); and that the relief contained in the judgment cannot exceed that pled in the complaint, F.R.Civ.P. 54(c).