

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

www.flsb.uscourts.gov

GUIDELINES FOR PREPARING, SUBMITTING AND SERVING ORDERS

Note: Please refer to each judge’s link on the court web site under “Judges’ Information” for any additional requirements specific to that judge.

Preface: Pursuant to Local Rule 5005-1(G) these guidelines are intended to set forth: 1) how proposed orders should be delivered to the court; 2) the formatting requirements for all orders; 3) how entered orders will be served; and 4) the required general content for all orders.

PART ONE: HOW TO SUBMIT ORDERS

There are three methods for submitting proposed orders to the court as set forth below. Submission of a proposed order electronically or conventionally on a matter scheduled for hearing does not remove the matter from the judge’s calendar. The parties must receive confirmation from the court that the hearing has been cancelled.

1. Electronic Submission of Orders via CM/ECF:

The court has adopted an electronic orders processing program referred to as “E-Orders.” E-Orders replaces the conventional process by which proposed orders are delivered to the court, except as otherwise specified in the local rules and supplemented by these “Guidelines.” E-Orders provides the ability to upload PDF-formatted proposed orders directly into CM/ECF without appearing prematurely on the public docket (except for proposed “sample” orders attached as exhibits to motions served on negative notice). Orders uploaded in CM/ECF can be electronically routed to and signed by the judge without the need to print any paper. Additionally, attorneys and trustees can check the status of uploaded proposed orders. Because E-Orders requires a proposed order to be uploaded in PDF format, the court can only make minor edits or modifications to the proposed order. “E-Orders” should be used to submit local form orders, routine ex-parte or uncontested orders and orders for matters heard at a non-emergency hearing. See Local Rule 5005-1(G)(1)(a).

All local form orders have been converted to the E-Orders format and should be submitted via E-Orders as indicated on the attached “Summary List of Orders and Method of Submission” (“Summary”) [see Exhibit 1]. **The “Summary” also lists several local form orders that will be generated internally by the court.**

The E-Orders Upload program is accessible as a separate menu item after logging into CM/ECF. (See “User’s Guide for Electronic Case Filing”, Chapter III, Section 13).

2. Conventional (paper) submission of orders:

This method will ONLY be used by conventional paper filers AND for proposed orders brought to an emergency hearing pursuant to Local Rule 5005-1(G)(b), or submission of a local form order for payment of unclaimed funds.

3. Submission to judge's dedicated E-mail Box:

This method will ONLY be used when specifically directed by the court for (1) submission of competing orders following a contested hearing or trial or orders setting forth Findings of Fact and Conclusions of Law submitted before or after a contested hearing or trial; or (2) submission of an alternative version of a proposed order when the opposing party disputes the form or content of the initial proposed order submitted by the prevailing party. Proposed orders submitted in a word processing format to an electronic mailbox permit the judge to make additional modifications, as opposed to orders submitted in PDF format via E-Orders which cannot be easily edited. Each judge's electronic E-Mail address is listed in Section III of the "Summary" [Exhibit 1].

PART TWO: FORMATTING REQUIREMENTS

A. General Requirements for Both Paper and Electronically Submitted Orders.

These requirements apply to all orders, whether submitted electronically or conventionally in paper [sample order attached - Exhibit 2].

1. The top margin on the FIRST PAGE must be four (4) inches. All other pages of the order will have a top margin of one (1) inch. Page size (and orientation) should be 8.5 x 11, portrait (note that this is not the same as 11 x 8.5 landscape).
2. To assist the court in verifying that the "entire" body of the submitted order has been properly transmitted, the last line in the order must consist of three (3) pound symbols (# # #), centered in the middle of the page, to indicate the order is complete. Any signatures or attachment notations should be placed below the line containing the ### symbols.
3. Do not include a line for the signature of the judge and date signed, as that will be included in the top margin on the first page of the order.
4. All proposed orders must include the name, law firm, mailing address, phone/fax number and, an active hyperlink to the e-mail address of the party who submitted the order. This information shall be included on the order, after the line containing the "###" symbols.
5. After the line containing # # #, list all parties who are to receive a conformed copy of the order and if the attorney submitting the proposed order is required

to serve the order, include the following statement: “[submitting attorney’s name] is directed to serve copies of this order on the parties listed and file a certificate of service.”

6. Do not include any *colored* highlighting when submitting orders.

B. Technical requirements for uploading proposed orders in E-Orders.

1. Orders can ONLY be uploaded in PDF format and must contain a “.pdf” extension. No security should be applied to the PDF.
2. If you use Adobe Acrobat Writer version 5 or greater, your orders should be prepared using the Arial, Courier, or Times New Roman font (regular, bold, italic, and bold italic). Other fonts will not process correctly through the court’s noticing center. **E-Orders cannot electronically sign orders which have been created using Adobe Distiller 6.0 default settings.**

C. Requirements for submission of proposed orders to judge’s dedicated E-mail box.

1. Submit files created in a word processing format.
2. The subject line of the email should include the case number and a description of the order submitted (i.e. “Competing Order from Hearing Held date” or “Findings and Conclusions for Trial on date”).
3. The submitting party must comply with Local Rule 5005-1(G)1(c) by serving a copy of the proposed order and any cover E-mail text to all adverse parties. [See Local Rule 9072-1]

PART THREE: SERVICE OF ORDERS

Local Rules 2002-1(F), 5005-1, 5005-4(G), 9021-1, 9036-1, 9072-1 set forth the provisions addressing electronic docketing of orders, service and certificate of service requirements. In general, the following guidelines apply:

1. If the attorney submitting the order is required to serve the order, include the following statement: “[attorney’s name] is directed to serve copies of this order on the parties listed and file a certificate of service.”] See Part Two A of these Guidelines and Exhibit 2.
2. Orders entered on the electronic docket will be served by the clerk via the Bankruptcy Noticing Center (BNC) on the designated serving party unless the order specifically directs the clerk to serve the order. Parties who have appeared electronically in the case at the time the order is entered on the docket will receive their copy of the order via the NEF only. It is the responsibility of the serving party to timely serve the order

on all required parties and file a certificate of service with the court reflecting the date and manner of service as required under Local Rule 2002-1(F).

3. Unless requested by the court, no additional copies of orders and service envelopes should be submitted. If a party wishes to receive a conformed copy of a conventional paper order entered in open court, the party must bring an extra copy of the order to the hearing.
4. Conventional paper filers responsible for service will not have access to the Notice of Electronic Filing (NEF) generated by CM/ECF when the order is electronically entered on the docket, thus they will be required to serve all necessary parties by US Mail, absent other agreement among the parties.

PART FOUR: CONTENT REQUIREMENTS

I. General requirements for all proposed orders.

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"

Note #1: The title "Order" is insufficient. It provides no help when searching the docket for a particular order.

Note #2: 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.

2. Orders addressing agreed matters should include in the title that the matter is agreed.
3. See also Local Rule 9072-1 and these Guidelines.

B. Introduction. Always refer to the motion that brought the matter before the court. See Local Rule 9072-1(C). If a hearing was held, always include the date of the hearing. 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 Fed.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. 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, ..."
3. 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. 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 include a date provision in the proposed order (e.g., "ORDERED in the Southern District of Florida on _____)." It will be inserted by the court at the top of the first page [see Ex. 2].
- G. Signature section. Do not include a signature section in the proposed order. It will be inserted by the court at the top of the first page [see Exhibit 2].
- H. Service Section. A proposed order must not indicate in the service section that the clerk will serve the order unless the clerk is required to provide service under these rules or directed by the court for a specific case or order.

II. 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. 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".

II. **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; Fed.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 Fed.R.Civ.P. 52.
 - 2. An order granting a motion for summary judgment under Fed.R.Civ.P. 56.
 - 3. An order granting a motion for judgment by default under Fed.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. 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 Fed.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); Fed.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.
- H. The memorandum shall conform to the following example:

Memorandum on interest

3 May 2004 - \$1,070.00
4 May 2004 - \$1,098.15
5 May 2004 - \$1,136.21

- I. 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". 28 U.S.C. § 1920; Bankruptcy Rule 7054(b); Bankruptcy Rule 9021; Fed.R.Civ.P. 58. If you object to 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).
- J. Motions for judgment by default after a default has been entered pursuant to Fed.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 the amount requested in the complaint, Fed.R.Civ.P. 54(c).

Exhibit 1

SUMMARY LIST OF ORDERS AND METHODS OF SUBMISSION

I. E-ORDERS: THE FOLLOWING ORDERS MUST BE SUBMITTED BY REGISTERED USERS TO THE E-ORDERS PROGRAM.

- A. Local Form Orders (where motion is uncontested) except as listed in Section II.
- B. Other orders to be uploaded in E-Orders:
 - 1. Orders on motions which were served on negative notice [Note: Proposed order must contain in the preamble the applicable Local Rule statement regarding expiration of response time and that [either] the form of order was attached as an exhibit to the motion [or] the relief to be granted in this order is the identical relief requested in the motion,"]
 - 2. Ex parte orders submitted for requests for relief which may be considered immediately by the court without opportunity for objection or hearing.
 - 3. Proposed orders on motions for continuances. The proposed order should contain blank spaces for the date and time of the rescheduled hearing in the event that the court grants the motion for continuance without hearing.
 - 4. Proposed orders extending deadlines for filing documents. The proposed order should be uploaded immediately following the filing of the motion and include the new requested deadline that complies with any applicable rules.
 - 5. Proposed Pretrial Orders in accordance with the Order Setting Filing and Disclosure Requirements for Pretrial and Trial unless otherwise directed by the assigned judge.
 - 6. Agreed Orders.

II. THE FOLLOWING LOCAL FORM ORDERS WILL BE PREPARED BY THE COURT AND SHOULD NOT BE SUBMITTED WITH ELECTRONICALLY OR CONVENTIONALLY FILED MOTIONS:

- A. Order Upon Conversion of Case Under Chapter 13 to Case Under Chapter 7 by the Debtor

- B. Order Setting Filing and Disclosure Requirements for Pretrial and Trial
- C. Order Dismissing Chapter 7 Case for Failure to Appear at the § 341 Meeting of Creditors
- D. Order Conditionally Approving Disclosure Statement and Setting Hearing on Final Approval of Disclosure Statement and Confirmation of Chapter 11 Plan
- E. Order (I) Setting Hearing to Consider Approval of Disclosure Statement; (II) Setting Deadline for Filing Objections to Disclosure Statement; and (III) Directing Plan Proponent to Serve Notice
- F. Order (I) Approving Disclosure Statement; (II) Setting Hearing on Confirmation of Plan; (III) Setting Hearing on Fee Applications; (IV) Setting Various Deadlines; and (V) Describing Plan Proponent's Obligations
- G. Order Conditionally Approving Disclosure Statement, Setting Hearing on Final Approval of Disclosure Statement and Confirmation of Chapter 11 Plan, Setting Various Deadlines and Describing Plan Proponent's Obligations
- H. Order Setting Hearing on Approval of Disclosure Statement and Confirmation of Chapter 11 Plan, Setting Various Deadlines and Describing Plan Proponent's Obligations
- I. Order Confirming Chapter 13 Plan
- J. Order for Relief in Involuntary Case and Order Setting Deadline for Filing Schedules, Statements and Other Documents
- K. Order Upon Conversion of Case Under Chapter 12 to Case Under Chapter 7 by the Debtor
- L. Order Allowing Installment Payments
- M. Order Reopening Case to Issue Discharge of Debtor Upon Filing of Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management

III. JUDGES' E-MAIL BOXES:

These e-mail boxes are solely for the purpose of submitting proposed orders as directed by the judge:

Chief Judge Paul G. Hyman
Judge A. Jay Cristol
Judge Robert A. Mark
Judge Raymond B. Ray
Judge John K. Olson
Judge Laurel Myerson Isicoff
Judge Erik P. Kimball

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Exhibit 2

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**
www.flsb.uscourts.gov

In re: _____ Case No. _____
Chapter _____

SAMPLE

_____ Debtor _____ /

ORDER APPROVING EMPLOYMENT OF TRUSTEE'S ATTORNEY

THIS CAUSE came on before the court upon the Trustee's Application for Employment of _____ of the law firm of _____ in this case. Upon the representations that [Name of attorney] is [duly qualified to practice in this court pursuant to Local Rule 2090-1(A)] [appearing pro hac vice pursuant to Local Rule 2090-1(B)(2)], that [Name of attorney and law firm] hold no interest adverse to the estate in the matters upon which they are engaged, that [Name of attorney and law firm]

are disinterested persons as required by 11 U.S.C. §327(a), and have disclosed any connections with parties set forth in Bankruptcy Rule 2014, and that their employment is necessary and would be in the best interests of the estate, it is

ORDERED that the trustee is authorized to employ _____ of the law firm of _____ as attorney for the trustee, on a general retainer, pursuant to 11 U.S.C. §§327 and 330.

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Submitted by:
John Smith, Esq.
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Miami, FL 33130
(305) 714-1234
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The party submitting this order shall serve a copy of the signed order on all parties listed below and file with the court a certificate of service conforming with Local Rule 2002-1(F).

SAMPLE