

ORDER PREPARATION GUIDELINES FOR JUDGE KRESSEL

My goal in preparing orders, as it is for all of my legal writing, is to use regular grammatical English as much as possible. A secondary goal is to use actual statutory language as much as possible, rather than changing or paraphrasing it, which runs the risk of changing its meaning. When you prepare proposed orders, please keep these principles in mind.

Guideline No. 1 – Electronic Format

All proposed orders must be submitted in electronic form. It should be converted directly from Word or WordPerfect to PDF. It should not be created by scanning it from its original Word or WordPerfect form. If it is scanned, I cannot make additions or changes. As an aside, although scanning documents is acceptable under our local rules and orders, it is highly discouraged since it takes up a much greater amount of space than a document that is created and then converted directly into a PDF document.

Guideline No. 2 – Case Title

In the title of the case or in the body of the order, use “debtor” or “debtors” as appropriate, but never “debtor(s).”

Guideline No. 3 – The Date

Please put a place for the date on the left side below the text. Do not put a month or year, simply put the word “Dated:” I use an electronic stamp to insert the date, so putting any part of the date is simply an inconvenience and an interference. The traditional line used to put the date is also unnecessary.

Guideline No. 4 – Signature

Put a line for a signature below the text on the right side of the page, slightly lower than the date. Do not include anything above the line. For example, do not include the phrase “by the court” or “entered.” Putting my name below the signature line is optional, but if you do, do not include anything other than my name. “Honorable,” “The Honorable,” or “Hon.” are forms of address and not part of my name. However, whether you include my name or not, the proper title to be

included either directly below the line or directly beneath my name is “United States Bankruptcy Judge.”

Guideline No. 5 – Quotation Marks and Parenthesis

Do not include quotation marks or parenthesis to indicate a shortened version of a name. For example, the common reference in the first sentence to First National Bank of Minneapolis (“Movant”) is wordy, somewhat ungrammatical, unnecessary, and certainly clutters up the order. Please don’t do it.

Guideline No. 6 – Capitalization

Lawyers apparently love to capitalize words. Pleadings, including proposed orders, are commonly full of words that are capitalized, not quite randomly, but certainly with great abandon. Please limit the use of capitalization to proper names. For example, do not capitalize court, motion, movant, debtor, trustee, order, affidavit, stipulation, mortgage, lease or any of the other numerous words that are commonly capitalized.

Guideline No. 7 – Use of articles

Lawyers apparently disfavor articles, both definite and indefinite. Use the articles “the,” “a,” and “an” as appropriate. Write the way you would speak. So, “the debtor,” not “debtor,” “the trustee,” not “trustee.”

Guideline No. 8 – And/Or

Never use “and/or.”

Guideline No. 9 – Superfluous Words and Phrases

Eliminate superfluous words. They serve no purpose other than to make the document sound more legal, which is exactly the opposite of the goal that I am trying to accomplish. Examples of such words are: “hereby,” “herein,” “in and for,” “subject,” “that certain,” “now,” “that,” “undersigned,” “immediately,” “heretofore entered in this case,” “be, and hereby is”—the list goes on and on. Compare the meaning of “Now, therefore, it may be and is hereby ordered that:” with “It is ordered:” A good opening line for an order would read something like: This case came before the court on the motion of First National Bank seeking relief from the automatic stay. Referring to it as “this case” is the most accurate and succinct description. It is unnecessary to refer

to it as “matter,” “proceeding,” “proceedings,” “that certain,” “subject,” or “above titled.”

If the order is for an adversary proceeding, then refer to it as “this adversary proceeding.” Refer to the automatic stay, simply as the automatic stay, not the automatic stay of actions. Do not refer to an order granting relief from the automatic stay as an order for relief. An order for relief is something entirely different. In addition to superfluous words, watch for superfluous and wordy phrases. Examples include referring to a motion as “filed with the court” or an “order heretofore entered in this case. How about “order?”

Guideline No. 10 – Multiple Page Orders

As a matter of form, if your order runs to more than one page, make sure that the last page contains more than just the court’s signature and date.

Guideline No. 11 – Inappropriate Relief

Do not include in the actual order, things that the court is not ordering. Frequently, lawyers will include things that are factual determinations or are things the parties have agreed to. Those things really belong in a separate part before the words “It is ordered:.”

Guideline No. 12 – Undersigned.

Never use the word “undersigned.”

Guideline No. 13 – Hearing

In a proposed order filed with a motion, do not include any reference to a hearing having been held, since there rarely is. If you are submitting an order after a hearing, then it would obviously be okay to refer to one.

Guideline No. 14 – Attachments

I dislike having attachments to orders. For one thing, attorneys frequently forget to include the attachment. In addition, they can be easily be separated from the order or even replaced.

Guideline No. 15 – Waiver of the Stay of the Order

If you want to include a waiver of the stay of your order, include that as a separate and last paragraph. I prefer the language:

“Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.” Substitute Rule 6004(h), 3020(e), or 6006(d) as appropriate.

Guideline No. 16 – Plurals and Possessives

Keep plurals and possessives straight and consistent. Know when to use debtors (plural), debtor’s (singular possessive), and debtors’ (plural possessive). Make sure the verb matches the subject of the sentence.

Guideline No. 17 – Its and It’s

Please use the possessive noun “its” and the contraction “it’s” correctly.

Guideline No. 18 – Disposition

Make sure the relief granted is actually stated in the dispositive part of the order. Do not simply say “the motion is granted” or “the trustee’s objection is overruled.” Say “The debtor’s sale of 10,000 widgets is approved” or “The debtor’s 1999 Dodge is not exempt.” If real property is involved, include the legal description, at least if you ever intend to file the order. Make sure the legal description is correct. (Double and triple check it.) Lastly, do not include as part of your relief anything which you did not request in the motion.

Guideline No. 19 – How to Submit

Ordinarily, of course, the proposed order is filed with the motion. If you are submitting an order after you have filed the motion, then submit it as follows:

[email address omitted]