

**DRAFTING A PROPOSED
ORDER FOR THE COURT TO SIGN**

BY: BANKRUPTCY JUDGE PHILLIP J. SHEFFERLY

I'm sure all of you will recall from law school the maxim that a court speaks through its orders. It is true. That is how we as bankruptcy judges communicate to the parties to the cases before us. Each bankruptcy judge in the Eastern District of Michigan has literally thousands of cases. Each of those cases requires many orders to be entered. In consumer bankruptcy cases, there may be orders granting a waiver of a fee or approving payment of a fee in installments. There may be orders granting relief from the automatic stay. There may be orders approving agreements between a trustee and a debtor regarding their exemptions. There may be orders either allowing or disallowing a proof of claim. If there is an adversary proceeding, there may be orders granting or denying discharge. Or granting or denying a motion for summary judgment. Or granting or denying a motion to dismiss. You get the point. There are many orders that are entered on a daily basis in

thousands of bankruptcy cases and adversary proceedings in the bankruptcy court.

Although the judge may sometimes prepare their own order to be entered in a bankruptcy case or adversary proceeding, most orders are drafted by the attorneys who represent parties in the bankruptcy case or adversary proceeding. Most orders are drafted by the prevailing attorney with the idea that the order will be submitted to the bankruptcy judge to sign. The order is intended then to be the words of the bankruptcy judge in the bankruptcy court granting or denying relief. Unlike most pleadings and documents that you will draft as an attorney, the order is not intended to represent your words or thoughts. Rather, it is intended to represent the words and thoughts of a third person, the bankruptcy judge. That makes drafting a proposed order for signature by a bankruptcy judge a different exercise than drafting other pleadings or documents. I would like to spend a few minutes talking about how to draft a proposed order. What should go in it. How it should be structured.

I look for five basic things to be in a proposed order. It's important that you know what those are, because you are drafting it for me to sign as though it were my words. Here's the five things.

1. The title of the order. Many times I receive orders that just say "Order," and nothing else. That's not enough. The title to the order should tell me what the order's about. For example, "Order Granting Motion for Relief from Stay." "Order Granting Summary Judgment." "Order Disallowing Proof of Claim." When you draft an order that you are intending to submit to me to sign, make sure the order has a title that tells me and the other readers of the file what the order is.

2. After the title of the order, the order should explain how the particular matter got before the Court. For example, "This matter is before the Court on a motion to dismiss." "This matter is before the Court upon a motion for relief from the automatic stay." "This matter is before the Court upon the Trustee's objection to the Debtor's exemptions." Again, you get the picture. The point here is that the

judge and a reader of the order should be able to immediately identify how this particular matter is postured before the Court.

3. What did the Court look at to consider the relief requested? Did the Court review the papers filed by the parties? Did the Court review affidavits? Did the Court review the briefs? Did the Court conduct a trial? Here's an example: "This matter is before the Court upon a motion for relief from the automatic stay. The Court held a hearing on February 6, 2012. The Court reviewed the papers filed by the parties and the affidavits submitted in support of them. The Court heard oral argument on the motion." The point here is to inform the reader of what the Court looked at regarding the matter before it.

So far we have three things: the title of the order; how the matter is before the Court; and what the Court looked at to consider it. Here's the fourth:

4. What did the Court do after it made its review or held a hearing? Did the Court make findings of fact? Did the Court reach a

legal conclusion? Did the Court state a holding? Here's an example: "This matter is before the Court upon a motion for relief from the automatic stay. The Court held a hearing on February 3, 2012. The Court reviewed the motion, the brief in response, the affidavits filed by the parties, and heard oral argument at the hearing on February 3, 2012. At the conclusion of the hearing, the Court found that there was no equity in the Debtor's property and that the moving party was entitled to relief from the automatic stay." Here's another example: "This matter is before the Court upon the Trustee's objection to the Creditor's proof of claim. The Court reviewed the proof of claim and the objection, and held a hearing on February 3, 2012. At the end of the hearing, the Court determined that the objection should be sustained and the claim disallowed."

5. Now that we've stated the title of the order; how the matter is before the Court; what the Court reviewed; and what the Court found after making its review, the final piece of the order is the "order" itself. The part of the order that either directs somebody to do something or not

do something. For example: “It is Hereby Ordered that the automatic stay is lifted.” “It is Hereby Ordered that Smith shall pay Jones \$1,000.00.” The first four components of the order all lead up to this component. This is the component that is really the directive, the crux of the order. This is the most important part of the order because it is the operative part of the order that either grants or denies the relief requested. Be direct and be clear.

All five of these components are necessary ingredients to the order. When you are done drafting a proposed order for the judge’s signature, please review and consider whether each of these components are in there. Also, keep in mind that you are setting this up for the judge’s signature. The judge has to put his or her name to it. Please write in complete sentences and carefully check the spelling and punctuation. No one likes to sign something that is not well written. Judges are no different.