

## DRAFTING AND FORMATTING PROPOSED ORDERS - How to make your proposed orders complete and ready for a judge's signature

The bankruptcy court, in an effort to improve the quality of its pleadings and orders, has been reviewing orders submitted for a judge's signature. Throughout this process, the court has identified several common errors found within the proposed orders.

While most of the proposed orders conform with the standards of this court, as set forth in the Local Rules of Practice and Procedure and the Administrative Guide to Practice and Procedure, a sizeable number do not. Most of the errors, while easy to fix, reflect poorly upon the court and upon those who draft and submit the orders. At the end of this article, we have included an example of an acceptable order heading and a checklist for your reference.

### I. Formatting Requirements for Proposed Orders

a. **Include the case and/or adversary proceeding number:** If a case and/or adversary proceeding number has been assigned, the number should appear in full on the proposed order. When formatting orders to be docketed in an adversary proceeding, be sure to include the main bankruptcy case name and the case number above the caption identifying the parties and adversary proceeding number. A case number should include the year, a five digit number assigned by the court, the number "8" (for 2014 cases and forward the number will be "5"), and the judge's initials. An example of a correct case number and adversary proceeding number is:

Case No. 14-00306-5-RDD  
Adversary Proceeding No. 10-00023-8-SWH

b. **Include the chapter number under which the case is being administered:** Local Bankruptcy Rule 9004-2 states "all documents filed with the clerk or the court shall state in the caption the court and division in which the action is pending and the chapter under which the case is being administered." E.D.N.C. LBR 9004-2. Make sure the correct chapter reference is on the order. Many times, a document may state "Chapter 13," when the case is actually one under Chapter 7.

c. **Include the court division in the order heading:** All documents filed with the clerk or the court shall state in the caption the court and division in which the action is pending. E.D.N.C. LBR 9004-2. The Administrative Guide provides a list of the North Carolina counties within the Eastern District, along with each county's respective division. Administrative Guide to Practice and Procedure, Rule 1071-1. Cases are assigned to a division based on the county where the debtor resides or has its principal place of business at the time the petition is filed.

There are five divisions in the Eastern District of North Carolina including, Fayetteville, Greenville, New Bern, Raleigh, and Wilmington. E.D.N.C. LBR 1071-1.

A map displaying the North Carolina counties within the Eastern District, along with their respective divisions may be accessed on the court's website at:

<http://www.nceb.uscourts.gov/divisional-maps>

d. **Scanning requirements:** Orders must be created in a word processing program and then converted to PDF format pursuant to the Administrative Guide. **Upon conversion to PDF format, the order should be reviewed for correct formatting as the conversion to PDF sometimes alters the formatting of the document, such as spacing, margins, etc.**

Only consent orders that have been ink signed by the parties, may be scanned and converted to PDF format. Administrative Guide to Practice and Procedure, Rule 5005-4(3) (E.D.N.C. December 1, 2009). The Administrative Guide to Practice and Procedure provides the following formatting requirements:

- (1) The top margin of the FIRST PAGE must be three (3) inches. All other pages of the order will have a top margin of one (1) inch.
- (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 be “End of Document”, centered in the middle of the line.

Administrative Guide to Practice and Procedure, Rule 5005-4 (4) (E.D.N.C. December 1, 2009).

The Administrative Guide to Practice and Procedure as well as the Local Rules of Practice and Procedure are available for review and download on the court’s website at:

[www.nceb.uscourts.gov](http://www.nceb.uscourts.gov).

e. **Include signatures of parties:** The Administrative Guide provides that “[e]lectronically filed documents requiring a signature shall either (1) show an image of such signature as it appears on the original document or as appended as an image file, in which case such document shall indicate that it has been filed electronically, or (2) bear the name of the signatory preceded by an ‘s/’ typed in the space where the signature would otherwise appear, as follows: s/ Jane D. Doe.” Administrative Guide to Practice and Procedure, Rule 5005-4(8).

f. **Match prayer for relief in motion with language in proposed order:** Match the language of the proposed order with the language used for your prayer for relief in your motion. Additionally, the findings of fact and conclusions of law, as stated in your order, should be consistent with the facts and relief requested in your motion. For example, if your motion states the debtor has possession of the collateral at issue, your proposed order should not state that the creditor has possession of the collateral.

However, language to the effect of, “Such other and further relief as the court deems necessary and appropriate,” should not be included in the order.

g. **Submit proposed orders within 30 days of settlement or hearing:** Orders submitted for signature resulting from settlements or hearings must be submitted within 30 days of the settlement or hearing. If orders are not timely received, a show cause hearing may be scheduled. If negotiations break down, the attorney may request that the hearing be rescheduled prior to the expiration of the 30 days, or request additional time. The November 2010 CM/ECF Newsletter

explains the text entry event, which is available to request additional time to submit an order or consent order: <http://www.nceb.uscourts.gov/newsletter-cmecf>

**h. Submit proposed orders contemporaneously with pleadings requesting such relief:**

Upload a proposed order when your motion or objection is filed, so that the proposed order will be available for the court to review once the response time has expired. The Local Rules provide that a “proposed order shall be submitted contemporaneously with the filing of any document requesting relief in accordance with the procedures established in the Administrative Guide.” E.D.N.C. LBR 9072-1. The Administrative Guide provides that when “motions, applications, objections to claim, and other requests for relief are filed electronically, the moving party must submit a proposed order for each request for relief through the ‘Order Upload’ option in CM/ECF.” Administrative Guide to Practice and Procedure, Rule 5005-4(4).

**Use caution when cutting and pasting from previously submitted orders. Many times, the court has seen case numbers, divisional information, names, and other matters that have not been properly changed. If an attachment is referred to in a proposed order, please verify that it has been uploaded as an exhibit to the order, if your intent is to have the attachment included as part of the order. In a number of situations, we have seen a reference to an attachment in a proposed order that has been cut and pasted from language that was included in the original motion where the reference to the attachment is not necessary to the order.**

**II. Formatting Suggestions for Proposed Orders:**

a. **Proofread:** It is important to PROOFREAD your submitted order. Even minor typographical errors can make your submitted order look unprofessional. Please review orders before submission to make sure glaring typographical and grammatical errors are corrected.

Be sure to correctly spell the debtor’s name and any addresses included in the order.

Failing to proofread your submitted order will result in grammatical errors. A common grammatical error is the incorrect use of plural and possessive forms. If there is more than one debtor in your case, then the plural possessive form of debtors, for a reference to joint debtors, would be “debtors’” not “debtor’s.”

b. **Consistent formatting:** Incorrect formatting includes off-centered headings, varying font sizes, only underlining a portion of a heading, inconsistent indentations and inconsistent spacing between paragraphs. The formatting of your proposed order should appear professional. If you choose to underline the title of your order, make sure the order title is completely underlined and properly centered. Use the same font style and font size throughout the entire document.

The phrase “End of Document” should not appear on a page by itself.

c. **Keep order title consistent with request for relief:** If your proposed order contains a title, other than “Order”, keep the title consistent with the title of your motion. For example, if you

file a Motion for Relief from Stay, the proposed order should be titled Order Granting Motion for Relief from Stay.

d. **Use correct citations:** For example, citations should be to the Federal Rules of Bankruptcy Procedure, not to the Bankruptcy Rules.

### **ORDER CHECKLIST:**

1. Check heading for:
  - a. division - assigned by county
  - b. chapter #
  - c. full case # and AP # (if applicable and if assigned)
  - d. party name
  - e. party's role (i.e., debtor, plaintiff, defendant, trustee, etc.)
  
2. Check order title for:
  - a. centered
  - b. underlined correctly (if underlined)
  - c. title of order consistent with motion
  
3. Check formatting for:
  - a. 3" margin
  - b. correct spacing
  - c. proper indentation
  - d. "End of Document"
  - e. necessary signatures
  - f. relief requested is relief sought in motion

Proofread for obvious spelling errors.

**CASE HEADING FORMAT EXAMPLE:**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

**IN RE:**

**JANE D. DOE,  
  
DEBTOR**

**CASE NO. XX-XXXXX-X-XXX  
CHAPTER XX**

**ORDER**