

## TOP TWENTY REASONS THAT ORDERS ARE RETURNED

These are common reasons that Judge Jacobvitz returns orders for revisions instead of entering them.

1. Notice List for Order. The order fails properly to specify who is entitled to receive notice of the order; fails to specify, when applicable, such party's role in the case, or fails to give the notice address of the person entitled to notice.

(a) Example. A default stay order in a chapter 7 case where the Debtor is represented by counsel should show that notice was served on (i) the Chapter 7 Trustee, (ii) counsel for the Debtor, and (iii) the Debtor. A default stay order in a chapter 7 case should recite that all of those parties were served, and also at the end of the order list those parties as entitled to notice indicating each party's role in the case. This is an example:

Copy of Order to:

[Name]  
[Address]  
Chapter 7 Trustee

[Name]  
[Address]  
Attorney for Debtor

[Name]  
[Address]  
Debtor

By listing the parties entitled to notice, and their role in the case, it allows the Court to confirm that the proper parties were given notice of the motion and will receive a copy of the order.

2. Multiple E-Mail Attachments. More than one order is attached to an e-mail message. Given the large number of orders that are submitted, it is difficult to track orders if more than one order is attached to an e-mail message.

3. Motion Filed In Adversary Proceeding Instead of the Bankruptcy Case. A motion and notice of a contested matter in the bankruptcy case is filed in an adversary proceeding instead of in the underlying bankruptcy case.

4. Fee Orders-Copying Charges. A fee order includes more than 15¢ per page for in-house photocopying (unless a hearing is requested to establish the actual copying cost).

5. Orders Continuing Hearings. An order continuing a hearing simply recites that the parties agree to continue the hearing and reset it for a particular date, without including a provision that the Court orders the continuation. The order instead should state something like:

upon the stipulation of the parties the Court vacates a hearing or continues a hearing to a certain date.

6. Approval of Stipulated Orders. An order recites that certain parties have stipulated or agreed to the order, but not all of those parties are shown as having approved the order.

7. Information on Service of the Order and Notice. A default order (a) does not state both when notice was served and when the objection period expired; (b) contains an incorrect calculation of the date the objection period expired; or (c) fails to include an additional three days in the specified expiration date.

8. Order is Premature. The objection deadline has not expired prior to submission of the order.

9. Default and Stipulated Order. An order based in part on the stipulation of one or more parties and in part on the failure to object by one or more other parties is termed a Stipulated Order instead of a Default and Stipulated Order, and/or fails to provide information about service on the party who failed to respond and the response deadline for that party.

10. Service on a Corporation or Partnership. The certificate of service of a motion or notice, where service is made on a corporation or partnership, fails to state that service by United States first class mail, postage prepaid, was addressed to an officer, or managing or general agent, or other agent upon whom service may be made. See Fed.R.Bankr.P. 7004(b)(3) (made applicable to contested matters by Fed.R. Bankr. P. 9014(b)).

11. Service on an Insured Depository Institution. The certificate of service of a motion or notice, where service is made on an insured depository institution, fails to state that service was made by certified mail addressed to an officer of the institution (unless one of the exceptions to such requirement is satisfied). See Fed.R.Bankr.P. 7004(h).

12. Affidavit of Nonmilitary Service. An order granting relief by default against an individual fails either to (a) be preceded by an affidavit of nonmilitary service on file in the case, or (b) include in the order a declaration "under penalty of perjury" of no military service. For example, it is sufficient to include in an order a statement as follows: The undersigned counsel for \_\_\_\_\_ states under penalty of perjury, pursuant to 50 USCA Appx § 521 (2004), that [I/our office] conducted a search of the data banks of the Department of Defense Manpower Data Center (DMDC) and found that the DMDC does not possess any information indicating that \_\_\_\_ is currently on active military duty." The DMDC may be accessed at <https://www.dmdc.osd.mil/scra/owa/home>.

13. Default Order Includes Relief Not Sought in the Motion or Not Included in the Notice. A default order includes relief not sought in the motion, or not included in a notice where the notice specifies the relief sought by the motion.

(a) Example #1. A default order will be returned when a motion for relief from stay does not seek abandonment but the proposed order includes abandonment, even if the trustee has issued a report of no distribution (unless the report of no distribution expressly abandons the property).

(b) Example #2. A default order will be returned when the motion does not seek abandonment and does not seek the right not to name the chapter 7 trustee in state court foreclosure action, but the proposed order states that the movant need not name the chapter 7 trustee in state court foreclosure action.

14. Default Stay Order Containing Findings Regarding Loan Terms or Lien Position in a Default Stay Order. A default stay relief order includes a finding or determination (i) that certain loan documents have been executed; (ii) of the amount owed to the creditor; (iii) that the creditor has a valid lien against collateral; (iv) that the lien is of a specified priority; and/or (v) that the lien is perfected. If the creditor believes the default stay order should recite such specifics, it should recite what the creditor claims.

15. Default Stay Order Requiring Surrender of Collateral. A default stay relief order includes a requirement that the debtor surrender collateral, such a house or a car.

16. Default Stay Order Modifying the Co-Debtor Stay-Notice. A default order in a chapter 7 case containing stay relief as to both the debtor and a co-debtor fails to state that notice was given to the debtor, co-debtor and chapter 7 trustee, and that none of those parties timely objected.

17. Default Stay Order Modifying the Co-Debtor Stay-Collateral. A default stay order on a motion seeking relief from the stay only against a co-debtor (not against the debtor) includes stay relief as to certain collateral and not just the co-debtor's interest in the collateral.

18. Default Stay Order-Subsequent Cases. A default stay order includes relief from the stay in a subsequently filed bankruptcy case.

19. Default Order Annuling the Stay. A default stay order provides that the stay is annulled (*i.e.* that stay relief is granted as of a time prior to entry of the stay relief order) without the motion requesting annulment of the stay and/or without the notice specifically stating that the movant seeks to annul the stay.

20. No Objection Filed versus No Objection Received. A default order states that the movant did not "receive" an objection, rather than stating that no objection was timely "filed."

September 24, 2009; revised #10 on December 16, 2009.