

MEMORANDUM

TO: All Attorneys who file **Motions for Relief from Stay**

FROM: Judge Pat E. Morgenstern-Clarren

DATE: February 12, 2008

SUBJECT: Tips for How a Motion for Relief from Stay Can Proceed Smoothly Through the Court

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A growing number of motions for relief from stay are being filed that are deficient in some respect. My practice is to adjourn such motions once by order identifying the deficiency and giving the creditor an opportunity to amend the motion. If the amended motion is still deficient, the motion is denied without prejudice.

It would be in everyone's best interest if the motions are correct when filed the first time. To that end, I thought it might be helpful to identify some of the more common errors that cause the court to adjourn or deny the motions:

1. The motion is not in the form approved by the judges and reflected in General Order 99-1.
2. The motion has blanks where the attorney has set up his or her computer to indicate the attorney should insert information, but no information is inserted.
3. The name of the creditor in the caption is different from the name of the creditor in the first paragraph.
4. The motion states that the movant made the loan, but the documents show that another entity made the loan.
5. A payment history is attached that resembles hieroglyphics.
6. With respect to any "extra charges" on the worksheet:
  - a. the worksheet says there are none, but then includes inconsistent language stating that certain expenses are continuously accruing;

- b. the worksheet deletes the language requiring the attorney to attach a payment and loan transfer history;
  - c. the worksheet does not have an itemization of the extra charges.
7. The date of the last payment is not listed on the worksheet. Logic dictates that the creditor must know the date on which it last received payment from the debtor.
  8. A separate transfer history either is not attached to the worksheet at all or it lists only the last transfer. A transfer history should start with the entity that originated the loan and move forward to the present with supporting documentation of all transfers.
  9. The motion states in the caption that it is directed to the debtor, but somewhere along the line in the motion relief is requested against a co-debtor as well. This does not give adequate notice to the co-debtor that his or her rights may be affected. A related issue is a motion that requests relief against a co-debtor without stating the co-debtor's name. Most people do not think of themselves as "co-debtors" and will not realize that relief is being requested against them unless their name is stated.
  10. The documents do not show that the movant is in the chain of title.

Please review these issues with the individuals in your office who participate in preparing motions for relief from stay.

Thank you.