

Comments from Judge Parker Prior made from the bench prior to the Tyler 4/16/14 confirmation docket concerning the drafting of proposed Orders:

Court: More care needs to be taken in the preparation of Orders that are submitted with motions and objections filed with the Court under negative notice language. As stated in the negative notice language contained in the motion/objection, the proposed order should state that the motion/objection is deemed to be unopposed upon the failure of any party to file a timely objection. The proposed Order should not contain language of findings concerning the merits of the allegations of the motion/objection. Such an Order will be rejected by the Court thereby requiring the attorney to redraft it.

Trustee: I would refer you to the following example orders on the Court's website that illustrate what I believe Judge Parker was referring to:

Local Form 3007: Order Sustaining Debtors' Objection to Proof of Claim:

...The Court finds that the objection to claim contains proof sufficient to overcome the presumption of validity imposed by Fed. R. Bankr. P. 3001(f) and was properly served pursuant to the Federal and Local Rules of Bankruptcy Procedure. *The Court further finds that the objection contained the appropriate twenty (20) day [should now read "twenty one (21) day"] negative notice language, pursuant to LBR 9007, which directed the Claimant to file a written response within twenty [one] days or the objection to claim would be deemed by the Court to be unopposed. Due to the failure of the Claimant to file a timely written response to the objection, the Court deems the Debtors' claim objection to be unopposed and, therefore, the Court finds that just cause exists for the entry of the following order. [emphasis added]*

Local Form 4001: Order Granting Motion:

...The Court finds that the Motion was properly served pursuant to the Federal and Local Rules of Bankruptcy Procedure and *that it contained the appropriate twenty-one (21) day negative notice language, pursuant to LBR 9007, which directed any party opposed to the granting of the relief sought by the Motion to file a written response within twenty-one days or the Motion would be deemed by the Court to be unopposed. The Court finds that no objection or other written response to the Motion has been timely filed by any party. Due to the failure of any party to file a timely written response, the allegations contained in the Motion stand unopposed and, therefore, the Court finds that good cause exists for the entry of the following order. [emphasis added]*

There are other examples on the Court's website. The common thread in these form Orders is that the motion/objection had the required negative notice language, that no party filed a response to such, and that the Court deemed the motion/objection unopposed. There are no findings by the Court concerning the merit of the allegations.

John J. Talton
Chapter 13 Trustee
Eastern District of Texas
Tyler, Marshall, Lufkin, and Beaumont Divisions