Proposed Orders

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Purpose for proposed orders

A proposed order allows the judge to quickly and accurately process a decision.

Tips

Basic orders:

1) If the proposed order is on an uncontested matter, let the court know it is uncontested and state so in the proposed order.

2) Automation is a good thing so let it work – EDMS automatically does the following:

   a) Adds the date to the ruling.
   b) Adds the judge's signature to the ruling.
   c) Electronically notifies the parties of the ruling.

Accordingly, you can delete the following from proposed orders

   a) A space to add the date.
   b) A signature line for the judge.
   c) A cc list.

3) Continuing hearing dates – You do not need to submit a proposed order solely to continue a hearing date.

   a) The court can use an EDMS form order that automatically puts the new hearing date on the court calendar, which takes less steps than filing a proposed order and manually adding the hearing to the calendar.

   b) However, please provide proposed hearing dates so the court can avoid conflicts.

Defaults/uncontested summary judgment orders:

4) Identify the location of each item for relief in the motion or make them easy to find. For example:

a) Affidavit of amount owed or damages – if attached to the petition, tell the court.
b) Contractual rate of interest – identify where in the contract.
c) Service fees or costs – include in affidavit.
d) Contractual right for attorney fees – identify where in the contract.

Note: If the court cannot find support for an item for relief, your request for that item for relief may be delayed or denied.

Dissolution decrees:

5) It is very helpful to have a proposed decree with the technical aspects, such as visitation schedules and property. Even if there is disagreement, the court can easily make changes as needed on the contested issues.

a) Ask the judge whether he or she wants proposed findings of fact and/or conclusions of law. I like to do my own, but other judges may want proposed.

Issues Concerning Overuse of Proposed Orders

***United States v. El Paso Nat. Gas Co.*, 376 U.S. 651, 656-57 (1964)** – The court held a trial on an antitrust claim under the Clayton Act. After the trial, the judge announced judgment from the bench and said he would not write an opinion. The court then told the winning party to prepare findings of fact, conclusions of law, and a judgment. The court adopted the proposed decision verbatim.

The United States Supreme Court held that it would not reject the district court's findings "out-of-hand" if supported by the evidence. In doing so, the court noted that finding that are "drawn with the insight of a disinterested mind are, however, more helpful to the appellate court."

***United States v. Forness*, 125 F.2d 928, 942-43 (2d Cir. 1942)** – The *El Paso* decision cited to this older circuit court decision which criticized the practice of wholesale adoption of proposed orders in more detail. The court noted the importance of fact finding versus application of law because standard of review for reversing on a fact question is more stringent than on questions of law. However, the court went further in describing the importance of independent fact findings:

> It is sometimes said that the requirement that the trial judge file findings of fact is for the convenience of the upper courts. While it does serve that end, it has a far more important purpose— that of evoking care on the part of the trial judge in ascertaining the facts. . . . The trial court is the most important agency of the judicial branch of the government precisely because on it rests the responsibility of ascertaining the facts. . . . To ascertain the facts is not a mechanical act. It is a difficult art, not a science. It involves skill and judgment. As fact-finding is a human undertaking, it can, of course, never be perfect and infallible. For that very reason every effort should be made to render it as adequate as it humanly can be.

***Kroblin v. RDR Motels, Inc.*, 347 N.W.2d 430, 434-36 (Iowa 1984)** – Plaintiff's brought a declaratory judgment action concerning a stock purchase price. The district court initially issued a one-page decision finding the contract price to be $425,015.00. The buyer filed a motion to enlarge the ruling. Twenty-two months later, the trial judge orally asked the sellers' attorney to prepare an order denying the motion. The trial judge signed and filed the order.

The Iowa Supreme Court first recognized that it is common practice to accept proposed findings and order, and that those submissions may be of great assistance to the trial court. However, the court also recognized that the whole-sale adoption of a proposed order from the prevailing party gives the impression that "the court has abdicated its role of fact-finder as well as decision-maker." The court cited to three reasons supporting a rule that the court independently enter rulings:

> (1) the quality of the judge's decision-making process is enhanced by requiring simultaneous articulation of the judge's underlying reasoning;
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> (2) the parties receive assurance that their contentions have been fully and fairly considered; and
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> (3) appellate courts can readily ascertain the specific factual and legal bases for the court's decision.

***In re Marriage of Siglin*, 555 N.W.2d 846, 848-49 (Iowa App. 1996)** – The Iowa Court of Appeals, in a decision by now-Chief Justice Cady, confirmed the rule from *Kroblin* in a dissolution case. As stated by the court:

> [i]t is one thing for a judge to think he or she understands a case, and another to put that understanding to the test of writing. Similarly, it is one thing for a party to lose a case, and another to lose with a decision written by the winning party. The latter outcome can undermine the public confidence in our system of justice, and promote further litigation and appeals.

The court confirmed that proposed decisions can be useful, but only when used as "a guide, with selected portions incorporated into the independent thoughts of the trial judge." Still, the court declined to adopt a separate standard of review on an appeal from a decree prepared by one of the lawyers.

Rubes v. Mega Life And Health Ins. Co., 642 N.W.2d 263, 266 (Iowa 2002) (Reaffirming *Kroblin* in a declaratory judgment action).

NevadaCare, Inc. v. Dep't of Human Servs., 783 N.W.2d 459, 465-66 (Iowa 2010) – In a breach of contract action, the appellant asked the court to adopt a more exacting standard when reviewing a district court's decision that allegedly made a "wholesale" adoption of the prevailing party's proposed findings of fact and legal conclusions. The court refused to adopt a higher standard of review, but stated it would "scrutinize the record more carefully" when conducting review of a case involving wholesale adoption of an attorney's proposed order. *citing Rubes,* 642 N.W.2d at 266. The court again encouraged district courts not to adopt verbatim the proposed findings of fact and conclusions of law prepared by counsel, noting that a "court should never abdicate this essential duty of the judicial branch of government to counsel or the parties before the court."

Newlin v. Callender, 808 N.W.2d 754 (Iowa App. 2011) – affirming *Rubes and NevadaCare* in an injunction action.

T. Zenon Pharm., LLC v. Wellmark, Inc., No. 14-0769, 2015 WL 9450469, at *4-5 (Iowa App. Dec. 23, 2015) – affirming *Rubes and NevadaCare* in a breach of contract action.