

Ever More Advice and Thoughts from Judge Starzynski
Prepared for

BANKRUPTCY 2007: The 23rd Annual Year in Review
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The following continues my “More than You Probably Wanted to Know” monologues and occasional colloquies with practitioners at the Annual Year in Review programs, which deal largely with practice and procedures in my courtroom and chambers.

These practice and procedure tips are in addition to those already listed on my chambers homepage. If you are interested in or need to know about these practice tips, then you need to also review the other practice tips at my chambers homepage. To get there, go to www.nmcourt.fed.us then click on “Bankruptcy Court”, then select “Judge Starzynski” from the “Judges/Opinions” button, and then start clicking on the various topics you want or need to read about. Note that at that site there is a list of all the decisions I have rendered (pdf) filed chronologically and that there is a “last updated” line at the bottom of that page, which will help you remain current on what is filed on that page. There is a wealth of other information on the homepage as well, such as a “matters pending” list and the court calendar for the upcoming two months (see item #1 below), which is usually updated once a week and is searchable. Spending some time at that site might be useful, especially if you are new to bankruptcy practice in this district.

1. **Don’t use the CM/ECF calendar:** The CM/ECF calendar is not complete. If there isn’t a correctly docketed notice or order scheduling a hearing, that hearing does not appear on the CM/ECF calendar. Also if an order is entered continuing a hearing, both hearings will appear on the CM/ECF calendar. Therefore do not rely on the CM/ECF calendar. Instead, use the calendar on the chambers homepage. If you have any questions feel free to call chambers.

2. **BAPCPA motions to dismiss or convert Chapter 11 cases and motions to extend the automatic stay in serial filing cases:** Note that there are some explicit and some implied deadlines, all of them pretty short, that are triggered when you file these sorts of motions. To address those deadlines, the Court enacted a number of local interim bankruptcy rules in an October 2005 order. (The order adopting them is MP 05-001.) Paragraph 3 (pp. 3-4) of that order has the relevant provisions, adding rules 9013-2 and

4001-2 to the local rules. Those added local rules will help you to timely ask for the relief you want; failure to pay attention to these rules may curtail or eliminate your success. So be familiar with them. And if you are representing a “serial-filing” debtor, be aware from the outset about the need to deal with the problem of the (not so) automatic stay for your client as soon as you file the petition.

3. **Notice of continued or other subsequent hearings:** Ordinarily I require a party at a hearing to prepare and file a notice of a continued hearing or a final hearing if there is not already one in the file. I do that primarily so that anyone looking at the file, particularly non-parties, will be informed about what is going on in the case or adversary proceeding. However, the filing of such a notice and its receipt by a party is not what triggers the requirement of a party’s attendance at the subsequent hearing; my setting the subsequent hearing at the first hearing is what does that. Therefore make sure you note the setting of the subsequent hearing and do what you need to do to ensure that you attend the hearing without the need of a notice filed in the record.

4. **“Political correctness”:** Eschew terms or phrases that may offend others’ religious beliefs; *e.g.*, “God willing”, “Allah willing” (*inshallah*), “come to Jesus meeting”, etc. And certainly do not make comments suggesting that any one religion is more likely to produce violence, greed, bigotry, etc. I realize that in using certain phrases, no one in this bankruptcy community intends as such to offend any other person or group. However, any number of people take their respective religious beliefs and creeds very seriously, and the casual use of certain phrases can be offensive to them, and therefore should be avoided. I am also aware that there will probably be other people who decry this suggestion as “political correctness”, unless of course it is a religious belief or creed to which the decriers adhere (in which case the offending words or remarks will merely be further evidence of the persecution of their religion). Nevertheless, don’t do it, as a matter of courtesy and social lubrication, if for no other reason.

5. **Religious holidays:** In a similar vein (the vein being respect for religious beliefs of others), be sure to let us know if there is a significant religious holiday or standard holy day that you or your clients observe, which observance a hearing or a deadline that we are setting will interfere with. So far as I know, we have accommodated all such requests, including, for example, not scheduling hearings such that people would have to travel on a holy day. Of course this applies to all religions or belief systems equally. We maintain on our calendar a list of various such holidays, but that list is certainly incomplete and in any event, depending on what sect of what religion you or your client belong to, the actual date(s) of the holiday may vary. So be sure to let us know at the time you get notice of the setting.

6. **Las Cruces and Roswell hearings:** These locations are part of the District of New Mexico. So let us know if you think we should have a hearing in person rather than just by video, as soon as you learn of the video setting.

7. **Settlements:** Don't be afraid to settle an adversary proceeding or other contested matter the morning of the hearing, although if you can settle it before that (and especially if you save us the travel time to Roswell or Las Cruces), that would be preferable. We welcome all settlements, even those arrived at at the last minute.

8. **Dating orders:** (No, this does not refer to obligatory romance or imposing restrictions thereon.) You may have noticed that recently we began putting in the text of our orders (next to the signature block) the date they are entered on the docket. We are doing that because currently when the orders are printed off CM/ECF, they do not have a date on them. The next version of CMECF, due to be installed shortly, fixes that shortcoming.

9. **Reminder about stay orders:** Even if the trustee has done a no asset report following the conclusion of the 341 meeting, a creditor still needs to either obtain the trustee's explicit consent to a stay relief order or default the trustee out after notice. The no asset report does not by itself constitute an abandonment under section 554.

10. **Snow days:** Snow days for the clerk's office are not necessarily snow days for the court. Call chambers specifically -- 505.348.2420 (Starzynski) and 505.348.2525 (McFeeley) -- to find out if hearings in those courts will be delayed. Alternatively, the end of the message from the Clerk's office will ordinarily say whether either court's hearings will be delayed.

11. **Credit and budget counseling the day before filing the petition:** I recently issued a decision in In re Charlene A. Francisco, No. 07-12810-s13 (doc 34), 2008 WL 244172, in which I ruled that the wording of §109(h)(1) required that the budget and credit counseling (the "ticket in") be obtained no later than the day before the day the petition is filed; *i.e.*, obtaining the counseling the day the petition is filed is too late. The decision has been appealed, and with any luck will be overturned. As of the preparation of these materials, Judge McFeeley has not, to my knowledge, ruled on the issue. Since no one can predict to which judge any given case will be assigned, it would behoove counsel to ensure that the counseling is timely obtained. Note that in cases where the counseling has not been obtained within the 180-day period mandated by the statute I have been requiring debtor's counsel to reimburse the debtor for the filing fee, help the debtor file again free of charge, and requiring counsel to help the debtor, free of charge, to get the automatic stay extended if necessary.

12. **Reaffirmation agreements when debtors are represented by counsel:** As has been discussed in previous Year in Review programs (Year in Review 2006 ¶2, Year in Review 2003 ¶5), I have conducted hearings to approve or not approve reaffirmation agreements when the debtor is represented by counsel but counsel refuses to sign off on the reaffirmation agreement despite the debtor's wanting counsel to do so. (Note: this is a somewhat different issue from the attorney certification process provided

by §524(k)(5), some discussion of which appears in some materials that I prepared for an American Bankruptcy Institute CLE program. Those materials are also on my chambers web page under “General Matters: Notes on BAPCPA”.) Something that happened in three very recent hearings in three different cases with three different counsel prompts me to issue further instructions. In each of those three cases, the reaffirmation agreement was filed without counsel’s signature, so we set a hearing on each one. It turns out that counsel had intended to sign off the agreements in two cases, but through glitches that did not happen before the agreements were filed. In the third case, by the time of the hearing circumstances had changed such that counsel was prepared to sign off on the agreement. (In each case we entered an order treating counsel’s statement as an oral “signature” on the reaffirmation agreement.) So the additional instructions are that (1) as soon as debtor’s counsel finds himself or herself in the circumstances described above, counsel should call chambers immediately so an order can be entered (or, better, a signature page with counsel’s signature on it filed) and the hearing taken off the docket; (2) debtor’s counsel needs to appear (in person or by telephone) at *any and every* hearing in which I am being asked to approve a reaffirmation agreement, in part to explain if asked why counsel would not approve the reaffirmation agreement, and (3) creditors seeking reaffirmation agreements must be sure to send the reaffirmation agreement to debtor’s counsel in lieu of, or at least at the same time as, sending the proposed agreement directly to the debtor.

13. **Conduct at 341 meetings:** Please be quiet during §341 meetings. If you need to confer with your client or another person, do so out in the hall (not just the anteroom) or in a quiet whisper. The atmosphere in the meeting room and the anteroom and the conduct of everyone during §341 meetings ought to be the same as occurs in a preliminary hearing in my bankruptcy court hearing room or Judge McFeeley’s conference room. This behavior is important for communication (*i.e.*, so everyone in the room can hear clearly). And since this is frequently a debtor’s only contact with “the court” during the case, it is important, for the dignity of the court, that the debtor come away with the impression of a businesslike and respectful proceeding. Finally, that sort of quiet proceeding shows respect for the debtor (to which he or she is entitled, as are all the parties in a case), particularly at a time when the debtor may be feeling particularly vulnerable or ashamed. I acknowledge that these comments are based on hearsay and I am fully aware of §341(c) which forbids me from presiding at or even attending a §341 meeting in a case assigned to me. Nevertheless, I have no qualms in asking the bankruptcy community, including trustees, to conduct and attend §341 meetings in this manner.