

The following continues Judge Starzynski's "More than You Probably Wanted to Know" monologues with practitioners at the Annual Year in Review programs, which deal largely with practice and procedures in his courtroom and chambers.

1. Don't be afraid to call and ask for the status of a decision on your motion, trial, etc. – others are certainly not hesitant, and no one in chambers will hold it against you. In particular, if there is an upcoming trial or hearing which may be disposed of by another matter pending before this Court, don't hesitate to bring that to the Court's attention by a phone call, letter, or whatever, particularly if by doing so you can save yourself, the other counsel and the clients money by not engaging in discovery that may not be necessary, etc.
2. The timing of decisions and the AO 413 process:
  - a. Apropos of item # 1, we maintain a running list of the items under advisement, e.g., motions for summary judgment that are fully briefed<sup>1</sup>, evidentiary motions and trials on which the evidence and any further briefing has been completed, etc. We generally decide matters on a "first come, first served" basis – or perhaps more accurately, "first submitted, first decided." However, there are exceptions to this rule: some matters are very complicated factually or very difficult from a legal standpoint, so they may be delayed; other decisions can be decided because they are simpler to decide, or can be decided relatively quickly with oral findings of fact and conclusions of law pursuant to Rule 7052. (See # 3 below.) In any event, if you have not heard about your decision in a while, see # 1 above.
  - b. The Administrative Office (or someone in Washington, D.C.) requires that bankruptcy and district courts to some extent keep track of the matters pending before them, and report on the status of certain matters that (i) have been submitted for decision (as defined in the regulations) within sixty days of the end of the quarter but (ii) have not been decided by the end of the quarter. Matters that fit within this description are to be reported to the Tenth Circuit on the fifteenth day (or next business day) following the close of the quarter, unless they have been decided by the time the report is submitted. These

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<sup>1</sup> The Court is not required to (and ordinarily does not) conduct oral argument on motions for summary judgment, so if you are prosecuting or defending one of those, you need to say everything you want to say in the briefs. Century Bank, FSB v. Heritage Park, Inc. (In re Roybal), Adv. No. 99-1216, Memorandum Opinion docketed November 21, 2000. Doc. 48.

reporting requirements essentially constitute a form of deadline for the Court to get matters decided. Like most lawyers, the Court finds that deadlines have a certain continuing utility as an incentive for getting things done. This is reflected in the fact that in most quarters, the Court has been able to submit a “clean” AO 413. One consequence of the AO 413 system is that if you have a matter that has been under submission for a period of time, you might expect a decision sometime around when the AO 413 is due.

3. FRBP 7052 allows Court to recite onto the record orally findings of fact and conclusions of law in connection with matters that require findings and conclusions. That is a procedure that allows a decision to be rendered more quickly, since written decisions often require dozens of hours of reviewing the record, research and writing (and just plain thinking about the issues). Oral decisions frequently require much of the same amount of time, except that the writing component is not as demanding and is therefore less time consuming. So the Court is making more decisions pursuant to Rule 7052. But because of the requirements of the rule, the Court usually recites detailed oral findings and conclusions on the record. Further, and this is what may be of use to practitioners in general, there will usually be the Court’s detailed written notes attached to the minute sheets, including case cites, findings and conclusions, reasoning and policy considerations, etc. – close to a verbatim transcript of the decision as read on the record. A typical example is attached. We intend to maintain a list of the decisions that we have rendered so far, that we can remember, on the Court’s chambers web site in the future, and may have that up by the beginning of March 2001.
4. Proof of insurance by first hearing on stay motion, if the debtor has had 20 days or so to deal with it – if the debtor cannot show that the debtor has already provided evidence of the insurance by the time of the first hearing, the Court will usually modify the stay immediately.
5. If you want the Court to consider an exhibit during a trial or other evidentiary hearing, you will be far better off if you have a copy available for the staff attorney to refer to and/or follow along during the testimony. So when you make copies of exhibits for a hearing, make enough copies for (1) the witness, (2) the judge, (3) the staff attorney, (4) each (other) party’s counsel, and (5) yourself. And if you have not already provided copies to the other side(s) by the time you get to the courtroom, do so immediately upon seeing the other counsel.
6. E-order protocol: when you submit an order by e-mail, please fill in your signature line with “/s/ submitted by [your name here] [date of submission]”. And do not hesitate to copy opposing counsel by e-mail when you send an e-mail message to the Court. In that regard, see the attached copy of an e-mail exchange dated 5-7

July 2000.

7. In connection with attorney fees and costs that secured creditors may seek to charge debtors arising from stay motions and the like, see again the attached copy of an e-mail exchange dated 5-7 July 2000.
8. The Court's current policy on settlement facilitators is as follows (and subject to change at any moment): In the process of setting up a panel of settlement facilitators similar to that which Judge McFeeley uses, an attorney raised the issue of immunity. Following a brief examination of the issue, including resort to the federal Alternative Dispute Resolution Act of 1998 (which is little more than an expanded arbitration provision), the Court determined that in a few instances resort instead to the United States Magistrate judges would be appropriate. However, the massive criminal docket now engulfing the District Court is such that the Court has reservations about burdening the magistrates with requests to them to perform additional duties, although they have been uniformly both very gracious and extremely helpful in the instances in which the Court has made a request for their services. In consequence, the Court had been informing parties that if they wish to use a mediator, the Court will look with favor on approving by order about any contractual arrangement that the parties and the mediator may enter (including provisions dealing with subsequent testimony, maximum immunity possible under law, etc.), as well as any compensation arrangements that the parties and mediator may agree on. With respect to the latter issue, the Court does not think that counsel should necessarily have to perform mediator functions without compensation. (In that respect, there are other perhaps more deserving circumstances in which free services might be appropriately used, such as debtors unable to afford counsel for some basic services, to say nothing of services outside the bankruptcy process such as serving as a guardian ad litem for abused or neglected children or for children in contentious divorce cases.) In any event, since a good mediation may well result in the savings of considerable litigation expenses, it does not seem out of line to require the parties to come up with a reasonable compensation package for the mediator. And of course the Court reminds all counsel that part of the duty of representing a client well, as set out in the Lawyer's Creed, requires the attorney to see if a reasonable settlement is possible; the "first line" of settlement obligations falls on the attorney, not the Court or a mediator.
9. Remember that fax signatures are valid, so if you send an order over with a fax signature on one page, think about signing that page so as to save the clerk's office from having to scan and upload an extra page on orders.