



**United States Bankruptcy Court
District of New Mexico
Office of the Clerk
Norman H. Meyer, Jr., Clerk of Court**

March 3, 2004

Notice to Practitioners No. 2004-01

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(1) Performance Appraisal Program for Judge Starzynski

Judge James S. Starzynski is initiating a performance appraisal program to obtain input from persons and entities involved in matters assigned to him. The purpose of this program is to ensure that Judge Starzynski, his office staff, and the Clerk's Office are discharging their duties and being as responsive as possible to the needs of our customers.

We are seeking opinions, observations, complaints, and data (anecdotal and otherwise) about the entire bankruptcy court experience in Judge Starzynski's cases, including judicial demeanor; courtroom ambience; treatment of attorneys and others; efficiency of motion calendars and trials; helpfulness of Judge Starzynski's web page; professionalism of staff; responsiveness to inquiries and requests for assistance; timeliness of decisions; and the overall tone of the Court. This also applies to your observations about the Clerk's Office and its operations.

To accomplish this goal, Professor Frederick M. Hart and the University of New Mexico School of Law have graciously agreed that Professor Hart will serve as judicial performance liaison. Professor Hart has been a member of the law school faculty and a resident of New Mexico for many years, and served as the dean of the law school. One of the leading scholars in the United States on, among other things, bankruptcy and commercial law, Professor Hart was one of the editors of *Colliers on Bankruptcy* (14th Ed.) and one of the authors of a leading treatise on commercial and secured transactions. He is a highly respected teacher and lawyer in the state and the nation. It was for these reasons, and for the additional reason that Professor Hart does not practice before Judge Starzynski, that Judge Starzynski asked Professor Hart to serve as judicial performance liaison.

This program supplements Judge Starzynski's encouragement to anyone to contact him or any of his office staff directly about any of the above subjects (keeping in mind the prohibition on *ex parte* contacts in litigated matters), or to contact the Clerk of the Court if the information is to be passed on confidentially. This program does not replace the right of any person to file a complaint with the Tenth Circuit Court of Appeals. AND IT IS NOT A SUBSTITUTE FOR APPEALING AN ORDER, RULING OR OTHER DECISION. The reason for Professor Hart's participation is to encourage persons to participate who might feel uncomfortable in passing along information or concerns to Judge Starzynski or any court personnel about how well Judge Starzynski, his staff and the Clerk's office are doing their jobs. If you wish to convey information to Judge Starzynski through Professor Hart anonymously, Professor Hart will "scrub" any source-identifying information.

Your candid participation and constructive comments are essential to the success of this program. Professor Hart may contact you to solicit input. Neither Judge Starzynski nor anyone on his staff, nor the Clerk nor anyone on his staff, will ever inquire into the identity of the source of any comment; that information will only be disclosed if the source specifically requests or permits the disclosure.

Professor Hart can be contacted as follows, preferably via e-mail:

Professor Frederick M. Hart
University of New Mexico School of Law
1117 Stanford Drive NE
Albuquerque, NM 87131-1431
505-277-4737
E-mail: *hart@law.unm.edu*

(2) Digital Audio Record of Proceedings for Judge Starzynski's Hearings and Trials

Beginning March 1, 2004, all proceedings before Judge Starzynski will be recorded by a proprietary digital audio recording system called For the Record (FTR), not by a stenographic court reporter. This applies to hearings taking place in the hearing room and the Animas Courtroom in Albuquerque, as well as any hearings Judge Starzynski conducts elsewhere in the District of New Mexico.

The system uses a computer and microphones to pick up what is said, creating a digital audio file. Copies of audio recordings are available from the Clerk's Office¹ on compact disk or via e-mail for a fee of \$26.00.² The Clerk's Office will provide you with necessary technical information. As with stenographic and audio-taped court records, written transcripts may be obtained by using the services of a court-approved transcriber who may charge no more than the rates allowed. See the court's website listed in footnote 1 for more information.

This particular digital technology has certain limitations, risks and benefits. Among these are:

- a. You may listen to the recording; you don't need to get a written transcript or rely only on your notes.
- b. Since each file may contain multiple proceedings, remember what time your hearing took place, or when the particular part you are interested in took place. Also note the hearing location.
- c. Make sure you are near a microphone whenever you want to be heard. If you leave the microphone at the podium to approach a witness, stop talking until you get back to the podium.
- d. The system records everything it hears. What you say "off the record" is recorded. If you want something to be "off the record," request that and get an affirmative ruling that what you say will be deemed to be off the record, although in fact what the system "hears" will be recorded. The microphones in the Animas Courtroom not only record but also broadcast what is said throughout the courtroom. The mute button on a microphone only blocks or stops the microphone from broadcasting; the mute button does not stop the system from recording what you are saying. To say something confidentially to your client, whisper in the client's ear, put your hand over the microphone, step away from the microphone, or take other steps to ensure your voice is not picked up by system.
- e. Identify yourself every time you speak.
- f. The system is not running all the time; we turn it on before the hearings start in the morning and turn it off at the end of the hearings, and sometimes in between. If the judge has forgotten to turn the equipment on, please bring it to his attention.

¹The request form is available on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on GENERAL INFORMATION, then on TRANSCRIPTS AND AUDIO RECORDINGS.

²The \$26 fee is mandated by the Judicial Conference of the United States; however, CDs or e-mail files are provided free of charge to court-approved transcribers.

(3) Revised Mailing List Guidelines

The Mailing List Guidelines were revised February 18, 2004, for clarity and to update the section on the consequences of failure to submit a readable mailing list. The guidelines are available on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on GENERAL INFORMATION, then on MAILING LIST GUIDELINES.

(4) Unclaimed Funds Lists

Unclaimed funds are monies held by the bankruptcy court for an owner or recipient who is entitled to the money, but who has failed to claim ownership of it, usually due to faulty or incomplete address information. 11 U.S.C. § 347(a) and Fed. R. Bankr. P. 3011 and 3010 provide for the deposit of unclaimed funds with the court. Lists of unclaimed funds are available on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on GENERAL INFORMATION, then on UNCLAIMED FUNDS LISTS. The lists will be updated monthly.

(5) Electronic Filing Training

The Clerk's Office will be conducting classes in Electronic Filing using the court's Advanced Court Engineering (ACE) system beginning Monday, April 5, 2004. A schedule of classes is available on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on ELECTRONIC SERVICES, then on ACE TRAINING. To sign up, contact Sharon Kologie at 505-348-2443 or via e-mail at skologie@nmcourt.fed.us. After attending the training, participants will be ready to e-file test cases and documents, a prerequisite to using the live system for electronic filing.

(6) Rule 5003(e) Government Addresses and Clerk's List of Standard Creditor Addresses

Government addresses posted by the Clerk's Office pursuant to Fed. R. Bankr. P. 5003(e) and the Clerk's list of standard creditor addresses have been updated and are available on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on GENERAL INFORMATION, then on RULE 5003(E) GOVERNMENT ADDRESSES and STANDARD CREDITOR ADDRESSES.

(7) List of Attorneys Agreeing to Receive Notice and Service from Other Attorneys via Electronic Transmission

The list of attorneys agreeing to receive notice and service via facsimile and/or ACE mailbox has been updated and is available on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on GENERAL INFORMATION, then on ELECTRONIC NOTICE.

(8) Fax Filing Via Intermediary

Pursuant to New Mexico Local Bankruptcy Rule 5005-4(a), any party may, upon a showing of good cause, and with prior judicial approval, file any paper by facsimile to a court facsimile machine. Please contact the appropriate judge's chambers directly for prior approval. Contact information is available on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on JUDGES.

The rule also authorizes fax filing by an intermediary, which allows you to fax your document to an intermediary, who then delivers the document and any required filing fees to the Clerk's Office Customer Service Counter or the drop box located on the west side of 5th Street between Gold and Silver Avenues in downtown Albuquerque.

An intermediary can be any person or entity with whom you make arrangements – just be sure that the need to **deliver** the document and fee to the Clerk is clear.

(9) Lists of Closed Case Files Stored in Denver Available on Website

Lists of closed cases stored at the Denver Federal Records Center are now available on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on GENERAL INFORMATION, then on CLOSED CASE FILES, and then on DENVER FILE LISTS. The web page provides instructions for obtaining copies of case records stored in Denver.

(10) New Copy Request Form

The Clerk's Office has revised its Copy Request Form to clarify our internal procedures. The revised form is available on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on COURT FORMS and then on COPY REQUEST FORM, Form 24. Please destroy old forms and use the one dated March 2, 2004.

(11) New Credit Card Blanket Authorization Form

The Clerk's Office has revised the Credit Card Blanket Authorization form: (1) to eliminate the requirement to attach copies of the credit card, and (2) to make it clear that the Clerk's Office will automatically charge the account for any fees due. In March, the Clerk's Office will ask attorneys and cardholders who currently have a blanket authorization on file to complete and return a new form.

(12) Three New Main Menu Links on the Court's Web Page

The Clerk's Office has added three new main menu links on the court's website (www.nmcourt.fed.us/web/BCDOCS/bcindex.html): COURT FORMS (direct link to a list of court forms, most available in pdf, WordPerfect and MS Word formats), OPINIONS (direct link to New Mexico federal

court opinions -- no ACE account required), and JUDGES (direct link to the judges' page with links to chambers staff e-mail addresses and Judge Starzynski's homepage). We recommend that you review the offerings available under GENERAL INFORMATION, which have been updated.

(13) Requests for Entry of Default and Amendments to the Soldiers' and Sailors' Civil Relief Act of 1940

Effective December 19, 2003, amendments to the Soldiers' and Sailors' Civil Relief Act of 1940 (as contained in Public Law 108-189) require submission of an affidavit indicating whether the defendant is or is not in military service or that the plaintiff is unable to determine the defendant's military status. Requests for entry of default by the Clerk require submission of the additional affidavit; requests submitted without the affidavit will be returned.

(14) Town Hall Meetings with Practitioners

After consulting with the Bankruptcy Law Section Board of Directors and given the importance of getting input from our customers, Chief Judge Starzynski is initiating quarterly meetings with practitioners. The purpose of these meetings is to allow practitioners to talk or ask about anything that goes on in the courthouse or Clerk's Office. Norman H. Meyer, Jr., Clerk of Court, or Margaret Grammer Gay, Chief Deputy Clerk, will also attend the meetings.

The first Town Hall meeting will take place in June of this year, during a lunch period and will last about 45-60 minutes. The meeting will be held in the Animas Courtroom or Judge Starzynski's hearing room in Albuquerque because of their telephone/microphone capabilities; we will call selected sites around the state (Farmington, Santa Fe, Las Cruces, Roswell, etc.) for broad participation. The Chief Judge will "chair" the meeting, with the goal of letting everyone fully express his or her thoughts about whatever issue the attorney thinks is important. This is a time for us to listen to you and respond to your questions. An invitation will be sent to practitioners and posted on the court's website in May.

NORMAN H. MEYER, JR.
Clerk of Court