

STAY HEARING PROCEDURES FOR JUDGE STARZYNSKI'S COURT

(as of May 20, 2004)

In an attempt to reduce the time and money that counsel and parties spend on prosecuting and defending stay relief motions, we are initiating the following procedures:

1. The current procedure for obtaining settings for stay hearings, set out in N.M.L.B.R. 9013-1(c) (eff. October 1, 1996), requires the [moving party to request a setting](#) from chambers. That procedure will continue.
2. **It is also the current procedure that chambers will provide a setting for a preliminary hearing only,** and that at the preliminary hearing, specific arrangements are made for the final hearing. **This will continue to be the procedure used for ROSWELL AND LAS CRUCES cases. THE REST OF THIS PROCEDURE DEALS WITH ALBUQUERQUE CASES ONLY** (although depending on circumstances and technology, the procedure may later be applied to Las Cruces also).
3. When a party calls chambers for a setting for a preliminary hearing on a stay motion, **the party will ordinarily receive at that time two settings:** one for the preliminary hearing and, if needed, one for the final hearing. The preliminary hearing will be set for a date within thirty days of the request ([see](#) N.M.L.B.R. 4001-1(b)), and the final hearing will be set for a date within thirty days of the preliminary hearing.
4. The party obtaining the settings will be required to **notice out both hearings, not just the preliminary hearing.**
5. If the parties (creditor or other movant, debtor, and, as applicable, trustee and/or co-debtor) agree between or among themselves that they do not need a preliminary hearing, they may simply **file an executed stipulation to that effect, continuing the automatic stay in effect until the final hearing.** This stipulation will have the same effect as the order continuing the stay and setting a final hearing that usually results from the preliminary stay hearing. (Note that § 362(e) says "unless the court...orders such stay continued..." I believe this language is in the statute for the protection of the movant and thus can be waived by the movant. If instead of merely filing a stipulation, the parties wish to submit a stipulated form of order, requiring a judge's signature, they may do so.)

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(as of May 20, 2004), continued

6. We will assume, in the rare instance of a failure by any of the parties to appear at a preliminary hearing, that they have agreed to go directly to the final hearing with the stay remaining in place until further order of the Court. Notwithstanding the preceding sentence, when you stipulate to bypass the preliminary hearing, please notify us right away. Any agreement between the parties to skip the preliminary hearing must be exactly that: an agreement. If one party does not want to skip the preliminary hearing (an example being the creditor wanting to obtain stay relief on a vehicle which the debtor has not insured), then the preliminary hearing will still take place. Should one party appear but not the other, then the usual practice in my court will prevail: if the creditor fails to appear, the stay motion will be denied; if the debtor fails to appear, then the matter will go on to the final hearing and debtor or counsel will face an order to show cause for the failure to appear. Note: there are times when the stay is modified at the preliminary hearing, such as for an uninsured vehicle (see Court Policies: The Main List, # 17 from my chamber's website at <http://www.nmcourt.fed.us/web/BCDOCS/Files/judges.htm>) or for some other reason. Nothing in this Notice to Practitioners is intended to change that policy.

7. If the parties wish to change the time for the final hearing to some date other than that received from chambers, they should either appear at the preliminary hearing and raise that issue, or, preferably, contact chambers to obtain an alternative setting. In the absence of an agreement between the parties or a court order for a new final hearing setting, the setting originally given by chambers will be the operable one. A creditor's (movant's) agreement to a final hearing date outside the thirty-day time limit provided by § 362(e) will be deemed to be a waiver of the thirty-day time limit.

Please let us know whether these procedures work better for you than the previous ones; in particular, please let us know if there is anything we can do to improve on these procedures. (Voice: 505.348.2420; fax: 505.348.2432; e-mail: starzynski@nmcourt.fed.us.)



JUDGE STARZYNSKI'S CHAMBERS

United States Bankruptcy Court
District of New Mexico
Albuquerque, N.M.

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The fax number is to be
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appear telephonically at a
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