

## Some Further (if not Interminable) Advice and Thoughts from Judge Starzynski

prepared for

### **BANKRUPTCY 2001: The 17<sup>th</sup> Annual Year in Review**

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United States Bankruptcy Judge  
District of New Mexico

The following continues my “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 my courtroom and chambers. Many of these are repeated from last year (in fact, some are chestnuts from years before), but bear repeating because some people are still coming up surprised when they hear about these procedures. (Repeats are marked with “\*”; “#” designates a repeat but with substantial new material added.)

These practice and procedure tips are in addition to those already listed on my chambers website. 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 website. To get to my chambers website, go to [www.nmcourt.fed.us](http://www.nmcourt.fed.us), then click on U.S. Bankruptcy Court, then on Chambers, then on Judge Starzynski’s “homepage”, and then start clicking on the various topics you want or need to read about. There is a wealth of other information on the chambers website as well, such as the court calendar for the upcoming six months, which is usually updated once a week and is searchable, so spending some time at that site might be useful.

In addition, this year’s monologue branches out to some ruminations on the business and the art of judging, on lawyers, on the rule of law, and on civilization as we know it. That discussion follows the practice and procedures tips.

#### **PART 1: PRACTICE AND PROCEDURES**

1. Given that my chambers’ web page calendar is updated on a weekly basis (almost always), if you have a question about a specific hearing that is or is not on the calendar, feel free to call chambers to verify the accuracy of a setting. In this connection, note that if you have a notice of hearing on a matter, you are not excused from attending the hearing merely because the hearing does not appear on the calendar.
2. # 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. This philosophy applies equally so if there is some event in your life or your client's life that requires a decision by a certain time; e.g., if not getting the decision out by a certain time will moot the need for the decision. And if you know about any such upcoming events when the hearing takes place, please pass that information on at the time of the hearing.

3. # The timing of decisions and the AO 413 process:
  - a. 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. Note: what has changed is that there are only two reporting dates, not four: following the 1<sup>st</sup> and 3<sup>rd</sup> quarters each calendar year.
  - b. One of the critiques I received from the 2001 ABA (Albuquerque Bar Association) survey was that I take too many decisions under advisement, and that I take too long to issue a decision in those matters that I do take under advisement. (On the other hand, other comments said that, in an attempt to do "equity", I tend to ignore the rules and make decisions too quickly.) I certainly agree that with respect to some matters, it has taken too long to issue decisions, and we are working on ways to speed up the process and catch up on the backlog. We are making progress in that respect, but more progress needs to be made, and will be.
  - c. With respect to the first criticism, I am aware that many lawyers say that clients would just as soon have a quick decision, whether it is right or wrong. Maybe that is right, but maybe not. I do think that quick decisions are helpful, as far as that goes. But I also think that, at least in the abstract and as a whole, clients (parties) expect and want a decision that evidences a careful examination of the facts and a careful application of the law to the facts, and that applies even to the "small" matters that come before the Court for a decision (although most matters are not so "small" from the perspective of the clients). (One constant finding of surveys which ask litigants about how satisfied they were with the judicial process, is that a majority of litigants are

satisfied when they feel they were given a full and careful hearing by the judge, and this is the case whether the party responding won or lost the hearing. This factor is the most accurate predictor of litigant satisfaction with the judicial process, even more than (and significantly more than) predicting litigant satisfaction based on who won and who lost.)

- d. Along that line, as every lawyer knows, even a small matter may contain an issue of some complexity within it, one that requires research and reflection to ensure the correct result. How do I deal with that? To begin with, many times I do not require the parties to fully argue or brief issues (in order to keep the cost of litigation down). But even in those rare cases when the parties have fully argued the issues at the conclusion of the hearing or when the answer is supposedly "obvious" (often merely because some other court has ruled on the issue, regardless of the soundness of the reasoning), it takes time and effort to correctly decide those issues, which after all were important enough to the parties to pay a lawyer to litigate over. So, until I get a whole lot smarter, or get to the point where I have previously decided all the matters that come before me (and remember what those decisions were), I need to take the time and effort to get it right.
4. FRBP 7052 allows a bankruptcy judge 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 I am making more decisions pursuant to Rule 7052. But because of the requirements of the rule, I usually recite detailed oral findings and conclusions on the record. Further, and this is what may be of use to practitioners in general, there will often be my own written notes of the decision 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 as Exhibit 1, which came from a Furr's Supermarkets Inc. hearing (01-10779) on the issue of whether the trustee would be allowed an extension of time to assume or reject a warehouse lease. What is also useful is the fact that when I prepare notes like that and they are incorporated into the minutes of the hearing, the minutes in turn are filed, docketed and available on ACE the same day, often within minutes of the conclusion of the hearing.

In addition, a number of these "semi transcripts" of oral decisions are on my chambers web site, as part of the compilation of my written decisions that we maintain. These decisions (both "oral" and written) consist of PDF files, but they are word searchable. They can be reached by going to my chambers homepage

(for directions see the second paragraph on the opening page of this document) and then making the further selections from the menus presented.

5. You should be aware that there is another section on the District/Bankruptcy Court website ([www.nmcourt.fed.us](http://www.nmcourt.fed.us)) which purports to have the text of all the significant written opinions of all the judges (district, magistrate, bankruptcy) of the District going back a number of years. These opinions are also word searchable. The decisions are categorized by judge (as to the district and magistrate judges); another single category is "bankruptcy judges", and that is where you find them. (Directions: From the homepage, click on "Court Opinions" in the left hand frame and you will be taken to the search page. Searching this database requires an ACE account. If you need an ACE account, the procedure is described at "E-Filing Frequently Asked Question 3" which is found on the "Local Practice" screen from the main page.)
  
6. # Student loan cases: as soon as an adversary proceeding comes to our attention, particularly when filed by a debtor seeking a hardship discharge (what other kind are there?), we will require that the debtor visit the Department of Education website ([www.ed.gov](http://www.ed.gov)) or call the Department at 1-800-848-0979 in order to put the loans into a workout program with the federal government. (A more targeted site and number are [www.loanconsolidation.gov](http://www.loanconsolidation.gov) and 1-800-557-7392, although these last two apparently are pretty busy.) Until the debtor has gone through the process of developing (or trying to develop) such a workout program, we will not spend time dealing with the adversary. Note that this applies to any loan that is backed by the federal government, including those loans issued by state organizations. The reason for this approach is that, as I interpret the law, a condition of getting a hardship discharge is that the debtor has made all reasonable efforts to work out some way of repaying at least a portion of the obligation(s) owed. (Note that this is a necessary but not sufficient condition of getting a hardship discharge; that is, the debtor needs to have made this effort, but even if the debtor has made this effort, the debtor does not get a discharge unless he or she meets the other requirements as well.) The requirement is a Congressional mandate, expressed in 11 U.S.C. § 523(a)(8). See *In re Shay*, Adv. Proc. 99-1021 (doc 16) and *In re Detwiler*, Adv. Proc. 99-1105 (doc 29). A number of courts require that this effort have been engaged in before the request for discharge is made. And given that the debtor needs to make this effort, it makes sense to go these sites, because they have been designed to comply with the requirements of the statute (or certainly appear to have been designed with that purpose in mind). Indeed, the treatment available to borrowers that have been presented to me over the last year or so have been more generous to the debtor than most of the case law mandates. In consequence the debtor, the creditors (including the United States government) and the court are all better off requiring that effort by the debtor ahead of time.

7. Fee applications: Even when no one has objected to a fee application, a court is not precluded from reviewing an application. As is the case with most other judges, of course, I find this part of the job one of the least attractive. But it also seems that the issue of fees has the potential to make a reorganization unfeasible, to bring the entire bankruptcy system into disrepute, and, given the unequal bargaining positions between most debtors and their counsel, to lead to an overall unfair outcome for the debtor. While I am comfortable that, at least in this district, the large majority of debtors and estates get good representation at a fair price, I think that it is necessary to review most fee applications of any significance, whether in any chapter case or adversary proceeding, to ensure that overall the fees awarded are appropriate for the work done and the result accomplished, and that there are funds to pay the fees. One implication of this policy is that if counsel is representing a chapter 11 debtor in possession and the operating reports are not up to date, approval of a proposed order may be delayed because I will not be able to determine on my own whether the estate is current with UST fees, post petition taxes, other post petition operating and professional expenses, etc.
8. Remember also with respect to fee applications that you need to put in the notice, as well as the application itself, a summary of any previous fee applications and awards of fees, including a specific statement of how much has been paid on the previous (and pending) fee application already. It is my understanding that that disclosure is also a requirement of the application and the notice in Judge McFeeley's court.
9. When you submit an order approving the employment of a professional (attorney, real estate agent, etc.), you need to put in the decretal portion of the order what the rates of compensation or payment arrangement is. The idea behind this is to make it easy for anyone looking at the file to determine what the rate is without having to go back and find and review the employment application. If there has been no objection, I ordinarily do not go back and review the employment application, and so setting out the rates in the order helps me also. Another advantage is that by putting the rate in the order itself, it cuts down on the possibilities of misunderstanding or error on this issue. And in the event that I modify the order, as I have on occasion, it makes that modification easier for those reading the order to understand.
10. For many of the same reasons, I require that in chapter 13 confirmation orders, if executory contracts or unexpired leases are being assumed or rejected, those contracts or leases must be specifically identified in the confirmation order and a copy of the confirmation order, as entered, be sent to the other parties to the contracts or leases. The same goes for secured claims and property the liens on which are avoided, although virtually all debtors comply with the latter requirement.

11. Concerning chapter 13 practice, the current local rule (NM LBR 3015-3) requires the debtor's lawyer to request a hearing, within five days after the deadline for filing objections, on any objection filed to the plan. This is an important deadline, because it is the mechanism by which the administration of chapter 13 cases keep moving, a value not only to the court but also to the various constituent parties of the chapter 13 case and often to the debtor as well. As important as this deadline is, however, the rule is interpreted to permit only the debtor (or the debtor's attorney, obviously) to request the hearing; a secured creditor, or the chapter 13 trustee, or any other party, is not permitted to request the hearing. The opportunity for mischief is apparent, either through neglect or design on the part of the debtor or debtor's counsel, to delay the chapter 13 confirmation process for whatever reason. In consequence, and pending a change in the rule which may or may not come about, I have had to take steps on various occasions to deal with cases in which confirmation has been delayed months and even years. One sanction has been dismissal, although dismissal may end up punishing innocent debtors. An alternative and more frequent sanction has been to fine counsel for failing to make the request timely. This avoids dismissal while sanctioning counsel, who is the person ordinarily responsible for the problem. Until the rule is changed either to provide everyone with the right to ask for a hearing after the deadline has passed, or to automatically set such hearings based on a review of the file by the clerk's office or chambers, fines will apparently have to be the way that I deal with violations of this rule.
  
12. The Court has also developed a policy to deal with attorneys or parties who fail to appear at hearings, either in person or by telephone. (The policy on telephone participation in hearings is on the website under "Telephone Hearings". One piece of information not stated in that item is that if you are driving when you are called, I will expect you to pull over to the side of the road to take and finish the call – and I will give you time to do that -- regardless of whether you have a handheld or hands-free telephone system. The danger in cell phones in cars is not so much in having to have one hand free as it is in having to have one brain free to concentrate on the hearing.) Failure to appear can occur when counsel or the party does not ask to be called for a hearing and also does not appear physically in the hearing room or courtroom when the case is called, or when counsel or the party has asked to be called and then does not answer when I call (whether because counsel gave us the wrong telephone number, or forgot to take the telephone off "night mode", or an unexpected call came in to counsel and took up the line just when I was calling, or the cell phone battery gave out, etc., unless the fault was the carrier's, such as the system going down or the phone service being terminated unexpectedly.) The sanction for failing to appear varies with the circumstances, with the goals that (a) an attorney's failure to appear should not if possible prejudice the client, and (b) consistent with numerous Tenth Circuit and United States Supreme Court cases dealing with sanctions, the sanction imposed should be the minimum needed to

accomplish the goal of better attendance in the future. Examples of sanctions typically assessed are as follows:

- a. The usual process for dealing with a failure to appear is the issuance of an order to show cause (OSC), which OSC will set a preliminary hearing for the attorney or party to explain why she or he failed to appear, and giving her or him the option of paying a \$100.00 fine and disposing of the matter without the hearing. If the attorney or party wants to contest or otherwise explain what happened, the fine will still be \$100.00; the reason for keeping the figure the same is to not discourage someone from contesting the imposition of the fine by the threat of a higher fine. (Compare Blackledge v. Perry, 417 U.S. 21 (1974).) In most cases, people have elected to pay the fine before the hearing takes place. And most of the hearings have resulted in the imposition of the fine.
- b. The preliminary hearing may be continued in the absence of the non-appearing party or attorney, as for example is usually the case with a pretrial conference in an adversary proceeding, or a final hearing may be set, as is usually the case with a stay motion.
- c. If the creditor's attorney fails to appear at a preliminary hearing on a motion for stay relief, I may deny the motion, figuring that it is cheaper for the movant's attorney to refile the motion than pay the fine, although that probably results in some delay for the creditor (and the debtor). If the debtor's attorney fails to appear at a preliminary stay hearing after filing an objection, I will issue an OSC for a \$100.00 fine. If the debtor's attorney neither files an objection to the proposed stay relief nor appears at the hearing, I assume that the debtor and the attorney have decided that they are not going to contest the request for stay relief and that they do not want to spend the money (or don't have it to spend) to appear at the hearing to say that, so that there would be no basis for assessing a sanction.
- d. I expect and assume that a fine will be paid by the attorney and that the attorney will not seek reimbursement, directly or indirectly, from the client.
- e. I attempt to apply the sanctions evenly and equally to all counsel or parties, regardless of whether counsel represents debtors, creditors, a governmental entity, third parties or whomever. A review by my chambers has concluded that the attorneys sanctioned represent virtually the entire spectrum of parties that appear before me. The specific treatment may vary somewhat, because not all parties are in the same circumstances (e.g., failure to appear at a preliminary stay hearing). And there are instances in which an attorney or party will not be sanctioned at all for failing to appear; e.g., at a

preliminary hearing on the chapter 13 trustee's objections to payment of unsecured claims, there will usually be no reason for the debtor's attorney to appear, since the outcome of the hearing has no impact on the debtor and neither the debtor nor the attorney are needed for the preliminary hearing. Of course, merely because an attorney or party deems herself or himself superfluous to a hearing, or vice versa, does not mean that is the case; for example, if a hearing is set on a motion to dismiss a complaint, the mere fact that the complainant's attorney has agreed to amend the complaint does not mean the attorney can then ignore the hearing, at least until an order to that effect is entered.

- f. If you are thinking about skipping a hearing, keep in mind the Court's policy about hearings, both preliminary and final, and agreements between counsel and/or settlements, which is roughly summarized as follows: hearings will usually not be put off without an order submitted signed off by all counsel which resolves the matter at issue, or counsel can appear and read a settlement into the record (and if only one counsel appears and announces the terms of the settlement, those terms become the settlement terms and will bind the non-appearing counsel and client), or counsel can ask for a continuance at the time of the scheduled hearing (there is no guarantee it will be granted), or counsel can ahead of time call, show up at chambers or file a motion asking for a continuance (again, there is no guarantee the motion will be granted, but not doing things at the last minute enhances the credibility of the effort). Note that an agreement between counsel to continue a hearing does not constitute a "settlement".
  - g. If an attorney is not present, I will certainly permit another attorney to step in for the missing attorney on the spot. Obviously that would be applicable for attorneys from the same firm; it is equally applicable for attorneys not from the same firm. (So maybe it pays to cultivate good relationships among your colleagues.)
13. If you settle a case (or withdraw your motion for stay relief, or whatever), bless you. You will be doubly and triply blessed, however, if you let us know about the settlement, withdrawal, etc. so we can take it off the calendar, not have to pull the file, etc. And even if you don't care about the blessing, tell us anyway.
14. On occasion I call up counsel and conduct a (not previously scheduled) hearing that day, usually about some minor matter that could use immediate resolution or at least talking about. Examples are when a party wants to shorten notice and cannot get the approval of the other side, or discovery disputes. In those instances, if you have elected to wear jeans (or some other informal wear, hereinafter "jeans") to the office that day, you may certainly wear them over to the courthouse for the hearing.

Although my current job requires me (in my opinion) to wear at least a jacket and tie each workday, when I was an attorney and bicycling to work each day, jeans were my routine attire in the office. Counsel should be entitled to wear jeans on any day in which she or he has no hearings previously scheduled, at least with regard to proceedings in my courtroom. Note: I will not construe this rule will to permit any clothing-optional appearances.

15. The case managers in the clerk's office are tasked with assuring that cases are moved along administratively and closed as soon as possible, given the huge and growing caseloads we have. And year after year, Congress and the administration then in office look to "shrink the government" by limiting and reducing Bankruptcy Court personnel resources. As part of moving the cases along, each case manager regularly audits each file. That audit process is intended to, among other things, find unresolved motions that need a notice and a hearing, or other items that need finishing, in order to allow the case to be closed, or to stay on schedule. When the case managers find these things that require counsel to do something, they call counsel and then document the call on the docket. If you get such a call from a case manager, please comply with the request promptly. If you do not, either the case manager will call again to make the request, or, if the case is one of mine, I will call. Neither of us should have to call (again), so be both courteous and smart by doing what you are requested right away.
16. # I continue to require that proposed default orders (that is, any order effective against someone who has not signed off on it, other than orders arising out of a hearing and reflecting a ruling of mine) recite the date of the filing of the motion, the date of the mailing of the notice, the date that the deadline passed for objections, and the fact that there were no objections filed. I do that because when I first came on the bench there seemed to be a lot of orders submitted before the deadline had passed. That seems to have declined considerably now, perhaps due in part to this requirement. And most people seem to have adapted to the requirement easily.
17. \* 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. A mere denial in the response to the stay motion that there is no proof of insurance is not sufficient to avoid an immediate modification of the stay.
18. \* 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. And, when you submit the three sets of exhibits to the court the day or two before the hearing, deliver them to chambers, NOT the clerk's office (who may well file them and not get them to us right away or at all if they return the extra copies to you).

19. As part of the final pretrial process, I almost always do NOT require the filing of proposed findings of fact and conclusions of law, or trial briefs. The reason for this approach is that preparing briefs and proposed findings and conclusions adds considerably to the time and expense of the litigation process, and I would just as soon save the parties and their counsel from having to expend those resources. By the time the parties get to trial, the legal issues are usually clear enough, I will have reviewed the allegations or facts both before the initial pretrial conference and before the trial itself (and perhaps discussed them at one or more of the pretrial hearings), and I usually will have at least glanced through the proposed exhibits. If you want to submit proposed findings or a brief, particularly the latter, you are welcome to do so, and I will read the brief before trial (assuming it comes in soon enough). The vast majority of hearings take place without any briefs, pretrial or otherwise, and I don't recall the last time anyone submitted proposed findings and conclusions. If an issue arises which requires briefing, I will ask the parties to submit lists of cases (or points and authorities) they think are relevant or, more rarely, briefs, since briefs require so much more work than putting together a list of cases. In short, if I think I need briefs or something similar, I will ask; if you want to submit something regardless, you are welcome to do so; otherwise, don't worry about the issue.
20. I also do not routinely set deadlines for filing dispositive motions. I assume that if a party thinks it has the basis for getting rid of the trial, it will do so. The only practical deadline for filing such a motion is that it needs to be filed far enough ahead of time for the opposing party to respond and for us to get to it before the trial day arrives.
21. \* 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.
22. \* 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]” or even the more generic “submitted by email”. This is required by the Bankruptcy Court procedure set out on the Bankruptcy Court's website. And do not hesitate to copy opposing counsel by e-mail when you send an e-mail message to the Court.

23. \* Remember that fax signatures are valid. This has the following consequence: many people send an order over with a fax signature on one page, and their signature on the original signature page. Think about combining those signatures on the one fax page so as to save my staff (specifically Ms. Anderson) from having to scan and upload an extra page when she is doing orders. I certainly don't have a problem with putting my signature on a piece of paper that has come out of a fax machine.

24. Mediation (apparently more accurately known as "settlement facilitation"): Although I am (off and on) working to set up a formal mediation process with the help of certain mediation experts, my interim policy on settlement facilitators is as follows (and subject to change at any moment): I have been informing parties that if they wish to use a mediator, I will look with favor on approving by order just 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, I do not think that counsel should 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 counsel are reminded that part of the duty of representing a client well, as set out in the Lawyer's and Judge's Creed of Professionalism, 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. A copy of the Lawyer's and Judge's Creed of Professionalism (enacted in 2001 by the New Mexico Supreme Court to replace the Lawyer's Creed of Professionalism), which I support and attempt to adhere to in my own practice, is attached hereto as Exhibit 2. The (first) Lawyer's Creed is incorporated into the local District Court rules at D.N.M.LR-Civ. 83.9. As of the date of the compilation of these materials, the Lawyer's and Judge's Creed of Professionalism had not been incorporated into either the District Court or the Bankruptcy Court local rules. Nevertheless, I support the goals and the standards of conduct embodied in the Lawyer's and Judge's Creed, and I expect everyone, including myself, to adhere to the dictates of the Creed.

I should add that a while back I took an informal survey of the lawyers appearing before me over a three or four day period (that is, I asked virtually every one of the lawyers what they thought – about 30 lawyers in all), and the almost unanimous view was that their clients would be willing to have a mediation process

available, even if it were to cost the clients some money to pay the mediator. This was the view of attorneys representing the entire spectrum of parties that appear in bankruptcy court.

Finally, part of the feedback that I received was that attorneys would by and large prefer someone with at least some bankruptcy experience as a mediator, rather than someone who was a professional mediator or settlement facilitator per se. If you have any feedback on that issue that you want to provide to us, please feel free to do so, preferably in “writing” (*i.e.*, paper and writing tool delivered by hand, by fax (you may fax us directly for this purpose – 505 348 2432) or by post office, or by email).

25. One of the criticisms that I received from the 2001 edition of the Albuquerque Bar Association survey was from someone who said that they would come to my court for a five-minute hearing and spend hours waiting for it to take place. While I am unaware of an instance of something that bad happening, I have (and had) been concerned for some time about getting people in and out of hearings as quickly as possible. So we have come up with a set of procedures in an attempt to expedite your departure from the court:
  - a. Now that the Furrs case is taking somewhat less time, we will be treating Mondays as stay days and Tuesday mornings as pretrial conference days. We are also scheduling hearings in smaller groups of half-hour increments, rather than larger groups at one-hour intervals. We may shortly space the hearings into one-hour intervals again, but regardless of whether we go to one-hour increments or half-hour increments, it will be with a smaller number of cases in each segment.
  - b. Especially on busy days, we may segue from one half-hour or one-hour docket call to the next without a break, so that, for example, if you are standing out in the hall during the 9.00 docket waiting for everyone to come flooding out before the start of the 9.30 docket, and it is now 9.30 or later, you had best get into the hearing room immediately.
  - c. I try to call the cases that have persons there in the courtroom or hearing room first, and afterward call the cases that have people appearing only by telephone. That means that if you are waiting to be called by telephone for a case, you may well end up being called toward the end of that particular (half-hour or one-hour) docket.
  - d. If you have another hearing or a 341 meeting coming up shortly, be sure and let us know shortly before the docket starts, or, failing that, when we first walk in to start the hearings. I almost always am able to accommodate such a request to hear that matter first or last.

- e. If there is a large group of lawyers on one case, I may try to deal with that matter first, in order to get the largest number of people cleared out most quickly. However, that rule is subject to considerations such as whether there will also be a large number of people on the phone, whether the matter will require considerable discussion, etc. – in other words, I try to estimate whether calling the large group earlier or later on the docket will result in the most people getting out of the hearing room the most quickly.
  - f. Contrary to what is done in some other courts, cases involving self represented or “pro se” parties, including debtors, are treated the same as all the other cases; that is, if the case is third on the docket, it will be called third on the docket unless there is some other reason to call it in a different order. I believe that self represented parties should not be discriminated against, or made to feel unwelcome to the “lawyers’ club” (compare C. Dickens, Bleak House (Signet Classics 1966 edition), pp. 18-23, copy attached as Exhibit 3), or put at the “back of the line” as a way of discouraging their presence or participation in the court processes, merely because they have elected to try this themselves, or (think they) cannot afford an attorney. An inevitable consequence of this policy is that other parties and counsel will occasionally have to spend a little more time at a hearing or a docket call, since frequently the pro se party’s lack of experience causes a longer hearing. (Of course, this result does not obtain solely with unrepresented parties.) But given the importance of the justice system reaching out to serve everyone who comes before a court (see Part 2 below), I think there is no other option within these narrow constraints.
  - g. If you and the opposing party (or parties) have “settled” or otherwise precluded the need for discussion of the matter, please say so as quickly as possible after I have called the case. That will prevent me from launching into a discussion of the issues, based on my pre-hearing review of the file, which in turn will just waste a lot of your time and everyone else’s. I don’t mind being interrupted for this purpose.
26. There were also criticisms in the 2001 ABA survey that can be summarized as, “This guy overrides the rules in order to do ‘equity’,” and “This guy tries to make the process move more quickly for people by taking shortcuts, but it only adds to the time that it takes to get cases resolved.” Again, I am not aware of specific instances where this has happened, but we are now watching for potential instances of this. In any event, if you are aware of an incident that fits this description, or indeed of any incident that should or should not have occurred in my courtroom or chambers, please feel free to inform me, anyone on my staff, or Norman Meyer or Margaret Gay directly. I promise there will not be any retaliation.

27. On the chambers' web page, I maintain a list of stocks and other interests that I and my spouse and child own or otherwise have an interest in. And in the clerk's office at the intake counter is a hard copy of that list, updated each time there is a change in those holdings. Canon 3.C of the Rules of Conduct for United States Judges (mostly codified at 28 U.S.C. § 455) requires me be familiar with the interests that I, my spouse or my minor children own. The reason in turn for this is to ensure that there are no violations of the rule that absolutely forbids me to sit on or make any decisions in litigation in which I hold any "financial interest," including an ownership interest of any size in any of the parties to the litigation. (And "parties" includes any subsidiaries or parents of a party, so that, for example, when I owned General Electric Company common stock, I was precluded from hearing anything in which GE's subsidiary, General Electric Credit Corporation, was a litigant.) These financial disclosure lists help me keep track of those interests. They also are intended, perhaps primarily intended, to allow everyone in the litigation (and every other person on earth as well), to determine for themselves whether I have a financial interest in the litigation. So, what this means is that you should periodically consult that list, particularly before or shortly after you file an adversary proceeding or contested proceeding, to ensure that you don't have to do something like retry part or all of your case before another judge. (A number of years ago the parties to a class action against General Motors, found themselves without the judge who had presided over it for the past several years, because the judge or someone in his family owned just a few shares of GM stock. All the institutional history the judge had accumulated was unavailable to the parties, and they and the new judge had to start over again.) The AO is working on some software that is designed to catch those conflicts as soon as the adversary proceeding (or other matter) is filed, but how soon that software will be available, and how effective it will be once it is in use, is anyone's guess.
28. Also on the website are copies of my financial disclosure statements required by the Ethics Reform Act of 1989, which every United States judge and other (upper level?) federal employee is required to file in May of each year. There is a PDF copy of each disclosure statement I have filed since I got on the bench (August 1998). The other way to get hold of a copy of any one or more of these is to communicate with the AO, which for security reasons is required to obtain from you your identity, purpose in seeking the document, etc. before turning over to you a copy of the document.

PART 2: SOME THOUGHTS ABOUT THE JUDGING PROCESS AND POSTERITY

Among the paramount concerns I have is the need to get it right at the trial court

level, and to help get it right at the appellate level.<sup>1</sup> The further up the appellate level one goes, the more that appellate court becomes in effect the court of “last resort”. But for many people, who will only be able to afford one hearing (if that), the court of last resort practically speaking is the trial court; that is, the bankruptcy court. If I don’t get it right in these cases when there will be no appeal, justice will not have been done. See paragraph 3(c) in Part 1 above.

Even for those hearings in which there is likely to be an appeal, it is important for me to make the findings of fact and the reasoning, legal and otherwise (including the underlying assumptions and policy considerations) as clear as possible, so that the appellate court (particularly the newly graduated inexperienced law clerk who may be doing much of the work on the appeal) will clearly understand my decision. That way the appellate court can truly make a decision on the merits, rather than on what I did not decide.

I also have a deep concern for the court system itself as an institution. Every society, to survive, needs a means of resolving disputes “peacefully”. As a society, we have evolved the court system as our primary mechanism for resolving disputes that the parties cannot resolve on their own. This is a system that works only because the vast majority of people voluntarily comply with court orders and judgments, and they do so out of respect for the system. If that is ever lost, this society will be in very deep trouble; metaphorically, the foundations of this republic will be endangered or even destroyed. In consequence of that fact, my duty as a judge is to ensure that everyone who comes in front of me walks away believing, indeed convinced, that he or she got a full, fair, careful and courteous hearing, regardless of whether that person won or lost, regardless of the quality of the attorneys (or no attorneys), and regardless of my busy schedule. (In this connection, an attorney/mediator related the story of a successful mediation of a case (not one of mine) at the appeal stage. At the end of the process, one of the parties told the mediator, “You are the first person who listened to me.” The mediation was clearly successful; the rest of the process appears to have been markedly less so.)

Given the foregoing considerations, a healthy amount of humility on my part and on the part of any judge – all judges – is both useful and becoming.

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<sup>1</sup> “Whenever decisions of one court are reviewed by another, a percentage of them are reversed. This reflects a difference in outlook normally found between personnel comprising different courts. However, reversal by a higher court is not proof that justice is thereby better done. There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of state courts would also be reversed. We are not final because we are infallible, but we are infallible only because we are final.” Brown v. Allen, 344 U.S. 443, 540 (1953) (concurring opinion of Mr. Justice Jackson).

Related to this and to the concern for the institution of the courts is the injunction not to question the functioning of the system or the honesty of the other professionals unless there is some evidentiary basis for doing so. For example, in the Furrs case, an attorney at a hearing alleged that the way a motion was filed suggested a conspiracy between the debtor and the secured creditors to funnel all the money to the secured creditors and make sure none of the employees or unsecured creditors got paid. (The attorney shortly thereafter retracted the allegation, in open court, when I asked what the evidentiary basis for the statement was.) I was concerned about the statement because Furrs was a case which drew, for this state, a lot of media (particularly newspaper) coverage, and a newspaper reporter was at that hearing. The media has no constitutional or statutory obligation to be fair in its coverage, or even accurate. And in fact there were instances in the reporting on the Furrs case in which the media honored its lack of an obligation to be fully accurate. The Furrs case was a major court experience for thousands of employees and other creditors (whether they specifically appeared in court or not), affecting their opinions about the courts in general and the way justice is administered. And for the vast majority of people who knew much of anything about the Furrs case, their source of information and opinions was little else than the media. So what was said in court, by anyone, was important.

There are several corollaries to this concern about the system and how it is perceived by its users. Clearly one corollary is that we need to work on improving the system constantly. It is not overstatement to say that improving the system is a matter of preservation of the nation and perhaps of the species. And that duty applies to everyone who participates in the system. For that reason, we welcome any comments or suggestions you may have about how we can better manage the court process and increase the parties' satisfaction with and confidence in the system.

Another corollary is that no one ought to be afraid to tell a judge (respectfully) that the judge is wrong about something, whether it is a point of law, or a fact in evidence, or how something is being done in or out of court. I certainly acknowledge that there is a not-so-subtle power imbalance between judge on the one hand and lawyer and/or party (or court staff, for that matter) on the other hand. But unless we judges are willing to listen graciously and openly to disagreement and criticism, even embarrassing criticism, we will leave the perception that the system relies more on the power of the gavel than on the power of reason and compassion.

And in that vein, I recognize how hard it is to be a lawyer, a good lawyer. In fact, as the time that I left being a lawyer and took the bench recedes further into the past, I appreciate more just how hard it is to practice law well. (Another way of saying that is that as each day goes by, I realize how lucky I am to be on the bench.)

Finally, at the risk of getting a bit grandiose (although I firmly believe this), all this stuff about the administration of justice and about the research that shows that the highest

indicator of satisfaction with a judicial system is people's sense that they were carefully listened to and treated fairly, is important for another reason, besides the preservation of our republic. This process of fairness and transparency is what a number of us judges in the United States are advocating in other countries around the world, under the aegis of the Rule of Law programs which we participate in. Why do we care about the Rule of Law in United States, Russia and everywhere else? Why should you care?

One reason is the hope that people come to accept this peaceful mechanism as the way to conform behavior and resolve disputes, a model of behavior that is largely accepted in the United States but is not happening in many places throughout the world. And if enough individuals come to accept this process and affirm it, then nations, which are collections of persons, may apply the same methodology to resolving their disputes, both internally and externally.

The veneer of civilization is quite thin. We saw that in spades last century (not to exclude previous centuries, of course), in which there were numerous breakdowns of civilization and massive human rights violations, including, to mention only a few, the recent genocide in Rwanda; the slaughter of millions in Kampuchea; the expulsion of the Armenians from Turkey; Nazism in Germany (a country that was considered so civilized that what happened would have been unimaginable had it not actually happened) and the destruction of millions of people that accompanied it, including the holocaust; the Cultural Revolution in the People's Republic of China; and Stalinism in the former Soviet Union in which one man (with a lot of help) was responsible for the murders of tens of millions of people. Indeed in the United States (albeit on a much smaller scale and against a backdrop of steadily improving human rights), we had, among other embarrassments, the Japanese American cases, a signal dereliction by the United States Supreme Court of its duty to those persons, to the nation and to the Constitution.

But if what happens is that people internalize the rule of law (including the recognition of human rights) as the process for resolving conflict as individuals and as nations, that will strengthen this fragile thing we call "civilization" and maybe, with (considerable) luck, we will not repeat in the 21<sup>st</sup> century what happened in the 20<sup>th</sup> century.

And that is why it is important for us judges to talk about the rule of law, and about what it is that I and my colleagues around the world do and stand for, and why I very much appreciate the opportunity to communicate with you.

RULING:

1334 and 157; core; 7052

Issue is extension of time under 365(d)(4) , but practically speaking it also includes a decision on (d)(3), since Congress clearly made it a policy matter that a LL should not have to pay the cost of a trustee taking time to decide about what she wants to do – that is, the LL should not have to go deeper into the hole while the trustee makes a decision. The legislative history of d3 makes that clear. At the same time, there is no call from the Code to require the trustee to fix problems or allow the LL to make up for prepetition defaults – that comes later in the context of an attempt to assume under 365(b). That includes issues of structural repairs, clean up, asbestos, etc. – not ruling on those issues, only that they are h1 issues not to be addressed until and unless necessary.

On the issue of proration, no binding decision in this circuit. Believe Handy Andy got it right, not necessarily because of the school of economics analysis but because the decision is both consistent with language of Code – which is not all that “plain” – and because it comports with philosophy and practice of BR Code. See Judge Mansmann’s dissent in Montgomery Ward case from 3rd Cir., including his analysis of Koenig case from 6<sup>th</sup> Cir.

Re d3, trustee must do the following before midnight of Sunday, Feb 17:

- tender 60 days worth of rent
- tender a prorated amount of 60 days worth of real estate taxes
- tender proof of casualty insurance for the premises in the amount of \$7.5mm, plus \$1mm in liability insurance for three months out
- continue to pay the utilities current

Re d4, trustee must do the following, also before midnight of Sunday, Feb 17, and the before midnight on the last day of February and each month thereafter:

- tender one month’s rent (for rest of Feb, the rest of one month’s rent)
- tender one month’s worth of RE taxes (same as for rent)
- tender proof of casualty insurance for the premises in the amount of \$7.5mm, plus \$1mm in liability insurance for three months out (rolling figure, and taken care of if 6 months, etc.)
- Continue to pay utilities current

Failure to timely meet any obligation set out in d3 or d4 paragraphs results in immediate deemed rejection of the lease.

Deadline under d4 is extended to June 30, 2002, subject to the requirements set out above.

I have some question about interest, penalties and costs for RE taxes, but that seems to me to be essentially a “prepetition” or preconversion liability, and does not come under d3 or d4. If LL wants to reargue that, can do so, but it is not an obligation to pay that I am imposing, and even if I change my mind, the ruling will not be applied retroactively such that the trustee will find herself having been in default

Ex. 1

Was testimony about what it takes to market the property successfully – that has nothing to do with d3 and d4. Same for the impact of that testimony as it goes to the care of the building – no concrete evidence of what it takes right now to prevent significant structural damage, and what that would cost. (Roof stuff is close, but not concrete enough.)

LL needs to ID a reasonable location where performance can be tendered, even on a Sunday night.

Other issues: testimony elicited from Mr. Leugers provides evidence (\$.60 v. \$1.50 or \$2.00 per sq. ft.) of significant potential value, so clearly is within the range of reasonable business judgment for the trustee to move to extend the deadline. Thus overrule objection from LL as a creditor of estate. And that includes contention that this will only benefit lenders. Have not read the tender of proposed settlement with trustee and secured lenders – not relevant.

Entry of order – need to get that entered before Sunday.

Access for LL – incorporate that into the order.

**Rules of Professional  
Conduct**

**Professionalism**

# ***A Creed of Professionalism of the New Mexico Bench and Bar***

## **Judge's Preamble**

***Preamble:*** *As a Judge, I will strive to ensure that judicial proceedings are fair, efficient and conducive to the ascertainment of the truth. In order to carry out that responsibility, I will comply with the letter and spirit of the Code of Judicial Conduct, and I will ensure that judicial proceedings are conducted with fitting dignity and decorum.*

### **A. With respect to parties, lawyers, jurors and witnesses:**

- I will be courteous, respectful and civil to parties, lawyers, jurors and witnesses. I will maintain control in the courtroom to ensure that all proceedings are conducted in a civil manner;
- I will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications;
- I will be punctual in convening all hearings, meetings and conferences;
- I will be mindful of time schedules of lawyers, parties and witnesses;
- I will make all reasonable efforts to decide cases promptly;
- I will give all cases deliberate, impartial and studied analysis and consideration;
- I will be considerate of the time constraints and pressures imposed on lawyers by the demands of trial practice;
- Within practical time limits, I will allow lawyers to present proper arguments and to make a complete and accurate record;
- I will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents;
- I will do my best to ensure that court personnel act civilly and professionally;
- I will not adopt procedures that needlessly increase litigation expense;
- I will be open to constructive criticism and make such changes as are consistent with this creed and the Code of Judicial Conduct when appropriate.

### **B. With respect to other Judges:**

- I will be courteous, respectful and civil in my opinions;
- In all written and oral communications, I will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another Judge;
- I will endeavor to work with other Judges to foster a spirit of cooperation and collegiality.

## **Lawyer's Creed**

***Preamble:*** *As a lawyer, I will strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all lawyers, and I will also conduct myself in accordance with the following Creed of Professionalism when dealing with my client, opposing parties, their counsel, the courts, and any other person*

**Ex. 2**

*involved in the legal system, including the general public.*

**A. In all matters: "My Word is My Bond."**

**B. With respect to my clients:**

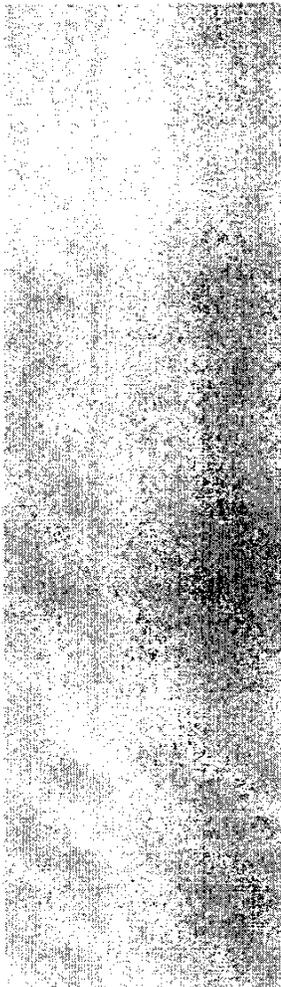
- I will be loyal and committed to my client's cause, and I will provide my client with objective and independent advice;
- I will work to achieve lawful objectives in all other matters, as expeditiously and economically as possible;
- In appropriate cases, I will counsel my client regarding options for mediation, arbitration and other alternative methods of resolving disputes;
- I will advise my client against pursuing matters that have no merit;
- I will advise my client against tactics that will delay resolution or which harass or drain the financial resources of the opposing party;
- I will advise my client that civility and courtesy are not weaknesses;
- I will counsel my client that initiating or engaging in settlement discussions is consistent with zealous and effective representation;
- I will keep my client informed about the progress of the work for which I have been engaged or retained, including the costs and fees;
- I will charge only a reasonable attorney's fee for services rendered;
- I will be courteous to and considerate of my client at all times.

**C. With respect to opposing parties and their counsel:**

- I will be courteous and civil, both in oral and in written communications;
- I will not make improper statements of fact or of law;
- I will agree to reasonable requests for extensions of time or waivers of formalities when legitimate interests of my client will not be adversely affected;
- I will consult with opposing counsel before scheduling depositions and meetings or before rescheduling hearings;
- I will cooperate with opposing counsel's requests for scheduling changes;
- I will not use litigation, delay tactics, or other courses of conduct to harass the opposing party or their counsel;
- I will refrain from excessive and abusive discovery, and I will comply with reasonable discovery requests;
- In depositions, negotiations and other proceedings, I will conduct myself with dignity, avoiding groundless objections and other actions that are disrupting and disrespectful;
- I will not serve motions and pleadings that will unfairly limit the other party's opportunity to respond;
- In the preparation of documents and in negotiations, I will concentrate on substance and content;
- I will clearly identify, for other counsel or parties, all changes that I have made in all documents.

**D. With respect to the courts and other tribunals:**

- I will be a vigorous and zealous advocate on behalf of my client, but I will remember that excessive zeal may be detrimental to my client's interests or the proper functioning of our justice system;
- I will communicate with opposing counsel in an effort to avoid litigation or to resolve litigation;
- I will voluntarily withdraw claims or defenses when they are superfluous or do not have merit;
- I will refrain from filing frivolous motions;
- I will voluntarily exchange information and work on a plan for discovery as early as possible;

- 
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
  - When hearings or depositions are canceled, I will notify opposing counsel, necessary parties, and the court (or other tribunal) as early as possible;
  - Before dates for hearings or trials are set, or immediately after dates have been set, I will verify the availability of participants and witnesses, and I will also notify the court (or other tribunal) and opposing counsel of any problems;
  - In civil matters, I will stipulate to facts when there is no genuine dispute;
  - I will be punctual to court hearings, conferences and depositions;
  - I will be respectful toward and candid with the court;
  - I will avoid the appearance of impropriety at all times.

**E. With respect to the public and to other persons involved in the legal system:**

- I will be mindful of my commitment to the public good;
- I will keep current in my practice areas, and, when necessary, will associate with or refer my client to other more knowledgeable or experienced counsel;
- I will willingly participate in the disciplinary process;
- I will strive to set a high standard of professional conduct for others to follow;
- I will respect and protect the image of the legal profession, and will be respectful of the content of my advertisements or other public communications;
- I will commit to the goals of the legal profession, and to my responsibilities to public service, improvement of administration of justice, civic influence, and my contribution of voluntary and uncompensated time for those persons who cannot afford adequate legal assistance.

*This page last updated on Tuesday, January 08, 2002*

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Gas looming through the fog in divers places in the streets, much as the sun may, from the spongy fields, be seen to loom by husbandman and ploughboy. Most of the shops lighted two hours before their time—as the gas seems to know, for it has a haggard and unwilling look.

The raw afternoon is rawest, and the dense fog is densest, and the muddy streets are muddiest near that leaden-headed old obstruction, appropriate ornament for the threshold of a leaden-headed old corporation, Temple Bar. And hard by Temple Bar, in Lincoln's Inn Hall, at the very heart of the fog, sits the Lord High Chancellor in his High Court of Chancery.

Never can there come fog too thick, never can there come mud and mire too deep, to assort with the groping and floundering condition which this High Court of Chancery, most pestilent of hoary sinners, holds this day in the sight of heaven and earth.

On such an afternoon, if ever, the Lord High Chancellor ought to be sitting here—as here he is—with a foggy glory round his head, softly fenced in with crimson cloth and curtains, addressed by a large advocate with great whiskers, a little voice, and an interminable brief, and outwardly directing his contemplation to the lantern in the roof, where he can see nothing but fog. On such an afternoon some score of members of the High Court of Chancery bar ought to be—as here they are—mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities, running their goat-hair and horsehair warded heads against walls of words and making a pretence of equity with serious faces, as players might. On such an afternoon the various solicitors in the cause, some two or three of whom have inherited it from their fathers, who made a fortune by it, ought to be—as are they not?—ranged in a line, in a long matted well (but you might look in vain for truth at the bottom of it) between the registrar's red table and the silk gowns, with bills, cross-bills, answers, rejoinders, injunctions, affidavits, issues, references to masters, masters' reports, mountains of costly nonsense, piled before them. Well may the court be dim, with wasting candles here and there; well may the fog hang heavy in it, as if it would never get out; well may the stained-glass windows lose their colour and admit no light of day into the place; well may the uninitiated from the streets, who peep in through the glass panes in the door, be deterred from en-

trance by its cwisish aspect and by the drawl, languidly echoing to the roof from the padded dais where the Lord High Chancellor locks into the lantern that has no light in it and where the attendant wigs are all stuck in a fog-bank! This is the Court of Chancery, which has its decaying houses and its blighted lands in every shire, which has its worn-out lunatic in every madhouse and its dead in every churchyard, which has its ruined suitor with his slipshod heels and threadbare dress borrowing and begging through the round of every man's acquaintance, which gives to monied might the means abundantly of wearing out the right, which so exhausts finances, patience, courage, hope, so overthrows the brain and breaks the heart, that there is not an honourable man among its practitioners who would not give—who does not often give—the warning, "Suffer any wrong that can be done you rather than come here!"

Who happen to be in the Lord Chancellor's court this murky afternoon besides the Lord Chancellor, the counsel in the cause, two or three counsel who are never in any cause, and the well of solicitors before mentioned? There is the registrar below the judge, in wig and gown; and there are two or three maces, or petty-bags, or privy purses, or whatever they may be, in legal court suits. These are all yawning, for no crumb of amusement ever falls from Jarndyce and Jarndyce (the cause in hand), which was squeezed dry years upon years ago. The short-hand writers, the reporters of the court, and the reporters of the newspapers invariably decamp with the rest of the regulars when Jarndyce and Jarndyce comes on. Their places are a blank. Standing on a seat at the side of the hall, the better to peer into the curtained sanctuary, is a little mad old woman in a squeezed bonnet who is always in court, from its sitting to its rising, and always expecting some incomprehensible judgment to be given in her favour. Some say she really is, or was, a party to a suit, but no one knows for certain because no one cares. She carries some small litter in a reticule which she calls her documents, principally consisting of paper matches and dry lavender. A sallow prisoner has come up, in custody, for the half-dozen time to make a personal application "to purge himself of his contempt," which, being a solitary surviving executor who has fallen into a state of conglomeration about accounts of which it is not pretended that he had ever any knowledge, he is not at all likely ever to do. In the mean-

time his prospects in life are ended. Another ruined suitor, who periodically appears from Shropshire and breaks out into efforts to address the Chancellor at the close of the day's business and who can by no means be made to understand that the Chancellor is legally ignorant of his existence after making it desolate for a quarter of a century, plants himself in a good place and keeps an eye on the judge, ready to call out "My Lord!" in a voice of sonorous complaint on the instant of his rising. A few lawyers' clerks and others who know this suitor by sight linger on the chance of his furnishing some fun and enlivening the dismal weather a little.

Jarndyce and Jarndyce drones on. This scarecrow of a suit has, in course of time, become so complicated that no man alive knows what it means. The parties to it understand it least, but it has been observed that no two Chancery lawyers can talk about it for five minutes without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce without knowing how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff or defendant who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out; the legion of bills in the suit have been transformed into mere bills of mortality; there are not three Jarndyces left upon the earth perhaps since old Tom Jarndyce in despair blew his brains out at a coffee-house in Chancery Lane; but Jarndyce and Jarndyce still drags its dreary length before the court, perennially hopeless.

Jarndyce and Jarndyce has passed into a joke. That is the only good that has ever come of it. It has been death to many, but it is a joke in the profession. Every master in Chancery has had a reference out of it. Every Chancellor was "in it," for somebody or other, when he was counsel at the bar. Good things have been said about it by blue-nosed, butious-sheed old benchers in select port-wine committee after dinner in hall. Articled clerks have been in the habit of fleshing their

legal wit upon it. The last Lord Chancellor handled it neatly, when, correcting Mr. Blowers, the eminent silk gown who said that such a thing might happen when the sky rained potatoes, he observed, "or when we get through Jarndyce and Jarndyce, Mr. Blowers"—a pleasantry that particularly tickled the maces, bags, and purses.

How many people out of the suit Jarndyce and Jarndyce has stretched forth its unwholesome hand to spoil and corrupt would be a very wide question. From the master upon whose impaling files reams of dusty warrants in Jarndyce and Jarndyce have grimly withered into many shapes, down to the copying-clerk in the Six Clerks' Office who has copied his tens of thousands of Chancery folio-pages under that eternal heading, no man's nature has been made better by it. In trickery, evasion, procrastination, spoliation, botheration, under false pretences of all sorts, there are influences that can never come to good. The very solicitors' boys who have kept the wretched suitors at bay, by protesting time out of mind that Mr. Chizzle, Mizzle, or otherwise was particularly engaged and had appointments until dinner, may have got an extra moral twist and shuffle into themselves out of Jarndyce and Jarndyce. The receiver in the cause has acquired a goodly sum of money by it but has acquired too a distrust of his own mother and a contempt for his own kind. Chizzle, Mizzle, and otherwise have lapsed into a habit of vaguely promising themselves that they will look into that outstanding little matter and see what can be done for Drizzle—who was not well used—when Jarndyce and Jarndyce shall be got out of the office. Shirking and sharking in all their many varieties have been sown broadcast by the ill-fated cause; and even those who have contemplated its history from the outermost circle of such evil have been insensibly tempted into a loose way of letting bad things alone to take their own bad course, and a loose belief that if the world go wrong it was in some off-hand manner never meant to go right.

Thus, in the midst of the mud and at the heart of the fog, sits the Lord High Chancellor in his High Court of Chancery. "Mr. Tangle," says the Lord High Chancellor, latterly something restless under the eloquence of that learned gentleman. "Mlud," says Mr. Tangle. Mr. Tangle knows more of Jarndyce and Jarndyce than anybody. He is famous for it—

supposed never to have read anything else since he left school.

"Have you nearly concluded your argument?"

"Mud, no—variety of points—feel it my duty to submit—Ludship," is the reply that slides out of Mr. Tangle.

"Several members of the bar are still to be heard, I believe?" says the Chancellor with a slight smile.

Eighteen of Mr. Tangle's learned friends, each armed with a little summary of eighteen hundred sheets, bob up like eighteen hammers in a pianoforte, make eighteen bows, and drop into their eighteen places of obscurity.

"We will proceed with the hearing on Wednesday fortnight," says the Chancellor. For the question at issue is only a question of costs, a mere bud on the forest tree of the parent suit, and really will come to a settlement one of these days.

The Chancellor rises; the bar rises; the prisoner is brought forward in a hurry; the man from Shropshire cries, "My lord!" Maces, bags, and purses indignantly proclaim silence and frown at the man from Shropshire.

"In reference," proceeds the Chancellor, still on Jarndyce and Jarndyce, "to the young girl——"

"Begldship's pardon—boy," says Mr. Tangle prematurely.

"In reference," proceeds the Chancellor with extra distinctness, "to the young girl and boy, the two young people"—Mr. Tangle crushed—"whom I directed to be in attendance to-day and who are now in my private room, I will see them and satisfy myself as to the expediency of making the order for their residing with their uncle."

Mr. Tangle on his legs again. "Begldship's pardon—dead."

"With their"—Chancellor looking through his double eye-glass at the papers on his desk—"grandfather."

"Begldship's pardon—victim of rash action—brains."

Suddenly a very little counsel with a terrific bass voice arises, fully inflated, in the back settlements of the fog, and says, "Will your lordship allow me? I appear for him. He is a cousin, several times removed. I am not at the moment prepared to inform the court in what exact remove he is a cousin, but he is a cousin."

Leaving this address (delivered like a sepulchral message) ringing in the rafters of the roof, the very little counsel drops, and the fog knows him no more. Everybody looks for him. Nobody can see him.

"I will speak with both the young people," says the Chancellor anew, "and satisfy myself on the subject of their residing with their cousin. I will mention the matter to-morrow morning when I take my seat."

The Chancellor is about to bow to the bar when the prisoner is presented. Nothing can possibly come of the prisoner's conglomeration but his being sent back to prison, which is soon done. The man from Shropshire ventures another remonstrative "My lord!" but the Chancellor, being aware of him, has dexterously vanished. Everybody else quickly vanishes too. A battery of blue bags is loaded with heavy charges of papers and carried off by clerks; the little mad old woman marches off with her documents; the empty court is locked up. If all the injustice it has committed and all the misery it has caused could only be locked up with it, and the whole burnt away in a great funeral pyre—why so much the better for other parties than the parties in Jarndyce and Jarndyce!

## CHAPTER II



### *In Fashion*

IT IS BUT A GLIMPSE OF THE WORLD OF FASHION THAT WE want on this same mazy afternoon. It is not so unlike the Court of Chancery but that we may pass from the one scene to the other, as the crow flies. Both the world of fashion and the Court of Chancery are things of precedent and usage; oversleeping Rip Van Winkles who have played at strange games through a deal of thundery weather; sleeping beauties whom the knight will wake one day, when all the stopped spits in the kitchen shall begin to turn prodigiously!

It is not a large world. Relatively even to this world of ours, which has its limits too (as your Highness shall find when you have made the tour of it and are come to the brink of the void beyond), it is a very little speck. There is much good in it; there are many good and true people in it; it has its appointed place. But the evil of it is that it is a world wrapped up in too much jeweller's cotton and fine wool, and cannot