

Ever More Advice and Thoughts from Judge Starzynski
Prepared for

BANKRUPTCY 2010: The 26th Annual Year in Review

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

These practice and procedure tips are in addition to those already listed on my chambers homepage. If you are interested in or need to know about these practice tips, then you need to also review the other practice tips at my chambers homepage, including the Year in Review materials from every previous year that I have been on the bench except 1999. To get there, go to www.nmcourt.fed.us then click on “Bankruptcy Court”, then select “Chief Judge Starzynski” from the “Judges/Opinions” button, and then start clicking on the various topics you want or need to read about. Note that at that site there is a list of all the decisions I have rendered (pdf) filed chronologically and that there is a “last updated” line at the bottom of that page, which will help you remain current on what is filed on that page. There is a wealth of other information on the homepage as well, such as a “matters pending” list and the court calendar for the upcoming two months, which is updated hourly and is searchable. And, finally, there is an even bigger wealth of information on the web page of Judge Robert H. Jacobvitz. Spending some time at both those sites might be useful, especially if you are new to bankruptcy practice in this district.

1. **Reaffirmations:** At last year’s Year in Review, we spent a considerable amount of time talking about reaffirmations during the judges’ presentation. Then in June 2010 the judges conducted a brown-bag educational program on the subject which featured, among other things, a step-by-step analysis of the issues which in effect provided guidelines for counsel to address the issues with their clients and make decisions. A copy of the Policy Regarding Reaffirmation Agreements Where the Debtor has Counsel of Record (June 9, 2010) is available on the web pages of

both judges, and for convenience is attached to these materials. That policy became effective August 1, 2010. See also In re Perez, 2010 WL 2737187 (Bankr. D.N.M., Jacobvitz, J.), also available on Judge Jacobvitz' web page. Yet it is apparent from a number of the reaffirmation agreements that I review each week, that there are still some debtor's attorneys, and creditor representatives, who have not read or understood the policy or the Code sections on reaffirmations in general, or examined the forms, or at least not thought carefully about what the consequences are of how the forms are filled out and signed off on. The consequences are significant for all parties involved, and can last well beyond the issuance of the discharge and the closing of the case. Whomever you represent, you owe it to them to be familiar with the topic (admittedly not a simple one) and to provide the best guidance to them.

2. **Requests to shorten time for objections and/or notice of hearing:** When you need an order permitting a shortening the usual notice time (subject of course to the limitations of F.R.B.P. 9006(c)(2)), file a motion setting out the reason for the request and repeat that information in the proposed form of order. Be sure to let us know if the request is urgent, including calling chambers to speak with someone to alert us to an e-mail with the proposed order if you need us to focus our attention on the issue immediately. Let us know as well in the e-mail transmission if you have already spoken to someone in chambers about this, since if you have done so, we in chambers may already have had a discussion about the shortened notice or when the matter could be set for a hearing. Keep in mind as well that for the usual shortened notice order, you still need to add in the three days for mailing required by F.R.B.P. 9006(f). (On that subject, see item no. 6 below.)
3. **More on "emergency" orders:** And on orders generally, including any emergency orders, put in the e-mail, or preferably the order itself, what the emergency is, and don't assume that because you told someone in chambers what the issues are that that information will get timely communicated to me. It may be that I get to the orders before talking with staff, or I am not in the office when I am doing orders, etc.
4. **Where to send orders:** Send orders to starzynski@nmcourt.fed.us , not james_starzynski@nmcourt.fed.us and not to anything identified as "Starzynski Orders", despite the fact that there is something like "Jacobvitz Orders" which people are supposed to use to send orders to Judge Jacobvitz. Internally we have a "Starzynski Orders" e-mail address, and this address occasionally appears in an e-mail that comes from chambers when we do a "Reply All" in connection with an order. When

you see “Starzynski Orders”, ignore it; it is not for use except as part of our procedures for processing and tracking orders.

5. **Flatten your documents:** When you submit orders to the judges for approval, or when you file anything in CM, especially exhibits, remember to flatten your documents. As an example of what I am talking about (though not exactly the same thing), I recently had a situation in which counsel had put electronic “yellow post-it notes” on the exhibits to serve as notes to counsel summarizing the contents and import of certain exhibits. Those notes came right through the filing of the exhibits and were available to everyone who read the exhibits. As it turned out, there was nothing revelatory about counsel’s thinking or analysis of the documents, but the example makes clear the potential adverse impact of not flattening your documents.

6. **Read carefully Rule 9006(a) and (f) when calculating deadlines:** Rule 9006 provides for an additional three days "after the prescribed period would otherwise expire under Rule 9006(a)." Rule 9006(a) provides that if the last day falls on a weekend or on a day which happens to be a holiday on which the Court is closed, "the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday." So, for example, if a twenty-one day notice was filed on Friday, December 4, 2009, the counting of the 21 days begins the next day (Saturday = day 1, etc.), and the 21 days ends on Friday, December 25. But the notice period cannot end on that day, and runs until and through the next business day, which is Monday, December 28. This is the "prescribed period" contemplated by 9006(f). **Then** the three days are added to December 28, so that the deadline is Thursday, December 31. Then, in this example, by virtue of the Court’s “electronic drop box rule” [NM LBR 5005-1(a)], which as a “local rule” overrides the provision of F.R.B.P. 9006(a)(4)(A) that says that the deadline of a given day for electronic filing is midnight of the last day in the time zone in which the court is located, the actual deadline would be 7.59 a.m. on Monday, January 4, 2010.
Rather than calculate the two periods independently or consecutively, many people simply add the 21 days and the 3 days together at the outset, and set the deadline for 24 days after the filing of the notice, which in this example would (erroneously) make the deadline Monday, December 28. So in this example, a confluence of timing, holidays and the drop box rule would result in an effective objection period of almost a full 31-day month.

7. **Blaming your secretary or paralegal when something has gone wrong:** In a word, **don’t**. For one, you are the attorney whose name is on the

pleading, petition, etc. It is you who get paid the so-called big bucks and that is one of the bucks, big or otherwise, that should stop at your desk. Two, blaming your secretary or paralegal will likely draw a rebuke from the court or the trustee, which could be embarrassing if the client is present. (Not that we want to embarrass any attorney in front of the client but it could happen.) Third, blaming your secretary or paralegal demonstrates a lack of class.

8. **Professionalism of the Bankruptcy Bar:** As a final note, and perhaps the most important of all these items, I note the continuing high level of professionalism and courtesy that continues to characterize the working relationships of the various attorneys who regularly (and some not so regularly) practice bankruptcy in this District. Perhaps it is something we judges too easily take for granted, since the same cannot be said for at least some other jurisdictions. But we thank you all for that level of professionalism and courtesy which makes work and life so much easier for all of us.