WE'LL GET BY WITH A LITTLE HELP FROM OUR FRIENDS[1]

By Margaret Dee McGarity©
U.S. Bankruptcy Judge
Eastern District of Wisconsin

Filings are up - way up. Still, we here in the bankruptcy courts of the Eastern District try to keep up. You can help, and we know how much you want to, especially if it will cause you only negligible inconvenience. Here are a few real no-brainer type things that would make our work lives a little easier, and those of our clerks and staffs who move most of the paper around here. Some of my suggestions are not in the local rules, or they are in the local rules but are widely ignored by all but the pickiest among you, or they will never rise to rule level but it sure would be nice if you would do them. In no particular order of importance, these are:

1. *Claims Procedure.*

When a claim is filed in a bankruptcy case, it is given a number on the claims register, which is kept separately from the docket in the main case or in any adversary proceeding. Any time you deal with that claim after it's filed, put that number and the name of the creditor in the title. No exceptions. And there should be a separate document for each matter dealing with the claim, such as an objection, response, order setting the amount, etc. Be sure to use Official Form 20B for the notice of objection to claims. You may be tempted to save paper by drafting a blanket "Order Disallowing Claims Nos. 6, 12, 45 and 118" or something similar. Don't. Use a separate order for each claim so, someday, a person checking on the

[1]With thanks to John Lennon and Paul McCartney, "With a Little Help From My Friends," on the Beatles' *Sgt. Pepper's Lonely Hearts Club Band* album (EMI Records 1967).

disposition of Claim No. 6 will be able to do so electronically, as all the documents related to Claim No. 6 will be linked. At least that's what I'm told by people a whole lot smarter than I am in the ways of computer magic.

The chapter 13 trustees may assign their own numbers to claims on their systems that are different from the court's claims registry. Use the registry number.

This procedure may be subject to change as the genies figure out ways to link claim documents in ways that won't require separate entries, but for now, keep them separate.

2. *Objections to Motions to Dismiss for Failure to Appear at § 341 Meeting of Creditors.*

It used to be that almost any lame excuse would get a debtor a new chance to salvage a bankruptcy by going to a rescheduled § 341 meeting of creditors after missing the original one. No more. We just have too many of them, and people are not taking sufficient responsibility for fulfilling the requirements of something they obviously want very much - a bankruptcy discharge. Allowing any old excuse puts an unreasonable burden on the trustee (who files the motion to dismiss for failure to appear, makes the court appearance when the debtor objects, and reprocesses the case, all for no additional compensation), the U.S. Trustee's office, the clerk's office, and the court that holds the hearing. At least if the case is dismissed and the debtor has to refile, a new fee is paid. This puts the cost on the party at fault, not on the folks providing relief to the thoughtless person who supposedly wants it. So, here are a few reasons for objecting to the trustee's motion to dismiss for failure to appear at the § 341 meeting that generally WON'T WORK.

1. I forgot. But I'll never forget again. I promise.
2. I put the wrong date on my calendar [or I would have, if I kept a calendar].
3. People steal my mail, and I never got notice [of course, I never told the post office I moved either, but the motion to dismiss found me just fine, thank you].
4. I went to the wrong federal courthouse.
5. I overslept.
6. My lawyer never called to remind me when it was [not that I asked, and besides, I changed my phone number without telling her/him].
7. I was waiting for the court to tell me when to be there [see #3 and #6 - no news is not good news; it means you have to take the initiative to find out when it is].
8. My aunt [sister, cousin, friend, neighbor, etc.] didn't have anyone to take care of her/him.
9. My car wouldn't start.
10. My babysitter didn't show up [so bring the kids; everyone else does].
11. I had to work [don't we all].
12. I was out of town on vacation [oh, really? hope it was fun].

There are a few excuses that probably will work. These include:

1. I have a verifiable case of something debilitating and truly loathsome that will make everyone in the courthouse deathly ill if I show up, and I called my lawyer, who then notified the trustee, preferably beforehand or immediately upon missing the meeting.

2. My child became suddenly ill, and I couldn't find anyone to watch her after diligent efforts, and I called my lawyer, who notified the trustee, etc.

3. The weather was so bad that my only, uninsured, car would have ended up in a ditch, and I called, etc. [this assumes the weather and roads were indeed bad].

4. I had an accident on the way, and the ambulance driver didn't have a phone so I could call.

These are not ironclad edicts, but it should give you an idea of when you should be objecting to a motion to dismiss or when you should just start over.

3. *Letters. . .♪ We Get Letters. . .♬*

A motion is a formal request to a court to do something. We know how to deal with those. But some letters, and I'm not talking about the enclosed-please-find kind or the we-settled-cancel-the-hearing kind, we don't know what to do with. They usually say they are "informing the court" of something, like that they don't like the other side. We don't want those. Communications with the court, even if copied to the other side, relating to the substance of your position in a case, unsworn, outside of open court, are still ex parte, and they are verboten. Leave us out of your written conversations with each other. Let us know clearly in a motion or response with legally defensible grounds when you want us to do something besides sympathize.

4. *"They Didn't Do What They Promised!" - Affidavits of Default*

Many (maybe most) disputes are solved by a payment agreement, usually with a penalty for failure to pay. Characteristically, these agreements, and associated orders, dismiss the pending proceeding on the condition that the debtor make certain periodic payments, and if the debtor fails to do so, the creditor can send the court an affidavit of default with an order reopening the proceeding and granting a money judgment, granting relief from the automatic stay, or whatever remedy you have agreed to.

Lots of these fail, and out of nowhere we get the affidavit of default with the proposed order. Now, if the court's signature meant nothing, we might just sign these orders. But we want to know if you REALLY have a right to that judgment or order. We're funny that way. If you sent a copy of the original order showing you had a right to the order requested, we would know right away. Then we wouldn't have to make a file request, have the file fetched or go through the electronic docket and documents, etc. Sometimes the file is already in Chicago, in which case we have to call your assistant, who must pull your file (which he/she had in hand when the affidavit of default went out in the first place), copy the original signed order, type another envelope, spend more postage . . . Just send the copy.

5. *Keep it Separate - Orders, That Is.*

Bankruptcy Rule 7052 states that findings of fact must be in a separate document, and Rule 7058 requires that judgments be separate. Local Bankruptcy Rule 9004(f) states that any proposed order must be separate. We believe this also means that stipulations or agreements to enter orders must also be separate. When a stipulation is filed, it is docketed

and given a different number from the accompanying order. If you make the stipulation and order one document, this whole scheme doesn't work. So give the order its own caption and own piece of paper or make it a separate electronic document, if appropriate.

6. *Who Done It?*

Local Bankruptcy Rule 9004(d) provides that each document shall have in the lower left corner of the first page the name, address, and telephone number of "each person signing the pleading." Since lawyers sign pleadings as well as draft them, we can tell right away who prepared the document. But proposed orders are signed by the judge, not the attorney or party. We still want the drafter's name in the lower left corner, even though that is not the person who will be signing. That's really what we meant.

7. *Flip, Flop, In, Out*

It is easy to get into bankruptcy. Sometimes, it is easy to get out (of chapters 12 and 13 anyway). And it is usually easy to move around the chapters, at least once. For example, a debtor can convert from a chapter 12 or 13 to a chapter 7 with just a notice; no court order is necessary. So don't send one.

Other moves around the Code can be made, but they require a motion and order. Send both. If the debtor has not previously converted the case, the court must, no choice, sign the following orders: dismissal of chapter 12 or 13, conversion from chapter 7 to chapter 11, 12, or 13, and conversion from a chapter 11 to chapter 7 if other statutory qualifications are met. Other dismissals or conversions may require notice or may be discretionary. If signing

the order is mandatory, how about alleging the necessary qualifications (like the case was not previously converted) in the motion? Then we don't have to check (we know you'll tell us the truth or we will get you), and you'll get real fast service.

7. *Miscellaneous*

Don't fax without prior permission and a very good reason. And follow up with a hard copy, or you won't have filed anything. Local Bankruptcy Rule 5005.2.

Don't put the date and signature line, or just the signature line, on a separate page of a stipulation or proposed order. Local Bankruptcy Rule 9004(f). Not that YOU would attach the signature to something else, but you never know what the bad guys might do.

Briefs can only be 15 pages long, exclusive of attached copies of cases and exhibits. That's long enough for all but the most arcane issues, so you have to ask us if it's O.K. to get arcane. And we really do want those copies of cases, at least on the chambers copy of the brief.

The things I've mentioned will work pretty well for all the judges. We also have more detailed policies and procedures on this website. You can get copies of local bankruptcy rules for the Eastern District of Wisconsin and the bankruptcy fee schedule (also found in 28 U.S.C. 1930 and the Appendix to that statute) on our website or from the office of the Clerk of Bankruptcy Court. We don't want to set traps or make your work difficult, and the easier the administration of the system is for us, the easier it will be for you.