

LOU JONES BREAKFAST CLUB  
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## Effective Legal Writing

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“The biggest problem with communication is the illusion that it has been accomplished.” – George Bernard Shaw

### Motion practice:

- Cite the applicable Code section
  - “Motion to retain tax refunds”
    - Relief sought: relief from the confirmed plan’s requirement that the debtor turn over tax refunds
    - Is this really a §1329 motion?
  - Tell the court not just what relief your client seeks, but why the court has the authority to grant such relief
- Allege all of the statutory elements
  - Avoid doing so in the alternative unless facts are provided that show both alternatives have been satisfied
    - 11 U.S.C. §722 motion to redeem
      - “Property is either exempt or abandoned.”
  - Make sure that the allegations are actually true
    - Most chapter 7 cases are no-asset cases. Therefore, property is almost never abandoned until the case is closed (compare 11 U.S.C. §554(a) and (c)); has it in fact been exempted?
- Know the governing Rule and the standard set forth therein
  - Rule 1007(c) – the court may “for cause shown” grant an extension of time to file schedules
  - Compare with Rule 4008(a) – the court may “at any time and in its discretion” enlarge the time to file a reaffirmation agreement
  - Untimely request? Now must show “excusable neglect” under Rule 9006(b)(1), unless enlargement is not permitted, see Rule 9006(b)(2), or enlargement is governed by a specific rule, see Rule 9006(b)(3).
  - Be mindful of specific limitations. See, e.g., Rule 4004(c)(2) (allowing a court to defer the entry of discharge “for 30 days and, on motion within that [30-day] period, . . . to a date certain”); but see Rule 9006(b) (not mentioning this specific limitation).

### Brief writing:

- Order of authorities
  - Standard of proof for a non-dischargeability action = preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279 (1991).
    - Don't cite a bankruptcy case when a Supreme Court case is available
- Overall outline
  - Avoid structuring your brief after supporting case law
  - Address your opposition's arguments
  - When there is no controlling precedent, i.e., an on-point decision of the Supreme Court or the Seventh Circuit, spend less time explaining supporting cases (the court can and does read the relevant case law) and more time explaining why the court should adopt the reasoning of the cases you cite.
  - Establish a complete factual record

### Orders:

- Omit relief not requested in the motion
  - §362(d) motions for relief from the automatic stay
    - "Claim shall be deemed withdrawn . . ."
- Avoid the use of unnecessary Latinisms, e.g., "*nunc pro tunc*"
  - Correctly used, *nunc pro tunc* is limited to correcting clerical errors made by the court
- Incorporate the terms of the parties' stipulation into the order