

Bankruptcy Best Practices in the Digital Age

Troy Attorney Uses Technology to Stay Mobile, Better Serve Clients

By Lynn Patrick Ingram

Michelle Bass *knows* technology. In fact, the Troy bankruptcy attorney, who focuses her practice on Chapter 13 reorganizations, has never practiced without it.

“By the time I began practicing in the fall of 2007, electronic filing was already a well-established method for bankruptcy practitioners,” Bass said, noting that this system has made her and other bankruptcy attorneys more mobile and, thus, more effective.

“The ability to file a pleading or open a new bankruptcy case from my laptop allows me to be more flexible,” she said. “It gives me the ability to spend more time during the day meeting clients so I can spend time at home preparing and filing documents. Simply knowing that I have access to *every* document on the docket in my cases and in *any* case filed in the Eastern or Western federal districts at my fingertips wherever I go is astonishing.”

Bass said the electronic court filing system “has certainly advanced the practice of bankruptcy from the time that cases needed to be delivered in person and filed by hand,” but noted that recent advancements in technology have not drastically altered her practice.

However, she cautions that a recent bankruptcy opinion, *In re Formosa*, does raise the issue of best practices for counsel in the digital age. The case involved a debtor who filed for Chapter 13 on the eve of a foreclosure sale and a mortgage company that foreclosed on the property after the automatic

stay had gone into effect but before the company had received notice through the mail.¹

“Counsel for the debtor did not email, call, or fax to alert the mortgage company that a case had been filed, and the debtor was not under a legal duty to do so,” Bass explained. “The mortgage company did not conduct a PACER search for a potential bankruptcy filing before foreclosing on the property despite Fannie Mae and Freddie Mac’s guidelines requiring servicers to do so. It contended, however, that there is no law requiring such a search.”

Bass said that to undo the foreclosure, the mortgage company had to hire bankruptcy counsel who incurred more than \$12,000 in fees and costs to prepare and file a stipulated rescission of the sale. It then filed a notice for post-petition mortgage fees and expenses, which the court considered under Federal Rule of Bankruptcy Procedure 3002.1(e).

“Typically, a mortgage company’s claim for post-petition mortgage fees and expenses is less than \$1,000, is paid through the debtor’s Chapter 13 plan, and causes no disruption of the debtor’s case,” she said. “In this case, both parties sought to hold the other accountable for the expenses incurred, despite no actual breach of legal duty by either side.”

The issue was whether the \$12,000 incurred by the mortgage company was required to be paid by the debtor to cure a payment default or to maintain payments under the mortgage in accordance with section 1322(b)(5) of the Bankruptcy Code.

The judge, Bass said, “instructed both parties that they could—and should—have done more to avoid the foreclosure which took place two days after the Chapter 13 case was filed, awarding a small amount of fees to be added to the mortgage loan on account of fees incurred by the lender.

About Michelle Bass

Admitted to Bar: 2007

Practice Area: Bankruptcy (focus on Ch.13 reorganizations)

Firm: Wolfson Bolton, PLLC, Troy



Bass’s Top Tech Tips:

- **Go paperless.** Not only will you become more efficient, but you will also help save the environment.
- **Go wireless.** Your practice should be able to travel with you wherever you go. Invest in a mobile device, tablet, and laptop that fit your needs.
- **Use technological advancements responsibly.** There is no replacement for face-to-face interactions with clients. Don’t allow the growth of technology to dilute the quality of your representation or diminish the personal attention that all matters deserve.

“Future of Law” is a regular column of the *Michigan Bar Journal*. Articles relating to lawyers using technology in their practices are written by Lynn Patrick Ingram. To submit a story idea, please contact Lynn at lingram@michbar.org.

"Practitioners who fail to use today's technological advancements are likely limiting their business, the size of their practice, and the amount of work they could otherwise take on."

"This case exhibits that best practices in bankruptcy are certainly subject to change as changes in technology continue to eclipse the requirements of our Federal Rules of Bankruptcy Procedure."

In other words, she advises that attorneys continue to monitor these often fast-developing changes, and cautions against getting too comfortable.

"While I am old enough to remember a time when the bar exam essay section was completed by hand in a series of blue books, those days are long gone," she said. "Practitioners who fail to use today's technological advancements are likely limiting

their business, the size of their practice, and the amount of work they could otherwise take on."

She also foresees some significant developments on the legal horizon.

"It is possible that we will see more electronically held hearings (via phone or Skype), where circumstances require," she predicted. "The bankruptcy court currently allows for certain hearings to be held by phone conference. I see this avenue widening in the years to come, particularly should there be another great recession leading to an increase in the volume of cases being filed."

Finally, Bass says that while advancements in technology have made it easier for her to do her job, she acknowledges its impact on the consumer bankruptcy practice in general.

"Consumers now turn to the internet for all of their needs, including attorney reviews and selection," she noted. "Solo practitioners and firms with fewer resources who do not have a dynamic website or online presence are at a significant disadvantage."

However, in the long run, she believes that advancements in technology are a good thing.

"Keeping up with it will only serve to help me improve on the services I can offer to my clients and to be more efficient, saving them time and money," she said. ■

Lynn Patrick Ingram, Esq., is publications development manager and legal editor at the State Bar of Michigan.

ENDNOTE

1. *In re Formosa*, 582 BR 423 (Bankr ED Mich, 2018).

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