



By Hon. Daniel S. Opperman

Bankruptcy Practice

[Practical Pointers]

The Bankruptcy Court of the Eastern District of Michigan offers a few practice pointers for bankruptcy practitioners. The following list is not exhaustive, but does address some common mistakes made by attorneys. The list is clearly subjective, and does not necessarily express the views of other bankruptcy judges or court staff. In some instances, these pointers are limited to bankruptcy practice in the Eastern District. The list is purposely long on practical advice and short on theoretical narrative.

Know your court staff. The courtroom deputy sets the docket and processes many orders. The courtroom recorder is responsible for exhibits and maintaining a record of proceedings, as well as substituting for the courtroom deputy. The deputy and recorder have a great amount of responsibility and discretion. If you know the individuals, and know how a judge handles the workload and docket, your case or order will likely move through the system in a smooth and orderly manner.

Know your judge. The court has a “Judges’ Corner” section on its website that details various guidelines and practices of each judge. If you haven’t appeared before a judge, call or e-mail some of your colleagues. They probably can give you a short summary of the unique practices of each judge. If time allows, get to court early and see how the judge handles cases. Observa-

tion will also give you insight on the nature of the day’s docket. Each judge posts the weekly calendar on the court’s website, so you can generally tell what is scheduled.

Contact court staff. Bankruptcy procedure can be complicated, so if you are unsure about a unique procedural issue, call the clerk’s office or judge’s chambers for some guidance. Court staff cannot give legal advice, but pre-screening of a procedural problem may save you time and embarrassment later. Caveat: do *not* call about routine questions or substantive legal issues.

Likewise, if you submitted an order, but it has not been signed or returned to you, call about its status. More often than not the order has been misdirected, and your call places the order back in the right place.

Check the court’s calendar. By Friday of each week, each judge posts on the court’s website the calendar for the following week. If your case does not appear, call the courtroom deputy. With the complexity of the court system, motions and trials are sometimes misplaced, so it is better to call ahead to correct the problem to avoid wasting time sitting in court when your case will not be called.

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Fast Facts

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- Stay current.
- Remember that briefs are called briefs for a reason.
- Tell us why a hearing should be expedited.

preparing for hearings and trials. Call the court the same day you settle a matter. We can then move to the next case and preserve judicial resources. The case you settle today may allow us to schedule your next case sooner. Finally, settlements are usually happy events—share them.

Introduce your client. Most hearings do not require your client's attendance, but introduce your client to the court if he or she is present. Most debtors are very concerned about the court proceedings because decisions affect their lives. Letting them be part of the process generally makes debtors feel better immediately. Don't ever refer to your clients in the abstract—they are real people with real problems.

When you hit oil, quit boring. Successful, experienced attorneys know, through questions from the bench, body language, or positive reception of their arguments, when a judge has made a decision. If a judge has said he or she has heard enough, additional argument is a waste of time.

Likewise, if a judge states that the court has reviewed all relevant pleadings, don't repeat every argument. Briefly focus on the two or three strongest points and then invite questions.

Finally, answer any questions the judge has, not the question you wished the judge had asked. If the judge spent time thinking of the question, the answer is important. It is all right if your answer exposes a weakness in the case. Most cases are not perfect, so be prepared with a responsive answer.

Stay current. Bankruptcy law changes, so you need to know about the changes and how the changes can affect you and your client. The Eastern District has a service that automatically sends you copies of recent Sixth Circuit, Bankruptcy Appellate Panel, District Court, and Bankruptcy Court decisions from the Eastern District, as well as announcements. You can sign up for this service on the court's website. Second, the local rules for the Eastern

District of Michigan were amended effective May 5, 2008—know the changes. Do yourself a favor and read through these rules and comments, and then attend two or three seminars a year. The American Bankruptcy Institute, Consumer Bankruptcy Association, and the Federal Bar Association all have annual seminars in Michigan. The Institute of Continuing Legal Education likewise has seminars on pertinent bankruptcy developments. You owe it to your clients, yourself, and your malpractice carrier to stay current.

Briefs are called briefs for a reason. We review a lot of pleadings daily, so you need to make your argument stand out. One way to do this is to avoid burying your best argument in the middle of a 20-page tome. In addition, string cites are generally unnecessary. If there is solid Sixth Circuit case law supporting your argument, the court is unlikely to follow a 1997 decision from the Idaho bankruptcy court. Conversely, if you have Sixth Circuit authority against you, your attention should be devoted to distinguishing the instant case. Remember, 20 pages is the limit, not the required length.

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If you made it to this sentence, imagine reading the previous same sentences for 20 pages or hearing the same argument for 10 minutes.

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Tell us why a hearing should be expedited. The court receives many requests to shorten notice or expedite a hearing. Most of these requests give enough detail to warrant granting the requested relief, but a surprising number do not. Since the reasons for expedited relief are usually fact specific, those facts must be detailed. It also helps if some, if not all, of the affected parties agree to the expedited relief.

In the words of one of my former partners, "Lack of preparation on your part does not mean an emergency on my part." Emergencies have to be real, not self-inflicted. ■



Hon. Daniel S. Opperman is a bankruptcy judge for the United States Bankruptcy Court for the Eastern District of Michigan in Flint and Bay City. Judge Opperman was sworn in on July 13, 2006. Before taking the bench, he practiced with Braun Kendrick Finkbeiner, concentrating in litigation, bankruptcy, and real estate. He earned his BS magna cum laude from Eastern Michigan University and his JD magna cum laude from Wayne State University Law School.