Judges' Roundtable

Featuring the Judges of the 20th Annual Rocky Mountain Bankruptcy Conference

2015

Dicta

By Hon. Janice Miller Karlin

Yes, Goldilocks, Writing Well Really Does Still Matter

Hon. Janice Miller Karlin
U.S. Bankruptcy Court (D. Kan.); Topeka

Hon. Janice Miller Karlin is a bankruptcy judge for the District of Kansas. She is also serving her second term as a judge on the Tenth Circuit Court of Appeals BAP and is chair of the Administrative Office of the U.S. Courts Bankruptcy Judges Advisory Group.

When I first became a bankruptcy judge in 2002, there was no electronic filing in the District of Kansas. That meant that every afternoon, the clerk's staff would bring me a rolling cart full of case files, with paper orders attached that had been prepared by one of the attorneys in the case. I really believed that if I signed an order with a typographical, syntax or grammatical error, and that order was appealed, the Tenth Circuit judges who had just seen fit to appoint me to a 14-year term would think less of me when they reviewed my order.

Using my blue pen, I would thus draw a caret (an upside down "v" for those of you who did not have Mr. McKinney for ninth grade English) to include a missing character, or punctuation mark, letter or word, or put a line through a misspelled word and write in the correct spelling, or just add language to complete what I thought was an unacceptably abbreviated order. I mentioned to the bankruptcy judge that I had just replaced — Judge Julie Robinson, who had been named a district court judge — that I was bothered by this fraction of the written work product I was receiving. I lamented that it took too much time to make these corrections. She quickly told me that I needed to "get over it," explaining that everyone knew I had not drafted these orders, the appellate judges would not be confused by that, and that my edits would not make better writers or proofreaders out of those attorneys who submitted these sloppy pleadings. While it hurt to sign my name to these orders, I knew she was right. I stopped editing all but the most unacceptable orders, so long as the findings/holdings were essentially correct.

Fast forward 12 years. I now receive all orders via CM/ECF, which allows me to insert, at the top of the page, about 100 characters worth of edits. I routinely use it to set exact dates for hearings being continued, add a missing word, qualify an order or gently educate an attorney that the motion is unnecessary.[1] I have found this to be much more expedient than requiring a case administrator from the clerk's office to return the order to the submitting attorney and explain why it is being returned, receiving the replaced order, reviewing the replaced order, trying to remember why I needed to have the order replaced, etc. However, I still wonder if the ol' blue ink method wasn't more effective in putting attorneys on notice that the work product was noticeably less than acceptable. I also wonder if just signing orders that contain such errors — out of expediency because the basic holding is mostly correct — sends the message that I do not appreciate good writing and proofreading, or that somehow these skills are no longer important. These skills are still very important.

Recent Examples

Much like Goldilocks in the story of *Goldilocks and the Three Bears* — although my locks are far from golden — I like pleadings that are not too long and not too short, but just right. I don't need the formality or legalese of "being otherwise well and duly advised in the premises," or "heretofores," or "based on the stated premises following," or being told that the application for compensation is "in the official court docket of all filed pleadings" or that the debtor's attorney "appears in her own person" (who else's person would she be appearing in?).

Like all judges, I read and sign dozens of routine orders daily, and the prize goes to the attorneys who draft tight orders using plain English with a cogent "It Is So Ordered" clause so everyone knows what I'm ordering. Admittedly, a tight order can only follow when it has been preceded by a tight motion or complaint that tells me (and, more importantly, any party who might be prejudiced by entry of an order) what relief is being sought and the facts and law that support that relief.

Too Short

While I like short and well-drafted motions, I will be the first to admit that there can be "too much of a good thing." I often see motions that are simply too brief. An example is a motion to shorten a required notice period. For example, Federal Rule of Bankruptcy Procedure 2002(a)(5) provides a 21-day notice to object to a plan modification. I receive motions to reduce the objection time to 10 or 14 days with some regularity where the only basis stated for the shortening notice is that "time is of the essence." OK, I get that. I must admit that I do then expect the next sentence or phrase to tell me

1 For example, Kansas state law provides that a judicial lien does not attach to homestead real estate. For that reason, there is no reason to file motions to avoid a judicial lien against homestead real property in Kansas under 11 U.S.C. § 522(f)(1)(A). In my quest to educate the bar about this settled case law, I often add text such as "I sign this as a 'comfort' order only, because the order is unnecessary under Kansas law. *See Deutsche Bank Nat. Trust Co. v. Rooney*, 39 Kan. App. 2d 913, 917 (Kan. Ct. App. 2008) (holding judicial lien does not attach to homestead property)." My "educational efforts" on this subject have had mixed results.

why time is of the essence. Without it, I do not think that I should exercise my discretion to reduce the time limits contained in Rules that have gone through the lengthy rulemaking process and have thus been approved by everyone and their uncle, including the U.S. Supreme Court.[2]

"Dead Wrong" Is Also Too Short

Debtors' counsel responded to a rather detailed motion to dismiss a chapter 13 case with this single sentence: "COME NOW debtors and object to the motion to dismiss and show that the Trustee is dead wrong in the position [that] he has taken and debtors will soon show same." And that was it; you just read 100 percent of the response to the trustee's motion. Obviously, that response did not permit the trustee to prepare for the hearing where the motion was to be heard, nor could I research the issues to give me a head start on knowing how to next proceed. Neither of us had been given the benefit of knowing what factual or legal bases the debtors intended to assert to show that the trustee was "dead wrong." Like the too-cold porridge, this pleading did not satisfy.

Pleadings Also Need Not Be Too Long

I often receive motions to abate payments in chapter 13 cases, which is just the terminology used in this district to forgive a missed payment and tack it onto the end of the plan. The orders granting them usually consume about a page of text, and that is typically all that the trustee or I need in order to convey why the payment was missed and how the missing payment will be treated. However, some attorneys go on for three pages, repeating themselves and including redundant information. It costs them or their client money to mail these longer documents to the matrix, and it does not result in a better result for the client.

An order I signed recently provided that the court would sustain the "debtor's motion to amend plan post-confirmation [Doc. 47], and grant [the] debtor's application for compensation for services provided and expenses incurred in post-confirmation matters." So far, so good. It then added immediately thereafter that the "Debtor's motion to amend plan post-confirmation is titled: 'Debtor's Second Motion to Amend Plan Post-Confirmation in Addition to Debtor's Attorney's First Application for Compensation Filed Post-Confirmation,'" finally concluding that the "Chapter 13 plan is amended per provisions of the motion as set forth following in this Order." I do not need to know the title of the pleading if the contents of the order already provide the essence of that title, as it did here. As I write this example, my complaint seems a bit petty, but multiply that times hundreds of these a year, and the unnecessary length becomes more problematic for both the trustee who has to approve these orders and for me. The porridge here? It's too hot.

Precision Matters: Part I

An individual debtor recently asked me to deem a lease as terminated as of the date that he filed the motion to terminate the lease. He properly notified the lessor of the relief being sought, and the lessor did not object. However, when I received the default order, the debtor's language had morphed into terminating "its" lease, not "his" lease. The individual debtor was the president of a corporation that had not filed for bankruptcy, and this language change appeared to be an attempt to instead terminate the lease as to the corporate entity, even though the corporation was not the debtor. I soon learned that there was no intent to pull a fast one, only that the attorney had not done a good job of proofreading his order. Like proofreading, possessive pronouns still matter.

Precision Matters: Part II

Judges trust lawyers to include in orders granting the relief sought in an unopposed motion only the relief originally sought in that motion, unless the change is favorable to the opposing party (*e.g.*, granting more time for compliance than the motion sought). I recently received an order requiring an insurance company, which had not been notified of the motion, to pay a precise amount to a lienholder. Something about the order just did not seem right; it granted much more relief than I typically see in similar motions. I decided to read the motion more carefully.

The motion was silent about the amounts to be paid, but more importantly, it contained the name of an entirely different creditor that should receive the insurance proceeds. I returned the order, noting the inconsistencies and the lack of notice to the insurance company. The attorney had simply made an error on the creditor's name, but also had apparently realized that his original motion simply did not cover as much ground as he needed. When that happens, the attorney has two choices: (1) obtain the consent of the impacted party on the order, or (2) amend and renotice the motion. Option three — submitting an order containing relief not sought in the motion — is not a permissible choice.

Punctuation? I Still Like It!

As it turns out, apostrophes matter to me. I get orders with this kind of language almost every day: "The courts reaffirmation hearing." But there was only one court that conducted the noted reaffirmation hearing. This "courts" and not "court's" was in the body twice, and in the title of the pleading once, so this was not a typographical error. This was either a staff person who does not understand apostrophes, a lawyer who did not proofread the document before uploading it, or a lawyer who doesn't understand apostrophes. I do not like any of these three alternatives. Here are a few more:

"Debtor's had to surrender one of their two cars due to cost..."

"It's position is unsupported."

"Your late."

All of these examples show the lack of clarity that results from the simple misuse of an apostrophe.

Proofreading: I Still Like It, Too!

I get it; I know that filing routine pleadings in the court where I sit is not equivalent to filing a *cert* petition with the

continued on page 62

2 *See* U.S. Courts, "About the Rulemaking Process," *available at* www.uscourts.gov/rulesandpolicies/rules/about-rulemaking.aspx (last visited Sept. 22, 2014) (stating that "[f]rom beginning to end, it usually takes two to three years for a suggestion to be enacted as a rule," and providing links to explanations of the rulemaking process).

Dicta: Yes, Goldilocks, Writing Well Really Does Still Matter

from page 35

Supreme Court. And I promise I do not expect that perfection; you certainly don't always get perfection when you read my decisions. However, I think any pleading filed in any court deserves at least a spell-check. Now, I am admittedly reticent to suggest that lawyers (and judges) should spell-check their pleadings before signing them, lest they think spell-checking is the equivalent of proofreading. We all know that spell-check is notoriously bad at missing misspelled or incorrectly used words,[3] but I do recommend the consistent use of spell-check as a nice start. I think its use might have prevented the pleading with this sentence from being filed: "Accordingly, no mnies ahll be paid to general unsecured creditors...."

When I reviewed the order containing this language, it reminded me of those puzzles where they ask if you can read a paragraph when most of the letters are jumbled, or the vowels have been removed.[4] As it turns out, I can. But you should not ask me to! Your name is on the pleading, your client is going to see it, and judges form opinions, correctly or not, that your written work reflects your knowledge and skill level. Practicing law is not a game to see whether your judge has these cognitive skills.

Conclusion

Your written-word product conveys a message to the judge, your client and opposing counsel about you. It reveals whether you have basic English skills, but just as importantly, it reflects whether you care about your work product. So repeat after me: "Not too long, not too short." "Punctuation is still good." "Proofreading is beloved." I promise that the judges before whom you appear will appreciate it if you really believe what you have just repeated. abi

3 Here are just a few examples where spell-check will not save you: (1) homonyms ("there" instead of "their" or "they're"), (2) usage errors such as "its" and "it's" (see above) or "affect" and "effect," and (3) simply wrong words such as "untied" instead of "united" or "casual" instead of "causal."

4 Chris McCarthy, "Can You Read This?," English Language Schools, Oct. 19, 2008, *available at* www.ecenglish.com/learnenglish/lessons/can-you-read (last visited Sept. 22, 2014) (citing the following example: "I cnduo't bvleiee taht I culod aulaclty uesdtannrd waht I was rdnaieg. Unisg the icndeblire pweor of the hmuan mnid, aocdcrnig to rseecrah at Cmabrigde Uinervtisy, it dseno't mttaer in waht oderr the lterets in a wrod are, the olny irpoamtnt tihng is taht the frsit and lsat ltteer be in the rhgit pclae. The rset can be a taotl mses and you can sitll raed it whoutit a pboerlm. Tihs is bucseae the huamn mnid deos not raed ervey ltteer by istlef, but the wrod as a wlohe. Aaznmig, huh? Yaeh and I awlyas tghhuot slelinpg was ipmorantt! See if yuor fdreins can raed tihs too.").

Dicta

By Hon. Alan S. Trust and Jason I. Blanchard[1]

So Tell Me What You Mean, What You Really, Really Mean

Hon. Alan S. Trust
U.S. Bankruptcy Court (E.D.N.Y.); Central Islip

Jason I. Blanchard
U.S. Bankruptcy Court (E.D.N.Y.); Central Islip

Hon. Alan Trust is a U.S. bankruptcy judge for the Eastern District of New York in Central Islip and serves as a coordinating editor for the ABI Journal. *Jason Blanchard is a law clerk for Judge Trust.*

Last year, we wrote about the lessons learned from the Spice Girls in an article entitled, "So Tell Me What You Want, What You Really, Really Want."[2] The message was to get you thinking about how you should simply, clearly and directly tell the court what you want for your client, and why you are entitled to it, in your pleadings and in your oral presentations.

This time, our focus is on writing and speaking clearly; tell me what you mean, what you really, really mean. Now, I will admit that I can very appropriately be accused of using phrases that may leave you puzzled. Having grown up in the country and spent 24 years in Texas, I have developed a fondness for expressions like, "That dog won't hunt." I have heard enough variations of that expression tossed back to me over six years on the bench to appreciate that not all sayings have a universal meaning or are expressed the same way. For example, "That dog won't hunt" is not the same as "No dog in the hunt," which itself is similar to "No horse in the race." Also, on several occasions, when being asked something like, "Judge, how would you like us to proceed?" meant "How should we present our case?," I have responded with, "Counselor, it's your rodeo; I won't tell you how to saddle up." By that, I mean that you should decide how to try your case and I'll decide the outcome, but seconds of silence and puzzled faces often followed. So, my sensitivity has been heightened to not just what we say, but how we say it; to paraphrase either (or both) Oscar Wilde or George Bernard Shaw, as Americans, we are often separated by a common language.[3]

It is not just colloquialisms that can cause confusion; sometimes we go for the flowery punch line ("Thus, the debtor's contumacious conduct in violating this court's mandates cannot be pretermitted; it must be redressed by the most extreme comeuppance available."), when a more direct statement will work ("The debtor should be sanctioned for his violations of this court's orders.") I appreciate that we often want to unleash the inner creative genius that we believe resides within us — been there, done that — but sometimes a 10-cent word works better than a 10-dollar cousin.

Also, a growing concern that I have is for the omnipresence of abbreviations and shorthands. No, I have not yet received a brief or correspondence that has "LOL," "BRB" or "IDK" in it (emphasis on *yet*). However, I have received emails with "SMH" (shaking my head) and "IMHO" (in my humble opinion) in them, causing me to ask the sender, "What does that mean?"

So Tell Me What You Really, Really Mean

Do not overread this: I am not saying that everything must be written in "See Spot. See Spot run" format.[4] However, if you have to choose between "It was a dark and stormy night"[5] and "Darkness skulked along the blurry visages of the horizon, as ominous clouds rumbled misgivings of a torrent to follow," if you are writing a legal brief, choose the former; if you are working on the next great American novel, go with the latter. The bottom line is this: Make it easy for the court to understand what you mean. Use colorful phrases on occasion so you can let your dog hunt and your horse race every now and then but also remember that the effect you are going for is "his/her client wins," not, "Wow! What a great way to craft a losing argument." abi

1 Disclaimer: None of the statements contained in this article constitute the official policy of any judge, court, agency or government official or quasi-governmental agency.

2 Hon. Alan S. Trust and Jason I. Blanchard, "So Tell Me What You Want, What You Really, Really Want: Lessons Learned from the Spice Girls," XXXII *ABI Journal* 9, 46-47, 76 (October 2013).

3 There are variations on the expression that America and England are two countries separated by a common language, and a debate over its authorship. In *The Canterville Ghost* (1887), Wilde wrote, "We have really everything in common with America nowadays except, of course, language." However, the 1951 *Treasury of Humorous Quotations* by Evan Esar and Nicolas Bentley quotes Shaw as saying that "England and America are two countries separated by the same language"; this quote had earlier been attributed to Shaw in *Reader's Digest* (November 1942). *See* English Language and Usage, *available at* http://english.stackexchange.com/questions/74737/what-is-the-origin-of-the-phrase-two-nations-divided-by-a-common-language.

4 William S. Gray and Zerna Sharp, *Dick and Jane* series, http://en.wikipedia.org/wiki/Dick_and_Jane.

5 Sorry, but it was not the original work of Charles Schultz and Snoopy. Edward George Bulwer-Lytton, *Paul Clifford* (1830), "It was a dark and stormy night; the rain fell in torrents — except at occasional intervals, when it was checked by a violent gust of wind which swept up the streets (for it is in London that our scene lies), rattling along the housetops, and fiercely agitating the scanty flame of the lamps that struggled against the darkness." *See* http://en.wikipedia.org/wiki/It_was_a_dark_and_stormy_night.

Dicta

By Hon. Stacey G. C. Jernigan

Stranger-Than-Fiction Moments in Court: The Best of the Best

Hon. Stacey G. C. Jernigan
U.S. Bankruptcy Court (N.D. Tex.); Dallas

Hon. Stacey Jernigan is a U.S. bankruptcy judge for the Northern District of Texas in Dallas.

It is often said that life is stranger than fiction. For those of you who sometimes linger awhile in a crowded courtroom, perhaps waiting for your own matter to be called, you often see glimpses of this. Below are some of my favorite "stranger-than-fiction moments" from my court docket recently. The "best of the best" are examples of strange attempts at evidence introduction, unusual testimony or creative legal arguments, etc. Caveat: No disrespect is intended to anyone involved. In fact, many of these individuals were extremely interesting people, whose creativity and tenacity were quite noteworthy. Embedded in this piece is the hope that readers will learn a few "do's and don't's" about courtroom strategies from these strange tales!

Most Unusual Attempted Use of Evidence

(Or, "Nothing Shows Good Faith Like a Bullet-Riddled Car Door")

A *pro se* debtor who filed five bankruptcy cases in a relatively short length of time recently wanted to bring in a bullet-riddled car door, removed from her own vehicle, as evidence to demonstrate her "good faith" in filing her latest bankruptcy case. For those who may not know, § 362(c)(4) of the Bankruptcy Code requires a demonstration of good faith, by clear and convincing evidence, in order for an individual debtor to obtain a stay from creditor collection activity in any situation in which the individual debtor has filed two or more bankruptcy cases and then had them dismissed within the year before the current case. Apparently, in this *pro se* debtor's view, her bullet-riddled car door would be highly relevant on the topic of her financial distress and reasons for multiple bankruptcy filings.

I ultimately denied the request to bring the car door into the courtroom (the *pro se* debtor had filed a special pre-hearing motion asking for permission to bring the car door to court). While no bullet-riddled car door was permitted inside the courtroom, I did rule that the individual was welcome to introduce pictures of her car door during the hearing if she somehow thought this was relevant to her serial bankruptcy filing pattern.

Tip for the wise: It is always wise to contact court personnel (or even file a motion) ahead of time if some sort of unusual evidentiary presentation is anticipated in order to avoid unpleasant surprises on the day of your hearing (such as a surprise that you cannot use the evidence that you wanted to use). A more typical example than a bullet-riddled car door might be that you want to use electronic equipment, a PowerPoint presentation or other graphics. It is always a good idea to practice ahead of time and make sure your fancy gadgets are going to work, and to make sure electronic gizmos are going to get past the court security guards. Many times, a judge's staff will allow you to come "practice" in the courtroom if there is a convenient time before the hearing. *Plan ahead!*

Most Unusual Testimony in Support of a Rehabilitation Plan

(Or, "To What Lengths Would You Go to Save Your House in a Bankruptcy?")

An individual in a chapter 13 case recently faced an uphill battle when she received a strong objection to her rehabilitation plan from a chapter 13 trustee based on the lack of feasibility of her plan; specifically, the objection was that the individual's income was not nearly high enough to support her monthly expenses and plan payments.[1] The numbers just did not work, and the plan would inevitably fail. However, the individual testified quite convincingly at her confirmation hearing that her plan was, indeed, feasible because things were looking rosier. She was handsomely supplementing her regular income now. Specifically, she had a side job testing laxative drugs for a drug company for a fee. The individual credibly testified that she would do "just about anything" to save her house through bankruptcy. I believed her and confirmed her rehabilitation plan — then I quickly ended the court hearing.

Tip for the wise: On a more serious note, we judges spend a lot of time reading pleadings and briefs and may *almost* have our minds made up before hearing evidence at times, *but never underestimate the importance of a compelling witness.* The laxative-taking debtor was truly compelling. She had much to say about her lifestyle changes (reduction in expenses) and the likelihood of continuing, reliable income. She was actually far more effective than any lawyer making an argument, under the circumstances. Prepare your witnesses well, but remember that it is sometimes effective to let them just speak from the heart and plead their case. You need to know your witness to be able to make these strategy calls.

1 *See* 11 U.S.C. § 1325(a)(6).

Most Unusual Use of Obscure Legal Authority

(Or, "Never Underestimate the Persuasiveness of a 225-Year-Old Moroccan Peace Treaty")

I recently had a chapter 7 case pending in my court in which the individual debtor represented that his job was serving as a "sheik" of a sovereign nation that existed within the U.S. The "sheik" also had another job as a horse trainer at a large rural compound at which the sovereign nation was headquartered. The "sheik" started out with a lawyer representing him, but the lawyer eventually asked (actually begged) to withdraw. The debtor owned many real properties and was litigating with numerous parties (suing some of them for hundreds of millions of dollars, in fact). Some of these parties that the debtor was suing were Fortune 500 companies with well-heeled lawyers, who often came to court looking weary and exasperated. Suffice it to say that this debtor's situation was unusual.

In any event, not only was the debtor's job status of "sheik" a little ambiguous, but he also had a knack for citing obscure and ambiguous legal authority. For instance, in many of the individual's *pro se* pleadings, he attached as legal authority a peace treaty from 1789 between the U.S. and the government of Morocco that allegedly absolved him from his debts. He also sometimes attached to his court papers a copy of a letter authored by former Secretary of State Condoleezza Rice as somehow relevant to his debt disputes.

Tip for the wise (not!): It is nice to see someone in court branch out from using the traditional legal resources, and this is really "thinking outside the box." You should consider putting the 1789 U.S./Moroccan Peace Treaty in your arsenal of legal advocacy tools!

Tip for the wise (seriously): Think about whether you are "grasping at straws" with your legal argument. The most common example in our bankruptcy world is the old "section 105 authorizes you to do this, Judge."[2] OK, OK. The U.S. Supreme Court's *Marrama* decision re-energized lawyers and judges a bit with regard to § 105 and the ability of a judge to exercise inherent equitable powers.[3] But, really, if there is no statute or case law supporting your argument — or, say, your best argument stems from a U.S. Peace Treaty from more than 200 years ago — perhaps you need to have a heart-to-heart conversation with your client about the merits of going forward. *Credibility with the judge — now and in the future — needs to be a priority.*

Most Unusual Business Seeking to Reorganize in a Bankruptcy Case

(Or, "The Case of the Financially-Strapped Hookah Bar")

Yes, it is true. A hookah bar filed a chapter 11 case in my court. Imagine the inventory list for this one.[4] Imagine the universe of expert witnesses that might be hired (and the *Daubert* objections — what would be "junk science" in the world of hookah?). But I guess it should come as no surprise that a hookah bar might file for bankruptcy. Hookah bars are no more immune from the economy's ups and downs than any other business. And — what with the direction that the law seems to be taking with the legalization of marijuana in some states — well, who knows what may lie ahead for this industry? It could be brutal. Some of you who know me know that I sometimes cannot resist quoting song lyrics in court when the occasion seems to fit. So it should be no surprise that the case of the financially strapped hookah bar had me dreaming (hallucinating?) for the perfect opportunity to cite Jefferson Airplane's song, "White Rabbit":

> And if you go chasing rabbits. And you know you're going to fall. Tell 'em a hookah-smoking caterpillar has given you the call. To call Alice. When she was just small.[5]

Tip for the wise: All silliness aside, here is a serious tip. *Judges are interested in your case.* We are not just robots who like to construe statutes. Like you, we want to help the parties in our court, and that means learning about their businesses, unique capital structures or a creditor's unusual loan instruments. *Some of the most impressive lawyers are those who come into court and really know their client's business and industry, and can speak extemporaneously about any aspect of it.* If you represent an energy company, you should become an expert on energy companies. If you represent a manufacturing company, you should learn everything about its history, business model, supply chain, cash-flow problems and state of the industry. If you represent a hookah bar, become an expert on hookah bars. A good rule of thumb is that it is probably fine if the judge knows the *law* better than you, but the judge should never know the *facts* about your company, or more details about its industry and obstacles better than you. Learn about and care about your client!

Best Assignment Given to U.S. Marshals

(Or, the "Bond, James Bond" Story)

I recently presided over a chapter 7 case in which the individual debtor failed to disclose an Aston Martin car that he drove. Yes, an Aston Martin — the British manufactured sports vehicle that is arguably the most tantalizing of all exotic and sensational vehicles that Ian Fleming's fictional character "James Bond, Agent 007," ever drove. Think *Goldfinger*, *Thunderball*, *Golden Eye*, *Tomorrow Never Dies*, *Casino Royale* and *Skyfall*. Anyway, once the chapter 7 trustee learned about the Aston Martin and confronted the debtor, he failed to reveal the car's whereabouts (alas, the vehicle seemed to disappear — perhaps with a James Bond-like cloak of invisibility; must have been the V12 *Vanish* model — although I thought they said it was the *Vanquish* model). Subsequently, the fellow was ordered to turn over the vehicle to the trustee in a court order, but he did not. The U.S. Marshals Service was contacted to investigate and, thankfully, they found the vehicle late one Friday afternoon on the verge of being sold. They seized and delivered it to the trustee. I think the Marshals may have found this task slightly more enjoyable than transporting prisoners.

Tip for the wise: Disclose, disclose, disclose. All lawyers have heard this many times, but emphasize this with your cli-

2 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.").

3 *Marrama v. Citizens Bank of Mass.*, 549 S. Ct. 1105 (2007) (Bankruptcy Code § 706(a) does not convey to chapter 7 debtor absolute unqualified right to convert case to chapter 13 when he/she has engaged in bad-faith pre-petition conduct; court still has equitable power, pursuant to § 105(a) of Code, to deny conversion when debtor acts in bad faith).

4 For the record, I have never visited a hookah bar.

5 This profound song lyric is from Jefferson Airplane's epic album "Surrealistic Pillow."

continued on page 109

Dicta: Stranger-Than-Fiction Moments in Court: The Best of the Best

from page 47

ents. The debtor with the Aston Martin lost his discharge pursuant to § 727 of the Bankruptcy Code. There might also be a bankruptcy crime prosecution in his future pursuant to 18 U.S.C. § 152. Clients need to hear this type of story. The goal of bankruptcy is to solve some of your problems, not create more.

Best Luxury Asset in a Bankruptcy Case

(Or, "The Devil Wears Prada and Hermes!")

OK. I am female, so I cannot help but choose, as my personal favorite luxury asset *ever* to become part of a bankruptcy case, the large collection of Hermes purses that one female debtor owned. Yes, Hermes, the handbag of the rich and famous. The debtor's Hermes purses were all listed, in mouth-watering detail, on an attachment to her schedule of personal property that was filed in her bankruptcy case, described by color, handbag style, size, year, etc.

Do some research on Hermes purses, if you are so grossly uninformed and uncultured as to not understand this reference. As any *Cosmopolitan* reader would know, one has to be put on a waiting list to buy a Hermes purse, and the purses are priced at many thousands of dollars. There is also a reference to the great designer Hermes in one of my favorite movies, *The Devil Wears Prada*. (You know the scene: Magazine editor Miranda Priestly (portrayed by Meryl Streep) sends her assistant, Emily (portrayed by Emily Blunt), out to the Hermes store in Manhattan to purchase some scarves. Emily gets hit by a car, darting through traffic because she is so distracted and stressed out working for Miranda and is unable go to the big fashion show in Paris because her neck is in a brace. Miranda then says "that'll be all" to Emily and Miranda's other assistant, Andy Sachs (portrayed by Anne Hathaway), gets to go to Paris instead of Emily. But I digress.)

Tip for the Wise: OK, my tip is probably not what you might expect. My tip here deals with a subject that no one should have to lecture educated people about, and yet I will. Think about how you and your clients dress for court. The world and the workplace are more casual than ever, but there are still places where one should dress respectfully, court being one of them. While Prada and Hermes are perhaps a bit "over the top" for bankruptcy court attire (personally, I cringe a little when I see lawyers dressed in designer-flashy attire in the courtroom when there are poor, desperate debtors waiting to testify), at the same time, flip-flops, blue jeans, and T-shirts that read "What does the fox say?" are equally inappropriate for the courtroom.

Best Reason for Requesting an Emergency Hearing

(Or, "The R.I.P., Nemo" Story)

Lawyers are notorious for requesting emergency hearings in bankruptcy cases. The "emergency" often does not quite seem like an emergency to the court, but at other times the exigencies are clear. Case in point: A chapter 11 trustee of a manufacturing company recently filed an emergency motion to sell certain "miscellaneous assets" that were unnecessary to the business operations. It seemed like a good way to raise some quick cash. Why was this an emergency? Well, for one thing, the business needed cash sooner rather than later, but it turns out that one of these "assets" was a very large fish tank with expensive, exotic, high-maintenance fish. The Dallas Aquarium was interested in taking the tank and fish. Here is a summary of the chapter 11 trustee's lawyer's argument:

> Lawyer: Fish are dying. It is exorbitantly expensive to maintain the fish tank. Unfortunately, we have already had a crab and a fish die. The crab even had a name. I can't remember it. The only thing that might be more sad is if this was a puppy tank.
> Court: But crab and fish are important, too.
> Lawyer: Absolutely. I agree.
> Court: What kind of fish was it that died?
> Lawyer: A clownfish. "Nemo." [courtroom audience: "Aw!"]

Tip for the Wise: Use good discretion when requesting emergency hearings. Bankruptcy courts in particular are inundated with requests for emergency hearings. Some are genuine, and some are less compelling. A good idea is to protect your credibility and avoid being perceived as the "lawyer who always cries 'wolf'" by seeking an emergency hearing every time you file a motion. Another good idea is to explain the emergency adequately in your motion and do not leave the court guessing. *If Nemo is dying — that is clearly an emergency. Make sure that the court understands that Nemo is dying.* In the case described herein, the lawyers did a good job of explaining that Nemo was dying. I still can't get that cute little image of an orange, striped clownfish out of my mind. R.I.P., Nemo. abi