M E M O R A N D U M

TO: All Attorneys with Bankruptcy Cases on my Docket

FROM: Pat E. Morgenstern-Clarren, Chief Bankruptcy Judge, N.D. Ohio

RE: Tips: Putting Some of the Unwritten Rules into Writing

DATE: October 24, 2014

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Last summer I participated in the Federal Judicial Center's Judicial Evaluation Survey. Many thanks to everyone who took the time to fill out the survey and especially those who responded to the request for suggestions. One lawyer replied that it would be helpful to have some of the unwritten rules put into writing. While I am not sure that all of the items mentioned here are rules, it is my attempt to put in writing some philosophies and practices that may not be self-apparent to newer lawyers or to lawyers who come to the Bankruptcy Court infrequently.

With that goal in mind, I offer these tips for cases pending on my docket:

1. If you are filing a consumer case, have your client's credit counseling certificate in your hand before you file. Do not take your client's word that he or she has taken the course and will bring the proof later. If a case is filed before the debtor takes the course, the case is subject to dismissal and the attorney fees are subject to disgorgement. In that event, you may find that you and your client have different recollections of the pre-filing conversation.

2. When you file a new case, log in to the court docket to make sure that each document has been filed. It takes less time to check than it does to respond to an order to show cause why some of the documents are missing.

3. Know how to do every task before you delegate it to a staff member in your office. You are responsible for everything that takes place under your name. The only way to delegate is if you can supervise appropriately, and the only way to supervise appropriately is if you know how to do the task yourself.

4. A court order is not an invitation, it is an instruction. If the order sets a hearing for a matter where you are counsel, you should be at the hearing. If you have a conflict, file a motion to continue the hearing explaining what the conflict is and the new date you are requesting.

5. If the court enters an order against your client to appear and show cause, read the order and be prepared to address the court's concerns as stated in the order. It is not enough to have a staff member note the hearing on your calendar. If you have not read the order, you will be standing in court looking at me, while I am looking at you waiting to hear your response.

6. At times, it turns out that an attorney did not come to a hearing because he or she did not have a solid argument to present and so deemed it a waste of time to appear. That is not a good decision. If you do nothing in this circumstance, it may look (to both your client and me) as if you are neglecting the representation.

7. If you are going to be unavoidably late to a hearing, call chambers before the hearing begins and explain the problem and when you expect to arrive. Chambers staff will give that information to me and I will know when to expect you. If you call after the hearing starts, the courtroom deputy, electronic court reporter, and law clerk will be in the courtroom, and your message will not reach me. The bench ruling will then be made without the benefit of knowing that you are on your way.

8. Asking for an extension is not the same as getting one. I try to alert counsel to the kinds of deadlines that I generally do not extend, but if in doubt file your motion well before the deadline expires.

9. Please avoid the everyday use of exclamation marks, underlining, and boldface in motions and briefs, especially if combined in one sentence. It makes me feel as if someone is yelling at me.

10. Counsel are required to attend adversary proceeding pretrials in person. I always conduct these myself, so this is your first chance to tell me your client's side of the dispute. Also, counsel frequently find that they are able to sit down in court-provided space immediately after the pretrial and hash out issues that save everyone time and money. In my view, there is no substitute for looking someone in the eye and listening to what they have to say. As an aside, I once discussed this issue with a district judge; while he permits counsel to appear by telephone, he said that he cannot imagine why anyone would give up the chance to sit face-to-face with the judge to set the tone for the litigation.

11. Chambers staff are available to answer procedural questions. If they do not know the answer, they will transfer you to the person who does. They are, however, prohibited by law from giving legal advice to anyone. Examples of procedural questions: Do I need to bring a witness to the hearing? Do you want copies delivered to chambers? Examples of substantive questions that will not be answered: What should I do next? What Bankruptcy Code section addresses this issue? What is the Sixth Circuit law on this issue? (I did not make up these examples). On a related point, it is not fair to your office staff to have them call chambers to ask a question that you know cannot be answered.

12. If you are having a personal or professional problem that you think is interfering with your practice, feel free to let me know at sidebar or through a phone call. There are excellent resources available, especially through the Ohio State Bar Association OLAP program. You do not need to feel that you are alone in dealing with those issues.

I hope that these thoughts will be helpful to you, and look forward to seeing you in court.