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Essay

THE ADMINISTRATIVE RELATIONSHIP BETWEEN THE DISTRICT AND BANKRUPTCY COURTS

by
*The Honorable William W Schwarzer**
*Neil McGaraghan***

INTRODUCTION

Title 28 U.S.C. § 151 establishes that the bankruptcy judges in each judicial district are “a unit of the district court . . . known as the bankruptcy court for that district.”¹ This seemingly innocuous designation is the subject of significant controversy in some districts, which have struggled to understand how § 151 affects their administrative relationship with the bankruptcy courts. Is the chief district judge responsible for the general administration of the bankruptcy court in his or her district, as is the case with the other units of the district court, or does the statutory scheme grant the bankruptcy court a degree of independence from the administrative oversight of the chief district judge, notwithstanding § 151?

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¹ 28 U.S.C. § 151 (1999).

Where one stands on these questions depends, in many cases, on where one sits. Some district judges believe the chief district judge, as the administrative head of the district, has a duty to oversee the efficient operation of all units that comprise the district, including the bankruptcy court by virtue of § 151. Conversely, some bankruptcy judges view § 151 as a jurisdictional technicality intended only to remedy Congress's unconstitutional grant of the judicial power to non-Article III judges in the Bankruptcy Reform Act of 1978. They also claim that the lack of an explicit statutory provision granting the chief district judge a supervisory role in the administration of the bankruptcy courts confirms that Congress intended the bankruptcy courts to manage their own administrative house.

The difference of views over the proper administrative relationship between the district court and its bankruptcy court has led to stand-offs in some districts. In the Ninth Circuit, for example, certain districts have weathered clashes over the district courts' efforts to institute district-wide budget and Employee Dispute Resolution plans. This memorandum was prepared for the chief district and chief bankruptcy judges in the Ninth Circuit to help them define an appropriate relationship between their courts.

II. THE STATUTORY SCHEME

A. *The Bankruptcy Reform Act of 1978*

In 1978, Congress enacted the Bankruptcy Reform Act of 1978 (the "Code").² Its legislative history reflects that Congress intended to establish "Independent Bankruptcy Courts."³ As the history explains:

[this] would solve many of the problems, generated by the de facto independence of the bankruptcy courts from the district courts

² Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (codified as amended in scattered sections of Titles 11 and 28 of the U.S. Code).

³ H.R. REP. NO. 95-595 (1977), reprinted in COLLIER ON BANKRUPTCY app. at 4-1068 (Lawrence P. King ed., 15th ed. rev. 1999); see also COLLIER ON BANKRUPTCY app. at 4-1073 ("The concept of a bankruptcy court that is separate and independent from the district court has been nearly universally supported.").

without a corresponding de jure independence, that now plague the bankruptcy courts and litigants. Solution of those problems, and separation of the district and bankruptcy courts, would contribute significantly to attracting well-qualified judges to the new bench.⁴

To achieve de jure independence, the Code made the following relevant provisions:

There shall be in each judicial district, as an adjunct to the district court . . . a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court . . .⁵

Appointment of bankruptcy judges shall be by the President with the advice and consent of the Senate.⁶

The senior active judge under the age of 70 shall serve as the chief judge.⁷

The chief judge . . . shall divide the business and assign the cases so far as such rules and orders of the bankruptcy court do not otherwise provide.⁸

B. Marathon and the Bankruptcy Amendments and Federal Judgeships Act of 1984

In 1982, the Supreme Court decided in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*⁹ that the Code's broad grant to the bankruptcy courts of jurisdiction of all civil proceedings arising under title 11 or in cases under title 11 vested the judicial power of the United States in judges not appointed in conformity with Article III of the Constitution.¹⁰ The Court concluded that the Code:

⁴ *Id.* at 4-1068.

⁵ 28 U.S.C. § 151(a) (1978) (current version at 28 U.S.C. § 151 (1999)).

⁶ *See id.* § 152 (current version at 28 U.S.C. § 152(a)(1) (1999)).

⁷ *See id.* § 155(a) (current version at 28 U.S.C. § 154(b) (1999)).

⁸ *Id.* § 156 (current version at 28 U.S.C. § 154(a) (1999)).

⁹ 458 U.S. 50 (1982).

¹⁰ *See id.* at 87.

has impermissibly removed most, if not all, of “the essential attributes of the judicial power” from the Art. III district court, and has vested those attributes in a non-Art. III adjunct. Such a grant of jurisdiction cannot be sustained as an exercise of Congress’ power to create adjuncts to Art. III courts.¹¹

Marathon sent Congress back to the drawing board to revise the jurisdictional grant to the bankruptcy courts. In the Bankruptcy Amendments and Federal Judgeship Act of 1984 (the “Act”), Congress remedied the jurisdictional problem under the Code.¹² While the focus of the amendments was on jurisdiction, they incidentally changed certain provisions of the Code affecting the structure of the bankruptcy courts and their relationship to the district courts. Thus, the Act contained the following relevant provisions:

In each judicial district, the bankruptcy judges . . . shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge [is] a judicial officer of the district court¹³

Appointment of bankruptcy judges shall be by the court of appeals for the circuit.¹⁴

[T]he district court shall designate one judge to serve as chief judge of . . . [the] bankruptcy court.¹⁵

[The] bankruptcy court . . . shall . . . promulgate rules for the division of business among the bankruptcy judges to the extent . . . the division . . . is not otherwise provided for by the rules of the district court.¹⁶

¹¹ *Id.*

¹² See Pub. L. No. 98-353, 98 Stat. 333 (codified as amended in scattered sections of Titles 11 and 28 of the U.S. Code); see also 130 CONG. REC. 8895-97 (daily ed. June 29, 1984) (statement of Sen. Hatch), reprinted in COLLIER ON BANKRUPTCY app. at 6-175-78.

¹³ 28 U.S.C. § 151 (1999).

¹⁴ *Id.* § 152(a)(1).

¹⁵ *Id.* § 154(b).

¹⁶ *Id.* § 154(a).

III. ANALYSIS

Whatever else the 1984 Act accomplished with respect to the bankruptcy court's jurisdiction—a matter not relevant to the nonadjudicatory relationship between the courts—it brought about a significant change in the status of the bankruptcy court and its judges under the Code. The bankruptcy court was transformed from an adjunct to the district court into a unit of the court. Judges were to be appointed by the court of appeals instead of by the President with the advice and consent of the Senate. The chief judge was to be designated by the district court; and the district court was given residual authority over the bankruptcy court's division of its business. Under the 1984 Act, the Independent Bankruptcy Courts contemplated by the Code were eliminated.¹⁷

To say that the bankruptcy courts ceased to be independent courts and suffered diminution of their powers and status is not to say, however, that they were made subordinate to the district court. There is no evidence in the statute or its legislative history of a Congressional purpose to subordinate the bankruptcy court to the management or administrative control of the district court or its chief judge.¹⁸ It is clear that Congress was concerned with complying with the mandate of *Marathon*, which was limited to the jurisdictional issue. Congress gave no indication that it acted for any purpose other than to solve the jurisdictional problem under Article III. As Senator Dole said on the floor of the Senate, “[t]he court structure provisions are, I believe, a constitutional answer to *Marathon*.”¹⁹

The relevant statutory changes, which are subtle, must be interpreted in the light of such history. Thus, while Congress created the bankruptcy courts as a unit of the district court, it did

¹⁷ Congressman Edwards, one of the sponsors of the 1978 legislation, said of the 1984 legislation that it “turns back the clock, and it does so more than just 6 years, by diminishing the status of bankruptcy judges and their powers from what they were before the 1978 legislation [B]ankruptcy judges are stripped of their powers.” 130 CONG. REC. H7490 (daily ed. June 29, 1984) (statement of Rep. Edwards), *reprinted in* COLLIER ON BANKRUPTCY app. at 6-122.

¹⁸ This interpretation of congressional intent is confirmed by the 1986 amendment prohibiting consolidation of the bankruptcy and district court clerks' offices without prior approval of the Judicial Conference and the Congress. *See* 28 U.S.C. § 156(d) (1999).

¹⁹ 130 CONG. REC. S8890 (daily ed. June 29, 1984) (statement of Sen. Dole), *reprinted in* COLLIER ON BANKRUPTCY app. at 6-159.

not provide for appointment of bankruptcy judges by the district court as is true of other officers of court units; it left primary authority over the division of business with the bankruptcy court; and it made no other grants of administrative authority or supervisory responsibility to the district court. It made no change in the rather sparse statutory grant of authority to the chief judge of the district court.²⁰

CONCLUSION

In sum, the bankruptcy courts after 1984 were not the same as the bankruptcy courts in 1979. The 1984 Act represents a retreat from independent bankruptcy courts. It significantly diminished the status of bankruptcy judges and the authority of the bankruptcy courts. But the Act did little to add to the power or authority of the district courts vis-à-vis the bankruptcy courts. It merely added authority to appoint the chief judge, and residual authority to provide by rule for the division of business among bankruptcy judges. The fact that Congress made these two specific grants of authority to district courts in the 1984 Act leaves no room for finding an inferential grant of broad supervisory authority over the bankruptcy courts.

For better or worse, Congress left the relationship between the bankruptcy courts and the district courts in legislative limbo. Congress left it to the courts to develop and manage that relationship, and they have done so in a variety of ways. Generally, the courts have succeeded in establishing cooperative and productive relationships. The principal challenge appears to have come from the institution of decentralized budgeting, which created a separate operational track between bankruptcy courts and the Administrative Office. Yet, for most courts, this has proved no impediment to maintaining a cooperative and productive working relationship. The various constructs that have emerged provide models offering helpful guidance, but they do not establish authoritative precedent for how the relationship is to be structured

²⁰ See 28 U.S.C. § 137 (1999) (making the chief judge responsible for the observance of the rules and orders of the court, for the division of business of the district court, and for the division of business and assignment of cases not otherwise prescribed by the rules and orders). Cf. *id.* § 154(b) (1999) (directing that the chief judge of the bankruptcy court “ensure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously”).

or implemented. Only Congress can provide that authority and it has not done so. As the Federal Judicial Center, in its Deskbook for Chief Judges of U.S. District Courts, concludes:

Since the statutory scheme does not clearly establish the relationship between the district court and the bankruptcy court . . . chief district judges should take responsibility for establishing a cooperative and productive relationship with chief bankruptcy judges.²¹

²¹ FEDERAL JUDICIAL CENTER, DESKBOOK FOR CHIEF JUDGES OF THE U.S. DISTRICT COURT 49 (2d ed. 1993).

