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DECISION **THE COMPTROLLER GENERAL OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-217236.2 **DATE:** May 22, 1985

MATTER OF: Accountable Officer for Bankruptcy Fees and Registry Funds

DIGEST: The Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, establishes a bankruptcy court as a unit of the district court, in each judicial district. The bankruptcy judges may appoint clerks of bankruptcy courts. Amendment of 28 U.S.C. § 1930 providing that bankruptcy filing fees are to be paid to "the clerk of the court" does not exclude payment to the bankruptcy clerk as the accountable officer for the funds. Incident to his office, the bankruptcy clerk also is the accountable officer for registry funds entrusted to the bankruptcy court.

A judge of the U.S. Bankruptcy Court for the Eastern District of Kentucky, on behalf of the clerk of the district court and of the clerk of the bankruptcy court, Eastern District of Kentucky, requests our views as to which clerk is the proper accountable officer for bankruptcy fees and registry funds under the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, enacted on July 10, 1984. The judge refers to a memorandum issued by the Administrative Office of the U.S. Courts which indicates that the clerk of the district court rather than the clerk of the bankruptcy court is now responsible both for bankruptcy fees and costs and for the maintenance of registry funds. The bankruptcy judge disagrees with the memorandum and is of the opinion that the bankruptcy clerk is the proper accountable officer for bankruptcy fees and costs, as well as for registry funds.

For the reasons indicated below, it is our opinion that the clerk of bankruptcy court is the appropriate accountable officer for bankruptcy fees and costs, and for registry funds, in connection with bankruptcy matters before the bankruptcy court.

LEGISLATIVE BACKGROUND

Changes in the structure of bankruptcy courts in recent years have affected the status of the clerks of these

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courts. The judge asks us to determine how the accountability of the clerks has been affected by these changes. The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, codified and enacted the law relating to bankruptcy as title 11 of the U.S. Code. The Act also amended title 28 of the U.S. Code to provide the United States District Courts with original and exclusive jurisdiction of all cases under title 11, with certain specified exceptions, and to provide the bankruptcy court for the district in which a case under title 11 is commenced, with the jurisdiction conferred by the Act on the district courts. 28 U.S.C § 1471 (1982).

The Act further provided that the bankruptcy court, based on need, "may appoint a clerk who shall be subject to removal only by the court." 28 U.S.C. § 771 (1982). It also provided that the clerk of each bankruptcy court would pay into the Treasury all fees, costs and other moneys collected by him. Id. It stated, as well, that "the parties commencing a case under title 11 shall pay to the clerk of the bankruptcy court * * * filing fees." 28 U.S.C. § 1930 (1982).

The Act amended 28 U.S.C. § 451 (see note to this section in 1982 edition of United States Code) to change the term "court of the United States" to include "bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years."

In Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, June 28, 1982, the U.S. Supreme Court struck down the bankruptcy court's jurisdiction under section 1471 because the bankruptcy judges were not afforded the protections set forth in Article III of the Constitution to insure the independence and impartiality of the Federal judiciary. A stay of entry of the Supreme Court's order was granted and extended to December 24, 1982, to provide the Congress time to correct the constitutional problem and to protect the orderly administration and adjudication of bankruptcy cases in the interim. On December 25, 1982, in the absence of congressional action or a further extension of the stay, the bankruptcy system began operating under a suggested temporary emergency rule issued by the Judicial Conference. See H.R. Rep. No. 9, Part 1, 98th Cong., 1st Sess. 2-4 (1983).

On July 10, 1984, the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, was enacted. Under section 113 of the Act, the provisions concerning the bankruptcy court and bankruptcy clerk described above, sections 1471, 771 and 451 of title 28, among other provisions of the Bankruptcy Reform Act of 1978, whose effective dates had been postponed, were not to become effective.1/

Similar to the 1978 Act, the 1984 Act amended 28 U.S.C. § 1334 to provide, with certain stated exceptions, that the U.S. District Courts shall have original and exclusive jurisdiction of bankruptcy cases. Section 101(a), 98 Stat. 333. The Act, however, added section 151 to title 28 of the U.S. Code. Section 104(a), 98 Stat. 336. It states that--

> "In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter * * * except as otherwise provided by law or by rule or order of the district court."

Further, in a change particularly important to this case, the Act amended 28 U.S.C. § 1930 to provide that parties commencing a case under title 11 shall pay filing fees to the "clerk of the court." Section 111(a), 98 Stat. 342. Section 1930 had previously required payment to be made to the clerk of the _bankruptcy_ court.

Additionally, the Act amended 28 U.S.C. § 156 to provide that the bankruptcy judges for a district, after making the required certification of need, may appoint an individual to serve as clerk of the bankruptcy court. Section 104(a), 98 Stat. 339. The Bankruptcy Clerk may, with the approval of the bankruptcy judges, appoint and remove deputies. _Id_.

1/ The effective date of these sections was originally established by section 402(b) of the 1978 Act, _id_., at 92 Stat. 2682. This effective date was postponed several times; the last date prior to the cancellation was June 28, 1984, established by Pub. L. No. 98-325, 98 Stat. 268 (1984).

BANKRUPTCY FEES

The Director of the Administrative Office of the U.S. Courts, in his memorandum dated October 11, 1984, addressed the issue of fees in bankruptcy petitions. These are principally filing fees paid by the party commencing a case under title 11. He indicated that under 28 U.S.C. § 1930, as amended, bankruptcy fees are to be paid to the clerk of the district court because the amendment which requires that the fees be paid to the "clerk of the court," refers to the clerk of the district court. Thus, the memorandum concludes "[t]his means that the clerk of the district court is an accountable officer for such fees and costs."

Under the Bankruptcy Reform Act of 1978, a bankruptcy court was to exercise the jurisdiction of a district court in bankruptcy matters. Under that legislative plan bankruptcy matters would have gone directly to a district bankruptcy court, which was given the status of a "court of the United States." The bankruptcy court was empowered to appoint and remove a clerk of the bankruptcy court to whom filing fees would be paid. Under the Bankruptcy Amendments and Federal Judgeship Act of 1984 this plan was changed so that the district court decides if bankruptcy matters are referred to the bankruptcy court in that district, which is not a separate "court of the United States" but rather a unit of the district court. The bankruptcy judges, upon a certification of need, may appoint bankruptcy clerks to serve at their pleasure.

In light of this background we do not read the current Act, which provides that bankruptcy fees are to be paid to "the clerk of the court," to require payment only to the clerk of the district court. The disputed language seems to us to be the result of an effort to accommodate those potential situations created under the Act, for cases where there is no bankruptcy court clerk.

Under the 1984 Act, bankruptcy matters sometimes may be retained by a district court rather than be dealt with by the bankruptcy court in that district. Also the judges of the district courts of the territories serve as the bankruptcy judges for those courts. (Section 104(a) of the Act, 28 U.S. § 152(b)(4).) Finally, in some districts a bankruptcy clerk may not be appointed because of an insufficient caseload. In all these instances the clerk of the district court will receive the fees paid incident to the bankruptcy proceedings since in the first two cases he is the clerk of the court in which the proceedings will be held, and in the latter case, he is the only available court clerk.

When, however, the bankruptcy judges in a particular district appoint a clerk and the bankruptcy matter is handled in the bankruptcy court, the bankruptcy clerk is, in fact, the clerk of the cognizant court. Because of the change in court structure, the current Bankruptcy Act provides that payment will be paid to the "clerk of the court" where formerly filing fees were to be paid to "the clerk of the bankruptcy court." The 1978 Act contemplated that the bankruptcy court established under that Act would handle bankruptcy matters within district court jurisdiction. However, as we have seen, under the present arrangement this may not always be the case since in response to the Marathon case, the Congress has provided for the retention of bankruptcy matters by the district courts.

Accordingly, it appears that the purpose in changing reference to the clerk of the bankruptcy court to the "clerk of the court" was not to preclude the bankruptcy court clerk from having responsibility for the fees, but rather to recognize that a bankruptcy court might not be the appropriate or available forum for some bankruptcy matters; or that there might not be a bankruptcy clerk appointed. The legislative history we have examined does not show an intention to preclude the bankruptcy court clerk from prime responsibility for fees paid to him incident to bankruptcy matters. Indeed, there seems little purpose to requiring the district court clerk to be the accountable officer for the bankruptcy fees when a functioning bankruptcy court clerk will receive the fees, and he is not, as noted by the memorandum of the Administrative Office, subordinate or responsible to the district court clerk.

Subsequent to the passage of the 1984 Act, an interview with Senators Dole and DeConcini, conference committee managers for the Senate, appeared in the American Bankruptcy Institute Newsletter (Winter 1984/1985, Vol. III, No. 3). They were asked whether it was the intent of Congress to augment the role of the district court clerks in bankruptcy. Senator Dole replied that:

> "No change in their functions and duties was anticipated. Cases should still be filed with the bankruptcy court, not the district court. There was also no change anticipated regarding the handling of monies coming through the bankruptcy court."

Senator DeConcini made the following comments:

> "I agree. These battles were fought years ago, and despite differences in approach to the court system, nobody had any desire to revisit the concerns of 'consolidation' and the like. We sought to maintain the status quo."

While these comments were made after passage of the Act, they confirm our understanding of congressional intent and our conclusion that the bankruptcy court clerk is the sole accountable officer for fees that come to him.

BANKRUPTCY REGISTRY FUNDS

Regarding registry funds, which are disputed assets of the bankrupt estate paid into the court subject to disbursement in accord with the bankruptcy proceedings, the Director in his memorandum of October 11, 1984, stated:

> "Bankruptcy clerks no longer have statutory authority for the maintenance of registry funds. Under 28 U.S.C. § 2041, that authority is vested in the district courts. Therefore, registry accounts formerly maintained by bankruptcy clerks must be redesignated as district court accounts to comply with section 2041. This does not preclude the district court from designating the bankruptcy clerk as the accountable officer for the bankruptcy portion of the registry funds * * *."

Section 2041 of title 28, U.S. Code states that:

> "All moneys paid into any court of the United States, or received by officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court."

Under the Bankruptcy Reform Act of 1978, bankruptcy courts were to be included as "courts of the United States." However the amendment of 28 U.S.C. § 451 which was to be effective on June 28, 1984, by virtue of section 113 of the 1984 Act, "shall not be effective." Today, therefore, a bankruptcy court is not a "court of the United States," but is instead a unit of the District court for the district in which it is located.

Section 2041 places a specific limitation on where funds received by courts of the United States may be deposited--either with the Treasurer of the United States or a designated depositary. By its terms, this section does not constitute a grant of authority to receive funds, which appears to be assumed. It is derived from the Act of March 24, 1871, ch. 2, sec. 1, 17 Stat. 1, which referred to "all moneys in the registry of any court of the United States." In presenting the Committee on Finance's favorable report on S. 74, a bill relating to moneys paid into the courts of the United States, Senator Sherman told the Senate that, "It is a bill to guard the Treasury." Cong. Globe, 42nd Cong., 1st Sess. 90 (1871).

The clerk of the bankruptcy court, which is a unit of the district court, would appear to us subject to 28 U.S.C. § 2041 as an officer of the district court. Even in the absence of this provision he would be accountable for the funds placed in his care.

Accordingly, it is our view that the bankruptcy clerk is the accountable officer for the registry funds which are to be entrusted to him for matters before the bankruptcy court even without an official designation as such by the district court. A court order as recommended in the Administrative Office's memorandum that would make the clerk of a bankruptcy court the accountable officer for registry funds would therefore be redundant.

CONCLUSION

From the foregoing, it follows that the clerk of a district court is not the accountable officer for either fees or registry funds received by the bankruptcy court clerk. The bankruptcy court clerk is the accountable officer in the described circumstance. We think this conclusion provides the most appropriate means of carrying out the legislative scheme created by the Congress.

for Milton J. Socolar
Comptroller General
of the United States