

FILED

UNITED STATES DISTRICT COURT DEC 22 1982

EASTERN DISTRICT OF CALIFORNIA CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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BY _____ DEPUTY CLERK

RE:)
)
 THE REFERENCE OF BANKRUPTCY CASES) GENERAL ORDER NO. 117
 AFTER DECEMBER 25, 1982)
 _____)

Acting pursuant to the authority vested in the Judicial Council by 28 U.S.C. §332(d), the Judicial Council of the Ninth Circuit concludes that the uniform effective and expeditious administration of justice within this circuit requires that the attached rule for the administration of the bankruptcy system in this circuit be adopted by the district courts of this circuit pursuant to 11 U.S.C. §105.

General Order No. 114, dated September 29, 1982, adopting Local Rule No. 19, and General Order No. 115, dated October 4, 1982, staying the effective date of Local Rule No. 19 are hereby vacated and set aside.

IT IS SO ORDERED.

DATED: December 22, 1982.

FOR THE COURT:

Philip C. Wilkins
 PHILIP C. WILKINS
 CHIEF U.S. DISTRICT JUDGE

LOCAL RULE 19

(a) Emergency Resolution

The purpose of this rule is to supplement existing law and rules in respect to the authority of bankruptcy judges of this district to act in bankruptcy cases and proceedings until Congress enacts appropriate remedial legislation in response to the Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., U.S. , 102 S. Ct. 2858 (1982), or until March 31, 1984, whichever first occurs.

The judges of the district court find that exceptional circumstances exist. These circumstances include: (1) the unanticipated unconstitutionality of the grant of power to bankruptcy judges in section 241(a) of the Bankruptcy Act of 1978; (2) the clear intent of Congress to refer bankruptcy matters to bankruptcy judges; (3) the specialized expertise necessary to the determination of bankruptcy matters; and (4) the administrative difficulty of the district courts' assuming the existing bankruptcy caseload on short notice.

Therefore, the orderly conduct of the business of the court requires this referral of bankruptcy cases to the bankruptcy judges.

(b) Filing of bankruptcy papers

The court of bankruptcy constituted by § 404 of the Bankruptcy Act of 1978 shall continue to be known as the United States Bankruptcy Court of this district. The Clerk of the Bankruptcy Court is hereby designated to maintain all files in bankruptcy cases and adversary proceedings. All papers in cases or proceedings arising under or related to Title 11 shall be filed with the Clerk of the Bankruptcy Court regardless of whether the case or proceeding is before a bankruptcy judge or a judge of the district court, except that a judgment by the district judge shall be filed in accordance with Rule 921 of the Bankruptcy Rules.

(c) Reference to Bankruptcy Judges

(1) All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district.

(2) The reference to a bankruptcy judge may be withdrawn at any time by the district court on its own motion or on timely motion by a party. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge

unless a specific stay is issued by the district court. If a reference is withdrawn, the district court may retain the entire matter, may refer part of the matter back to the bankruptcy judge, or may refer the entire matter back to the bankruptcy judge with instructions specifying the powers and functions that the bankruptcy judge may exercise. Any matter in which the reference is withdrawn shall be reassigned to a district judge in accordance with the court's usual system for assigning civil cases.

(3) Referred cases and proceedings may be transferred in whole or in part between bankruptcy judges within the district without approval of a district judge.

(d) Powers of Bankruptcy Judges

(1) The bankruptcy judges may perform in referred bankruptcy cases and proceedings all acts and duties necessary for the handling of those cases and proceedings except that the bankruptcy judges may not conduct:

- (A) a proceeding to enjoin a court;
- (B) a proceeding to punish a criminal contempt --
 - (i) not committed in the bankruptcy judge's actual presence; or
 - (ii) warranting a punishment of imprisonment;
- (C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge; or
- (D) jury trials.

Those matters which may not be performed by a bankruptcy judge shall be transferred to a district judge.

(2) Except as provided in (d) (3), orders and judgments of bankruptcy judges shall be effective upon entry by the Clerk of the Bankruptcy Court, unless stayed by the bankruptcy judge or a district judge.

(3) (A) Related proceedings are those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or a state court. Related proceedings include, but are not limited to, claims brought by the estate against parties who have not filed claims against the estate. Related proceedings do not include: contested and uncontested matters concerning the administration of the estate; allowance of and objection to claims against the estate; proceedings to lift the automatic stay; counterclaims by the estate in whatever amount against persons filing claims against the estate; proceedings to set aside preferences and fraudulent conveyances; orders to turn over property of the estate; orders authorizing use of cash collateral; orders approving the sale of property of the estate free and clear of liens; allowance or denial of discharge; proceedings to determine the dischargeability of a debt; proceedings regarding the confirmation of a plan; and similar matters. A proceeding is not a related proceeding merely because the outcome will be affected by state law.

(B) In related proceedings, and wherever the bankruptcy judge determines that circumstances require that a judgment or order be entered by a district judge, the bankruptcy judge shall not enter a judgment or dispositive order, but shall submit findings, conclusions, and a proposed judgment or order to the district judge, unless the parties to the proceeding consent to entry of judgment or order by the bankruptcy judge.

(e) District Court Review

(1) A notice of appeal from a final order or judgment or proposed order or judgment of a bankruptcy judge or an application for leave to appeal an interlocutory order of a bankruptcy judge, shall be filed within 10 days of the date of entry of the judgment or order or of the lodgment of the proposed judgment or order. As modified by sections (e)(2)(A) and (e)(2)(B) of this rule, the procedures set forth in Part VIII of the Bankruptcy Rules apply to appeals of bankruptcy judges' judgments and orders and the procedures set forth in Bankruptcy Interim Rule 8004 apply to applications for leave to appeal interlocutory orders of bankruptcy judges. Modification by the district judge or the bankruptcy judge of time for appeal is governed by Rule 802 of the Bankruptcy Rules.

(2) (A) A district judge shall review:

- (i) an order or final judgment entered under section (d)(2) if a timely notice of appeal has been filed or if a timely application for leave to appeal has been granted;
- (ii) an order or final judgment entered under section (d)(2) if the bankruptcy judge certifies that circumstances require that the order or judgment be approved by a district judge, whether or not the matter was controverted before the bankruptcy judge or any notice of appeal or application for leave to appeal was filed; and
- (iii) a proposed order or judgment lodged under section (d)(3), whether or not any notice of appeal or application for leave to appeal has been filed.

(B) In conducting review, the district judge may hold a hearing and may receive such evidence as appropriate and may accept, reject, or modify, in whole or in part, the order or judgment or proposed order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge. At the conclusion of the review, the district judge shall enter an appropriate order or judgment.

(3) When the bankruptcy judge certifies that circumstances require immediate review by a district judge of any matter subject to review under section (e)(2), the district judge

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shall review the matter and enter an order or judgment as soon as possible.

(4) It shall be the burden of the parties to raise prior to the time of the entry of the order or judgment of the district judge after review the issue whether the bankruptcy judge should have entered a proposed judgment or order under section (d)(3) rather than an order under section (d)(2).

(f) Local Rules

In proceedings before a bankruptcy judge, the local rules of the bankruptcy court shall apply. In proceedings before a district judge, the local rules of the district court shall apply.

(g) Bankruptcy Rules and Title IV of the Bankruptcy Act

Courts of bankruptcy and procedure in bankruptcy shall continue to be governed by Title IV of the Bankruptcy Act of 1978 as amended and by the Bankruptcy Rules prescribed by the Supreme Court of the United States pursuant to 28 U.S.C. § 2075 and limited by section 405(d) of the Act, to the extent that such Title and Rules are not inconsistent with this rule and the holding of Northern Pipeline Construction Co. v. Marathon Pipe Line Co., ___ U.S. ___, 102 S. Ct. 2858 (1982).

(h) Effective Date and Pending Cases

This rule shall become effective December 25, 1982, and shall apply to all bankruptcy cases and proceedings not governed by the Bankruptcy Act of 1898, as amended, and filed on or after October 1, 1979. Any bankruptcy matters pending before a bankruptcy judge on December 25, 1982 shall be deemed referred to that judge.

EXPLANATION OF BANKRUPTCY REFERENCE RULE

A. Introduction

The Supreme Court's decision in Northern Pipeline Const. Co. v. Marathon Pipe Line Co., ___ U.S. ___, 102 S. Ct. 2858 (1982) struck down 28 U.S.C. § 1471(c), the provision of the Bankruptcy Reform Act of 1978 (P.L. 95-598) that established the jurisdiction of bankruptcy judges. Marathon did not, however, invalidate the district courts' jurisdiction over bankruptcy cases. Marathon would thus require all bankruptcy cases to be handled by district judges, and the bankruptcy judges would be left without duties.

The function of this Rule is to provide a means for the bankruptcy judges to continue to handle bankruptcy cases should Congress not enact remedial legislation before the stay in Marathon expires on December 24, 1982. The Rule delegates power from the district judges to the bankruptcy judges of the district, enabling the bankruptcy judges to conduct bankruptcy proceedings, subject to later district court review. The Rule is in the form of a local rule to be adopted by the judges of each district court.

The Supreme Court has stated that district courts have inherent authority to appoint and delegate appropriate powers to special masters, referees, and commissioners in the absence of legislation to the contrary. Ex parte Peterson, 253 U.S. 300, 312-13 (1920). The delegation of power to bankruptcy judges contained in the Rule is a reasonable exercise of this inherent power.

The Rule closely adheres to the adjudicative scheme for bankruptcy cases established by Congress. In "core" bankruptcy cases, the Rule does not deprive parties of any safeguard traditionally available in bankruptcy litigation and will create no additional expenses or delays. In related cases, the Rule creates no greater departure from the traditional manner of adjudication than would reference to a magistrate, which the Supreme Court suggested in Marathon would be permissible. See 102 S. Ct. at 2876-78.

The district courts' power to establish this bankruptcy reference rule is probably not affected by Rule 53 of the Federal Rules of Civil Procedure, which authorizes the appointment of special masters and referees. Rule 53 was intended to apply only to the occasional referral of individual actions on a case-by-case basis, while Congress has for many

years provided for general referral of all bankruptcy cases to bankruptcy judges and referees.^{1/}

The Supreme Court cited four factors in holding that bankruptcy judges exercised the "essential attributes of the judicial power:" (1) bankruptcy judges were authorized to exercise all of the jurisdiction of the district courts, not

^{1/} If Rule 53 does apply, however, a general reference of bankruptcy cases to bankruptcy judges can be justified under its terms.

Rule 53(b) provides that reference to a master shall be made only in exceptional circumstances. The Supreme Court has construed this limitation strictly, holding that case complexity and court congestion are not sufficient justification. See La Buy v. Howes Leather Co., 352 U.S. 249, 259 (1957). See generally C. Wright and A. Miller, Federal Practice and Procedure, § 2605 (1971). Several factors, however, suggest that exceptional circumstances exist here.

First, actual trial of all bankruptcy cases by the district courts would cause an unprecedented increase in caseload resulting in unmanageable court congestion and delay.

Second, the use of the general reference will be strictly limited in time. It will be effective only until Congress passes remedial legislation.

Third, Congress has authorized for many years the trial of bankruptcy matters by bankruptcy judges and referees. Thus, referral to a master does not raise the same concerns here as in La Buy, where the litigants were deprived of the type of trial traditionally afforded before a judge experienced in handling such matters. See 352 U.S. at 359. Bankruptcy judges are more experienced in handling bankruptcy matters than the district judges who would otherwise try them.

Fourth, the present case is distinguishable from decisions restricting the use of masters because of the additional costs and delay to the parties. See, e.g., Cruz v. Hauck, 515 F.2d 322, 329 (5th Cir. 1975), cert. denied, 424 U.S. 917 (1976). Although masters usually must be compensated by the court and these costs may be assessed to the parties (Rule 53(a)), the parties should incur no costs upon referral to the salaried bankruptcy judges. Bankruptcy cases are also likely to be resolved more quickly if they are referred to bankruptcy judges than if they are tried by district judges.

Section (c) of Rule 53 gives the district court great discretion in defining the powers of a master or referee. Nothing in that section prohibits delegation of the powers conferred upon bankruptcy judges by the bankruptcy referral rule.

merely to make factual determinations; (2) bankruptcy judges were empowered to preside over jury trials and issue declaratory judgments and writs of habeas corpus; (3) the factual findings of the bankruptcy judges were to be reviewed under the deferential "clearly erroneous" standard; and-(4) judgments of bankruptcy judges go into effect without an enforcement order from the district court. Marathon, 102 S. Ct. at 2878-79.

Under this Rule bankruptcy judges may not conduct jury trials and they may not enter final judgments in related cases except where the parties consent. In addition, their findings and conclusions are subject to de novo review. The Rule thus eliminates three of the four respects in which the Court found that the bankruptcy judges' powers in related cases were excessive under the 1978 Act. The powers the Rule confers on bankruptcy judges in related cases are almost exactly like those of a magistrate. The Supreme Court held in United States v. Raddatz, 447 U.S. 667 (1980) that the powers conferred on federal magistrates need not be exercised by Article III judges. Accord Marathon, 102 S. Ct. at 2876-78.

Marathon did not directly address what powers bankruptcy judges could properly exercise in "core" bankruptcy matters. The decision did state, however, that Congress has broad discretion in determining how Congressionally created rights must be adjudicated. 102 S. Ct. at 2878. "Core" bankruptcy matters involve such Congressionally created rights.

The Rule delegates to bankruptcy judges power to enter orders and judgments in core bankruptcy matters, subject to subsequent district court review. This delegation is consistent with Congress' long-standing statutory policy that core bankruptcy matters be tried before bankruptcy judges. Moreover, Article III judges retain considerable power over core bankruptcy proceedings under the Rule. A district judge may withdraw the reference at any time, and need give no deference to the bankruptcy judge's findings and conclusions upon review.

B. Section by Section Analysis

Section (a)

Section (a) is an emergency resolution that describes the necessity for the Rule.

Section (b)

Section (b) makes clear that all bankruptcy papers shall be filed with the clerk of the bankruptcy court and that the Rule does not change the respective financial and other responsibilities of the clerk of the bankruptcy court and the clerk of the district court.

Section (c)

Section (c) constitutes an automatic reference of both core bankruptcy proceedings and related cases from the district court to the bankruptcy judges of the district. The district court retains full power to withdraw or limit the reference in a case at any time for any reason.

Section (d)

Section (d) specifies the powers that bankruptcy judges may exercise in referred cases. Sections (d) (1) (A)-(C) mirror limitations on the powers of bankruptcy judges established in section 405(a) of the 1978 Act. Section (d) (1) (D), which prohibits bankruptcy judges from conducting jury trials, reflects the opinion that it is not permissible for a judge to delegate the power to conduct a jury trial because conducting a jury trial is itself an integral part the judicial function.

Sections (d) (2), (d) (3) specify the different powers bankruptcy judges have in core bankruptcy matters and in cases only related to pending bankruptcy proceedings. In core bankruptcy proceedings, bankruptcy judges are authorized under section (d) (2) to enter all orders and final judgments, subject to district court review under section (e). "Core" bankruptcy proceedings are not defined in the Rule; they include all bankruptcy proceedings not defined as "related proceedings" in section (d) (3) (A). Orders entered by bankruptcy judges go into effect immediately unless expressly stayed by the bankruptcy judge or a district judge.

Bankruptcy judges are also authorized to enter certain orders in related cases under section (d) (2). They may enter interlocutory orders, and may enter final judgments and dispositive orders where the parties consent. Parties are deemed to consent to entry of judgment by the bankruptcy judge unless they raise the issue whether a proposed judgment or order should have been entered by the time the matter is decided by the district judge. Parties who consent to the entry of judgment by the bankruptcy judge do not waive the right to review of the judgment by a district judge under section (e).

Section (d) (3) (B) provides that in a related case where the parties do not consent to entry of judgment by the bankruptcy judge, the bankruptcy judge may not enter a final judgment or dispositive order. Rather, the bankruptcy judge shall lodge recommended findings and conclusions and a proposed judgment or order. A proposed judgment or order does not go into effect until reviewed and entered by a district judge.

The bankruptcy judge has discretion to enter a proposed judgment or order, even though he is authorized to enter an order or judgment under section (d) (2), where he determines that commercial necessities require that the order or judgment be entered in the first instance by a district judge. It is

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intended that this power be invoked in circumstances similar to those in which the bankruptcy judge would certify an order or judgment for review even though no notice of appeal or application for leave to appeal had been filed (see section (e)(2)(A)(ii) and explanation herein).

Related proceedings are defined in section (d)(3)(A). Related proceedings do not include those that are integral to the adjudication of the bankruptcy case and the restructuring of the creditors rights. This is so because the right to relief in such instances is a matter of federal bankruptcy law, even if the rule of decision is derived from state law.

Section (e)

Section (e)(1) specifies the means of requesting district court review of interlocutory and final judgments in both core bankruptcy and related cases.

Section (e)(2)(A) specifies the orders and judgments that shall be reviewed by a district judge. Paragraph (i) provides for review of orders and judgments entered by the bankruptcy judge where review has been timely requested.

Paragraph (ii) provides that a bankruptcy judge may certify an order or judgment for district court review even if no objection has been filed. The bankruptcy judge might invoke this provision where, for instance, a bank refuses to loan money or a title company refuses to insure title without an order signed by a district judge. It is contemplated, however, that this provision will not be routinely invoked. Whether or not to certify a case for review is committed to the discretion of the bankruptcy judge. Such review may be, but is not automatically, expedited pursuant to section (e)(3).

An order or judgment entered by a bankruptcy judge under section (d)(2) becomes final when the time for filing a notice of appeal has expired, unless the bankruptcy judge has certified the matter for review under paragraph (ii).

Paragraph (iii) provides that a district judge shall review all proposed final judgments and dispositive orders in related cases, whether or not review has been requested. This paragraph embodies the concept that bankruptcy judges act only as special masters with respect to final judgments in related cases.

The method and standard of review is the same in all matters subject to review. Section (e)(2)(B) provides that the district judge need give no deference to the findings of fact and conclusions of law made by a bankruptcy judge. The district judge may, but need not, hold a hearing or take additional evidence. At the conclusion of review the district judge may not merely affirm or reverse the bankruptcy judge's action; he must enter an order or judgment even if the bankruptcy judge has previously entered an order or judgment.

Section (e)(3) enables the bankruptcy judge to provide for expedited district court review where circumstances so require. Whether to certify a case for expedited review is committed to the discretion of the bankruptcy judge.

Section (e)(4) provides that a party may not attack the validity of a judgment or order entered by a bankruptcy judge under section (d)(2) on the grounds that the bankruptcy judge should have lodged a proposed order or judgment under section (d)(3), unless that party raises the issue before judgment is entered by the district judge following review. Where the issue is not timely raised, the party will be deemed to consent to entry of the order or judgment by the bankruptcy judge.

Section (f)

Section (f) provides that the local bankruptcy rules and district court rules apply to the conduct of proceedings governed by this Rule.

Section (g)

Section (g) provides that the Rule does not affect the transition provisions of the 1978 Act or the bankruptcy rules.

Section (h)

Section (h) specifies that cases filed before October 1, 1979 and governed by the Bankruptcy Act of 1898, as amended, are not affected by this Rule. Cases pending before bankruptcy judges when the Supreme Court's stay in Marathon expires need not be transferred back to the district judges; proceedings may continue before the bankruptcy judges to whom they had been assigned.