Resources for Public Speaking: U.S. Bankruptcy Judges

Topic at a Glance

Introduction. Article I, section 8, of the Constitution gave Congress the authority to make uniform national bankruptcy laws. Bankruptcy was politically divisive in the early republic. Those favoring an economy based on commerce and trade, mainly in the Northeast, advocated bankruptcy laws, believing the credit necessary to such economic activity would not flow freely without a legal system to protect creditors. Agrarian interests in the South and West, more likely to borrow money than to lend it, largely opposed bankruptcy laws, believing they would be overly favorable to creditors. Congress passed bankruptcy laws in 1800, 1841, and 1867, but all were short-lived because of political opposition, leaving bankruptcy law to the states for much of the nineteenth century. In 1898, Congress passed the Nelson Act, the nation's first bankruptcy law with staying power. This summary of the U.S. bankruptcy judge position covers the referee system established under that law and the issues that eventually led to its overhaul, the establishment of the modern bankruptcy judge position in 1978, the Supreme Court's 1982 holding that the 1978 Act was unconstitutional, and the modifications to the bankruptcy system Congress made in 1984.

Referees in Bankruptcy. The Nelson Act of 1898 established the position of referee in bankruptcy, the predecessor of the modern-day U.S. bankruptcy judge. Referees were appointed by the U.S. district courts, which could accept or reject their findings and could remove them at any time. While referees had jurisdiction over bankruptcy proceedings, they did not have the authority to hear any other matters related to the bankruptcy.

The Biggest Flaw of the Referee System. Because referees had jurisdiction over only the bankruptcy itself ("summary" jurisdiction), any related matters ("plenary" jurisdiction) had to be heard in a U.S. district court or a state court. The boundary between the two types of jurisdiction was murky, leading to frequent litigation over where cases should be heard, causing inefficiency, expense, and delay.

The Bankruptcy Reform Act of 1978. The inefficiency of the bankruptcy system became a bigger problem in the 1960s, as consumer credit became more widely available and bankruptcy filings rose. After a lengthy period of study during the 1970s, Congress enacted the Bankruptcy Reform Act of 1978 to overhaul the system completely. The Act formally established the position of U.S. bankruptcy judge. Bankruptcy judges were to be "adjuncts" to the district courts and be presidentially appointed to fourteen-year terms. The Act expanded the bankruptcy judges' jurisdiction substantially, vesting them with jurisdiction over all matters arising in or related to a bankruptcy case.

1978 Act Ruled Unconstitutional. The Act's expansive grant of jurisdiction to bankruptcy judges led the Supreme Court to strike it down as unconstitutional a few years later. In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982), the Court ruled that the Act had improperly granted "essential attributes" of the Article III judicial power to judges not possessing constitutional tenure and salary protections. The Court stayed its ruling until the end of 1982 to give Congress time to fix the constitutional defects in the bankruptcy system, after which the courts operated under emergency rules proposed by the Judicial Conference of the United States.

The Bankruptcy Amendments and Federal Judgeship Act of 1984. Congress enacted a new bankruptcy statute in 1984 to repair the defects the Supreme Court had identified in the prior law. The Act vested the bankruptcy judges, now appointed by the U.S. courts of appeals, with jurisdiction over bankruptcy cases and "core matters" (defined in detail) arising from those cases. In matters considered "non-core," bankruptcy judges were limited to submitting findings of fact and proposed conclusions of law to the district court.

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