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-CITE-

28 USC CHAPTER 6 - BANKRUPTCY JUDGES

01/19/04

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
28 U.S.C., JUDICIARY AND JUDICIAL PROCEDURE

§§151-158

§753

PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

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CHAPTER 6 - BANKRUPTCY JUDGES

-MISC1-

Sec.

- 151. Designation of bankruptcy courts.
- 152. Appointment of bankruptcy judges.
- 153. Salaries; character of service.
- 154. Division of business; chief judge.(!1)
- 155. Temporary transfer of bankruptcy judges.
- 156. Staff; expenses.
- 157. Procedures.
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158. Appeals [as amended by BAPCPA of 2005]

PRIOR PROVISIONS

A prior chapter 6, consisting of sections 151 to 160, which was added by Pub. L. 95-598, title II, Sec. 201(a), Nov. 6, 1978, 92

Stat. 2657, as amended by Pub. L. 97-164, title I, Sec. 110(d), Apr. 2, 1982, 96 Stat. 29, and which related to bankruptcy courts, did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

COURTS DURING TRANSITION

Pub. L. 95-598, title IV, Sec. 404, Nov. 6, 1978, 92 Stat. 2683, as amended by Pub. L. 98-249, Sec. 1(b), Mar. 31, 1984, 98 Stat. 116; Pub. L. 98-271, Sec. 1(b), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, Sec. 1(b), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, Sec. 1(b), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, Sec. 121(b), July 10, 1984, 98 Stat. 345, which provided that, for purposes of Pub. L. 95-598, which enacted Title 11, Bankruptcy, and the amendments made by Pub. L. 95-598, the courts of bankruptcy as defined under section 1(10) of former Title 11, created under section 11(a) of former Title 11, and existing on Sept. 30, 1979, continue to be courts of bankruptcy during the transition period beginning Oct. 1, 1979, and ending July 9, 1984, made provision for extension of the term of office of referees in bankruptcy serving on Nov. 6, 1978, and for such a referee to have the title of United States bankruptcy judge, established for each State a merit screening committee to pass on qualifications of such a referee and determine if the term of such a referee should be extended, and set forth the rules and provisions applicable to United States bankruptcy judges during the transition period, was repealed by Pub. L. 98-353, title I, Secs. 114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

TRANSITION STUDY

Pub. L. 95-598, title IV, Sec. 406, Nov. 6, 1978, 92 Stat. 2686, as amended by Pub. L. 98-249, Sec. 1(c), Mar. 31, 1984, 98 Stat. 116; Pub. L. 98-271, Sec. 1(c), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, Sec. 1(c), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, Sec. 1(c), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, Sec. 121(c), July 10, 1984, 98 Stat. 346, which provided that during the transition period, Oct. 1, 1979, to July 9, 1984, the

Director of the Administrative Office of the United States Courts make continuing studies and surveys in the judicial districts to determine the number of bankruptcy judges needed after July 9, 1984, to provide for the expeditious and effective administration of justice, their regular places of offices, and the places where the court was to be held, and that the Director report to the judicial councils of the circuits and the Judicial Conference of the United States his recommendations, the judicial councils advise the Conference of their recommendations, and the Conference recommend to the Congress and the President, before Jan. 3, 1983, the number of bankruptcy judges needed after July 9, 1984, and the locations at which they were to serve, was repealed by Pub. L. 98-353, title I, Secs. 114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

JUDICIAL ADMINISTRATION DURING TRANSITION

Pub. L. 95-598, title IV, Sec. 407, Nov. 6, 1978, 92 Stat. 2686, which provided that the Director of the Administrative Office of the United States Courts appoint a committee of not fewer than seven United States bankruptcy judges to advise the Director with respect to matters arising during the transition period or that are relevant to the purposes of the transition period, and directed that during the transition period, the chief judge of each circuit summon at least one bankruptcy judge from each judicial district within the circuit to the judicial conference of such circuit called and held under section 332 of this title, was repealed by Pub. L. 98-353, title I, Secs. 114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

EXTENSION AND TERMINATION OF TERM OF OFFICE OF BANKRUPTCY JUDGE

SERVING ON JUNE 27, 1984

Section 121(e) of Pub. L. 98-353 provided that: "The term of office of any bankruptcy judge who was serving on June 27, 1984, is extended to and shall expire at the end of the day of enactment of this Act [July 10, 1984]."

[Section 121(e) of Pub. L. 98-353 effective June 27, 1984, see

section 122(c) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.]

For prior extensions of the term of office of bankruptcy judges see:

Pub. L. 98-325, Sec. 2, June 20, 1984, 98 Stat. 268.

Pub. L. 98-299, Sec. 2, May 25, 1984, 98 Stat. 214.

Pub. L. 98-271, Sec. 2, Apr. 30, 1984, 98 Stat. 163.

Pub. L. 98-249, Sec. 2, Mar. 31, 1984, 98 Stat. 116.

-SECRETF-

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 375 of this title; title 11 section 105; title 18 section 6001.

-FOOTNOTE-

(!1) So in original. Does not conform to section catchline.

-End-

-CITE-

28 USC Sec. 151

01/19/04

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 151. Designation of bankruptcy courts

-STATUTE-

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 with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 336.)

-MISC1-

EFFECTIVE DATE

Section 122 of title I of Pub. L. 98-353 provided that:

"(a) Except as otherwise provided in this section, this title and the amendments made by this title [enacting this chapter and sections 1408 to 1412 and 1452 of this title, amending sections 372, 634, 957, 1334, 1360, and 1930 of this title, sections 8331, 8334, 8336, 8339, 8341, and 8344 of Title 5, Government Organization and Employees, and section 105 of Title 11, Bankruptcy, enacting provisions set out as notes preceding section 151 of this title and under sections 151 to 153, 634, and 1334 of this title and section 8331 of Title 5, amending provisions set out as notes preceding sections 151 and 1471 of this title and section 101 of Title 11, and repealing provisions set out as notes preceding sections 151 and 1471 of this title] shall take effect on the date of the enactment of this Act [July 10, 1984].

"(b) Section 1334(c)(2) of title 28, United States Code, and section 1411(a) of title 28, United States Code, as added by this Act, shall not apply with respect to cases under title 11 of the United States Code that are pending on the date of enactment of this Act [July 10, 1984], or to proceedings arising in or related to such cases.

"(c) Sections 108(b) [enacting provisions set out as a note under section 634 of this title], 113 [amending provisions set out as a note preceding section 101 of Title 11, Bankruptcy], and 121(e)

[enacting provisions set out as a note preceding section 151 of this title] shall take effect on June 27, 1984."

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-353 provided: "That this Act [enacting this chapter and sections 1408 to 1412 and 1452 of this title and sections 557 to 559 and 1113 of Title 11, Bankruptcy, amending sections 44, 98, 131, 133, 371, 372, 634, 957, 1334, 1360, and 1930 of this title, sections 8331, 8334, 8336, 8339, 8341, 8344, 8701, 8706, 8714a, and 8714b of Title 5, Government Organization and Employees, and sections 101 to 103, 105, 108, 109, 303, 321, 322, 326 to 330, 342, 343, 345, 346, 349, 350, 361 to 363, 365, 366, 501 to 503, 505 to 507, 509, 510, 521 to 525, 541 to 550, 552 to 555, 702 to 704, 707, 723 to 728, 741, 745, 752, 761, 763 to 766, 901 to 903, 921, 922, 927, 943, 945, 1102, 1103, 1105 to 1108, 1112, 1121, 1123 to 1127, 1129, 1141, 1142, 1144 to 1146, 1166, 1168 to 1171, 1173, 1301, 1302, 1304, 1307, 1322, 1324 to 1326, 1328, 1329, 15103, and 151302 of Title 11, enacting provisions set out as notes preceding section 151 of this title and under sections 44, 133, 151 to 153, 371, 634, 1334, and 2075 of this title, sections 8331 and 8706 of Title 5, and preceding section 101 of Title 11 and under sections 101, 365, and 1113 of Title 11, amending provisions set out as notes preceding sections 151, 581, and 1471 of this title and section 101 of Title 11, repealing provisions set out as notes preceding sections 151 and 1471 of this title, amending Rules 2002 and 3001 of the Bankruptcy Rules, set out in the Appendix to this title, and amending Official Bankruptcy Form No. 1 in the Appendix of Forms] may be cited as the 'Bankruptcy Amendments and Federal Judgeship Act of 1984'."

SEPARABILITY

Section 119 of Pub. L. 98-353 provided that: "If any provision of this Act [see Short Title of 1984 Amendment note above] or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby."

-End-

-CITE-

28 USC Sec. 152

01/19/04

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 152. Appointment of bankruptcy judges

-STATUTE-

(a)(1) The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges	

Alabama:		
Northern	5	
Middle	2	
Southern	2	
Alaska	2	
Arizona	7	
Arkansas:		
Eastern and Western		3
California:		
Northern	9	
Eastern	6	
Central	21	
Southern	4	
Colorado	5	
Connecticut	3	
Delaware	1	
District of Columbia		1
Florida:		
Northern	1	
Middle	8	
Southern	5	
Georgia:		
Northern	8	
Middle	2	
Southern	2	
Middle and Southern		1
Hawaii	1	
Idaho	2	
Illinois:		
Northern	10	
Central	3	
Southern	1	
Indiana:		
Northern	3	
Southern	4	

Iowa:		
Northern	2	
Southern	2	
Kansas	4	
Kentucky:		
Eastern	2	
Western	3	
Louisiana:		
Eastern	2	
Middle	1	
Western	3	
Maine	2	
Maryland	4	
Massachusetts	5	
Michigan:		
Eastern	4	
Western	3	
Minnesota	4	
Mississippi:		
Northern	1	
Southern	2	
Missouri:		
Eastern	3	
Western	3	
Montana	1	
Nebraska	2	
Nevada	3	
New Hampshire		1
New Jersey	8	
New Mexico	2	
New York:		
Northern	2	
Southern	9	
Eastern	6	
Western	3	
North Carolina:		
Eastern	2	

Middle	2
Western	2
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	2
Eastern	1
Western	3
Oregon	5
Pennsylvania:	
Eastern	5
Middle	2
Western	4
Puerto Rico	2
Rhode Island	1
South Carolina	2
South Dakota	2
Tennessee:	
Eastern	3
Middle	3
Western	4
Texas:	
Northern	6
Eastern	2
Southern	6
Western	4
Utah	3
Vermont	1
Virginia:	
Eastern	5
Western	3
Washington:	
Eastern	2
Western	5
West Virginia:	

Northern	1
Southern	1
Wisconsin:	
Eastern	4
Western	2
Wyoming	1.

(3) Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

(b)(1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

(3) Not later than December 31, 1994, and not later than the end of each 2-year period thereafter, the Judicial Conference of the United States shall conduct a comprehensive review of all judicial districts to assess the continuing need for the bankruptcy judges authorized by this section, and shall report to the Congress its findings and any recommendations for the elimination of any authorized position which can be eliminated when a vacancy exists

by reason of resignation, retirement, removal, or death.

(c) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

(d) With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 336; amended Pub. L. 99-554, title I, Sec. 101, Oct. 27, 1986, 100 Stat. 3088; Pub. L. 100-587, Nov. 3, 1988, 102 Stat. 2982; Pub. L. 101-650, title III, Sec. 304, Dec. 1, 1990, 104 Stat. 5105; Pub. L. 102-361, Secs. 2, 4, Aug. 26, 1992, 106 Stat. 965, 966.)

-MISC1-

AMENDMENTS

1992 - Subsec. (a)(2). Pub. L. 102-361, Sec. 2, in item relating to district of Arizona substituted "7" for "5", in item relating to central district of California substituted "21" for "19", in item relating to district of Connecticut substituted "3" for "2", in item relating to middle district of Florida substituted "8" for

"4", in item relating to southern district of Florida substituted "5" for "3", in item relating to northern district of Georgia substituted "8" for "6", inserted item relating to middle and southern districts of Georgia, in item relating to district of Maryland substituted "4" for "3", in item relating to district of Massachusetts substituted "5" for "4", in item relating to district of New Jersey substituted "8" for "7", in item relating to southern district of New York substituted "9" for "7", in item relating to eastern district of Pennsylvania substituted "5" for "3", in item relating to middle district of Tennessee substituted "3" for "2", in item relating to western district of Tennessee substituted "4" for "3", in item relating to northern district of Texas substituted "6" for "5", and in item relating to eastern district of Virginia substituted "5" for "4".

Subsec. (b)(3). Pub. L. 102-361, Sec. 4, added par. (3).

1990 - Subsec. (a)(1). Pub. L. 101-650 inserted after third sentence "However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor."

1988 - Subsec. (a)(2). Pub. L. 100-587 in item relating to district of Alaska substituted "2" for "1", in item relating to district of Colorado substituted "5" for "4", in item relating to district of Kansas substituted "4" for "3", in item relating to eastern district of Kentucky substituted "2" for "1", in item relating to eastern district of Texas substituted "2" for "1", in item relating to western district of Texas substituted "4" for "3", and in item relating to district of Arizona substituted "5" for "4".

1986 - Subsec. (a)(2). Pub. L. 99-554 in item relating to eastern district and western district of Arkansas substituted "3" for "2", in item relating to northern district of California substituted "9" for "7", in item relating to eastern district of California

substituted "6" for "4", in item relating to central district of California substituted "19" for "12", in item relating to southern district of California substituted "4" for "3", in item relating to middle district of Florida substituted "4" for "2", in item relating to northern district of Georgia substituted "6" for "4", in item relating to southern district of Georgia substituted "2" for "1", in item relating to district of Idaho substituted "2" for "1", in item relating to northern district of Illinois substituted "10" for "8", in item relating to central district of Illinois substituted "3" for "2", in item relating to northern district of Indiana substituted "3" for "2", in item relating to northern district of Iowa substituted "2" for "1", in item relating to southern district of Iowa substituted "2" for "1", in item relating to western district of Kentucky substituted "3" for "2", in item relating to western district of Louisiana substituted "3" for "2", in item relating to district of Maryland substituted "3" for "2", in item relating to western district of Michigan substituted "3" for "2", in item relating to district of Nebraska substituted "2" for "1", in item relating to district of Nevada substituted "3" for "2", in item relating to district of New Jersey substituted "7" for "5", in item relating to western district of North Carolina substituted "2" for "1", in item relating to northern district of Oklahoma substituted "2" for "1", in item relating to western district of Oklahoma substituted "3" for "2", in item relating to district of Oregon substituted "5" for "4", in item relating to western district of Pennsylvania substituted "4" for "3", in item relating to district of South Carolina substituted "2" for "1", in item relating to district of South Dakota substituted "2" for "1", in item relating to eastern district of Tennessee substituted "3" for "2", in item relating to western district of Tennessee substituted "3" for "2", in item relating to northern district of Texas substituted "5" for "4", in item relating to southern district of Texas substituted "6" for "3", in item relating to western district of Texas substituted "3" for "2", in item relating to district of Utah substituted "3" for "2", in item relating to eastern district of Virginia substituted "4" for "3", in item relating to eastern district of Washington substituted "2" for "1",

in item relating to western district of Washington substituted "5" for "4", and in item relating to eastern district of Wisconsin substituted "4" for "3".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective Oct. 27, 1986, see section 302(b) of Pub. L. 99-554, set out as a note under section 581 of this title.

TEMPORARY APPOINTMENT OF ADDITIONAL JUDGES

Section 3 of Pub. L. 102-361, as amended by Pub. L. 104-317, title III, Sec. 307, Oct. 19, 1996, 110 Stat. 3852, provided that:

"(a) Appointments. - The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code:

"(1) 1 additional bankruptcy judge for the northern district of Alabama.

"(2) 1 additional bankruptcy judge for the district of Colorado.

"(3) 1 additional bankruptcy judge for the district of Delaware.

"(4) 1 additional bankruptcy judge for the southern district of Illinois.

"(5) 1 additional bankruptcy judge for the district of New Hampshire.

"(6) 1 additional bankruptcy judge for the middle district of North Carolina.

"(7) 1 additional bankruptcy judge for the district of Puerto Rico.

"(8) 1 additional bankruptcy judge for the district of South Carolina.

"(9) 1 additional bankruptcy judge for the eastern district of Tennessee.

"(10) 1 additional bankruptcy judge for the western district of Texas.

"(b) Vacancies. - The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in subsection

(a), resulting from the death, retirement, resignation, or removal of a bankruptcy judge, and occurring 5 years or more after the appointment date of the judge named to fill the temporary judgeship position, shall not be filled. In the case of a vacancy resulting from the expiration of the term of a bankruptcy judge not described in the preceding sentence, that judge shall be eligible for reappointment as a bankruptcy judge in that district."

EXTENSION AND TERMINATION OF TERM OF OFFICE OF PART-TIME BANKRUPTCY JUDGE SERVING ON JULY 2, 1986, IN DISTRICT OF OREGON, WESTERN DISTRICT OF MICHIGAN, AND EASTERN DISTRICT OF OKLAHOMA

Pub. L. 99-349, title I, July 2, 1986, 100 Stat. 718, provided that: "Notwithstanding the provisions of section 106(b)(1) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 [section 106(b)(1) of Pub. L. 98-353, set out below], a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 2, 1986] may continue to serve as a part-time judge for such district until December 31, 1986, or until such time as a full-time bankruptcy judge for such district is appointed, whichever is earlier: Provided, That these provisions shall apply only to part-time bankruptcy judges serving in the district of Oregon, the western district of Michigan, and the eastern district of Oklahoma."

EXTENSION AND TERMINATION OF TERM OF OFFICE OF BANKRUPTCY JUDGE AND PART-TIME BANKRUPTCY JUDGE SERVING ON JULY 10, 1984; PRACTICE OF LAW BY PART-TIME BANKRUPTCY JUDGE

Section 106 of Pub. L. 98-353 provided that:

"(a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act [July 10, 1984] is extended to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later.

"(b)(1) Notwithstanding section 153(a) of title 28, United States Code, as added by this Act, and notwithstanding subsection (a) of this section, a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 10, 1984] may continue to serve on such basis for a period not to exceed two years from the date of enactment of this Act [July 10, 1984].

"(2) Notwithstanding the provisions of section 153(b) of title 28, United States Code, a bankruptcy judge serving on a part-time basis may engage in the practice of law but may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Judicial Conference of the United States may promulgate appropriate rules and regulations to implement this paragraph."

APPOINTMENT TO FILL VACANCIES; NOMINATIONS; QUALIFICATIONS

Section 120 of Pub. L. 98-353, as amended by Pub. L. 99-554, title I, Sec. 102, Oct. 27, 1986, 100 Stat. 3089; Pub. L. 104-317, title III, Sec. 303, Oct. 19, 1996, 110 Stat. 3852, provided that:

"(a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the United States, such court of appeals shall appoint to fill that vacancy a person whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

"(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

"(3) When filling vacancies, the court of appeals may consider reappointing incumbent bankruptcy judges under procedures

prescribed by regulations issued by the Judicial Conference of the United States.

"(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States. In the case of the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, such potential nominees shall include the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment and the judicial council determines that such judge is qualified under subsection

(c) of this section to continue to serve. Such potential nominees shall receive consideration equal to that given all other potential nominees for such position. All incumbent nominees seeking reappointment thereafter may be considered for such a reappointment, pursuant to a majority vote of the judges of the appointing court of appeals, under procedures authorized under subsection (a)(3).

"(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that -

"(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex, religion, or national origin,

"(2) such persons are members in good standing of at least one State bar, the District of Columbia bar, or the bar of the Commonwealth of Puerto Rico, and members in good standing of every other bar of which they are members,

"(3) such persons possess, and have a reputation for, integrity and good character,

"(4) such persons are of sound physical and mental health,

"(5) such persons possess and have demonstrated commitment to equal justice under law,

"(6) such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

"(7) such persons demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge."

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 354, 372, 377 of this title; title 5 section 8331.

-End-

-CITE-

28 USC Sec. 153

01/19/04

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 153. Salaries; character of service

-STATUTE-

(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services, a salary at an annual rate that is equal to 92 percent of the salary of a judge of the district court of the United States as determined pursuant to section 135, to be paid at such times as the Judicial Conference of the United States determines.

(b) A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

(c) Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

(d) A bankruptcy judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 338; amended Pub. L. 100-202, Sec. 101(a), [title IV, Sec. 408(a)], Dec. 22, 1987, 101 Stat. 1329, 1329-26; Pub. L. 100-702, title X, Sec. 1003(a)(1), Nov. 19, 1988, 102 Stat. 4665.)

-MISC1-

AMENDMENTS

1988 - Subsec. (d). Pub. L. 100-702 added subsec. (d).

1987 - Subsec. (a). Pub. L. 100-202 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Each

bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361) as adjusted by section 461 of this title, to be paid at such times as the Judicial Conference of the United States determines."

EFFECTIVE DATE OF 1987 AMENDMENT

Section 101(a) [title IV, Sec. 408(d)] of Pub. L. 100-202 provided that: "This section [amending this section, section 634 of this title, and section 356 of Title 2, The Congress] shall become effective October 1, 1988, and any salary affected by the provisions of this section shall be adjusted at the beginning of the first applicable pay period commencing on or after such date of enactment [probably should read "such date", meaning Oct. 1, 1988]."

TRANSITION PROVISIONS

Section 1003(b) of Pub. L. 100-702 provided that:

"(1) If an individual who is exempted from the Leave Act by operation of amendments under this section [amending this section and sections 156, 631, 634, 712, 752, and 794 of this title] and who was previously subject to the provisions of subchapter I of chapter 63 of title 5, United States Code, without a break in service, again becomes subject to this subchapter on completion of his service as an exempted officer, the unused annual leave and sick leave standing to his credit when he was exempted from this subchapter is deemed to have remained to his credit.

"(2) In computing an annuity under section 8339 of title 5, United States Code, the total service of a person specified in paragraph (1) of this subsection who retired on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of section 8339 of title 5, United States Code, the days of unused sick leave standing to his credit when he was exempted from subchapter I of chapter 63 of title 5, United States

Code, except that these days will not be counted in determining average pay or annuity eligibility."

CONTINUATION OF SALARIES OF BANKRUPTCY JUDGES IN
EFFECT ON JUNE 27,
1984

Section 105(a) of Pub. L. 98-353 provided that: "The salary of a bankruptcy judge in effect on June 27, 1984, shall remain in effect until changed as a result of a determination or adjustment made pursuant to section 153(a) of title 28, United States Code, as added by this Act."

PART-TIME BANKRUPTCY JUDGES

For provision that notwithstanding subsecs. (a) and (b) of this section, a bankruptcy judge serving on a part-time basis on July 10, 1984, may continue to serve on such basis for two years from such date, and may engage in the practice of law, see section 106 of Pub. L. 98-353, set out as a note under section 152 of this title.

SALARY INCREASES

1988 - Salaries of bankruptcy judges continued at \$72,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1987 - Salaries of bankruptcy judges increased to \$72,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of bankruptcy judges increased to \$70,500 effective on first day of first pay period beginning on or after Jan. 1, 1987, by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1985 - Salaries of bankruptcy judges increased to \$68,400 effective on first day of first pay period beginning on or after

Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, formerly set out as a note under section 5332 of Title 5.

1984 - Salaries of bankruptcy judges (full-time) and bankruptcy judges (part-time) (maximum rate) increased to \$66,100 and \$33,100, respectively, effective on first day of first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

1982 - Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to \$63,600 and \$31,800, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97-276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was \$58,500 for bankruptcy judges and referees in bankruptcy (full-time), and \$30,600 for referees in bankruptcy (part-time) (maximum rate).

Maximum rate payable to bankruptcy judges after Dec. 17, 1982, increased from \$58,500 to \$63,600, see Pub. L. 97-377, title I, Sec. 129(b)-(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of Title 5.

1981 - Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to \$61,200 and \$30,600, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12330 further provided that pursuant to section 101(c) of Pub. L. 97-51 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1981, which was \$51,167.50 for bankruptcy

judges and referees in bankruptcy (full-time), and \$25,583.75 for referees in bankruptcy (part-time) (maximum rate).

1980 - Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to \$58,400 and \$29,200, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to section 101(c) of Pub. L. 96-369 funds are not available to pay a salary which exceeds the rate in effect on Sept. 30, 1980, which was \$51,167.50 for bankruptcy judges and referees in bankruptcy (full-time), and \$25,583.75 for referees in bankruptcy (part-time) (maximum rate).

For limitations on use of funds for period Oct. 1, 1980 through June 5, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96-369 and section 101(c) of Pub. L. 96-536, set out as notes under section 5318 of Title 5.

1979 - Salaries of bankruptcy judges increased to \$53,500 effective on first day of first pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96-86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the applicable rate payable for such position or office in effect on Sept. 30, 1978, which was \$51,167.50 for bankruptcy judges.

-End-

-CITE-

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 154. Division of businesses; chief judge

-STATUTE-

(a) Each bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.

(b) In each district court having more than one bankruptcy judge the district court shall designate one judge to serve as chief judge of such bankruptcy court. Whenever a majority of the judges of such district court cannot agree upon the designation as chief judge, the chief judge of such district court shall make such designation. The chief judge of the bankruptcy court shall 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.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 339.)

-End-

-CITE-

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 155. Temporary transfer of bankruptcy judges

-STATUTE-

(a) A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial district other than the judicial district for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject to the restrictions on the payment of an annuity in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such judge.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 339; amended Pub. L. 99-651, title II, Sec. 202(a), Nov. 14, 1986, 100 Stat. 3648; Pub. L. 100-659, Sec. 4(a), Nov. 15, 1988, 102 Stat. 3918.)

-MISC1-

AMENDMENTS

1988 - Subsec. (b). Pub. L. 100-659 inserted "section 377 of this

title or in" after "annuity in" and "which are applicable to such judge" after "title 5".

1986 - Subsec. (b). Pub. L. 99-651 inserted reference to chapter 84 of title 5.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 203 of title II of Pub. L. 99-651 provided that: "This title and the amendments made by this title [enacting section 375 of this title and amending this section and sections 374, 631, 633, 636, and 797 of this title] take effect on January 1, 1987."

-SECREP-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 374, 375, 376, 377 of this title.

-End-

-CITE-

28 USC Sec. 156

01/19/04

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 156. Staff; expenses

-STATUTE-

(a) Each bankruptcy judge may appoint a secretary, a law clerk, and such additional assistants as the Director of the Administrative Office of the United States Courts determines to be necessary. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

(b) Upon certification to the judicial council of the circuit involved and to the Director of the Administrative Office of the United States Courts that the number of cases and proceedings pending within the jurisdiction under section 1334 of this title within a judicial district so warrants, the bankruptcy judges for such district may appoint an individual to serve as clerk of such bankruptcy court. The clerk may appoint, with the approval of such bankruptcy judges, and in such number as may be approved by the Director, necessary deputies, and may remove such deputies with the approval of such bankruptcy judges.

(c) Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

(d) No office of the bankruptcy clerk of court may be consolidated with the district clerk of court office without the prior approval of the Judicial Conference and the Congress.

(e) In a judicial district where a bankruptcy clerk has been

appointed pursuant to subsection (b), the bankruptcy clerk shall be the official custodian of the records and dockets of the bankruptcy court.

(f) For purposes of financial accountability in a district where a bankruptcy clerk has been certified, such clerk shall be accountable for and pay into the Treasury all fees, costs, and other monies collected by such clerk except uncollected fees not required by an Act of Congress to be prepaid. Such clerk shall make returns thereof to the Director of the Administrative Office of the United States Courts and the Director of the Executive Office For United States Trustees, under regulations prescribed by such Directors.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 339; amended Pub. L. 99-554, title I, Secs. 103, 142, 144(a), Oct. 27, 1986, 100 Stat. 3090, 3096; Pub. L. 100-702, title X, Sec. 1003(a)(3), Nov. 19, 1988, 102 Stat. 4665.)

-MISC1-

AMENDMENTS

1988 - Subsec. (a). Pub. L. 100-702 inserted at end "A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court."

1986 - Subsec. (d). Pub. L. 99-554, Sec. 103, added subsec. (d).
Subsecs. (e), (f). Pub. L. 99-554, Secs. 142, 144(a), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 103 of Pub. L. 99-554 effective Oct. 27, 1986, and amendment by sections 142 and 144 of Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a), (b) of Pub. L. 99-554, set out as a note under section 581 of this title.

-SECREP-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1930 of this title.

-End-

-CITE-

28 USC Sec. 157

01/19/04

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 157. Procedures

-STATUTE-

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to -

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter

11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;¹

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

¹ BAPCPA: PUBLIC LAW 109-8—APR. 20, 2005 119 STAT. 145

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking “and” at the end;

(B) in subparagraph (O), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.”.

.....“(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.”.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any

case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 340; amended Pub. L. 99-554, title I, Secs. 143, 144(b), Oct. 27, 1986, 100 Stat. 3096; Pub. L. 103-394, title I, Sec. 112, Oct. 22, 1994, 108 Stat. 4117.)

-MISC1-

AMENDMENTS

1994 - Subsec. (e). Pub. L. 103-394 added subsec. (e).

1986 - Subsec. (b)(2). Pub. L. 99-554, in subpar. (B) substituted "interests" for "interest" and inserted reference to chapter 12, and in subpar. (G) inserted a comma after "annul".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554, set out as a note under

section 581 of this title.

-SECREP-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 158 of this title; title 11 section 524.

-End-

-CITE-

28 USC Sec. 158

01/19/04

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 158. Appeals

-STATUTE-

(a) The district courts of the United States shall have jurisdiction to hear appeals (!1)

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title.

An appeal under this subsection shall be taken only to the district

court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that -

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the

completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless -

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings

generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 341; amended Pub. L. 101-650, title III, Sec. 305, Dec. 1, 1990, 104 Stat. 5105; Pub. L. 103-394, title I, Secs. 102, 104(c), (d), Oct. 22, 1994, 108 Stat. 4108-4110.)

-REFTEXT-

REFERENCES IN TEXT

The Bankruptcy Rules, referred to in subsec. (c)(2), are set out in the Appendix to Title 11, Bankruptcy.

-MISC1-

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-394, Sec. 102, which directed the amendment of subsec. (a) by striking "from" the first place it appears and all that follows through "decrees," and inserting pars. (1) to (3), was executed by making the insertion and striking after "appeals" "from final judgments, orders, and decrees," which is through "decrees," the first place appearing, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 103-394, Sec. 104(c)(3), added par. (1) and struck out former par. (1) which read as follows: "The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section."

Subsec. (b)(2). Pub. L. 103-394, Sec. 104(c)(3), added par. (2). Former par. (2) redesignated (4).

Subsec. (b)(3). Pub. L. 103-394, Sec. 104(c)(1), (3), added par. (3) and struck out former par. (3) which read as follows: "No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district."

Subsec. (b)(4). Pub. L. 103-394, Sec. 104(c)(1), (2), redesignated par. (2) as (4) and struck out former par. (4) which read as follows: "A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title."

Subsec. (b)(5), (6). Pub. L. 103-394, Sec. 104(c)(4), added pars. (5) and (6).

Subsec. (c). Pub. L. 103-394, Sec. 104(d), designated existing provisions as par. (2) and added par. (1).

1990 - Subsec. (b)(2) to (4). Pub. L. 101-650 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 157, 1334, 1452 of this title; title 11 section 305.

-FOOTNOTE-

(!1) So in original. Probably should be followed by a dash.

-End-

[BAPCPA: 119 STAT. 202 PUBLIC LAW 109-8 – APR. 20, 2005

SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO COURTS OF APPEALS.

(a) APPEALS. – Section 158 of title 28, United States Code, is amended –

- (1) in subsection (c)(1), by striking “Subject to subsection (b),” and inserting “Subject to subsections (b) and (d)(2),”; and
- (2) in subsection (d) –
 - (A) by inserting “(1)” after “(d)”; and
 - (B) by adding at the end the following:

“(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that –

“(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

“(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

“(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

“(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel –

“(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

“(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A); then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

“(C) The parties may supplement the certification with a short statement of the basis for the certification.

“(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

“(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.”.

(b) PROCEDURAL RULES. –

(1) TEMPORARY APPLICATION. – A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such appeals is promulgated or amended under chapter 131 of such title.

(2) CERTIFICATION. – A district court, a bankruptcy court, or a bankruptcy appellate panel may make a certification under section 158(d)(2) of title 28, United States Code, only with respect to matters pending in the respective bankruptcy court, district court, or bankruptcy appellate panel.

(3) PROCEDURE. – Subject to any other provision of this subsection, an appeal authorized by the court of appeals under section 158(d)(2)(A) of title 28, United States Code, shall be taken in the manner prescribed in subdivisions (a)(1), (b), (c), and (d) of rule 5 of the Federal Rules of Appellate Procedure. For purposes of subdivision (a)(1) of rule 5 –

(A) a reference in such subdivision to a district court shall be deemed to include a reference to a bankruptcy court and a bankruptcy appellate panel, as appropriate; and

(B) a reference in such subdivision to the parties requesting permission to appeal to be served with the petition shall be deemed to include a reference to the parties to the judgment, order, or decree from which the appeal is taken.

(4) FILING OF PETITION WITH ATTACHMENT. – A petition requesting permission to appeal, that is based on a certification made under subparagraph (A) or (B) of section 158(d)(2) shall –
(A) be filed with the circuit clerk not later than 10 days after the certification is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

(B) have attached a copy of such certification.

(5) REFERENCES IN RULE 5. – For purposes of rule 5 of the Federal Rules of Appellate Procedure –

(A) a reference in such rule to a district court shall

be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel; and

(B) a reference in such rule to a district clerk shall be deemed to include a reference to a clerk of a bankruptcy court and to a clerk of a bankruptcy appellate panel.

(6) APPLICATION OF RULES. – The Federal Rules of Appellate Procedure shall apply in the courts of appeals with respect to appeals authorized under section 158(d)(2)(A), to the extent relevant and as if such appeals were taken from final judgments, orders, or decrees of the district courts or bankruptcy appellate panels exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

(As amended April 20, 2005, P.L. 109-8, Title XII, § 1233(a), 119 Stat. 202.)