

A Primer on Bankruptcy Jurisdiction

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Unlike courts that derive their authority from Article III of the U.S. Constitution, bankruptcy courts are courts of limited jurisdiction whose authority is derivative of that granted to the district courts. Bankruptcy jurisdiction extends to four types of matters: (1) cases under title 11; (2) proceedings arising under title 11; (3) proceedings arising in a bankruptcy case; and (4) proceedings related to a bankruptcy case. *In re Exide Techs.*, 544 F.3d 196, 205 (3d Cir. 2008). Cases under title 11, proceedings arising under title 11 of the U.S. Code and proceedings arising in a bankruptcy case are core proceedings, while proceedings related to a case under title 11 are noncore proceedings. *Id.*



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Sections 157 and 1334 of title 28 of the U.S. Code describe the jurisdiction of courts sitting in bankruptcy. Although appearing at first blush to be arcane, the distinctions between the types of bankruptcy jurisdiction are essential to determining whether, to what extent and under what circumstances a bankruptcy court may exercise subject-matter jurisdiction over a particular matter or proceeding. For that reason, a good understanding of these distinctions is essential for any bankruptcy practitioner.¹

Marathon Leaves Bankruptcy Matters Without a Court

As a court created by Congress, rather than explicitly provided for by the Constitution, a bankruptcy court is a creature of Article I of the Constitution. Accordingly, and as was subsequently confirmed by the Supreme Court, *see infra*, bankruptcy courts must be courts of limited jurisdiction. This was not initially recognized by Congress when it enacted the Bankruptcy Code in 1976.

¹ A comprehensive survey of all the issues relating to bankruptcy jurisdiction could fill a treatise. This article does not attempt, therefore, to address every issue, but instead provide a foundation for understanding the most fundamental jurisdictional issues encountered in bankruptcy practice.

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In 1976, Congress provided the newly created bankruptcy courts with jurisdiction over "civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. §1471(b) (1976). Moreover, the jurisdictional grant provided "in each judicial district, as an adjunct to the district court for such district, a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court for the district." 28 U.S.C. §151(a) (1976). Title 28 also provided that bankruptcy judges were to be appointed for 14 years, and that their salaries were to be set by statute. 28 U.S.C. §§152, 154 (1976). As some of a bankruptcy court's powers, as prescribed initially by Congress, could only be held by Article III judges, a constitutional fight was imminent.

Building Blocks

In *Northern Pipeline v. Marathon Pipe Line*, 458 U.S. 50 (1982), the Supreme Court considered the constitutionality of the relatively new 28 U.S.C. §1471 and found that it was unconstitutional to vest full and final authority over any matter conceivably related to a bankruptcy case in an Article I judge. The Constitution requires that the certain powers vest only in Article III judges. In the wake of *Marathon Pipe Line*, the question then arose as to what to do about the administration of the bankruptcy courts until the problem was fixed.

Courts and Congress Respond to Marathon

Recognizing the impact of its decision, the Court in *Marathon Pipe Line* temporarily stayed the effectiveness of its decision to allow Congress to adopt appropriate measures. *Marathon Pipe Line*, 458 U.S. at 58. However, Congress failed to act timely, and the Judicial Conference of the United States promulgated a model Emergency Rule

that was adopted as a local rule by the district courts to permit the bankruptcy system to continue to function.²

Congressional action did not come until 1984, when Congress codified the Emergency Rule by enacting 28 U.S.C. §157, which vests bankruptcy jurisdiction in the district court but permits the district court to "refer" bankruptcy cases and proceedings "to the bankruptcy judges for the district." 28 U.S.C. §157(a). Accordingly, bankruptcy courts only preside over bankruptcy cases and proceedings because the district courts have referred them. For instance, in the Southern District of New York, the automatic reference of cases and proceedings to the bankruptcy court is pursuant to Standing Order M-61, which is titled Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11 (dated July 10, 1984). Every other district similarly provides for the reference of bankruptcy cases and proceedings to the bankruptcy courts.³

Once a bankruptcy case or proceeding is referred to the bankruptcy court, that

reference is not irreversible. Under 28 U.S.C. §157(d), the district court "on its own motion or on timely motion of any party for cause shown" may withdraw the reference to the bankruptcy court. 28 U.S.C. §157(d). When resolution of a proceeding "requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce," then on a party's timely motion, withdrawal of the reference is mandatory. *Id.*⁴

² For more fulsome discussions of the Emergency Rule, see *in re Comm. of Unsecured Creditors of F.S. Communications Corp.*, 780 F.2d 1194, 1196 (11th Cir. 1985); *in re Finest Foods Inc.*, 143 B.R. 964, 966 (Bankr. M.D. Fla. 1992); J. Ferriell, "Core Proceedings in Bankruptcy Court," 56 *AMKC L. Rev.* 47 (1987).

³ In the District of Delaware, all bankruptcy cases are automatically referred to the bankruptcy court under a standing order (the "Delaware Standing Order"). See *In re Referral of Title 11 Proceedings to the United States Bankruptcy Judges for This District, Order* (D. Del. Sept. 6, 2001). The Delaware Standing Order provides, *inter alia*, that "the automatic reference of chapter 11 cases to the judges of the United States Bankruptcy Court for the District of Delaware shall be reinstated, pursuant to 28 U.S.C. §157(a)." It is notable that the Delaware Standing Order does not also refer "proceedings" to the bankruptcy court. However, there can be little doubt, almost eight years after entry of the Delaware Standing Order, that the bankruptcy court in Delaware does exercise jurisdiction over "proceedings."

⁴ Whether to withdraw the reference is a question that is inextricably linked to the question of whether a proceeding is "core" or "non-core." In the District of Delaware, in fact, a party moving to withdraw the reference is required to file concurrently a motion to determine whether the proceeding in question is "core" or "non-core." Del. Bankr. L.R. 5011-1.