



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

LEONIDAS RALPH MECHAM
Secretary

October 4, 2005

Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I write today on behalf of the Judicial Conference of the United States to seek your leadership and support for legislation that would authorize the remaining bankruptcy judgeships recommended by the Conference in February 2005.

Section 152(b)(2) of title 28, United States Code, requires that the Conference recommend to Congress the number of additional bankruptcy judgeships necessary for the effective functioning of the bankruptcy courts. The biennial recommendations are made based upon the specific needs of each judicial district. Each recommendation is pending until it is either enacted by Congress or superseded by a subsequent Conference recommendation. On February 17, 2005, I transmitted to you by letter the 2005 recommendation for the authorization of 47 additional bankruptcy judgeships (17 temporary and 30 permanent) in 31 judicial districts. The Conference also recommended converting three existing temporary bankruptcy judgeships into permanent judgeships.

On April 20, 2005, the President signed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8) (the Act). Section 1223 of the Act authorizes 28 additional temporary bankruptcy judgeships (only 23 of which were included in the Conference's February 2005 recommendation) and extends two of the three existing temporary judgeships that the Conference recommended for conversion. Section 1223 is based, however, upon the Conference's 1999 recommendation, which has been superseded by subsequent Conference recommendations.

Since the authorization of additional bankruptcy judgeships in 1992, bankruptcy weighted case filings per authorized judgeship have increased 18.3 percent. Certainly, the additional resources authorized by the Act will bring relief to those districts. However, the 18 judicial districts that were not included in the Act's judgeship provisions are still operating under the strain of significantly increased caseloads.

Compounding the problem, the workload of the courts is anticipated to increase further. Historically, litigation escalates following enactment of changes to title 11. Courts will see a rise in workload resulting from an increase in motions practice, adversary litigation and appeals for several years following the Act's effective date. The workload will increase further due to the anticipated increase in chapter 13 petition filings. The premise of the means test, as stated in the Act's legislative history, is to shift case filings from chapter 7 to chapter 13. A typical chapter 13 case requires 3.5 times as much judicial time as a typical chapter 7 case, and can be active on the court's docket for up to five years. Moreover, the judiciary anticipates a significant increase in pro se bankruptcy filings due to the attorney liability provisions in the Act and the resulting increase in the cost of bankruptcy representation. All of these factors will increase, not decrease, the work required of our already overburdened bankruptcy judges.

Recent events will add significantly to the upcoming national increase in activity in the bankruptcy courts, including new airline bankruptcy cases (the economic effects of which trickle down to the airlines' employees, contractors, and vendors) and the devastating effects of Hurricanes Katrina and Rita in the Gulf Coast region. Considering all of these factors, this is the time when our bankruptcy courts need as much assistance as the judiciary and Congress can provide.

Therefore, I ask for your support in seeking legislation to authorize the 24 additional bankruptcy judgeships remaining from the Conference's 2005 recommendation, as follows:

| <u>District</u> | <u>Number</u> | <u>Status</u> |
|--------------------|---------------|---------------|
| New York (S) | 1 | Permanent |
| Pennsylvania (W) | 1 | Permanent |
| Maryland | 1 | Permanent |
| North Carolina (W) | 1 | Temporary |
| Mississippi (N) | 1 | Temporary |
| Texas (E) | 1 | Permanent |
| Kentucky (E) | 1 | Permanent |
| Michigan (E) | 3 | Permanent |
| Ohio (S) | 1 | Temporary |
| Tennessee (W) | 1 | Permanent |
| Indiana (N) | 1 | Temporary |

| | | |
|--------------------|----------|----------------------------|
| Arkansas (E&W) | 1 | Permanent |
| Nevada | 1 | Temporary |
| Utah | 1 | Permanent |
| Florida (N) | 1 | Temporary |
| Florida (M) | 4 | 2 Permanent & 2 Temporary |
| Georgia (N) | 2 | Permanent |
| <u>Georgia (S)</u> | <u>1</u> | <u>Permanent</u> |
| Total: | 24 | 16 Permanent & 8 Temporary |

I also ask for your support for the judiciary's goal to convert three previously existing and fourteen new temporary judgeships into permanent judgeships based upon increased needs. Temporary bankruptcy judgeships are authorized so that a district will have the short term benefit of an additional judge. After five years from the date that judge assumes the bench, however, if any judge in that district retires, resigns, dies or is removed, the vacant judgeship is eliminated. The concept is to provide short term additional resources to a district that shows increased workload but is not expected to need additional long term resources.

When caseloads do not decline as originally anticipated, however, the expiration of a temporary judgeship imposes additional burdens on the remaining judges. In its February 2005 recommendation, the Judicial Conference specifically recommended certain judgeships be created as, or converted into, permanent judgeships based upon each district's case filings, workloads, and unique circumstances, to provide these districts with adequate, long term judicial resources. However, section 1223 of the Act only authorized temporary judgeships and did not convert any existing temporary judgeships. The recent authorization of additional temporary judgeships will alleviate the overburdened caseload under which these districts have suffered. Because temporary judgeships are designed to expire, however, these districts will face, perhaps in as few as five years, overburdened dockets and unmanageable caseloads when they revert to the judgeship resource levels that existed in 1992.

A short extension of a temporary judgeship that is about to expire in a district with a heavy workload is insufficient. This is evidenced by the District of South Carolina. That district needed its temporary judgeship to efficiently and effectively manage its caseload, but legislative efforts to extend or convert it failed before it expired. The district lost its temporary bankruptcy judgeship in 2000 and has operated with insufficient judicial resources for almost five years.

Therefore, in order to fully effect the 2005 recommendation, the Conference seeks conversion of 17 temporary judgeships as follows:

| <u>District</u> | <u>Number</u> | <u>Status</u> |
|--------------------|---------------|---|
| Puerto Rico | 1 | Previously existing temporary judgeship |
| New York (N) | 1 | Recently authorized judgeship |
| New York (S) | 1 | Recently authorized judgeship |
| Delaware | 5 | 1 previously existing temporary judgeship 4 recently authorized judgeships |
| Pennsylvania (E) | 1 | Recently authorized judgeship |
| New Jersey | 1 | Recently authorized judgeship |
| Maryland | 1 | Recently authorized judgeships |
| North Carolina (E) | 1 | Recently authorized judgeship |
| South Carolina | 1 | Recently authorized judgeship |
| Michigan (E) | 1 | Recently authorized judgeship |
| Tennessee (W) | 1 | Recently authorized judgeship |
| Illinois (S) | 1 | Previously existing temporary judgeship |
| <u>Georgia (S)</u> | <u>1</u> | <u>Recently authorized judgeship</u> |
| Total | 17 | Converted to Permanent Judgeships |

I have enclosed for your convenience proposed legislation that would, if enacted, put into effect the outstanding portion of the Judicial Conference's February 2005 recommendation for the authorization of additional bankruptcy judgeships. Your assistance to the federal judiciary and the bankruptcy system is very much appreciated.

Sincerely,



Leonidas Ralph Mecham
Secretary

Enclosure

cc: Honorable John Conyers, Jr., Ranking Democrat
Members, House Judiciary Committee