

VIA ELECTRONIC SUBMISSION

November 1, 2023

The Honorable Eduardo V. Rodriguez
Chief Judge
United States Bankruptcy Court
Southern District of Texas
515 Rusk Street
Houston, TX 77002

Dear Judge Rodriguez,

The undersigned represent a variety of stakeholders in the bankruptcy process ranging from academics to industry associations and former government officials. We write you to respectfully request that you abolish the current system of assigning complex chapter 11 cases to two judges pursuant to General Order 2018-1 and, instead, adopt a system of random assignment among all bankruptcy court judges.

Local rules that concentrate cases with a limited number of judges facilitate judge shopping. Senators from both sides of the aisle have raised concerns that case assignment procedures could enable a party to select a particular judge to hear a case.¹ The Administrative Office of the United States Courts wrote in relation to these concerns that “[f]rom a longstanding national policy perspective, the Judicial Conference strongly supports the random assignment of cases”² The Conference went on to write that random case assignment “operates to safeguard the judiciary’s autonomy while deterring judge-shopping and the assignment of cases based on the perceived merits or abilities of a particular judge.” While these concerns were raised in the context of patent cases, the same holds true in the context of judicial assignments of bankruptcy cases.

In the last few years, we have seen changes to local judicial assignment rules to create small subsets of bankruptcy judges within a district to hear large corporate bankruptcies.³ This has led to controversy and criticism for undermining public confidence in the chapter 11 system. In response to these concerns, Bankruptcy Courts for the Southern District of New York⁴ and the Eastern District of Virginia⁵ recently changed their judicial assignment rules to eliminate the ability of debtors to game the system⁶ by choosing the judge of their choice within these

¹ Letter dated November 2, 2021 from United States Senator Thom Tillis and United States Senator Patrick Leahy to Chief Justice John Roberts.

² Roslynn R. Mauskopf, U.S. Admin. Off. of the U.S. Cts.: Letter in Response to Concerns Raised Regarding Judicial Assignment and Venue for Patent Cases Within a District (Dec. 15, 2021).

³ Professor Levitin found that 55% of all large company bankruptcy cases filed in 2020 came before a handful of judges with 50% of those coming before Chief Judge Jones and Judge Isgur. Levitin, Adam J., Judge Shopping in Chapter 11 Bankruptcy (March 23, 2022). University of Illinois Law Review, Vol. 2022.

⁴ Bankr. S.D.N.Y. 1073-1.

⁵ Bankr. E.D.Va. 21-21.

⁶ Lax venue rules allow corporations to pick a court of their choosing by creating shell subsidiaries solely for the purpose of enabling a filing in that district. While venue shopping has attracted widespread criticism for concentrating cases within two major jurisdictions, judge-shopping is a relatively new phenomenon. Judge-shopping

Districts. Today, the Southern District of Texas remains one of the very few courts in limiting assignments of larger cases to only two judges in the entire district. It should come as no surprise that this has led to an extraordinary consolidation of a large portion of all large chapter 11 cases before the complex case panel. In fact, more than 1/3 of all mega bankruptcies filed in the United States during the first six months of 2023 were assigned to Judge Jones.⁷

The recent ethics controversy plaguing the bankruptcy court accentuates the already existing problem. By limiting the assignment of cases to a small group of judges, the ability of a single judge to undermine the whole system by a lapse in judgment cannot be overstated.⁸ The public's confidence in the integrity and independence of the Judiciary has been undermined and it is time for that to be restored.

By statute, individual courts, including the Southern District of Texas, have wide latitude to establish case assignment systems pursuant to local rules and orders of the court and can establish a case assignment process by general order. See 28 U.S.C. § 137(a) (“[t]he business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.”). See also 28 U.S.C. § 151 (stating “bankruptcy judges shall constitute a unit of the district court...”). To date, the District Court has given latitude to the Bankruptcy Court to implement local bankruptcy rules under 28 U.S.C. § 154. To the extent the Bankruptcy Court does not act to change its approach to case assignment procedures, we respectfully request that the District Court take the initiative to change these procedures.

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creates an even greater perception of conflicts of interest by allowing debtor's counsel the ability to choose the judge that it believes will be favorably disposed toward their client.

⁷ Reorg, Americas Court Opinion Review: Bankruptcy Industry Update (June 21, 2023). Although the local rules provide that the assignment of cases between the two judges is random, Reorg found that large corporate bankruptcies filed in the Southern District of Texas were disproportionately assigned to the Judge Jones. Id. (finding that 2/3 of corporate bankruptcies filed with the panel in Q2 2023 were assigned to Judge Jones). When random, but not equal, case assignments result in disproportionate amount of cases assigned to a particular judge, the credibility of the court is undermined.

⁸ See Clifford J. White III, Recent Ethics Controversy Highlights Needed Bankruptcy Reforms (October 2023). Creditor Rights Coalition.

Thank you for your consideration.

Sincerely,

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Clifford J. White III

former Director, United States Trustee Program (2005-2022)
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cc.

The Honorable Priscilla Richman, Chief Judge, United States Court of Appeals for the Fifth Circuit

The Honorable Randy Crane, Chief Judge, United States District Court

The Honorable William L. Osteen, Jr., Chair of the Judicial Conference Committee on the Administration of the Bankruptcy System

The Honorable Roslynn Mauskopf, Director of the Administrative Office of the United States Courts

Senator Dick Durbin, Chair of the Committee on the Judiciary

Senator Lindsey Graham, Ranking Member of the Committee on the Judiciary

Senator Sheldon Whitehouse, Chair of the Subcommittee on the Federal Courts, Oversight, Agency Action, and Federal Rights

Senator John Kennedy, Ranking Member of the Subcommittee on the Federal Courts, Oversight, Agency Action, and Federal Rights

Congressman Jim Jordan, Chair of the Judiciary Committee

Congressman Jerrold Nadler, Ranking Member of the Judiciary Committee

Congressman Darrell Issa, Chair of the Subcommittee on the Courts, Intellectual Property, and the Internet

Congressman Hank Johnson, Ranking Member of the Subcommittee on the Courts, Intellectual Property, and the Internet

Kelli Norfleet, Chair, Complex Case Committee, Bankruptcy Court, Southern District of Texas