

United States Bankruptcy Court

District of Arizona
P.O. Box 34151
Phoenix, Arizona 85067

Sarah Shurer Curley
Chief Judge

Telephone: (602) 640-5800 - Ext. 432

April 30, 2004

The Honorable Jeff Sessions
335 Russell Senate Office Building
Washington, D. C. 20510-0104

RE: Legislation to Split the Ninth Circuit

Dear Senator Sessions:

We understand that you are currently considering certain legislation which will split the Ninth Circuit. Whether Arizona is placed in a new circuit with Nevada or remains in a geographically decimated Ninth Circuit, all judges of this Court oppose any split of the Ninth Circuit. While many of us may have various individual reasons for opposing any split of the Ninth Circuit, we wish to bring one institutional reason to your attention.

The Ninth Circuit has been an innovator in many areas of judicial administration, the primary one of which, from our perspective, has been the Ninth Circuit Bankruptcy Appellate Panel ("BAP"). Although Congress authorized the creation of such appellate panels in each of the circuits in the 1978 Bankruptcy Reform Act, only in the Ninth Circuit has the BAP developed and flourished for more than twenty-five years. The BAP has been exceedingly effective in our Circuit and enjoys significant support not only from the Ninth Circuit bankruptcy judges, but also from the district court judges in this Circuit. In Arizona, the State Bar's support of the BAP is reflected by the percentage of cases which are heard by the BAP on a yearly basis rather than in the Arizona District Court. This success was recognized by Congress in the 1994 amendments to the Bankruptcy Reform Act which mandated that each circuit establish a BAP, unless the judicial council of the circuit specifically found a lack of sufficient judicial resources or a likelihood of undue cost or increased delay to parties.

The Ninth Circuit BAP has become an invaluable source of judicial precedent and a significant force in creating uniformity among the bankruptcy courts of this Circuit. Its judges are well respected, and its opinions are often cited. It has lessened substantially the workload on the district court judges from hearing bankruptcy appeals, which must be heard and determined on an expedited basis, a daunting task for district courts which are over burdened with a burgeoning criminal caseload.

We are very concerned that the splitting of the Circuit, in any manner, will destroy this valuable institution. No matter how Congress should physically reconfigure the Ninth Circuit, the BAP, as it now exists, would be severely impaired. From an administrative standpoint, any reconfiguration of the Circuit would leave one or more of the current or newly created circuits with insufficient judicial resources either to continue the remnants of the Ninth Circuit BAP or to create one or more new BAPs. The administrative problems are created under a variety of circumstances. For instance, because no member of a BAP panel is permitted to hear cases arising from that judge's district, it may diminish the pool of available judges to hear appellate matters, increasing the workload of those judges who serve on a BAP panel and still administer their trial calendars. Another administrative issue would be created if the circuit had an insufficient number of bankruptcy appeals to be able to create the three-judge panels to hear matters, thus forcing the matters to be heard solely by district court judges.

We see no benefit to any split of the Ninth Circuit which will ultimately shift the burden of bankruptcy appeals back to the ever increasingly overburdened district courts and foster less certainty and uniformity in bankruptcy law interpretation throughout the Circuit.

The bankruptcy courts have been at the center of many of the largest and most complicated commercial matters that have occurred over the last twenty to twenty-five years. These cases have had an enormous impact on the economy of this country. At the same time, the bankruptcy court is the federal court that is most likely to have a direct impact on the lives of many citizens attempting to solve their financial problems. Whether they are debtors, creditors, small or large businesses, they seek a fair, efficient, expedited resolution of their financial issues. Whether resolving such complex financial issues or important consumer problems, the Ninth Circuit BAP is critical to a functioning bankruptcy system. We believe that the likely destruction of the Ninth Circuit BAP is an extraordinarily high cost to pay for whatever may be perceived as the benefits of splitting the Circuit.

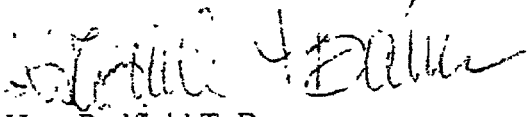
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We thank you for the opportunity to present our thoughts on this important matter.


Very truly yours,



Hon. Sarah Sharer Curley
Chief U. S. Bankruptcy Judge



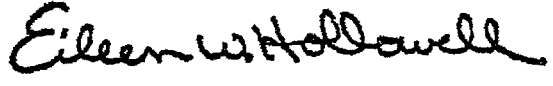
Hon. Redfield T. Baum
U. S. Bankruptcy Judge



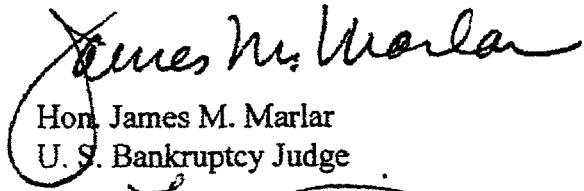
Hon. Charles G. Case
U. S. Bankruptcy Judge



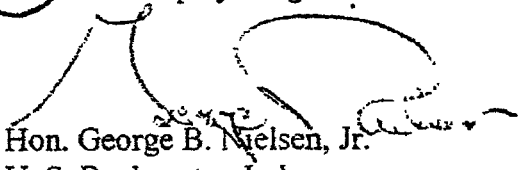
Hon. Randolph J. Haines
U. S. Bankruptcy Judge



Hon. Eileen J. Hollowell
U. S. Bankruptcy Judge



Hon. James M. Marlar
U. S. Bankruptcy Judge



Hon. George B. Nielsen, Jr.
U. S. Bankruptcy Judge