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B-217236, May 22, 1985

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B-217236, MAY 22, 1985

COURTS - ADMINISTRATIVE MATTERS - EMPLOYEES - ACCOUNTABLE OFFICERS DIGEST: UNDER B-217236.2, ISSUED TODAY, BANKRUPTCY FEES AND COSTS PAID TO THE "CLERK OF THE COURT" UNDER 28 U.S.C. SEC. 1930, AS AMENDED, INCLUDES PAYMENTS TO THE CLERK OF THE BANKRUPTCY COURT INCIDENT TO BANKRUPTCY MATTERS BEFORE THAT COURT. THEREFORE, THE BANKRUPTCY COURT CLERK AND NOT THE DISTRICT COURT CLERK IS THE STATUTORY ACCOUNTABLE OFFICER FOR THESE COLLECTIONS.

U.S. DISTRICT COURT CLERK'S LIABILITY FOR BANKRUPTCY FEES:

THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS HAS REQUESTED OUR VIEWS AS TO HIS RESPONSIBILITIES AND POSSIBLE LIABILITY FOR BANKRUPTCY FEES AND RELATED FINANCIAL OPERATIONS IN VIEW OF PUB.L. NO. 98-353, ENACTED ON JULY 10, 1984. MORE SPECIFICALLY, HE REFERS TO A MEMORANDUM ISSUED BY THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS WHICH INDICATES THAT A DISTRICT COURT CLERK'S FINANCIAL RESPONSIBILITIES FOR BANKRUPTCY FEES MAY BE DELEGATED TO THE COURT'S BANKRUPTCY CLERK. IN THAT CASE, ACCORDING TO THE MEMORANDUM, THE CLERKS OF THE DISTRICT COURT WOULD CONTINUE TO BE ACCOUNTABLE FOR THE FEES EVEN THOUGH THERE WOULD BE AN INCREASED LIKELIHOOD THAT THE COMPTROLLER GENERAL WOULD WAIVE THE DISTRICT COURT CLERK'S LIABILITY FOR ANY LOSS OF THESE FEES BY THE BANKRUPTCY COURT CLERK. DESPITE THESE ASSURANCES FROM THE ADMINISTRATIVE OFFICE, THE DISTRICT COURT CLERK IS UNCERTAIN ABOUT THE EXTENT OF HIS POTENTIAL LIABILITY UNDER A DELEGATION TO THE COURT'S BANKRUPTCY CLERK.

AS EXPLAINED BELOW, THE BANKRUPTCY CLERK AND NOT THE DISTRICT COURT CLERK IS THE ACCOUNTABLE OFFICER FOR FEES AND COSTS COLLECTED IN A BANKRUPTCY COURT. THEREFORE, THE DISTRICT COURT CLERK IS NOT LIABLE FOR THESE COLLECTIONS.

THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS, IN HIS MEMORANDUM DATED OCTOBER 11, 1984, ADDRESSED THE ISSUE OF FEES IN BANKRUPTCY PETITIONS. HE INDICATED THAT UNDER 28 U.S.C. SEC. 1930, AS AMENDED, BANKRUPTCY FEES ARE TO BE PAID TO THE CLERK OF THE DISTRICT COURT BECAUSE THE AMENDMENT WHICH REQUIRES THAT THE FEES BE PAID TO THE "CLERK OF THE COURT," REFERS TO THE CLERK OF THE DISTRICT COURT. ACCORDING TO THE DIRECTOR:

"THIS MEANS THAT THE CLERK OF THE DISTRICT COURT IS AN ACCOUNTABLE OFFICER FOR SUCH FEES AND COSTS. THE COURT MAY PARTIALLY INSULATE HIM FROM INVOLVEMENT IN THE HANDLING OF BANKRUPTCY FEES AND THUS INCREASE THE LIKELIHOOD THAT THE COMPTROLLER GENERAL MAY WAIVE HIS LIABILITY FOR THE LOSS OF THE MONIES, BUT IT MAY NOT CHANGE HIS STATUS AS AN ACCOUNTABLE OFFICER."

THE DIRECTOR STATED THAT WHEN A SEPARATE BANKRUPTCY CLERK'S OFFICE IS ESTABLISHED, THERE ARE TWO OPTIONS AVAILABLE FOR THE HANDLING OF BANKRUPTCY MONIES--

"(A) THE BANKRUPTCY CLERK IS DESIGNATED BY THE DISTRICT COURT AS AN ACCOUNTABLE OFFICER FOR ALL BANKRUPTCY FEES ***. THE DISTRICT COURT CLERK WOULD HAVE RESIDUAL LIABILITY FOR THE FEES COLLECTED IN THE BANKRUPTCY COURT ***.

"(B) THE BANKRUPTCY CLERK IS NOT DESIGNATED AS THE ACCOUNTABLE OFFICER FOR FEES ***. IN THIS EVENT THE DISTRICT CLERK WILL REMAIN FULLY RESPONSIBLE FOR THE COLLECTION AND DEPOSIT OF ALL SUCH MONEYS AND LIABLE FOR ANY LOSSES IN THE SAME MANNER AS ALL OTHER MONIES IN THE DISTRICT COURT."

SUBSEQUENT TO THIS REQUEST, A JUDGE OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF KENTUCKY, ON BEHALF OF THE CLERK OF THE DISTRICT COURT AND OF THE CLERK OF THE BANKRUPTCY COURT FOR THAT DISTRICT, REQUESTED OUR VIEWS AS TO WHICH CLERK IS THE PROPER ACCOUNTABLE OFFICER FOR BANKRUPTCY FEES AND REGISTRY FUNDS UNDER THE BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIP ACT OF 1984, PUB.L. NO. 98 353, ENACTED ON JULY 10, 1984. THE JUDGE ALSO REFERRED TO THE MEMORANDUM ISSUED BY THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.

IN THAT CASE, B-217236.2, ISSUED TODAY, WE CONCLUDE THAT THE CLERK OF A DISTRICT COURT IS NOT THE ACCOUNTABLE OFFICER FOR EITHER FEES OR REGISTRY FUNDS RECEIVED BY THE BANKRUPTCY COURT CLERK. THE BANKRUPTCY COURT CLERK IS THE ACCOUNTABLE OFFICER IN SUCH A CASE.

UNDER 28 U.S.C. SEC. 1930, AS AMENDED, THE BANKRUPTCY CLERK IS DIRECTLY ACCOUNTABLE FOR BANKRUPTCY FEES AND COSTS FOR MATTERS BEFORE THE BANKRUPTCY COURT. THEREFORE, A DELEGATION OF AUTHORITY TO HIM FROM THE DISTRICT COURT IS UNNECESSARY. THE DISTRICT COURT CLERK IS NOT ACCOUNTABLE FOR THESE FEES AND COSTS WHICH HE HAS NO CONTROL OVER, AND FOR WHICH HE HAS NO APPARENT DUTIES. IT FOLLOWS THAT THE DISTRICT COURT CLERK IS NOT LIABLE FOR THESE COLLECTIONS, WHICH ARE THE RESPONSIBILITY OF THE BANKRUPTCY CLERK.