

THE POLICY GOALS OF BANKRUPTCY

- What advantages does it provide the debtor?
 - A “fresh start” for your financial affairs - relief from collection activity, discharge of personal liability for debts, reorganization of debt and reduction of principle balance,
- What advantages does it provide to creditors?
 - Means to assert claims against the debtor, prevention of discharge of certain debts, method by which to obtain a share of the limited assets of the debtor during liquidation

WHO FILES BANKRUPTCY?

- Average age: 43
- Half own their homes
- Largest single group: women who are heads of households (39%)
- Ratio of non-mortgage debt to income: 2.12
 - It would take 2 years worth of earned income to pay off debt (excluding mortgage).

WHY DO CONSUMERS FILE?

- Job loss
- Illness / Disability
 - If you can't work, you'll lose your job.
 - If you lose your job, eventually you'll lose your health insurance.
- Divorce / Separation / Death of spouse
- Credit cards
- Small business failure: leads to bankruptcy filings by owners and employees.

STRUCTURE OF THE CODE

- Ch. 1: General Provisions
- Ch. 3: Case Administration
- Ch. 5: Creditors, Debtors, and the Estate
- Ch. 7: Liquidation
- Ch. 9: Adjustment of debts of a municipality
- Ch. 11: Reorganization [Businesses and high-debt consumers]
- Ch. 12: Adjustment of debts of family farmers and fishermen w/regular annual income
- Ch. 13: Adjustment of debts of individuals with regular income
- Ch. 15: Cross-Border Cases

WEBSITES OF BANKRUPTCY COURTS

<http://www.uscourts.gov/FederalCourts/Bankruptcy.aspx>

Excellent resource for finding the bankruptcy court in your area as well as information, forms, rules, etc.

In North Carolina see:

- **www.nceb.uscourts.gov**
- **www.ncmb.uscourts.gov**
- **www.ncwb.uscourts.gov**

All bankruptcy courts in North Carolina require lawyers to use electronic filing for all documents.

Other useful information on websites: court calendars, 341 meeting dates, forms, opinions, names and addresses (including service addresses), and dockets (CM/ECF)

SOURCES OF BANKRUPTCY LAW

The bankruptcy system is federal and statutory.

- U.S. Const., art. I, sec. 8, cl. 4

- The federal statutes used in bankruptcy proceedings are referred to as the [Bankruptcy Code](#), which is Title 11 of the United States Code
- Statutes relating to bankruptcy courts and their jurisdiction are found in Title 28 of the United States Code.
- Statutes relating to “bankruptcy crimes” are found in Title 18 of the United States Code.

THE BANKRUPTCY CODE

- The current Bankruptcy Code became effective on October 1, 1979.
- It was heavily amended in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), which became effective on October 17, 2005.
- Cases filed before October 17, 2005 are governed by the old law.

BANKRUPTCY COURTS

- Bankruptcy courts are federal courts.
- For purposes of jurisdiction, every bankruptcy court is a “unit” of the federal district court in which it is located.
- ***28 U.S.C. 1334*** gives jurisdiction over bankruptcy matters to the federal district courts.
- However, every federal district court in the United States has made a blanket “referral” of all bankruptcy cases to its bankruptcy court.
- In rare cases, the district court will “withdraw the reference” and itself take jurisdiction over a bankruptcy case.
- This odd jurisdictional scheme is the result of Northern Pipeline Constr. v. Marathon Pipe Line Co., 458 U.S. 50 (1982). [See p. 795]

1984, 1986, AND 1994 AMENDMENTS

■ 1984 Amendments

- Cured the Marathon problem by treating the bankruptcy court as a “unit” of the district court.
- The district court refers cases to the bankruptcy court in a standing order of reference.
- Bankruptcy judges are Art. I judges appointed to 14 year terms by the circuit court.

■ 1986 Amendments

- Adopted the U.S. Trustee system for 48 states
- NC and Alabama adopted a **Bankruptcy Administrator** system, not a U.S. Trustee system.

■ 1994 Amendments

- Adopting an indexing system for many dollar amounts in the Code.
- Amounts automatically readjust every three years.
- The last adjustment: April 1, 2007.

BANKRUPTCY JURISDICTION: 28 U.S.C. 157

■ Core Proceedings

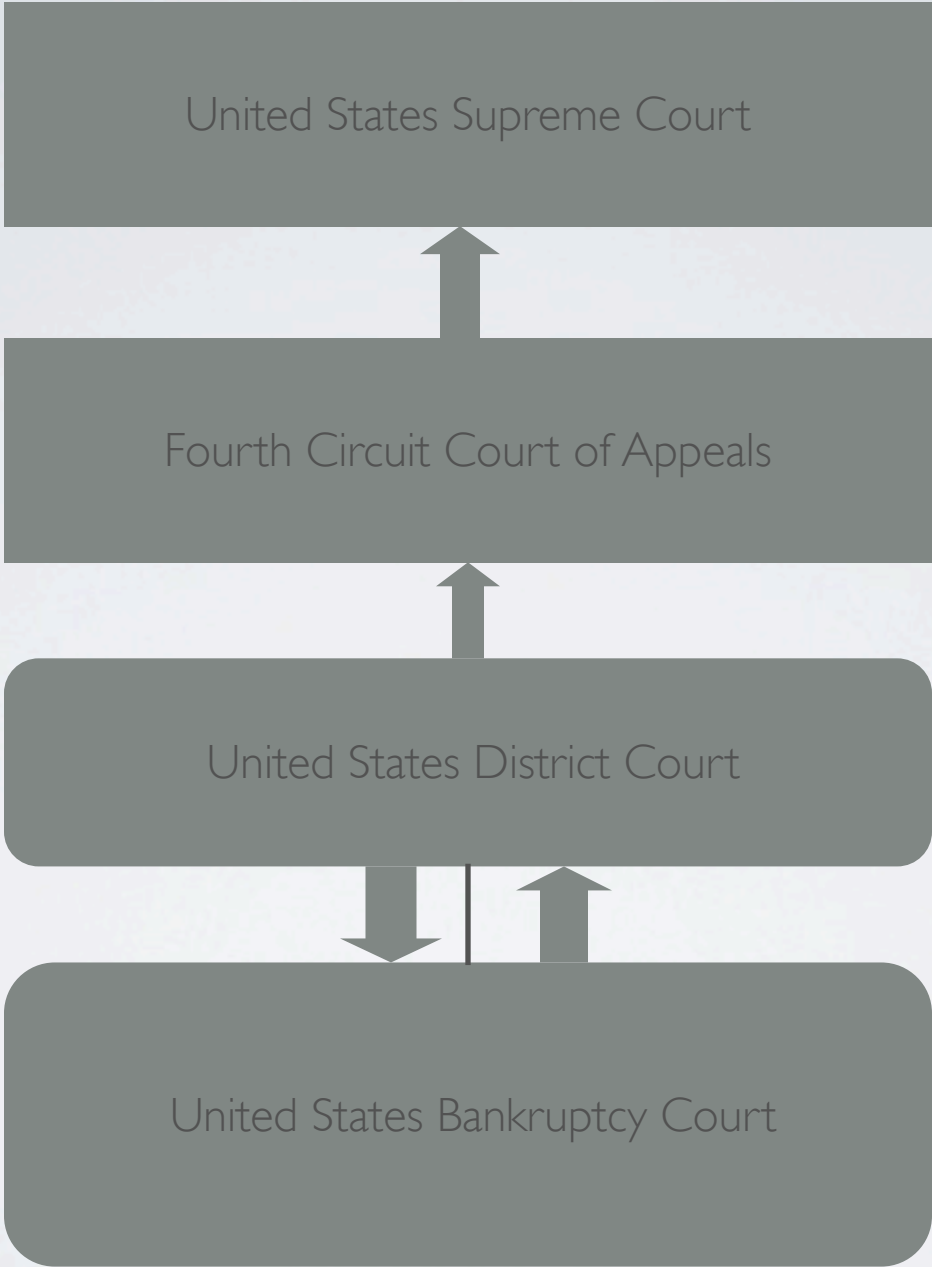
- Matters integral to the administration of the case
- 28 U.S.C. 157(b)(2): nonexclusive list
- 28 U.S.C. 157(b)(1): BR judge can hear and enter final judgment

■ Non-Core Proceedings

- Matters “otherwise related to” a bankruptcy case.
- 28 U.S.C. 157(c)(1): BR judge can hear, but acts as a special master unless the parties consent to jurisdiction. Submits proposed findings to the district court.

APPEALS IN BANKRUPTCY CASES

- Any final order entered by a bankruptcy judge can be appealed to the United States District Court for that district.
 - In some circuits outside the Fourth Circuit, appeal may be taken from the bankruptcy court to a Bankruptcy Appellate Panel (or BAP).
- Orders of the district court are appealed to the appropriate circuit court of appeals.
 - In North Carolina, this is the Fourth Circuit Court of Appeals based in Richmond, Virginia.
- Orders of the circuit courts are appealed to the United States Supreme Court.



BANKRUPTCY COURTS IN NORTH CAROLINA

- North Carolina has three bankruptcy courts that correspond to its federal districts.
- The United States Bankruptcy for the:
 - **Eastern District** of North Carolina
 - Greenville and Raleigh
 - **Middle District** of North Carolina
 - Durham, Greensboro, and Winston-Salem
 - **Western District** of North Carolina
 - Charlotte and Asheville

BANKRUPTCY JUDGES IN NORTH CAROLINA

- Appointed for 14-year terms by the Fourth Circuit Court of Appeals.
- EDNC: Judges Small, Humrickhouse, and Doub (Chief)
- MDNC: Judges Aron (Chief), Stocks, and Waldrep
- WDNC: Judges Hodges, Whitley (Chief), and Beyer

OTHER BANKRUPTCY COURT PERSONNEL

- Chambers Staff
 - Judicial Assistants
 - Law Clerks, Career Law Clerks, and Staff Attorneys
- The Clerk of Court
- Clerk's Office Staff (Deputy Clerks)
 - Chief Deputy, Deputy-in-Charge, Administrative Managers, Case Managers, Courtroom Deputies
- Court Security Officers

CASES AND ADVERSARY PROCEEDINGS

- A voluntary bankruptcy case is initiated when the debtor files a “petition in bankruptcy.”
 - Disputes may or may not arise in the case.
 - Disputes in the case are called “**contested matters.**”
- It is also possible for a bankruptcy case to be involuntarily initiated by creditors.
- An adversary proceeding is a lawsuit connected to a bankruptcy case.

BANKRUPTCY PROCEEDINGS

- There are four broad categories of bankruptcy proceedings.
- 1. Uncontested matters in a bankruptcy case
 - The bankruptcy petition, schedules, and statements,
 - Uncontested proofs of claim,
 - An uncontested discharge, etc.
- 2. Contested matters in a bankruptcy case
 - Examples: objections to claims, objections to exemptions, motions for relief from stay
- 3. Contested bankruptcy petitions (involuntary cases)
- 4. Adversary proceedings (lawsuits connected to a bankruptcy case)

ADVERSARY PROCEEDINGS (AP'S)

- May concern matters that are either core or non-core.
- Bankruptcy Rule 7001 lists 10 types of cases that must be brought as an AP.
 - (1) a proceeding to recover money or property;
 - (2) a proceeding to determine the validity, priority, or extent of a lien;
 - (3) a proceeding to obtain approval for the sale of the interest of the estate and a co-owner in property;
 - (4) a proceeding to object to or revoke the debtor's discharge; etc.
- The 7000 series of Bankruptcy Rules apply.
 - These incorporate most of the Federal Rules of Civil Procedure.

BANKRUPTCY RULES

- The wide variety of bankruptcy proceedings means that the Bankruptcy Rules are more complicated than the Federal or State Rules used in non-bankruptcy civil cases.
- There are only 86 Federal Rules of Civil Procedure (Rules 1 – 86).
- There are 202 Federal Rules of Bankruptcy Procedure (Rules 1001-9036).

LOCAL RULES

- Every bankruptcy court supplements the Federal Rules of Bankruptcy Procedure with a set of Local Rules.
- A court's Local Rules provide additional procedural law for that court.
- For example, EDNC L.R. 4003-1 (a) tells individual debtors that they must use a local EDNC form to claim their exemptions.
 - **There is no requirement that local rules of courts in the same state be consistent.**
- If you work in bankruptcy, you should have a copy of the local rules for each district in which your office files/handles cases.

LOCAL RULES

- Local Rules are available on the websites of all 3 bankruptcy courts in North Carolina and most bankruptcy court websites throughout the country
- The website may also contain:
 - An Administrative Guide to Practice and Procedure, and
 - A Service and Notice Chart that tell who to serve in particular matters, the number of days notice that must be given of particular matters, and any special filing fees that apply to particular matters.