

## As bankruptcy judge prepares to retire, 1st Circuit decides not to fill seat ... for now

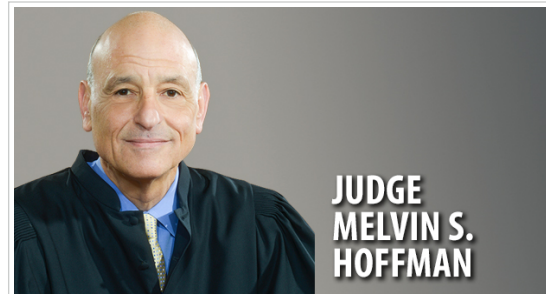
By: Kris Olson ◉ April 30, 2021

Ask a member of the local bankruptcy bar, and he or she is likely to tell you that Judge Melvin S. Hoffman will be difficult to replace.

Boston bankruptcy attorney Richard N. Gottlieb says he had heard rumors about Hoffman's forthcoming retirement on June 30.

"But I had hoped they would not be true as he is one of the very best bankruptcy judges that I have had the pleasure of appearing before," he says.

Hoffman is known for sifting meticulously through facts in contested matters, knowing bankruptcy law and practice backward and forward, and perhaps most importantly showing genuine compassion and fairness toward all parties, Gottlieb adds.



But while the 1st U.S. Circuit Court of Appeals has decided — for now — not to fill the looming vacancy, it is not because finding Hoffman's equal is such a daunting task, says Susan J. Goldberg, circuit executive for the 1st Circuit.

Instead, the decision largely has to do with the fact that business has not been brisk lately at the U.S. Bankruptcy Court, either in Massachusetts or across the country.

The number of filings ranks high among the criteria developed by the Judicial Conference of the United States and the Committee on the Administration of the Bankruptcy System to decide whether a position needs to be filled when a vacancy arises, Goldberg says.

According to data from the U.S. Bankruptcy Court, there were 4,415 combined business and non-business bankruptcy cases filed in calendar year 2020.

Those numbers represent a 42 percent decrease from the 7,622 cases filed in 2019.

And even those numbers are a far cry from what they once were. There were 9,171 total filings in 2015, and 23,618 back in 2010.

"I don't think any bankruptcy practitioner will be surprised by this news," Kathleen R. Cruickshank of Boston's Murphy & King says of the decision to hold off on filling Hoffman's seat.

Cruickshank says the most recent drop in bankruptcy filings is likely driven by pandemic-related relief, moratoriums on foreclosures, and forbearances by lenders.

"I would expect to see a sharp uptick in filings once these factors are no longer alleviating the financial distress being experienced by individuals and business," Cruickshank says.

Goldberg agrees that that's how filings are likely to trend and says the court will monitor filings to continue to assess whether and when Hoffman's position should be filled.

"I want to be clear that the judgeship will not be lost; it will simply go unfilled until the time the filings justify filling it," she says.

Goldberg says that there is not a precise "tipping point" that would trigger the 1st Circuit judges to use their power under 28 U.S. Code §152(a)(1) to select and appoint another bankruptcy judge.

"They do it on a case-by-case basis, keeping in constant communication with the Bankruptcy Court as to workload," she says.

Other, local factors are also considered when filling a vacancy on the Bankruptcy Court.

For example, when Judge Henry J. Boroff retired in 2016, the number of filings in Springfield alone could not justify filling the vacancy. But because it was deemed critical to have a bankruptcy judge in western Massachusetts, there was no objection to the filling of the position, according to Goldberg.

While he understands why the 1st Circuit reached its decision, Gottlieb worries that a very substantial rise in consumer and small-business bankruptcy filings is on the horizon within six to nine months, as more people become vaccinated, the moratoriums on evictions and foreclosures lapse, and the dockets in state court collection matters start to rise.

It's not that Gottlieb doubts the ability of Judges Frank J. Bailey and Janet E. Bostwick to keep their heads above water in the near term. But he worries that the process of vetting, selecting, training and installing a new bankruptcy judge is not "nimble" enough to respond to a sharp rise in cases.

"My concern is by the time filings do start to rise again to such a degree that another bankruptcy judge is determined to be necessary from an administrative standpoint, the wheels of progress will not be able to turn swiftly enough before the remaining bankruptcy judges on the bench become effectively overloaded and the bankruptcy process begins to languish," he says.

But Richard L. Levine of Sasso Cymrot Law in Boston is less worried, noting that Bailey and Bostwick can always call on Chief Judge Christopher J. Panos in Worcester to handle a case in a pinch.

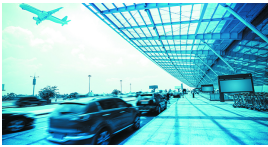
The bigger issue is the void Hoffman will leave in the Bankruptcy Court in Massachusetts and beyond, Levine says.

Until his colleagues had bid him adieu at the outset of a virtual meeting on April 8, Hoffman had served on the U.S. Courts' Advisory Committee on Bankruptcy Rules and a number of its subcommittees, influencing the course of bankruptcy proceedings not just here, but across the country.

"He has a big footprint," Levine says.

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