

Judge & Jailer: This Bankruptcy Judge Has Thrown Attorneys, Debtors Behind Bars

The big question among lawyers: Does the bankruptcy judge have the same authority as Article III jurists to jail attorneys and litigants who appear before him?

By Samantha Joseph | March 28, 2019



U.S. Bankruptcy Court Judge John K. Olson of Fort Lauderdale.

Photo: Jill Kahn/ALM

Editor's note: This is the second in a series of stories taking a deep dive into the U.S. Bankruptcy Court for the Southern District of Florida.

Lying naked on the floor of the Broward County Jail, attorney Lawrence Wrenn wondered how things came to this.

A lawyer for more than 30 years, Wrenn walked into the downtown Fort Lauderdale building wearing a \$4,000 designer suit. He said he'd come to turn himself in after returning from an international trip to find a federal bankruptcy judge had ordered his arrest. But within minutes, Wrenn said he was stripped naked because of a surprising note in his file from an evaluator saying he posed a danger to himself.

"The first night I was put in jail I was told I was a suicide risk," Wrenn said. "I said, 'What are you talking about?'"

Later, attention shifted from Wrenn to the judge who ordered his arrest: U.S. Bankruptcy Judge John K. Olson, who warned Plantation lawyer Mark Roher about the fallout from filing a sanctions motion the judge found to be "pure crap."

"If you do this kind of stuff in practice, you're going to get a reputation as a real asshole," Olson told Roher. "Don't do it."

**Click here to read the full transcript
(<https://drive.google.com/le/d/1bcDu6mqogkxZokWsQDYX-9qbjqsL15EZ/view?usp=sharing>)**

Court records show Olson has ordered the detention of at least 10 people, including two attorneys: Wrenn and Tina M. Talarchyk, who federal marshals (<https://www.law.com/dailybusinessreview/almID/1202748010551/marshals-stop-to-arrest-lawyer-even-after-judge-issues-stay/>) came to arrest at her home on a civil contempt charge while an appeal was pending before another judge.

Arrests Ordered by Olson

- **Maria Barone**, litigant, Case No. 11-60993-MC-JORDAN
- **Allan Bombart**, litigant, Case No. 07- 10749-JKO
- **Pamela Carvel**, debtor, Case No. 11-14548-JKO
- **Marvin Chaney**, litigant, Case No. 12- 33090-JKO
- **Adil Sohail Khan**, pro se debtor, Case No. 16-17329-JKO
- **James McBride**, Case No. 13-60124-CIV-Zloch
- **Kevin McKeown**, attorney, Case No. 11-14548-JKO
- **Timothy Reardon**, litigant, Case No. 09-26196-BKC-JKO
- **Tina Talarchyk**, attorney, Case No. 13-11065-JKO
- **Lawrence Wrenn**, attorney, Case No. 12-33090-JKO

With his temperament already a topic of discussion, questions swirl about whether the jurist overreached with multiple incarcerations.

The big debate among attorneys: Does the bankruptcy judge have the same authority — as jurists appointed to lifetime positions under Article III of the U.S. Constitution — to jail attorneys and litigants who appear before him without submitting proposed findings of fact and conclusions of law to the district court?

That question was raised in the U.S. Court of Appeals for the Eleventh Circuit but died with the litigant who asked for an opinion — health care administrator Timothy Reardon, who spent years asking for an investigation into Olson's behavior on the bench before his death in April. When Reardon died

(<https://drive.google.com/file/d/1QAe5y0OEhOwZmsUqu0Sajx661vyHE7fj/view?usp=sharing>), he had a case pending against Olson

(<https://drive.google.com/file/d/1S2iM1JTUSbd0MwcMilplFgXck2J-ka0B/view?usp=sharing>). As part on the litigation, he claimed the judge (https://drive.google.com/file/d/1UdTrRHplknlei3eQehGy9OW83UjSrc_A/view) unethically ordered the sale of all his company's assets for \$2.5 million to a creditor, which Reardon stated he felt was a move meant to punish him. Olson ordered his arrest over threatening messages Reardon sent in violation of a court order to creditor attorney Patricia Redmond, a shareholder at Olson's old firm, Stearns Weaver Miller Weissler Alhadeff & Sitterson.

Olson and Redmond did not respond to multiple requests for comment by deadline.

Click here to read Reardon's full motion
**(https://drive.google.com/file/d/0B1yVzJUOrBR_NzJGeC1ET3VF0
usp=sharing)**

Contempt

Without a ruling from the Eleventh Circuit, the existing answer to Reardon's question is complicated.

"The circuits are not in complete agreement as to bankruptcy court's contempt powers," according to the U.S. Department of Justice's Civil Resource Manual.

Most courts have held bankruptcy judges have the authority to issue civil contempt orders, but "a 'serious question' exists concerning the bankruptcy court's power to punish for criminal contempt," according to Justice Department.

"Current Bankruptcy Rule 9020 provides that, with respect to findings of contempt for acts not committed in the presence of the bankruptcy judge, the bankruptcy court's ruling is subject to review," according to the manual.

In one case, the U.S. District Court for the Southern District of Florida rejected Olson's proposed findings of fact and conclusions of law after he ordered marshals to arrest litigant Maria Barone, who admitted to filing fraudulent documents in bankruptcy court.

“Federal courts are courts of limited jurisdiction, and no statute or rule expressly gives a bankruptcy court the independent authority to punish criminal contempt through incarceration,” wrote Eleventh Circuit Judge Adalberto Jordan.

Click here to read Olson’s proposed findings (<https://drive.google.com/file/d/1h8H0hIU9sREY0thcol6qeMJB0usp/sharing>) and here for the district court’s rejection (<https://drive.google.com/file/d/1pCkU25JI18ZVGt1YFuxZhtieNe>) of those findings

Prosecutors agreed, arguing in their memorandum that the bankruptcy judge exceeded his authority with the arrest before submitting his proposed facts and conclusions of law to the district court for review.

But many of Olson’s subsequent orders have involved civil contempt, suggesting the arrested parties had the power to free themselves simply by obeying the court.

The problem with critics

Many of Olson’s critics are complicated figures.

In Reardon’s case, even his closest friends acknowledge he struggled with substance abuse. Attorney Robert Charbonneau, who Reardon had once retained to represent his company WB Care Center as the bankruptcy debtor, said he agreed with Olson’s decision to arrest Reardon.

“I’m not sure how dangerous Mr. Reardon was at the time. That’s the benefit of hindsight,” Charbonneau said. “But at that time, he was scaring Ms. Redmond quite badly.”

Court filings also show Reardon allegedly attempted to improperly remove about \$50,000 from his company’s debtor-in-possession account during the bankruptcy proceedings.

Wrenn openly discusses his criticism of Olson, largely because the attorney lost his license to practice law in Florida. Wrenn's Florida Bar file shows a suspension in September 2016

(<https://lsg.floridabar.org/dasset/DIVADM/ME/MPDisAct.nsf/DISACTVIEW/FBB8B5BCA> tied to allegations he mishandled a client's mortgage payments and credit card consolidations, and disciplinary revocation in January 2018

(<https://lsg.floridabar.org/dasset/DIVADM/ME/MPDisAct.nsf/DISACTVIEW/254323BFAI> findings of contempt and false representations.

Meanwhile, Olson is by all accounts a brilliant jurist. Even harsh critics concede this.

He earned his bachelor's degree magna cum laude from Harvard College and attended law school at Boston College. He spent nearly two decades at Stearns Weaver, eventually becoming a shareholder in its Tampa office before rising to the federal bench in 2006.

He also distinguished himself as a leader in the legal profession, chairing the Florida Bar's business law section and an American Bar Association subcommittee on bankruptcy abuse.

"Judge Olson really requires a higher standard of practice. He doesn't like sloppy practice," said attorney Felipe Plechac-Diaz, who's represented bankruptcy trustees in cases before Olson. "He is a very smart judge. He knows more about the bankruptcy code than the attorneys do. And I think he does not like people abusing the system. ... He does a lot of these pickup orders, but for a reason. It's done for a purpose."

Bankruptcy trustee Kenneth Welt agrees.

"A lot of debtors attorneys — a lot of attorneys — don't know that if you go before Judge Olson you have to be prepared. You can't just go before him and wing it," Welt said. "Some attorneys don't like that ... but that's the way it is. ... And that's to his credit."

But the judge has been the subject of conversation for years after sanctioning several lawyers, ordering them to pay fees, or altogether banning them from practicing in bankruptcy court.

He famously slammed Big Law firm Duane Morris

(<https://www.law.com/dailybusinessreview/almID/1202737856431/Bankruptcy-Judge-Lifts-Sanctions-Against-Duane-Morris-Partner-Lida-RodriguezTaseff/>), saying the tone of its pleading as he weighed sanctions for then-partner Lida Rodriguez-Taseff reflected what he “would conceive of as a self-satisfied smugness, full of self-congratulatory blather.” He slapped Rodriguez-Taseff with an interim sanction (<https://www.law.com/dailybusinessreview/almID/1202737856431/Bankruptcy-Judge-Lifts-Sanctions-Against-Duane-Morris-Partner-Lida-RodriguezTaseff/>) barring her from practicing in the Southern District of Florida’s bankruptcy court for 90 days, prompting her to resign from Duane Morris’ partners board.

When Boca Raton litigator Stuart M. Golant refused to pay a \$500 sanction, Olson tacked on another \$1,000

(https://drive.google.com/file/d/1dto_thzh4aoMDYXOmvsSxcs9FUxf0wrg/view), ordered him to pay the debtor’s \$274 court filing fee, added \$500 for “troubling” a litigant “to come to the courthouse more often than she should have” and then wiped out the attorney’s income in the case by disgorging a \$3,500 fee.

The judge also sanctioned West Palm Beach attorney Louis Mrachek and his firm Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, finding them liable for \$120,000 in attorney fees for showing “no whiff of regret; no hint of contrition” for what he considered a frivolous motion to disqualify opposing counsel in an adversary proceeding. U.S. District Judge Kenneth A. Marra later reversed him (<https://drive.google.com/file/d/1ctdjiHjoWwO-NHIndjPoLSP32fO3l6X4/view?usp=sharing>) for “an abuse of discretion.”

Some of Olson’s critics keep an itemized list of every reversal.

“He might be a brilliant jurist, but I think he’s power mad,” Wrenn said. “I don’t think he’s a true jurist. That’s just my opinion. He doesn’t reflect true judicial demeanor. ... His ego has taken over.”

Reardon felt the same and undertook a yearslong campaign against the judge he claimed unfairly ruined his business.

“I’m writing to you about one of your employees,” he once said in a letter to Chief Circuit Judge Ed Carnes. “Just to be clear, I am writing this letter because I want you to fire him.”

Copyright 2019. ALM Media Properties, LLC. All rights reserved.