Bankruptcy Clerkships: An Overlooked Opportunity

By Janet Siegel Brown
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According to the U.S. Courts, there were 773,375 bankruptcy petitions filed in the 90 federal bankruptcy courts during the 2018 fiscal year. That amounts to ample work to occupy the approximately 350 bankruptcy judges and their law clerks. Yet few pursue these clerkship opportunities. For some, it may be a thoughtful decision made after careful consideration of their interests and career goals. But for others, this arises out of a fundamental misunderstanding of what bankruptcy judges and their law clerks do. This article dispels common misconceptions to help counselors and employers make the case for bankruptcy clerkships to the students and attorneys they advise.

Bankruptcy clerkships are litigation experiences. While bankruptcy clerkships are unique, they aren't the limiting niche experience that many perceive them to be. As one bankruptcy judge says, “Bankruptcy clerkships are more similar than they are different from district court clerkships,” with the major difference arising from the subject matter. But fundamentally, it’s a litigation experience.” Bankruptcy judges have a heavy motion and trial practice, so their law clerks research and draft opinions and assist with motions in limine and trial preparation, much as they would in any clerkship. The procedural rules in bankruptcy court essentially mirror the Federal Rules of Civil Procedure, so the procedural knowledge that clerks acquire is transferable to other federal litigation.

Bankruptcy clerkships also offer transactional experience. One of the unique benefits of a bankruptcy clerkship is the exposure it offers to transactional work. A career clerk for a bankruptcy judge says that clerking “involves tons of litigation” but that it also shows law clerks “the business aspects of bankruptcy law, including deals, transactions, and people reshuffling plans.” The experience helps law clerks to better understand the incentives of the various parties once they enter practice — and demonstrates what effective bankruptcy advocacy is in terms of getting a good business deal for a client.

Bankruptcy clerks can explore practice options. Because of the dual litigation and transactional experiences they offer, bankruptcy clerkships can be ideal for someone still exploring practice options. A general counsel for a large financial institution appreciated how his bankruptcy clerking experience allowed him to explore which path was right for him early in his career. He found that “the bankruptcy process affords the opportunity to explore litigation, but encompasses the full panoply of legal issues, including transactional issues.” Clerking helped him understand “how you rebuild a company, how it operates in a distressed scenario, and all the practical aspects that affect the lives of employees and stakeholders.”

Bankruptcy clerks don’t need business experience. One common misperception is that a finance background is needed or gives applicants an advantage in applying. While expectations vary among judges, one bankruptcy judge wryly notes that his math training stopped in the 10th grade. He came from a broad litigation practice before joining the bench and prefers law clerks who took litigation-focused courses such as evidence, federal courts, civil procedure, and trial practice. Certainly an interest in bankruptcy is important, and it can be helpful to take courses in bankruptcy and secured transactions.

But creditors’ claims are rooted in an array of subject areas, some that applicants may expect — like contracts — and others that they may not — like torts and domestic relations. So rather than see clerkship applications that tout finance experience, this judge prefers to see applications that demonstrate a strong grounding in federal procedure and litigation practice — similar to what any federal judge may seek in a law clerk.

Bankruptcy clerkships lead to a variety of careers. While many clerks pursue careers in bankruptcy or corporation reorganization, a bankruptcy clerkship opens doors to a range of opportunities. Certainly bankruptcy clerks are well-positioned to enter a general corporate practice. After clerking, the general counsel mentioned above did corporate transactions and litigation at two firms before moving into a fully transactional position — and ultimately in-house, where he oversees a diverse legal department. But former clerks also are equipped to litigate in numerous subject areas, given that the practice in bankruptcy court touches on a vast array of federal and state law topics and provides a strong litigation skillset. One bankruptcy judge’s former clerks cover the gamut, including a corporate associate, a legal aid attorney, a government child welfare lawyer, and federal prosecutors.

Contrary to popular perception, bankruptcy clerkships offer broad exposure to litigation and transactional practice and can open the door to a multitude of legal careers. Candidates may be surprised to discover where a bankruptcy clerkship can lead!