

Bankruptcy and Professional Law Development

by Hon. Craig A. Gargotta



Hon. Craig A. Gargotta is a bankruptcy judge for the Western District of Texas and chair of the FBA's Bankruptcy Section.

Bankruptcy lawyers consider themselves specialists. Many only provide one kind of representation—consumer or business, or creditor or debtor work. The Bankruptcy Code and Rules require a heightened level of sophistication and knowledge, like other fields such as ERISA or tax law. Many bankruptcy lawyers maintain bar-related specializations. Because bankruptcy law has become so specialized, professional law development is critical to a young lawyer's success.

I asked my two law clerks about their development as lawyers and how it has prepared them to be bankruptcy lawyers. I also considered several years of teaching law students and mentoring interns in my chambers as a means for examining whether lawyers and judges are impacting the development of these new lawyers.

People go to law school for a variety of reasons, and a percentage of students have no idea of what type of law they want to practice. The first year of law school is consumed by surviving the challenges of law school and filled with studying and competing for good grades. There is little in the way of developing students as professionals, let alone in a specialized field. Tenured faculty do not perceive themselves as lawyers, but rather focus on educating new students on how to think critically and learn the law.

The majority of the first-year of law school is rooted in the basics—property, contracts, torts, civil and criminal procedure, and constitutional law. Little time is devoted to professional development. Fortunately, by the second year of law school, many law schools provide opportunities for professional development through court internships, adjunct faculty teaching specialized courses, and law clinics. These opportunities not only provide a law student with a learning experience but can also allow a student to see what it is like to be a lawyer in a specialized area of law. Law schools also invite professionals to speak at school to share their law school experiences and how they became the professionals that they are today. Importantly, much of this collective experience is being obtained outside of the classroom, and the student must avail him or herself of these opportunities.

Through career services, moot court, and mock trial, a law school can guide a student on how to dress and how to conduct oneself at an interview; however, such experiences cannot inform a law student as to how to act “professionally.” Moreover, most law schools have limited resources they can allocate to educating a student to pursue a specialization. At most, the school can identify specific employers who have a need for a specialization.

The summer between the second and third years of law school generally affords a law student the opportunity to investigate career options and consider a specialization by working for a firm or government entity. There is also the prospect of a job offer. Students utilize that experience to make career decisions and identify bar associations that can help facilitate their entry into a practice of law. That said, many students will not know where they will work or the kind of practice they will undertake until graduation.

In my judgment, there are some ways in which a law student can identify not only a career path but also learn about being a professional. To begin with, some law students do not focus on professional development. Their approach is similar to what they did in undergraduate school, and they do not take the requisite responsibility for applying themselves to settings that help develop professionalism. Further, few students appreciate the business of law while in school. They see a career, but do not appreciate that representing a client entails more than the representation; it includes billing for services and becoming a collection agent when payment is not rendered. Further, operating a law practice or being a solo practitioner requires more than having a law license; it requires a lawyer to manage a practice such that the lawyer can earn a living and provide the requisite services to the client.

As judges and lawyers, there are several ways that we can facilitate professionalism in the next generation of lawyers. As mentioned, clinical internships while in law school offer practical insight into the practice of law. Under the supervision of an attorney, students meet real people with real legal problems.

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When asked what advice she would give lawyers interested in administrative law, Judge Coughlin emphasized that the position requires a great deal of flexibility. Some cases may settle on the eve of the hearing after thorough preparation. Some cases may be well-represented, while others may involve parties proceeding pro se requiring additional guidance through the administrative process. In addition, ALJs must also be mindful at all times of their actions and behaviors as decision-makers.

Family Life

Judge Coughlin is content in both her personal and professional career. She maintains it with spiritual focus and peacefulness and explains that life experiences and a strong faith in a higher being have been instrumental in her development. “When my spiritual house is in order, everything else falls into place.”

She enjoys taking long walks with Pat—her husband of 29 years—and their German shepherd, Minna. She is a nature lover

and enjoys cases that deal with protecting the environment. She has many passions, including photography, reading fiction, cooking/baking, attending the theater and musical performances, and watching movies. One of her biggest passions, however, is scuba diving with her husband in the beautiful waters of Indonesia.

Her philosophy in life is to be kind, inclusive, and humble. She believes in the saying, “People may not remember what you said to them, but they will remember how you made them feel.” To Judge Coughlin, it is essential to be open and not pass judgment to another individual’s views or perspectives even when they differ from your own—an essential element for a judge.

When asked how she would like to be remembered when she retires, she said that she wants to be recognized as a fair, kind, and dedicated legal professional who produced high-quality work. Without question, Judge Coughlin has already accomplished that goal through her impeccable career and her stamina and perseverance to stay the course. ☺

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These individuals are not just names in cases, and their problems are more than academic exercises. Learning how to provide legal advice to a client is invaluable to a law student’s development as a lawyer.

Similarly, a court internship provides a unique perspective into how courts view litigation and related issues, plus what a court considers important in deciding a case. Court personnel, from the judge to the law clerks to the clerk’s office, are required to be professional in their dealings with the parties and the public. Moreover, they should exhibit a sense of pride and responsibility in having the privilege of being public servants. Observing this type of professionalism educates law students about the responsibilities of practicing law. In addition, court observation provides a unique perspective on the “dos and don’ts” of practice and how to practice with civility opposing counsel and the court.

I asked my law clerks to explain the benefits of clerking. They both agreed that notwithstanding doing well in law school, time management in terms of their court assignments has reinforced the concept of meeting deadlines and prioritizing work. They also said that they will be better prepared to practice bankruptcy law because they had two years to study and learn the Bankruptcy Code and Rules. Notably, they both emphasized that working in chambers allowed them to ask questions without fear of not already knowing the answers. Moreover, my clerks commented that the decision-making process in chambers is different for the court than being an advocate. Peer review of their written work and potentially appellate

review of their work made them better understand that an accurate statement of the law and facts is critically important in their jobs. Finally, because many judges participate in judicial and bar activities, law clerks are exposed to many opportunities to participate in the legal community.

Bar activities and mentorship is where professional development occurs. While in a perfect world it should really start in law school, there are too many obstacles and demands for it to be effective unless the student is proactive in reaching out to lawyers and bar associations. That said, lawyers and judges should mentor law students into joining and being active in bar associations. I have been fortunate to have been a member of the FBA for roughly 25 years, and during that period, I have been a chapter officer and president, editor-in-chief of *The Federal Lawyer*, and chair of the Bankruptcy Section. While I have enjoyed being involved in many bar associations and activities, there is no other bar association that collectively promotes federal practice, supports the federal judiciary, and provides a lawyer the opportunity to participate in an area of law. Through a local chapter, section, or division, a young lawyer can immediately meet potential mentors and peers in a field. During the time I have been chair of the Bankruptcy Section, I have been fortunate to meet several remarkable young people who have a deep commitment to the practice of bankruptcy law. I hope that I have the privilege to mentor many more bankruptcy lawyers. ☺

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¹The Pensacola Division of the U.S. District Court has been utilizing the bankruptcy courthouse in Pensacola since it was forced to vacate its own courthouse in 2017 due to mold issues. Hurricane Michael destroyed the bankruptcy courthouse in Panama City in October 2018. Both scenarios make it difficult to conduct hearings or other proceedings within those divisions at this time.