



ATTORNEY SEARCH

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TRANSITIONING YOUR PRACTICE TO BANKRUPTCY

Bankruptcy has been a hot topic in the legal market ever since the dotcom bubble burst in the late 1990's. Although many of the dotcoms disappeared with nary a whimper (because many of these firms did not have significant assets), the quick and public demise of huge international companies such as Enron Corp., WorldCom and Global Crossing increased the amount of bankruptcy work at many firms around the United States.

In addition to the increase in activity in the bankruptcy and restructuring markets, the United States capital markets have been quiet as the economy has slowly recovered. In the recent depressed market, many corporate attorneys who were not billing enough hours were approached by their firms to "re-tool" and work with the firm's bankruptcy or restructuring group.

Consequently, I am frequently asked by midlevel, junior and summer associates how they should approach the current economic recession from the perspective of their practice areas, and whether they should consider a short stint in other busier areas of law such as bankruptcy or even litigation. The answer for any individual is case by case, however, there are some common threads that all candidates will have to consider before accepting a temporary or permanent change.

An important distinction should be made between experienced and newly minted attorneys. That distinction is driven, in my opinion, by the concept of an attorney's "brand." What is an attorney's brand you may well ask? Practicing attorneys have a brand that is a combination of their expertise and education. Do you realize that every task performed by an attorney develops (or hinders) their brand? Therefore, choosing and changing practice areas affect your brand, and any such arrangement should be considered carefully. In my experience, well-branded attorneys get the best work and consistent recognition, and managing your brand correctly will help your success at your firm.

BANKRUPTCY LAW

First, let us consider the practice of bankruptcy law. The bankruptcy practice is, for the most part, a federal practice before Article III courts. Under the United States Constitution, businesses (and individuals) can seek the protection of the bankruptcy courts as they seek to sort out their business and financial affairs. Bankruptcy is a code-based practice which relies on the bankruptcy code (Title 11 of the United States Code), a set of rules which are loosely drawn to determine the arena in which creditors and debtors can determine how they are going to proceed to resolve a company's financial situation. The Bankruptcy Code has been modified by case law, but much of the bankruptcy practice never reaches published judicial decision because the parties negotiate a solution that is blessed by the supervising court.

Contrary to popular belief, businesses do not stop operating when they file for bankruptcy, and most businesses that have filed for bankruptcy continue their daily operations with the same pre-bankruptcy management and personnel. One example is Texaco, which filed for bankruptcy in the 1980's after losing a multi-billion dollar lawsuit to Pennzoil. The bankruptcy process allowed Texaco to continue to operate its business while it negotiated payment of the lawsuit with Pennzoil. However, businesses in bankruptcy operate under the watchful eye of a court, and they cannot dispose of any of their assets without court permission. Of course, a company's creditors are busy scrutinizing the company's books too!

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A primary function of a bankruptcy attorney is to assist their client in realizing the maximum value of a debtor's estate so that creditors can receive the maximum return on their debt. Maximizing return to creditors frequently occurs in the form of the sale of assets or business operations or the whole business in an auction process. Bankruptcy attorneys are frequently called upon to assist their clients with the daily components of running a large firm while in bankruptcy.

Bankruptcy can be loosely divided into creditor and debtor practice areas and restructuring and bankruptcy practices. The creditor and debtor practices are essentially similar practices; attorneys represent either creditors (generally financial institutions) or debtors. Frequently a firm will specialize in creditor or debtor work to prevent inter-client conflicts.

Creditor practice is frequently portrayed as the more intellectual and enjoyable practice because the attorney is not involved in the day-to-day minutia associated with running businesses in the bankruptcy process. However, these practices really are two sides of the same coin, with creditors' attorneys required to respond to and engage in the same motion practice as their debtor counterparts. In addition, the personal side of a debtor practice can be extremely rewarding because clients tend to be very grateful for their attorney's assistance in navigating them through the bankruptcy process. In addition, associates with a debtor's practice frequently liaise at a very senior level because bankruptcy necessarily streamlines the personnel structure in a business.

Whereas creditors and debtor re-negotiate the terms of existing debt, restructuring is rarely as complex or as lengthy as a full-blown bankruptcy. In general, this practice involves financial institutions and corporate executives working to renegotiate a company's private or public debt.

One advantage of being a bankruptcy attorney is that the attorney has the opportunity to act both as a litigator and as a transactional attorney. One day, the attorney may be required to do research, engage in motion practice or attend court hearings, while the next, the attorney may liaise with corporate attorneys, tax attorneys, ERISA and employment attorneys, intellectual

property attorneys, corporate finance, and in the case of public companies, securities professionals as they work to negotiate a deal on certain of the debtor's assets. A bankruptcy attorney does not need to know these areas of the law, but should develop a thorough understanding of the concepts associated with these practice areas. Consequently, the practice of bankruptcy law can be bewildering to the junior attorney, as they endeavor to understand not only their own practice area, but also learn to integrate other areas of the law into their practices. This straddle between transaction and litigation frequently generates the common perception that an attorney can easily transition into or away from the bankruptcy practice. While the bankruptcy practice straddles transaction work and litigation work, it is not the same as practicing in either of those areas of the law.

GRADUATING ASSOCIATES

Recent law school graduates frequently do not realize that they have a "brand" and their career depends on the continued development of that brand. Most recent law school graduates have invested more than \$120,000 in their legal education and law school living expenses to develop their brand. With attorneys, the brand starts with your pre-law school education. In most cases, this will be the primary factor that will decide which law school you attended. Next, your law school and your grades generally determine the scope of employers and training that you receive once you have graduated.

A graduating associate is different from an experienced associate because the graduating associate has yet to develop their practice area. The biggest career choice that graduating associates make when they join a firm is deciding their practice area. Consequently, I would recommend that graduating law students find an area of practice that they are prepared to commit to from the start. Choose an area of law that is right for you rather than being "hot."

Changing practice areas later is not necessarily easy, especially if the associate has been branded as a bankruptcy associate. For example, many junior attorneys overlook the fact that law firms are seeking laterals with experience in an advertised practice area. Junior associates can lateral into a different practice area, but frequently they must compete against candidates who have the prerequisite experience and all else being equal, it is most likely that the experienced candidate will fill an available job.

EXPERIENCED ASSOCIATES

With experienced attorneys, the issue is more complex. Experienced associates have (presumably) developed expertise in one area of law and have managed their career to get the widest range of experience in their practice area. However, a dilemma arises when your practice area is quiet, and the partner has asked you to "help out" in another department.

Temporarily working in a related practice area may be perceived as being beneficial to an experienced associate. The associate can make new contacts with different departments and partners of the firm. The attorney believes they will also demonstrate their commitment to their firm, and wants to see their firm succeed.

However, an attorney's skills in their chosen practice area will atrophy over time, and the attorney is

not being trained in their chosen practice area. It is hard to focus on the demands of the training and reading associated with one's favored practice area when one is busy working in a foreign practice area. In addition, there is the chance that the associate will be removed from the roster of associates available for assignments because the transferred associate's hours have increased. Associates asked to transition should consider whether the firm is giving them a subtle hint that they are not fitting in with their peers in their own practice areas. For example, do some of your colleagues remain busy while you are idle? Perhaps it is time to dust off your résumé and consider looking for a new home.

Having said all that, if you like the idea of bankruptcy as a career then I would encourage it. I worked as a bankruptcy attorney at one of the large New York firms and I still consider that experience to be one of the best in my legal career. The work was hard, the hours were long, but, in retrospect, I learned an enormous amount about how to get deals done and what it means to run a business. Finally, bankruptcy, in many ways, is not like other aspects of the law. I found it to be very creative because bankruptcy lawyers operate in one of those rare spheres in the business and legal worlds where the legal process drives some of the business decisions.

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