

What We Want in a Judge

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Judge Roy Bean holding court in the 19th century - a role model for how not to be a judge.

My name is T. J. Mullin and I have been practicing in the Eastern District of Missouri Bankruptcy Court since 1973. I represent debtors exclusively—typically middle- and lower- income debtors. I have represented more individuals in bankruptcy than any attorney in the area.¹

Why do people file bankruptcy? The most common reasons, in no particular order, include: 1) job loss due to industries relocating elsewhere; 2) injury or illness resulting in the inability to work for a long period of time; 3) medical bills; 4) home loans that are far greater than the declining value of the home, and which may have not been affordable in the first place; 5) co-signed loans for relatives or friends; 6) divorce, which may

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1. The Eastern District of Missouri extends from the Mississippi River on the east to middle of Missouri in the west, and north to south from Iowa to Arkansas. There are many different types of people and problems that need to be understood and appreciated in this region.

transform a couple from two incomes supporting one home, to two individual homes with one paycheck each; and 7) easy availability of credit and a societal pressure to live a lifestyle beyond one's means. Low levels of education, drug and alcohol abuse, and dysfunctional families can exacerbate these factors.

Anyone filing bankruptcy goes to federal court, and I assume that more people deal with the federal court system through bankruptcy than through any other action. As members of the bar, attorneys should want every person's experience with any court system to be equitable and efficient. We all understand that this can only be accomplished when the judge leads the court and its officers in this way. What do we really want in a person who seeks to be a judge?

Before all else, a judge must possess absolute morality and integrity. I think we all can agree that Judge Barry Schermer possesses both of these qualities. While that may be enough for some judicial positions, it is only a starting point for a bankruptcy judge: there are several challenges unique to this particular role.

First, every client who comes to court believes his or her case is the most important in the world. And they are right for him or her. Some days, bankruptcy judges confront dockets with hundreds of cases. I vividly remember being in Judge Schermer's court on days when the docket was full of Chapter 13 cases and with my ex-U.S. Army rucksack filled with ninety pounds of files (yes, I put the rucksack on a scale before leaving my home). It was full of perhaps 150 or more files as part of a 100-plus page docket. With Judge Schermer's guidance, we got through them all and did so on time. Each client's case was given the attention it needed. Judge Schermer understood every case represented a family who needed their home, someone who needed a vehicle to get to work, a family facing a garnishment that left them choosing which utility bill to pay, or someone unsure of how to buy food for the last week of the month. He also realized that the people and companies who finance houses or cars, sold furniture, provided medical services, or issued credit cards must be considered and treated fairly, if they were to stay in business.

A second unique challenge for bankruptcy judges is the ability to preside over family and personal bankruptcies one day, only to preside over multinational corporate bankruptcies the next. Cases involving these corporations often involve thousands of workers, billions of dollars, and

environmental issues of great significance. In such a case, the courtroom would be filled with New York attorneys being paid \$750 an hour (and their St. Louis local counsel trying to get that much). In contrast, the day before, those seats were filled with working men and women desperate to keep their humble homes and beat-up, high-mileage cars.

To properly adjudicate and administer the handling of these seemingly dissimilar legal cases requires not just a legal scholar, but something even more critical: the ability to see each situation as unique and apply the law to it with a special angle of understanding. Certainly we all would agree that Judge Schermer could easily claim the title of scholar — his appointment to the Bankruptcy Appellate Panel aptly illustrates that point. He is adept at managing this particular challenge.

But the world is full of smart people. It is not full of smart, practical people, nor especially is there an overabundance of smart, practical hard workers like we have in Judge Schermer. In addition to possessing morality and integrity, a bankruptcy judge must be practical in the application of the law and in the administration of the court in which he sits. He must recognize that the effects of his decisions range far beyond the courtroom, like ripples from a pebble dropped in water. This is exactly what is needed when your docket is full of a large volume of seemingly dissimilar cases that all seek proper adjudication, promptly and practically achieved.

Further, a bankruptcy judge must be decisive and predictable, helping attorneys properly advise their clients as to the probable outcome of certain acts. A bankruptcy judge must also be fair and realize that he or she, for the most part, represents the entire justice system to many people who have only previously encountered our court system on television shows. People should leave the courtroom feeling that their points and views were heard, and that the judge will decide their case in a fair and reasonable manner. I am certain my clients have left Judge Schermer's courtroom with exactly this feeling.

In addition to these important qualities, everyone involved in bankruptcy court wants a judge who will start hearings on time. It is hard enough to get through a docket on time, as any given case can have some wrinkle that causes it to take thirty minutes, not five. Starting late just creates frustration and tension in attorneys and clients. Those who appear

before Judge Schermer will agree that you can set your watch by his start times.

Finally, a bankruptcy judge needs patience. Most debtors have a very limited understanding of law and need explanations about their case and the law. Unfortunately, some bankruptcy attorneys do not seem to have organized and prepared themselves fully before they appear at court. I've seen Judge Schermer exercise patience with both debtors and unprepared attorneys — even when I'm sure he would rather have, with much justification, thrown his gavel across the room at the unprepared attorney.

Beyond the qualities of a bankruptcy judge I describe above, Judge Schermer possesses another human quality that lends itself particularly well to his role. Judge Schermer, in my experience, thinks about an issue after making a ruling and, if he determines he was wrong, reverses himself. This is a wonderful yet rare quality: most people refuse to acknowledge they are wrong, even in the face of new facts. I think this is especially important for a bankruptcy judge as, due to economics, it is very rare for an individual debtor to appeal a decision. Practically speaking, there is no appeal from the decision of a bankruptcy judge. Therefore, sound legal reasoning and fairness are paramount.

Bankruptcy is not a happy action: people are embarrassed and often feel like they are failures. A judge who is knowledgeable, patient, kind, and fair-minded helps restore their confidence in themselves and in our justice system. Fortunately, this is what Judge Schermer is able to achieve, to the betterment of all of us who operate in the Eastern District of Missouri.



Cornerstones for judges and attorneys – plus a little luck