

Addendum

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Short articles of general interest are always welcomed from ASB members. All materials submitted for publication in the *Addendum* are subject to editing for style, space and content. Send submissions as Word documents to margaret.murphy@alabar.org.



An Opportunity to Serve Those Who Serve Us

Sergeant Bradley Anderson* was severely injured in Afghanistan by a homemade pipe bomb—a hand-thrown IED. When he returned to the United States, however, he found that his recovery and treatments were not his only life challenges. He found that he faced a new legal issue.

While Sergeant Anderson's young son was living with the mother, child protective services removed his son from the mother's home due to sexual abuse charges against her. Anderson sought and was granted custody of his son. He and his fiancé were relieved to provide a stable and healthy home for the boy. However, this was contested by the maternal grandmother. The grandmother was represented by an attorney, and she appealed the custody order.

Very concerned and unable to afford an attorney for the appeal, Anderson

visited a military legal assistance office, where a JAG referred his case to the ABA Military Pro Bono Project.

The Military Pro Bono Project, a web-based nationwide program at www.MilitaryProBono.org, accepts case referrals directly from military legal assistance attorneys (JAGs) anywhere in the world on behalf of junior enlisted military personnel facing civil legal issues. It then places the cases with volunteer attorneys where the legal help is needed in the United States. Overseas deployments, frequent relocations and recurring mobilizations can place strains on military families, which can cause difficulties with family law matters, landlord-tenant issues, foreclosure prevention, creditor and consumer problems and trust and

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**ASB MILITARY PRO BONO
PROJECT: AN OPPORTUNITY TO
SERVE THOSE WHO SERVE US**

(Continued from page 1)

estate matters, among others. Receiving legal assistance to address these issues helps provide family and financial stability to military families and their communities.

The Military Pro Bono Project's success in helping military families facing civil legal challenges is built upon its volunteers. The project depends on attorneys—from legal organizations and firms large and small—to volunteer to help our military families. Alabama attorneys and pro bono coordinators can register at www.MilitaryProBono.org to stay up to date about available pro bono case opportunities.

Although signing up with the project does not obligate you to take any particular case, it is hoped that you will give consideration to volunteer opportunities that arise in your geographic area and substantive legal areas of expertise. Please consider lending a hand to our military personnel and their families, recognizing the sacrifices they make on behalf of us all.

For Sergeant Anderson, the project located an attorney who offered pro bono representation at the appellate court. The court ultimately rejected the grandmother's appeal, sustaining the trial court's decision that it is in the best interests of the child for Anderson to maintain full custody. While Sergeant Anderson made major sacrifices to help protect our country, this attorney's generous pro bono representation helped save Anderson's family.

To learn more, visit www.MilitaryProBono.org or contact project director Mary Meixner at mary.meixner@americanbar.org.

*Name changed for the client's confidentiality

MEMBER BENEFITS SPOTLIGHT



ABA Web Store Taking Orders

The Alabama State Bar, through an arrangement with the **American Bar Association**, offers a full selection of materials from the **ABA Web Store**, including great books on law firm finance, management, marketing and technology produced by the Law Practice Division, at a 15 percent discount. Order at www.americanbar.org and use discount code ALABAR. Orders will be shipped directly from the ABA within seven to 10 business days.

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EasyCDF Saves Time and Money

Easy Soft, a member benefit partner, announces new special offers for the members of the Alabama State Bar:

- EasyRealEstate Suite (includes all real estate products)—*\$39 per user per month (billed annually)
- EasyFamilyLaw Suite (includes all family law products)—*\$39 per user per month (billed annually)
- EasySoft Suite (includes all real estate and family law products)—*\$49 per user per month (billed annually)



Your Day in Court, Sooner or Later

By Judge (ret.) R.A. "Sonny" Ferguson, Jr., Christian & Small

To the parties litigating, nothing is more important than to have their legal matter concluded sooner rather than later. Having said that, one should always be ready to go forward with settlement or the trial of the case by completing their discovery. So, what can you do to conclude your legal matters?

I am reminded of a recognizable ad campaign several years ago for a particular oil filter: "You can pay me now or you can pay me later." Does it sound familiar? The ad attempted to imply that the consumer could either get work done sooner for less money or wait until more serious issues surfaced and have to pay more money down the road. In some respects, that ad can be tied into the concept of using a private judge.

In 2012, Alabama passed what is known as the Private Judging Act, Act. No. 2012-266 and codified at §12-17-350 et seq. with an effective date of July 1, 2012. Now almost three years later, said act has received little attention and, for the most part, few lawyers and their clients have heard about private judging—much less know how it can work for them. Here's a quick summary: the parties and their lawyers can opt to use a private judge *sooner* rather than waiting to get their day in court on some date *later*. So, if this is such a good option, why is it not being used on a regular basis and why do lawyers, much less their clients, not know about this option?

As one of the authors of the act and now a retired judge, I can only speculate as to the reason for its slow acceptance. One reason, and I think the most important one, is that not many lawyers know that it is available. That is somewhat surprising since there have been articles published in *The Birmingham News*, the *Birmingham Bar Bulletin* and *The Alabama Lawyer*. In addition to educational information among lawyers, there are many judges in this state who are not familiar with the act and how it can help move

their dockets. As a former judge, I would have welcomed this process because it would have eased an already crowded docket.

So, here are some frequently asked questions about the use of a private judge in Alabama:

1. What is a private judge and what are the qualifications?

- A. A private judge is a person qualified to act as a judge of a case.
- B. Qualifications are:
 - (1) Have been but not currently serving as judge of a district or circuit court;
 - (2) Been a former judge for at least six consecutive years;
 - (3) Be admitted to practice law in Alabama;
 - (4) Be an active member in good standing of the Alabama State Bar;
 - (5) Be a resident of Alabama.

2. What type of cases can be heard by a private judge?

- A. All domestic relations cases;
- B. Contract cases;
- C. Tort cases;
- D. Combination of contract and tort cases;
- E. No utilities cases or cases in which the State of Alabama is a party;
- F. A. through D. are non-jury cases.

3. How do you select a private judge?

- A. A private judge who has met the qualifications must register with the director of the Alabama Center for Alternative Dispute Resolution;

- B. A roster of qualified judges will be published and made available to the public and all actively serving judges in the state;
- C. The parties shall select a judge from the roster, with that judge's consent, and submit a motion for appointment with the circuit clerk in which said case is pending and the presiding judge shall enter the order of appointment.

4. What is the private judge's authority and power?

- A. The private judge has the same powers as the judge of a circuit court, as follows:
 - (1) Court procedure;
 - (2) Deciding the outcome of the case;
 - (3) Attendance of witnesses;
 - (4) Punishment of contempt;
 - (5) Enforcement of orders;
 - (6) Administering oaths;
 - (7) Giving necessary certificates for the authentication of the records and proceedings;
 - (8) Vested with judicial immunity;
 - (9) All proceedings shall be of record and filed with the clerk of the circuit court;
 - (10) All records shall be public in the same manner as circuit court records (unless otherwise ordered).

5. Is the private judge's order binding and for how long?

- A. The *Rules of Civil Procedure* shall apply for all actions before the private judge;

- B. The judge shall maintain jurisdiction over all matters brought before him or her until the order is deemed final and appealable;
- C. An appeal from an action or a judgment of a private judge may be taken in the same manner as an appeal from the circuit court.

6. What is the court cost and who pays the private judge?

- A. There is a filing fee of \$100 that is paid to the court clerk at the time the motion to appoint the private judge is filed;
- B. The private judge's compensation is determined by a contract for services between the judge and the parties which shall also include compensation of all personnel, and the cost of all facilities and materials that are used in relation to the case not otherwise covered.

7. Does the same law apply to private judges as at court?

- A. Yes, the private judge stands in the same shoes as the circuit judge and must uphold the laws of the State of Alabama and its constitution.

8. If one party wants a private judge and the other party does not, can a private judge be forced upon them?

- A. No, both parties must agree to the private judge before the appointment is made.

9. What happens if, after the appointment of a private judge, one side does not like the rulings? Can they elect to opt out?

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The image features the Alabama Center for Dispute Resolution logo on the left, which includes the Alabama Supreme Court seal and the text "ALABAMA CENTER FOR DISPUTE RESOLUTION". To the right is a photograph of a female judge in a black robe and white collar, seated at a desk and speaking to a man in a tan shirt. They are in a courtroom setting with books in the background. Below the photo is a call to action: "Need a private judge for a quick resolution of a domestic relations, contract or tort case?" followed by the website "www.alabamaprivatejudges.org".

Alabama Center for
Dispute Resolution

P.O. Box 671
Montgomery, AL 36101
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Need a private judge for a quick resolution of
a domestic relations, contract or tort case?

Read profiles of private judges and get information at www.alabamaprivatejudges.org.

YOUR DAY IN COURT, SOONER OR LATER

(Continued from page 5)

- A. No. As with any other circuit judge, one does not have that right. This is known as judge/forum shopping and is not allowed.
- B. The rules on this are very specific; adverse rulings alone are not sufficient to remove a properly appointed public or private judge.

10. What are the real advantages of having a private judge?

- A. The specialized expertise of the judge;
- B. Expediency/matters are heard promptly;
- C. Cost effectiveness;
- D. Timeliness/fewer delays;
- E. This is the only case the private judge is presiding over at the time;
- F. Timeliness of final orders.

11. Does the private judge have a courtroom?

- A. There is no assigned courtroom;
- B. Cases can be tried at any place in Alabama, which may include a county courtroom if available and approved by the presiding judge.

12. When will the private judge set my case for trial?

- A. All cases are set by the private judge or by agreement of the judge and attorneys for the parties.

13. When a private judge is requested, will the assigned judge of that case get upset?

- A. No, the request goes to the presiding judge, not the assigned judge;
- B. That is one fewer case the assigned judge will have on his/her docket;
- C. Said request for a private judge needs to be done timely (not at the last minute) so it does not disrupt the court calendar;
- D. A survey of judges supports this concept.

Since all private judging cases are non-jury, not every set of facts lends themselves to the use of a private judge. Cost in every case is a consideration, however it has been suggested that, all things considered, said reassignment to a private judge generally saves money and is more timely in its completion.

Rule 1.3 Diligence (*Rules of Professional Conduct*) states, "A lawyer shall not willfully neglect a legal matter entrusted to him." If a lawyer knows his/her case may take 15 to 24 months or longer (non-jury) with the assigned judge, does he not owe it to his client to present the option of private judging? Yes, there are other factors to consider, including cost, but it may be in the client's best interest to be heard sooner rather than later. We all know a client's interest may often be adversely affected by the passage of time or a change in circumstances.

Private judging provides an option for your clients and just may remove any anxiety they may have about their day in court.

Recently, there have been ongoing discussions about expanding the use of private judging as an option to consumer contracts and contracts in general, in place of arbitration or as an option to arbitration. This is a novel idea when you consider the time factor in getting heard, the finality of the decision and the cost savings in getting the issue resolved sooner rather than later. All of the judicial requirements are in play, as with any other circuit judge, including the right to appeal.

Considering all of the positive aspects of private judging, not every contract, tort, combination of contract and tort or domestic relations case is suited for private judging. The parties may want the public forum, or they and their lawyers just may not be ready to go to a private judge because they are unfamiliar with the process.

It is hoped that this article will be educational to the point of all lawyers being familiar with the option of private judging. In addition, all judges, especially the presiding judges of each circuit, need a working knowledge of the act and how it might benefit their individual caseloads by reducing their dockets. It is not uncommon for a judge to suggest that the parties mediate their case. Taking it a step further, why not suggest the parties consider private judging? **Your day in court, sooner or later—so why wait?**



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Did you know we're on Facebook? Visit us at facebook.com/alabamaadr and like us to keep up with the latest news and happenings at the Alabama Center for Dispute Resolution!



We're also on Twitter! While we don't have a lot of "fast-breaking news," we do have a Twitter account to keep you up on the latest. Follow us at @AlabamaADR.



And, now we have a YouTube channel! We are loading videos and pointing to reference videos related to our favorite topics—mediation, negotiation, arbitration, restorative justice, etc. at www.youtube.com/channel/UCAQvqFo2zKqoRVFEBjhSKmw.



Moving to Microsoft Office 365

By Laura A. Calloway, director, Practice Management Assistance Program

If you aren't already familiar with Microsoft Office 365, it's probably time that you are. It may be your best—or only—option the next time you update your Microsoft Office software.

Office 365 isn't a cloud-based system, although it does offer cloud-based applications, storage and collaboration. Instead, it turns the one-time license for software you used to buy, install on your local machine and use until well past obsolescence into a license that you pay a monthly fee for on an annualized basis, regardless of whether you use the online version or continue to load the software locally. Each time you crank up your computer to use the software, it phones home to Microsoft to make sure that you're paid up and automatically downloads or otherwise makes available any upgrades or patches, seamlessly.

Office 365 offers a great deal more than the MS Office suite you're used to. In addition to Word, Outlook, Excel, PowerPoint, OneNote Access and Publisher, you can also gain access to SharePoint, a document and workflow platform for collaboration both inside your firm and with clients; Lync, a secure communications platform for instant messaging, voice and video-calling, screen-sharing and white-boarding; and Dynamic CRM, a program for managing information about clients and prospects. Exchange

Server for email is also available.

Pricing in Office 365 is by the mailbox rather than by the user. This means that if users work across multiple devices, such as multiple desktop computers, laptop computers and tablets or other mobile devices, the software can be loaded on these without additional charge. And this allows for cross-platform use for those who have both PCs and Macs or iPads. In most instances, you can use Office 365 on your primary machine and up to four others.

There are three levels of Office 365 packages, Small Business (supports up to 25 mailboxes), Mid-sized Business (supports up to 300 mailboxes) and Enterprise (supports an unlimited number of mailboxes), with various offerings at each level, but the names can be somewhat deceptive. For example, Enterprise E-1 is what you would have to get if you want hosted Microsoft Exchange email service for even a single user, but while at that level of service you get unlimited users for email hosting, you don't get access to the desktop versions of the Office programs you're probably currently using. And you can move up from a lower level of service to higher one, but you can't easily move from a higher family back down without backing up all of your data, closing the account, opening a new account in the lower

family and then pushing the data back out to that account. As you can see, finding the right package to meet the needs of your firm may not be easy or obvious, and will require some work.

This is where the partner of record comes into play. Partners of record are approved resellers who can help you determine the best package for your firm, get it installed and running and, if you provide your partner of record with administrative rights, can provide personalized remote help if things go wrong. Unless you are a solo purchasing either a Home or Personal package, I recommend using a partner of record as you move into the Office 365 world.

Pricing for small and mid-size business plans ranges from \$5/user/month for use of the online-only Office apps with 50 GB of email storage and 1 TB of document storage to \$12.50/user/month for locally-loaded Office apps with the same amounts of email and document storage.

If you are considering upgrading to Office 365, I highly recommend that before you do you check out and read *Microsoft Office 365 for Lawyers: A Practical Guide to Options and Implementation* by Ben Schorr. It's available from the Practice Management Assistance Program's checkout library. Email pmap@alabar.org to check it out.

IMPORTANT NOTICES

Amendment of Alabama Rules of Appellate Procedure

In three separate orders, the Alabama Supreme Court has amended Rules 3(d)(1), 11(c), 39(d)(4) and 57(j)(1); Rules 22, 28(a)(5), 32(a)(7) and 40(f); and Rule 21(a)(1)(E), *Alabama Rules of Appellate Procedure*. The amendment of these rules is effective August 1, 2015. The order amending Rules 3(d)(1), 11(c), 39(d)(4) and 57(j)(1); the order amending Rules 22, 28(a)(5), 32(a)(7) and 40(f); and the order amending Rule 21(a)(1)(E) appear in an advance sheet of *Southern Reporter* dated on or about May 21, 2015. The amendment to Rule 11(c) provides that the clerk of the trial court shall notify the parties to an appeal of any extension granted for completion of the record. The amendment to Rule 21(a)(1)(E) provides that copies of any order, opinion or parts of the record included with a petition filed pursuant to Rule 21 be in the form of an appendix to the petition and that each document in the appendix be separated by a tab or divider. The amendment to Rule 28(a)(5) provides that in civil cases the brief on appeal shall identify the adverse ruling or rulings being appealed and asserted as error, with a citation to the page in the record at which the ruling can be found. The amendment to Rule 39(d)(4) provides that a petitioner for a writ of certiorari include with the petition a copy of the court of appeals' rehearing order or notice of rehearing, if an application for rehearing was filed in the lower appellate court. The other amendments are primarily of a house-keeping nature, e.g., the amendment to Rule 22 updates an outdated citation to the *Code of Alabama* 1975 and the amendment to Rule 32(a)(7) clarifies that the footnotes in appellate briefs should, like the text of the brief, be in Courier New 13 font. The text of these rules can be found at <http://www.judicial.state.al.us>, "Quick links—Rule changes."

Bilee Cauley
Reporter of Decisions
Alabama Appellate Courts

Vacancy Announcement

United States Bankruptcy Court
Northern District of Alabama
15-02

Position: Clerk of Court

Classification: JSP 17 (depending upon qualifications)

Salary: \$156,272-\$181,172 commensurate with experience

Location: Birmingham, AL

Opening Date: May 15, 2015

Closing Date: Open Until Filled

The United States Bankruptcy Court for the Northern District of Alabama is seeking a senior level executive with experience as an administrator of a diverse and innovative organization to serve as the Bankruptcy Court's Clerk of Court. Exceptional communication and interpersonal skills, along with a proven record of leadership and accomplishment, are required, preferably in a court environment. The Clerk of Court works in collaboration with and reports directly to the Chief Bankruptcy Judge along with the other four bankruptcy judges. The duty station of the position will be located in Birmingham, Alabama.

■ The Position

The Clerk of Court is appointed by the bankruptcy judges and has overall management authority and responsibility for the non-judicial components of the court. The Clerk occupies the highest non-judicial position in the court and works closely with the Chief Judge in assuring that the administrative and operational needs of the court are effectively and efficiently met. The Clerk supervises a staff of approximately 50 clerk's office

employees located in four divisional offices and provides operational support to five bankruptcy judges. As the Court Unit Executive, the Clerk is also responsible for providing administrative support services in the areas of budget and financial management, human resources, systems technology, space and facilities, and court staff. The Clerk serves as the court's liaison to, and works cooperatively with, federal and local government agencies, bar groups, media representatives and the public. The Clerk serves at the pleasure of the bankruptcy judges and is responsible for performing the statutory duties of the Office of the Clerk, pursuant to 28 U.S.C. § 156(e) and (f).

The Clerk of Court performs duties which include, but are not limited to:

- Working closely with the Chief Judge and other bankruptcy judges regarding court administration and policy;
- Creating a vision of excellence through strategic planning in an environment of limited and decreasing resources;
- Providing the administrative and operational infrastructure necessary to efficiently and effectively achieve the court's mission, including hiring, assigning and training of personnel;
- Creating and maintaining a culture that values human resources and the contributions necessary to maintain a good customer service-based organization;
- Directing the processing of bankruptcy cases and adversary proceedings;
- Maintaining the integrity of official court records in the custody of the Clerk;
- Directing and overseeing the court's financial services functions including purchasing, collecting

- fees, authorizing expenditures, accounting and any other fiscal responsibilities in accordance with statutory requirements, ensuring proper oversight in the revision and maintenance of internal control procedures;
- Managing staff responsible for automation and information technology services, statistical analysis and reporting requirements, inventory control and human resources management (HRMIS);
- Preparing and managing the court's annual budget including budgetary and staffing projections;
- Facilitating the court's use of technology and automation;
- Analyzing and making recommendations on statutes, local rules and procedures affecting the operation of the court;
- Directing development and administration of comprehensive emergency preparedness plans;

- Coordinating and preparing statistical studies and reports as required by the court, the circuit, the Administrative Office and the Judicial Conference;
- Managing space and facilities and working with the General Services Administration (GSA);
- Traveling, including overnight stays, as needed;
- Serving as the court's public information officer; and
- Performing special duties as directed.

Qualification Standards

A bachelor's degree in public, business or court administration and/or a Juris Doctorate is preferred. Transcripts must be submitted for verification prior to start of employment.

Candidates must have a minimum of 10 years of progressively responsible administrative experience in public service or business which provided a thorough understanding of the organizational,

procedural and human aspects of managing an organization. At least three of the 10 years' experience must have been in a position of substantial management responsibility.

An attorney who is in the active practice of law in either the public or private sector may substitute active practice on a year-for-year basis for the management or administrative experience requirements.

Experience in the federal judiciary is preferred, with operational knowledge of the courts, legal terminology, office automation applications, including automated case management, a working knowledge of the *Federal Rules of Bankruptcy Procedure* and adversary proceeding case flow.

Excellent judgment, solid organizational, problem-solving and conflict resolution, as well as outstanding oral and written communication skills, are required. The successful candidate should

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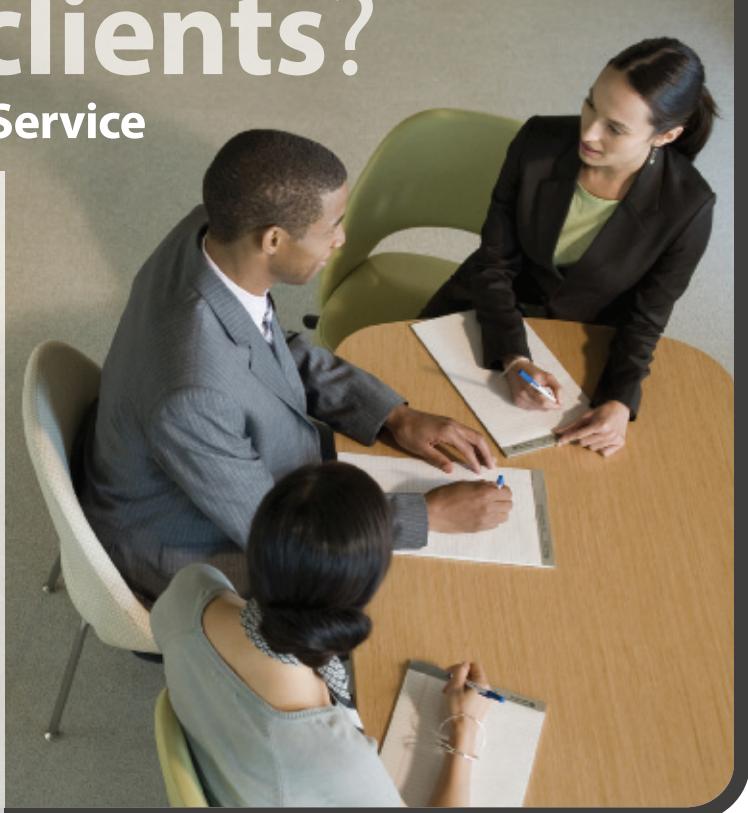
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IMPORTANT NOTICES

(Continued from page 9)

be a leader and motivator who is able to clearly describe his or her demonstrative leadership style, vision and values. He/she should have exceptional presentation skills and the ability to effectively and collaboratively interface and work with judicial officers. He/she should have experience in promoting a culture of high performance and continuous improvement.

■ Procedures for Applying

Qualified candidates may apply by emailing a current resume along with a cover letter stating your interest in the job, salary history or classification level, email address and a daytime telephone number. Also include contact information for three professional references.

The document must be emailed to clerkapplication@alnb.uscourts.gov.

■ Selection Process

The most qualified applicants will be invited to one (or more) personal interviews with the Court. Persons selected for interviews will be required to travel to the designated location at their own expense. The Court is not allowed to reimburse candidates for travel or relocation expenses. Only applicants selected for interviews will be contacted by the Court. Applicants selected for an interview must submit the application for Judicial Branch Employment (AO78) (see link on our website).

Upon appointment, the selectee is required to undergo an FBI background check and investigation.

■ Benefits

Benefits include paid vacation and sick leave, health benefits, life insurance,

disability insurance, retirement benefits, long-term care insurance and a tax-deferred savings plan. This position is subject to mandatory participation in direct deposit for payroll.

■ Notice to Applicants

Clerks of Court of the U.S. Bankruptcy Court serve under excepted appointments and are considered "at will" employees.

Relocation expenses will not be reimbursed.

All applicants must be U.S. citizens or be eligible to work in the United States.

Judiciary employees must adhere to the Code of Conduct for Judicial Employees.

The court reserves the right to modify the conditions of the job announcement, to withdraw the announcement or to fill the position sooner than the closing date without prior notice.

The United States Bankruptcy Court is an Equal Opportunity Employer.



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The Best of the Best



Mentor

Do you know a member of the bench or bar who has been an exceptional mentor to you, your friends or your colleagues? A group at the University of Arkansas Little Rock, William H. Bowen School of Law is seeking nominees for a new study of the very best mentors. The goals of this project are to identify the best law mentors in America, to synthesize the principles by which they mentor junior lawyers and then to share these principles as well as the stories of these mentors by documenting them in a book, *What the Best Law Mentors Do* (Harvard Press forthcoming 2019).

According to Michael Hunter Schwartz, dean of the law school, the goal is to identify attorney mentors who transformed junior lawyers' careers and even lives, study those mentors in depth and understand why they are so effective. Based on this research, a set of behaviors, attitudes and habits that are characteristic of the best law mentors will be identified and described, creating a manual for attorneys who aspire to be transformative mentors, a benefit to legal employers for hiring and training mentors and a tool more junior lawyers might use to find good mentors.

For more information regarding this project and submission of nominations, go to <http://www.bestlawmentors.com/nominate-a-mentor.html>.

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