

# CLERKING — SOMETHING EVERY FIRST YEAR LAW STUDENT SHOULD KNOW\*

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## *I. MAKING THE DECISION TO APPLY FOR A CLERKSHIP*

The decision to serve a judicial clerkship after graduation is an important choice law students should consider. The first and most obvious question a law student might explore when considering a judicial clerkship is what the job entails. On whole, judicial clerkships offer young attorneys an opportunity to apply the research and writing skills they learned in law school to real cases. While every judicial clerkship is a unique experience, there are some very basic similarities shared by most clerkships. Judicial clerks are typically responsible for researching legal issues, summarizing the briefs filed by the parties, and analyzing the parties' arguments. Some judges have their law clerks draft opinions, but other judges prefer to write the opinions themselves. If this type of job interests you, it is never too soon to begin the application process. In fact, most students are shocked when they discover how soon they should begin.

Many judges hire a year or two years in advance. Practically speaking, this means law students should consider and decide whether they want to do a clerkship during their first year of law school. This is a difficult decision to make at a point when students are just beginning to grasp fundamental legal principles and make choices about which extracurricular activities will best prepare them to be good attorneys and help them get a job.

With that said, making the decision at this early stage of law school has several advantages. First, the earlier you make the decision, the better your odds of being hired. As mentioned above, many judges hire clerks two years in advance. If you wait until your second year, you may miss many opportunities. Second, making the decision early will allow you plenty of time to research and select the judges for whom you would like to work. As anyone who has done a clerkship will tell you, the experience varies dramatically

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depending upon your judge. Third, having your job secured before your second year will decrease the stress and anxiety many second- and third-year law students experience.

## II. CHOOSING THE RIGHT JUDGE

Once you have made the initial decision that a clerkship is something that interests you, there are several remaining decisions to make. First, you need to decide whether you wish to do a state or federal clerkship. One factor to consider in making that decision may be what type of law you want to practice. If you choose to practice in an area of law that lends itself to state courts, then you may find a state clerkship more valuable than a federal clerkship. That aside, federal clerkships tend to be more prestigious and typically pay more money; however, they are also more difficult to obtain. One way to increase your chances of getting a federal clerkship is to be flexible in where you are willing to live.

A second decision is to decide how long you are willing to work as a judicial clerk. Some judges only hire for a year, but many hire for two years. Some judges prefer to hire for one year and reserve the option to have the clerk stay for a second year. Still other judges prefer to hire permanent clerks. Length of service is an individual matter within the judge's discretion. When you are researching judges, this is an important piece of the puzzle. If a judge is looking for a permanent clerk and you are only interested in a one-year position, then you should not apply for that clerkship.

Third, you will need to decide whether you would like to work for a trial judge or an appellate judge. This decision will most dramatically affect your experience as a law clerk. If you chose a trial court, you have more opportunities to observe trials. Appellate clerkships involve more research and writing, but allow you to observe appellate oral arguments. Again, this decision can be shaped according to the area of law that you ultimately want to practice. If you want to be an appellate lawyer or a law professor, then an appellate clerkship would probably prove more valuable. However, the converse is not necessarily true. If you do not want to practice appellate law, an appellate clerkship can still be valuable because it will teach you what types of errors are common at the trial level and how to preserve the errors for appeal. Typically, appellate clerkships are considered more prestigious than trial level clerkships.

Another way to select clerking positions is to choose a judge

who handles cases in an area of law in which you may want to practice. For example, if you know you want to go into bankruptcy law, then you could narrow your potential judges to only bankruptcy judges. Be careful in narrowing your selection too much, however, because it is difficult to truly know what type of law you want to practice in your first and second years of law school. A clerking position which offers a broad range of issues may prove to be more valuable than a clerking position in which you are limited to one precise area of the law.

### III. PROS AND CONS OF A CLERKSHIP

Many first- and second-year students are not familiar with the pros and cons of a post-graduation judicial clerkship. When asking my fellow clerks how they feel the experience has benefitted them, the unanimous response was that it had improved their writing and analytical abilities. Another commonly agreed upon benefit is the increase in employment opportunities after the clerkship is finished. Many firms recruit former law clerks because they feel the clerks have better writing and analytical skills than students right out of law school. These firms often offer additional signing bonuses. Currently, many larger firms are offering an additional five thousand dollar signing bonus for attorneys coming from one-year state clerkships and ten thousand dollar signing bonuses for attorneys coming from one-year federal clerkships. Many firms will also often give judicial clerks credit for the time they spent clerking. Several firms offer one year of credit towards the firms' partnership tracks for two year clerkships.

However, one of the biggest complaints about clerkships is the pay. Currently, the starting salary for a Florida state judicial clerkship is approximately \$36,000, while the starting salary for a federal clerkship is approximately \$40,000.

A second con of clerkships is that finding a job while you are in law school is easier than finding one after you get out because firms come to the schools to recruit. When looking for a job after graduation, attorneys must be more proactive. One potential cure for this clerking hazard is to go through the on campus interviewing process, even if you have already agreed to do a clerkship after graduation. Many firms will still hire you as a summer associate despite the fact that you will not be available to work for them right after graduation because they hope you will return to the firm after your clerkship expires.

A final reality of clerkships that may be a pro or con is the reality of what you will do on a daily basis as a judicial clerk. The vast majority of your day as a clerk is spent either researching an issue or writing briefs and opinions. Some clerks enjoy this process, while others feel confined or frustrated because they are stuck at their computer.

#### IV. STRATEGY FOR GETTING A JUDICIAL CLERKSHIP

While there is no substitute for attending a good law school, good grades, and law review, there are some less obvious strategies that can be employed when applying for judicial clerkships. Information is the key. The more you know about the judge for whom you are applying, the more likely you are to get the job. For example, if you know Judge X likes fishing and you like fishing then you can add an "Interest" section to your resumé that includes fishing.<sup>1</sup> If you discover Judge X went to your college or law school, or perhaps has a son or daughter that went there, you immediately have a bond, a commonality. Commonalities bring judges and clerks together. Several times I have seen clerks hired who did not have the best resumé, merely because they clicked with the judge.

A second strategy is to contact former judicial clerks. First, the former clerk can tell you about his or her experience in working for that judge. As stated earlier, clerking experiences differ dramatically depending upon the judge. Therefore, it is important to choose a clerkship that offers you a positive experience. Second, the former clerk may be willing to advise you on how to best structure your resumé to get an interview with the judge and perhaps even provide some interviewing tips. Third, if you meet a former clerk and have an opportunity to talk with him or her, you may find the former clerk willing to give you a recommendation. There is no substitute for a personal recommendation from a former clerk. Judges often become close to their clerks and trust their advice. For example, former Florida Supreme Court Justice Ben Overton has a reunion every year for all of his former law clerks and their families. In fact, he and Mrs. Overton often refer to their former clerks as their "children," despite the fact that many of their "children" are successful attorneys who have been practicing for twenty-five years or more.

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1. Of course, you would never want to misrepresent your interest because this could cause you to be embarrassed at an interview or even after you have been hired.

A third strategy is to call the judge for whom you would like to work and offer to spend a summer as an intern working for free. Judges frequently allow law students to intern for them during the summer. After all, judges often have more of a case load than they can handle and additional help is always welcome. Some schools have programs that allow students to get credit for summer internships. However, if there is not such an established program within your school or with the judge for whom you would like to work, then you are almost in a better position because calling on your own to set up an internship shows you are ambitious. Once you have the internship, you can impress the judge with your skills and charming personality.

A fourth strategy, which is particularly helpful for students who decide they want to do a clerkship in their last year of law school, is to look for newly appointed judges. As they are newly appointed, they probably have not hired clerks in advance. Perhaps the best way of learning this information is to contact the clerk of the court where you would like to work and simply ask if there are any new judges being appointed.

A fifth strategy for obtaining a clerking position is to take the back door route. Many courts have central staffs or senior staffs, where attorneys work for the court instead of a particular judge. The competitions for these jobs is often not as steep as it is for the clerking positions. Once you have a job working for the central or senior staff, you have the inside track to getting a clerking position by doing a good job and letting it be known that you are interested in clerking for a judge if a position becomes available.

## V. CONCLUSION

Clerking for a judge can be one of the most valuable experiences a young attorney can pursue. While it may be a financial burden in the beginning, it opens many doors and can provide future monetary rewards. Just remember to start looking early and get as much information as possible to choose the right court and judge for you.