



Clerkships

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“The year I spent as a clerk was the most intellectually challenging and relaxing year of my legal career.” -Former law clerk

Introduction

Most lawyers describe the year they spent clerking as the most relaxing, intellectually challenging, and interesting year of their lives. And this is really the essence of a clerkship. It allows you to see the inner workings of the legal system, work closely with a judge, and will provide you with a level of illumination about the legal system itself that you can carry with you throughout your legal career. A clerkship is one of the highest honors in the legal profession, and there are many places you can clerk. Almost every law clerk has many positive things to say about his/her clerkship experience. There are numerous advantages of taking a clerkship:

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- **Knowledge**-Clerking is the way to see how the legal system operates from the inside. By understanding how the system works, you may arguably be a more effective litigator once you start practicing law because you will better understand how your work will be evaluated by the court.
- **Training**-You are likely to receive close training and supervision by your judge. Most clerks discuss legal issues with their judges on a daily basis and are therefore exposed to their judges' thinking process on an ongoing basis. In addition, clerks have their work critiqued by judges on a day-to-day basis, which far surpasses the level of training most attorneys receive in most other legal environments. Due to the close supervision and training most clerks receive during their clerkships, your legal skills are likely to develop significantly while clerking.
- **Contacts**-If you plan on practicing in the area of the country where you clerk, you will have an excellent opportunity to evaluate the skills and abilities of the attorneys practicing in your court. In addition, since you will be interacting with many of these attorneys on an ongoing basis, these same attorneys will also be evaluating your skills and abilities and will be potential contacts for employment once you begin work.

A little-known fact is that you can be a clerk at any point in your career. Clerkships are not just for recent graduates. They are also for people who have been practicing for quite a while and seek the opportunity to give something back to the legal system. The skills and level of insight you acquire during your clerkship will help you throughout your career, regardless of what practice area you are in.

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Different Types of Clerkships

In evaluating whether or not a clerkship will make you marketable, it is important to understand the differences between various types of clerkships; namely, state and federal clerkships. The distinction between federal and state clerkships is examined below.

Federal court clerkships

Federal court clerkships are typically considered the most prestigious. At the Federal level, the order of prestige of clerkships is typically considered: (1) the Supreme Court, (2) circuit (appellate) clerkships, (3) federal district court (trial court) clerkships, (4) clerkships with United States magistrates. There are also several specialized courts (such as Federal Tax Court) that are on approximately the same level as federal district court clerkships; however, they are not quite as prestigious.

The most prestigious clerkship you can do is with the United States Supreme Court. Here, you will typically be working closely with a judge and evaluating the decisions made by lower courts. While some cases can go immediately before the Supreme Court, most cases the Supreme Court rules on were originally before other federal appellate courts. Accordingly, as a Supreme Court clerk, you will most often be making rulings on cases which have already been evaluated at the appellate stage.

The work you do as a clerk for the Supreme Court is extremely important work, and the issues you work on are often in the papers and involve profoundly important national issues. Virtually all attorneys who clerk for the United States Supreme Court can literally “write their own tickets” in terms of the firms they join following their clerkships. Many Supreme Court clerks end up going into academia, however. Most Supreme Court clerks are coming from the best law schools and were the top students of their respective law schools. A high proportion of Supreme Court clerks are graduates of Harvard and Yale Law Schools, for example.

Next in prestige comes a clerkship with a federal circuit court (i.e., appellate court) judge. The attorneys who get appellate court clerkships also are typically the top students of their respective law schools. As an appellate court clerk you are typically responsible for reviewing the opinions of a federal district court (i.e., a trial court). Many attorneys do an appellate court clerkship before applying to be a clerk for the United States Supreme Court.

As an appellate court clerk (which you will be if you clerk for the Supreme Court or a circuit court), most of your work will be research-based work. You will be working on evaluating opposing appellate briefs, as well as the trial record of the district court, and formulating opinions regarding the proper interpretation of the law. Very little of the work you do will involve going to court; however, you will attend oral arguments from time to time. Most appellate court clerks describe the work they do as quite “academic.” While many appellate court clerks end up practicing inside law firms, a high number also go on to government or teaching positions.

Beneath a circuit court clerkship is a clerkship with a federal district court. Here, you will be working closely with a federal district judge. Most of the work a federal district judge does involves ruling



on matters leading up to and during a trial. Accordingly, you will be exposed to discovery disputes, numerous oral arguments on issues such as summary judgment motions, and federal criminal trials. There are far more federal district judges than there are circuit court judges.

One of the advantages of a district court clerkship is that you are exposed to actual trials. The workload also tends to be much faster paced than the work done by circuit court judges. Here, you are likely to know many attorneys practicing in the area and very quickly get an understanding of the skills and abilities of the respective attorneys practicing in the area of the country you are in. Most clerks for federal district judges end up becoming litigators inside law firms once their clerkships are completed.

Supreme Court, Circuit Court, and District Court judges are all appointed by the President of the United States for life and must be confirmed by the United States Senate. In addition, given the serious screening which occurs for judges at the federal level, most of the judges appointed tend to be very well accomplished attorneys in their own rights before being appointed. Accordingly, the position generally has a great deal of prestige.

Beneath these federal clerkships is a clerkship with a United States Magistrate Judge. Unlike other federal clerkships, federal magistrates are not appointed by the President of the United States and also are not appointed for life. A United States Magistrate typically works on procedural and other matters for which the Federal District Judge does not have time. Thus, for example, the Magistrate may work with attorneys on discovery matters until a trial occurs or may be the first person to arraign a defendant in a criminal matter.

In addition to Magistrate Judges, there are also clerkships available with Federal Tax Judges and Federal Bankruptcy judges, for example, in addition to other specialized federal courts. These clerkships are often the best clerkships a future bankruptcy attorney or tax attorney could hope for. While these clerkships do not carry the same level of prestige as some other federal clerkships, they do offer the type of specialized training that can be of enormous benefit to clerks wishing to spend their careers in a specialized practice area.

State Court Clerkships

Clerking for a state court will give you important and meaningful local roots and contacts. There are generally the same distinctions at the state level as there are at the federal level for clerks. Thus, for example, there will be a supreme court, an appellate court, and a trial court. Within this spectrum, there will also be further distinctions.

Unlike clerking at the federal level, a clerkship with a state court does not consistently carry the same level of prestige as a clerkship with a federal court. Some state court judges are elected by a popular ballot, for example. Accordingly, the quality of judges tends to vary widely.

In addition, a clerkship with a state court judge is often not the wisest choice for attorneys wishing to practice in other areas of the country following their clerkships. While a clerkship with a federal district judge can potentially make you marketable anywhere in the United States, clerking with a state court judge may not necessarily do the same.



While some of the above may not sound all that positive, the fact of the matter is that most of the clerkships available throughout the United States are at the state level. In addition, the contact between clerks and attorneys in a given area tends to be much more profound at the state level than at the federal level. Thus, if you are quite sure you want to practice law in a given area of the United States, you may in some cases be better served clerking at the state as opposed to the federal level. At the state level, you are also more likely to be exposed to a much busier docket and a wider array of litigation.

In addition, most cases that attorneys work on are in state and not federal court. Thus, you are likely to receive exposure to the types of cases and the law that you will actually be dealing with once you commence practice. At the federal level, the cases decided are those involving diversity jurisdiction or federal law. Such cases comprise a small amount of the types of cases most attorneys work on in day-to-day practices inside law firms. Therefore, in many respects, a clerkship with a state court will better prepare you to work in a law firm.

About Getting a Clerkship

Despite the obvious advantages of working as a law clerk, most Legal Authority clients approach us because they are seeking positions inside a law firm or a corporation. Almost everything in life requires a cost-benefit analysis. Certainly most clerkships do not pay salaries as high as most law firms or corporations. Nevertheless, the experience of being a clerk and the knowledge you carry forward after a clerkship more than compensate for the lower pay rate.

“Clerkships are not available only to students.”

There are a few legal myths that surround getting a position as a law clerk. Some of the more common ones are addressed below. The biggest misconception is that clerkships are only available to the very best students. This is simply not true (But don't feel that you have to tell anyone about this after you have clerked. Let them think what they will.).



Legal Myth

Only people who were on law review at Harvard Law School can get a clerkship.

Getting a clerkship is next to impossible because there are hundreds of applicants for each position.

You can only get a clerkship in the area of the country where you are from.

LEGAL AUTHORITY

There are thousands of clerkships. Certainly, the more prestigious clerkships can be more difficult to get and will take into consideration your law school as well as your grades. Nevertheless, there are numerous opportunities to clerk across the nation. You just need to know where to look.

For example, every state in the country has federal as well as state clerkships available. How many people do you think are applying to be federal law clerks in South Dakota? One of the secrets of landing a clerkship at the federal (and state) level is bringing sufficient depth to your search by making the most applications.

Think again. With the salary increases of law firms that began in 2000, the number of people applying for clerkships declined drastically. In some cases, federal district judges (traditionally considered one of the more competitive types of clerkships to get) received fewer than 15 applications per position.

At the state level, this problem is even more pronounced. While salaries in the private sector have increased fairly dramatically over the past several years, they have not increased at nearly the same pace in the federal and state governments. Accordingly, throughout much of the United States, applications for clerkships have declined dramatically. In addition, many judges must make numerous offers to fill each clerkship position.

You can get a clerkship in any area of the country. While some state court judges are more receptive to local attorneys, the fact is that judges are seeking the best applicants for the positions they have available.

Questions about clerkships? Contact Legal Authority at 800-283-3860 today.