



## Judicial Clerkships—The Ups and Downs and the Ins and Outs

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The tradition of young lawyers serving as law clerks to experienced members of the judiciary is a long and important one. The impact of judicial clerkships on the careers of attorneys can be seen in a review of the biographies of prominent members of both the bench and the bar. A clerkship experience provides a unique perspective on judicial decision-making, and in many ways, serves as a capstone experience for a student's legal education.

The duties of a judicial clerk are defined by the needs of the individual judge and will vary depending on the nature and extent of the cases pending before the court. Typically, judicial clerks perform legal research, prepare memos and draft orders, write draft opinions and stipulations, assemble documents, and perform other duties as the judge may require. The clerk will often spend an extensive amount of time reviewing motions, memoranda, briefs, and other documents submitted to the court. Most judges use their clerks as a sounding board to prepare for argument and discussions; therefore, judges often expect their clerks to be well briefed on the legal issues and facts of the various cases. Judicial clerks often accompany the judge to trials, hearings, and conferences, and may occasionally take part in the discussions.

Although some clerks have secretarial assistance, most clerks find that moderate typing and word-processing skills are a prerequisite for the job. Work and library facilities are generally more than adequate. Clerks typically work Monday to Friday from 8:30 or 9:00 in the morning to 5:30 or 6:00 in the evening, but many put in longer hours. There is occasional evening and weekend work, particularly immediately before the court hears a case. In exceptionally busy courts, night and weekend work may be common. A few judges have permanent career law clerks. However, most law clerks are recent graduates from law school. A clerk is generally appointed for one year, but some courts—particularly trial courts—appoint law clerks for two-year terms. Federal judges typically have one to four clerks, most often two or three. State appellate judges generally have two clerks, and state trial judges generally have a single law clerk, if at all.

In addition to law clerks working for individual judges, many courts have staff law clerk positions. Staff law clerks work for the entire court, doing work on assignment or by request from different judges. A few courts have only staff law clerks. The federal courts employ pro se clerks that provide administrative assistance to litigants who are not represented by an attorney. Some federal courts also have motions clerks that handle procedural matters before cases are assigned to judges. Finally, some state trial courts have clerk-bailiff or trial clerk positions. These clerks engage in smaller projects requiring fast work. For example, they may be called upon to research points of law during a recess to aid the judge in making rulings during the trial. In jurisdictions where trial judges write opinions, a trial clerk will work on the opinions in the same way as an appellate clerk. Because of the press of business in trial courts, clerks may have considerable responsibility for minor matters and administrative duties. Trial clerks usually spend much of their time in the courtroom.



## **Advantages of a Clerkship**

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A position as a judicial clerk provides a student with an exceptional educational opportunity. Clerking provides an insight into the process of judicial decision-making. It also provides exposure to the documents, procedures, and functioning of the litigation process. Perhaps most importantly, it provides the opportunity to strengthen analytical skills and legal writing abilities. Often, judges will serve as mentors to their law clerks, providing the clerks with insights into the practical aspects of law practice and suggesting additional preparation for each clerk's future career. This role is often an informal one and may consist of critiquing the clerk's analysis, making suggestions regarding writing styles, or discussing the advocacy style of attorneys coming before the court. All of these experiences combine to improve the preparation of the clerk for his or her future legal career.

In summary, a judicial clerkship is not merely a job; it is a continuation of the student's legal education and preparation for a future legal career. Clerking also has practical advantages for the student. Legal employers recognize the benefits of the clerkship experience and consider them heavily in making hiring decisions. A federal appellate level clerkship has almost become a prerequisite for many law school-teaching positions. In addition, law clerks gain exposure to local practice and to the local bar where they will practice, particularly if the clerk is at the state court level. In some instances, such as in a family court or bankruptcy court, the opportunity will enable the clerk to develop an area of expertise upon which to build a future legal practice. Finally, the recommendation of a judge known in the legal community will carry a great deal of weight with potential legal employers.

## **Disadvantages of a Clerkship**

There can be some disadvantages to judicial clerkships. The workload is sometimes extremely heavy, and an eccentric judge can make for an unpleasant year or two. Additionally, some people find themselves bored by the seemingly endless research required by appellate court clerkships; the work can often seem very much like a one-year internship with the Law Review. In addition, most clerkship provides a modest paycheck, which can be difficult to accept when classmates are earning high salaries. (However, many large law firms provide a clerkship bonus if a law clerk joins the firm upon completion of the clerkship. Some firms may also count the year(s) spent at the clerkship as a year toward making partner.)

## **Getting a Clerkship**

Getting a clerkship is not easy, especially on the federal level. Most federal court clerkships are extremely competitive, and it is not uncommon for a court to be filled with clerks that graduated in the top five percent of their classes, especially at the appellate level. State appellate court clerkships are also competitive; however, state judges are often willing to consider more than grades and Law Review positions when making hiring decisions. Trial court clerkships are the least competitive, but even these positions often attract dozens, and sometimes hundreds, of resumes.



Clerkship applicants need to submit a letter of application, a resume, law school and undergraduate transcripts, two or three letters of recommendation from people familiar with their legal work, and, in some cases, a recent legal writing sample. At least one, but preferably all, of the letters of recommendation should come from a law school professor. In addition, students are more likely to receive a clerkship offer if someone recommends them that the judge knows. Students considering judicial clerkships should learn as much as possible about both the positions and the judges prior to submitting applications for particular positions. To learn more about a judge's writing style and approach to types of cases, students should read reported decisions, which can be obtained by performing a search on Lexis Nexis or Westlaw. The student should also consider the legal community in which the clerkship will be performed and the composition of the bar in this locale. Finally, in an effort to assure that their clerks will enjoy their experiences, some judges prefer to hire clerks with some connection to the location of the judge's chambers.

## Courts with Clerkships

### *The Federal Courts*

Judicial clerkships are available on both the federal and state levels. Federal courts hear cases when the questions of law involve federal law, the United States government is a party in the case, or there is diversity of citizenship between parties (i.e., the parties are citizens of different states). Below are brief descriptions of the various United States federal courts:

- **The United States Supreme Court:** This is the highest court in the United States. It has authority to hear an appeal from both federal and state court decisions.
- **United States Courts of Appeals:** There are 13 United States Courts of Appeals, including the Federal Circuit, the DC Circuit, and the First through Eleventh Circuits.
- **United States District Courts:** Ninety-four district courts make up the trial level of the federal system.
- **United States Bankruptcy Courts:** Bankruptcy Courts handle individual and business reorganization and insolvency matters, exclusive of state court jurisdiction. Each district of the United States has a Bankruptcy Court.
- **Special Courts:** A number of Special Courts have been created to resolve disputes in specific areas. These courts include
  - *US Court of Federal Claims:* Decides claims brought by individuals and business against the federal government (other than tax claims)
  - *US Court of International Trade:* Has jurisdiction over tariff conflicts and hears appeals from the United States International Trade Commission
  - *US Tax Court:* Hears taxpayer appeals involving income, estate, and gift taxes
  - *US Court of Appeals for the Armed Forces:* Comprised of five civilian judges who review court martial appeals
  - *US Court of Appeals for Veterans Claims Appeals:* Reviews decisions of the Board of Veterans' Appeals
  - *Administrative Law Judges:* Approximately 1,400 judges in 29 administrative agencies hear cases pertaining to their particular agency



- *Magistrates:* Appointed for a term of eight years and hear pretrial matters such as bond hearings and motions, conduct settlement conferences, and issue search and arrest warrants in federal criminal matters; magistrates may also try persons that are accused of minor offenses when designated to do so by a district judge

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### ***The State Courts***

Most states have courts at three levels: trial, intermediate appellate, and highest appellate. These courts hear cases dealing with issues arising under state law, including contract disputes, torts, criminal prosecutions, divorce and custody matters, and probate of estates. In some circumstances, state courts may also adjudicate federal law issues. The following are general descriptions of the functions of each state court:

**Highest State Appellate Court:** This court is generally considered the final authority on state legal issues; however, the United States Supreme Court can hear appeals from its decisions. Most states refer to this court as the state supreme court, though some states call it the court of appeals (e.g., Maryland Court of Appeals, New York Court of Appeals). All 50 states have a highest state appellate court.

**Intermediate Appellate Court:** States typically create this court to help lighten the caseload of the highest appellate court. An intermediate appellate court often hears appeals that have been statutorily assigned to it. However, the highest state court generally has the option of sending down any issue to the intermediate court for decision. Most states refer to the intermediate court as the state court of appeals, but some states use different titles, such as the Florida District Court of Appeals, the New Jersey Appellate Division of Superior Court, and the Pennsylvania Superior Court. Some states, such as Alabama and Tennessee, have separate intermediate courts for civil and criminal matters. Forty of the 50 states have at least one intermediate appellate court.

**State Trial Courts:** Most cases involving state law—and many that involve federal law—begin in a state trial court. In these courts an entire case is presented to a judge or jury. Because of this, trial courts are often much more emotionally charged than the comparatively sterile and serene environments of the appellate courts. Although some trial courts are specialized, such as the Delaware Family Court and the Hawaii Land Court, most trial courts hear cases in every area of the law. Keep in mind that application deadlines can be as early as two years or as late as a few months before the term begins, depending on the particular court.