



## Which is Better A Federal or State Clerkship?

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It depends. As discussed below, a state court clerkship will generally enhance your marketability if you are planning on working in the state where you are clerking. Nevertheless, the value of a clerkship should not necessarily be something that you view as a tool to make you marketable. Most importantly, the skills and insight you will acquire during your clerkship will be something that should help you throughout your career.

### **A. A State Court Clerkship Will be Most Likely to Make You Marketable if You Are Considering Working in the State Where You Will be Clerking.**

It is useful to examine some of the differences between different types of clerkships. Each type of clerkship has its advantages and disadvantages. In order to help you understand the role a clerkship will have in your marketability, I believe it is useful to examine the differences between federal and state clerkships.

#### **1. Federal Clerkships**

At the Federal level, the order of prestige of clerkships is typically: (1) the Supreme Court, (2) Circuit (Appellate) clerkships, (3) Federal District Court (trial court) clerkships, (4) clerkships with United States magistrates (who do a lot of the "grunt work" for Federal District Judges). There are also several specialized courts (such as Federal Tax Court) which are of approximately the same prestige level as Federal District Court clerkships.

Appellate clerkships involve mainly research and writing about issues the trial court has already ruled on. This involves reviewing the lower court's rulings for errors the District Court may have made when it ruled. Appellate clerkships typically involve more arcane and novel issues of law than are typically litigated at the trial level. In an appellate clerkship you are less likely to get to know the lawyers involved.

District Court clerkships involve actual issues being litigated at the trial court level and typically have more in-court action. In a district court clerkship you may see many of the same lawyers in court day in and day out. In a Circuit Court clerkship, you are likely to see the attorneys involved only when they present their appellate arguments in court.

There are also numerous distinctions between clerkships at the Federal level. For example, clerking for the Chief Justice of the United States Supreme Court is generally considered the most prestigious clerkship there is. Similarly, a clerkship with a federal district judge in the Eastern District of New York is more prestigious than a clerkship with a federal district judge in Bay City, Michigan, for example. Attorneys who clerk for the most prestigious judges are typically those whose "marketability" is likely to be increased as a result.



Typically, the most prestigious clerkships have been those with federal judges. At top national law schools, students compete very aggressively for federal clerkships and do so more so than they do for state judicial clerkships. Given the prestige of a federal clerkship, it can often make you marketable far beyond the geographic area where you are clerking.

## 2. State Court Clerkships

There are different distinctions in the state court system; however, in general, you also have a supreme court, appellate courts and trial courts. The same prestige distinctions are also present at the state level, with a state supreme court clerkship being the most prestigious. Just as certain federal district courts in various geographical locations are considered prestigious places to clerk in, so too are the state courts in different states. In general, if you are clerking for an appellate court in a major state, this will be more prestigious than if you are doing the same thing in a smaller state.

The problem with a state court clerkship is typically something that is also an advantage. While a state court clerkship will not necessarily increase your chances of being marketable anywhere throughout the United States, it can do you a tremendous amount of good in the area where you are clerking. *Clerking for a state court will make you a candidate with important local contacts.* The fact of the matter is that most litigation is actually conducted in the state courts. Accordingly, a state court clerkship will most likely provide you with a better understanding of state law than you would ever get as a federal clerk. If you are planning on working in the area where you are clerking, the state court clerkship should be enormously valuable.

You need to remember that accepting a clerkship is much like the decision of where you decided to go to law school. There are major national law schools that vary in prestige and there are smaller local law schools that vary in prestige. For example, attending a law school like Yale is going to give you a serious advantage when you are applying to positions throughout the United States. A law school like Yale might be compared to clerking on the Supreme Court. Conversely, a smaller more local law school like the University of Toledo is not going to give you as much an advantage throughout the United States. This school will, however, probably give you good options in Toledo, Ohio.

Accordingly, before you accept your clerkship, I would recommend having a good understanding of whether or not you want to work in the area where you will be clerking. The clerkship is most likely to make you marketable if you are seeking to work in the state where you are clerking. I would also do some research into where the judge's former clerks ended up working. By learning this you can also get a decent idea of what your marketability might be following the clerkship.

Additionally, you have stated a concern about being "marketable"; nevertheless, you have not told me where you would like to be marketable. Do you want to be marketable in the area you are clerking in? Do you want to be marketable to a law firm, corporation, public interest group, prosecutor's office? You get the idea. You should also think through the answers to these questions as you are deciding whether or not to clerk.



**B. The Value of Your Clerkship Should Not Necessarily be Viewed as a Tool to Make You Marketable**

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Clerking is something that gives you tools and memories that most clerks carry with them throughout their careers. When you sit on the judge's side of the bench, you get the feeling that you are really part of the **legal process** and have the idea of how decisions are made and the implications these decisions have on peoples' lives. Most clerks 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 will carry with you throughout your **legal career**.

My belief is that you should not clerk simply because you think it is something that will get you a better position. A clerkship is something that you should do because it will add depth and meaning to your future legal career. I do not believe that a state court clerkship (especially with an appellate judge) can possible hurt you in your marketability. Indeed, the skills and understanding you pick up during your clerkship will be something you can carry with you throughout your career.

C. Conclusions

In order to determine whether you should take a state court clerkship, it will be important that you analyze whether or not you want to work in the area of the country where you may be clerking. While a state court clerkship is typically not as prestigious as a federal one, it is something that can provide you with important local contacts and knowledge of state law. More importantly, I seriously doubt that a state court clerkship will hurt you. Instead, a state court clerkship will provide you with tools and an understanding of the legal system you can carry with you throughout your career.

While I have saved this for last, I believe that an important component of your question involves a brief discussion in this conclusion. You are a second year law student and it is only December. If your goal is to be marketable to a law firm, you may be "barking up the wrong tree" at this point by simply seeking a clerkship. Instead, you should accelerate your job search and apply to more law firms and look at more sources of information if working in a law firm is something you want to do. If you are considering accepting a clerkship just to make yourself more marketable, you are not doing yourself, the judge you will be working for, or the justice system itself any favors.