

DUQUESNE UNIVERSITY SCHOOL OF LAW

GUIDE TO JUDICIAL CLERKSHIPS



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GENERAL INFORMATION

INTRODUCTION

A judicial clerkship provides a valuable opportunity to deepen your understanding of the legal system. The benefits are many.

- You learn a great deal about the law, legal procedure, and courtroom practice.
- You have the opportunity to view the legal process from a judge's perspective and to gain an important mentor.
- You have the opportunity to network with practicing lawyers and other legal professionals.
- You have advantages when pursuing law firm positions.
- A judicial clerkship strengthens your resume and opens doors to opportunities.
- You may have an opportunity to spend time in a new area of the country and that experience can also enhance your resume and open doors to new opportunities.

Judicial clerkships exist at federal and state levels, in trial and appellate courts as well as in specialty courts. This **GUIDE TO JUDICIAL CLERKSHIPS** introduces you to judicial clerkships and the application process. Please use it in conjunction with the resources available in the Career Services Office.

DUTIES OF LAW CLERKS

Research

Research defines the role of the law clerk. Every law clerk will perform research to find, in printed or electronic form, cases, statutes, regulations, or scholarly commentary (such as Restatements) relevant to the questions presented to the court. Such questions are most likely to be presented by a particular case before the court, but they can sometimes arise from a judge's request for an answer that he or she believes would be useful. Depending upon the context, the law clerk may report the results of such research to the judge orally and informally (as, for example, when supplying a quick answer while the judge waits to rule from the bench). Otherwise, the law clerk may report in writing through formal legal memoranda.

Analysis

In addition to conducting research, law clerks are often asked to analyze contradictory versions of facts or law. Conducting research and analyzing contradictory versions of facts or law are rarely distinguished in law school, where facts and issues can be artificially limited to those necessary for a specific lesson on a particular legal doctrine. It is very different with real cases. A trial judge's resolution of a case requires him or her to make findings of fact before making conclusions of law. Disputing parties will have offered contradictory evidence in various forms which must be sorted, compared, and evaluated in order to arrive at the judge's preferred version. The judge's preferred version becomes a finding enunciated in the opinion to justify the ruling. Some courts permit the parties to propose findings of fact; in these courts, the law clerk analyzes record facts before endorsing to the judge one among the competing findings offered by counsel. In courts where the parties do not customarily propose findings, it is the law clerk who typically drafts findings for the judge's adoption after scrutinizing the pleadings, transcripts, and exhibits. So, too, law clerks in appellate courts review the record to establish whether the trial court has found accurately the facts upon which the appellate court's disposition can rest.

Drafting

Law clerks typically draft memoranda for use by their own and other judges. A memorandum for use within chambers may be less formal than a memorandum for circulation to other chambers. A law clerk should first make sure he or she has understood, completely and precisely, the subject and purpose of the required memorandum. In preparation for a hearing, a law clerk scrutinizes the pleadings and exhibits in order to prepare a clear summary of the relevant facts, and examines the pleadings in order to prepare an evaluation of the legal points and authorities relied upon by each side. The resulting memorandum is commonly called a bench brief or a bench memo. In appellate courts, the judges often divide among their clerks the chore of preparing bench briefs or memos for the cases scheduled each court day and share their work product with the other judges assigned to hear each case. Some law clerks will

also draft documents for the record such as orders, jury instructions, or opinions. Among those who draft, some will see much of their draft appear in the judge's final version. For those who are expected to produce a first draft, it is important to realize that the draft belongs not to the clerk but to the judge. A clerk's draft has served its purpose even if it serves only as a stimulus for the judge's own crafting of an instruction or opinion.

Editing

All law clerks edit. They typically read drafts produced by their judge, by a party, or even by another law clerk. This is more than simply editing for clear communication; it presumes the clerk had an adequate prior acquaintance with the facts and the law to make astute judgments about what has been written. Editing also includes proofreading, verifying quotations, and correcting citations to the court's standard or Bluebook form as appropriate. When opinions have been chosen for publication, a law clerk proofreads again before transmitting the opinion to the publisher and again when it appears in advance sheet form. The misplacement of a mere comma can prove embarrassing to the judicial author so meticulous proofreading is required—and expected.

Filing

The clerk of court (sometimes called a prothonotary in state court systems) is responsible for maintaining the master file for each case formally entered in the court. When that file is in the judge's chambers, it may be considered on loan from its custodian, the clerk of court. Judges maintain their own files in their chambers; some of these files may pertain to active cases. Others preserve the judge's collection of important documents in completed cases, or paperwork associated with collateral matters such as judicial council activities, speeches, or court administration. Law clerks often assist in keeping these files complete and current.

Calendar Scheduling

Some law clerks keep their judge's calendar, scheduling meetings, telephone calls and conferences at the judge's direction and, within guidelines set by the judge, rescheduling at the request of the parties. Because law clerks act in a representative capacity, his or her communications with attorneys should always be formal, tactful, and discreet.

Taking Notes

Law clerks take notes at hearings and during in chambers meetings where he or she assists the judge. These notes are for the aid of the judge as well as the law clerk, enabling them to refer to a source other than an interested party in order to refresh their own recollections of what was said and decided. Chambers meetings are not always recorded verbatim, leaving the judge with only the notes of his or her clerk as an alternative to interested parties' recollections.

JUDICIAL CLERKSHIP OPPORTUNITIES

There are a variety of judicial clerkships available to graduating law students and alumni. Opportunities exist at both the federal and state levels as well as at the trial and appellate level within each system. Clerkships generally last one to two years. A few are career clerkships where a judicial clerk works for a judge for an indefinite period of time.

Competitiveness of the application process varies by court and by judge. Clerkships at the federal level are more competitive. In 2015, for example, there were 2,261 applications for 12 clerkship positions in the United States Court of Appeals for the Third Circuit listed in OSCAR.

Due to the record number of applications at the federal level as well as the state level, it is imperative for applicants to start the application process early, to strategize, to determine where to apply, and to submit well polished materials to a variety of courts and judges.

APPELLATE VS. TRIAL CLERKSHIPS

There are similarities between trial and appellate clerkships. Both entail extensive research, analysis, and writing. However, the daily responsibilities vary between the two types of courts.

Appellate Court Clerkships

Typical duties include researching and drafting memoranda on issues raised for appeal, drafting opinions, reading briefs, and attending oral arguments.

Trial Court Clerkships

Typical duties include researching and drafting trial memoranda, attending oral arguments, writing jury instructions, and performing administrative tasks. Trial court clerks have the opportunity to meet and observe a variety of legal professionals with a weekly schedule of hearing motions.

COURTS WHERE CLERKSHIPS ARE AVAILABLE

United States Supreme Court

The Chief and Associate Justices may hire up to 30+ candidates for these most competitive and prestigious of clerkships. Previous clerkship experience is usually required, typically in a federal court of appeals or in a federal district court.

Federal Court of Appeals

The thirteen federal courts of appeal include the First through Eleventh Circuits, the Federal Circuit, and the District of Columbia Circuit. The federal appellate court that includes Pennsylvania is the United States Court of Appeals for the Third Circuit. Most federal circuit judges hire three to four clerks for highly competitive and prestigious one-year positions. Many hire only experienced clerks who have previously clerked for a federal district court judge.

Federal District Courts

There are ninety-four federal district courts serving as the trial-level of the federal court system. Most federal district judges hire one to two clerks for highly competitive and prestigious positions of one to two years. The U.S. District Court for the Western District of Pennsylvania has chambers located in Pittsburgh, Erie, and Johnstown.

Federal Magistrate Clerkships

Federal magistrate judges are appointed by the federal district court judges and serve eight-year terms. Magistrate judge duties will vary by court, with magistrate judges working to expedite the civil and criminal caseloads.

Federal Bankruptcy Courts

Each federal district has a bankruptcy court, and judges typically hire one law clerk. While bankruptcy clerkships are well suited for those who wish to practice in the area of bankruptcy or tax, they also provide valuable experience and contacts for those who want to practice commercial and business law.

Specialized Federal Courts

Specialized federal courts include the U.S. Court of International Trade, U.S. Court of Federal Claims, U.S. Tax Court, U.S. Court of Appeals for the Armed Forces, U.S. Court of Appeals for the Federal Circuit, and U.S. Court of Veterans Appeals. Most specialized federal courts are located in Washington, D.C., though the U.S. Court of International Trade is located in New York. The application process for specialized federal courts can sometimes be less competitive than that for federal district and appellate courts.

STATE

Highest State Court

All fifty states have a court of last resort, which goes by different names. Examples include the Supreme Court of Pennsylvania, the Supreme Judicial Court of Massachusetts, and the New York Court of Appeals. Judges in a state's highest court usually hire one or two clerks for a term of one to two years. The selection process, while competitive, is less competitive than the process for obtaining federal clerkships.

State Intermediate Appellate Court

Most but not all states have intermediate appellate courts. The Superior Court of Pennsylvania and the Commonwealth Court of Pennsylvania are intermediate appellate courts. State appellate court clerkships are great positions for those interested in appellate law and the application process is less competitive than the process for obtaining federal clerkships.

State Trial Courts

Many state trial courts, such as Courts of Common Pleas in Pennsylvania, hire clerks. In some, clerks are assigned to particular judges in divisions such as criminal, family, juvenile, or probate. Clerks are sometimes shared among two or more judges. State clerkships provide unique contacts with the state and local political communities, particularly in states like Pennsylvania, which has elected trial judges. There is less emphasis on research and writing and more contact with the public and local practitioners. State trial court clerkships are good positions for those who hope to become prosecutors, public defenders, and litigators.

Other Clerkships Options

Clerkships are also available with administrative law judges, judges who sit in U.S. Territories or in National Parks, and judges in Native American Tribal Courts.

JUDICIAL CLERKSHIPS vs. JUDICIAL INTERNSHIPS/EXTERNSHIPS

A judicial clerkship differs dramatically from a judicial internship or externship. A judicial clerkship is a competitive, post-graduate paid position. Federal judicial clerkships, for example, are considered an elite credential that can open doors to opportunities such as interviews and offers of employment with major law firms. Some law firms, for example, offer signing bonuses to new associates who are hired if they previously served as a federal judicial clerk.

In contrast, a judicial internship or externship is a volunteer position performed while one is still in law school. Students performing an externship during the school year can earn course credit, while internships are typically performed during the summer just for the experience. Internships and externships are for educational and observational purposes only and are typically not competitive. Internships/externships are valuable insofar as they introduce law students to the role of law clerks including some research tasks such as assembling documents, and reviewing documents submitted to the court. Some advantages these experiences offer include the opportunity to work closely with a judge and his or her law clerks and to gain insight into the judicial system. A judge may also be willing to help an intern or extern with the clerkship application process by serving as a reference.

While internships/externships can be a boost to your resume, you should not list a judicial internship or externship as a “judicial clerkship.” Your credibility will be harmed when a firm or interviewer discovers that you were only an intern/extern, not a clerk. Listing an internship/externship as a “judicial clerkship” also demonstrates a lack of knowledge and sophistication in not knowing the difference between the terms, which can also harm your credibility with a prospective employer.

PLANNING AND APPLICATION PROCESS PREPARING FOR A CLERKSHIP

Preparation for a judicial clerkship requires advance planning and can begin as early as the first year of law school. There are a few things that you can begin to work on quite early in law school to ensure that you are properly prepared when the time comes to apply. The following are suggestions about what you can be doing NOW.

- Prioritize your academic performance and grades. To be competitive for a federal clerkship, you want to be in the top 10 to 15% of your class and active on *Duquesne Law Review* or *Duquesne Business Law Journal*.
- Start cultivating relationships with faculty and legal supervisors who can serve as references. Those who are recommending you should be able to speak highly of your research and writing skills, as well as your character and fitness. Take the time to visit your professors during their office hours to ask questions and seek opportunities to serve as a faculty research assistant. Talk to faculty members about your clerkship plans, and see our Career Services Director before you leave campus for your 1L summer job. Beginning in July of your 2L year, you will be able to create an OSCAR account and begin applying to federal clerkships.
- Polish your writing skills through journal experience and publication. Participate in writing competitions. Try to get your upper-level writing requirement completed during your second year, and seek publication of the paper, if possible.
- Consider applying for a judicial internship or externship. Some judges may look favorably at an applicant who has completed an internship/externship.
- Take every opportunity to meet judges. Many federal and state judges are Duquesne Law alumni. When judges visit our law school and participate in events, make every effort to attend and introduce yourself.
- Discuss your judicial clerkship aspirations with faculty and alumni. The best advice may come from those who clerked with and know judges. And, remain open-minded in your clerkship search, considering courts and geographic regions of all types.
- Attend programs sponsored by our Career Services Office related to judicial clerkships, cover letter and resume preparation, and interviewing/networking skills. When you complete an externship with a judge for credit, there is a companion seminar designed to support your experience and deepen your understanding of the judicial system and its internal operation.

CONTENTS OF THE JUDICIAL CLERKSHIP APPLICATION

Your application should include a cover letter, resume, transcript, writing sample, and at least two, and often three, letters of recommendation. Everything must be carefully proofread. Your application package should demonstrate that you have a strong academic record, excellent writing skills, and a keen attention to detail as evidenced by error-free application materials. With so many high-quality applicants, typos and other small mistakes can automatically result in your immediate elimination from consideration. Prevent errors such as typos, mistakes in the judge's title (e.g., "justice" instead of "judge"), inappropriate abbreviations, and incorrect naming of the court. Remember that judges seek clerks with strong research and writing skills. In short, everything in your application packet, including your resume and cover letter, is a writing sample that will reflect on your qualifications for the clerkship.

Resume and Cover Letter

No later than the beginning of your 2L year (preferably before leaving campus for your first summer job), schedule an appointment with our Career Services Director to review your resume. It is important to emphasize the research and writing experience you have gained in law school and your legal work experience. Your resume should be one page, concise and clear.

Cover letters should emphasize your interest in a judicial clerkship as well as clerking for the particular judge or in the particular court where you are applying. Additionally, emphasize the skills you have obtained in law school that pertain to the qualifications of a judicial clerk—namely research and writing skills, journal experiences, academic performance, and previous judicial internship/externship.

It is wise to customize your cover letter for each judge to whom you apply. Judges are very interested in knowing whether you sincerely want to work for them (or whether they are just one more name on a long list of judges receiving your "form" package). You should also address your interest in clerking in the specific court, which might include a reference to the subject matter routinely handled by that court or in decisions of the specific judge. This extra effort conveys a message that you have done your research, and that your interest is sincere and deliberate. Essentially, your cover letter is both a writing sample and a demonstration of your research skills. It must be polished, concise, customized, and engaging.

In short, judges scrutinize resumes and cover letters very closely. Yours must be perfect. Be sure to have our Career Services Director review them prior to submission.

Transcript

You should order a law school transcript according to the directions on the Registrar's website. Unless otherwise directed, applicants should not order transcripts that are sent directly to the judge's chambers. You should request a paper copy of your transcript that you may then include with your other application documents.

Writing Sample

The best writing sample is one that the judge is likely to read. Judges may also have a length restriction (OSCAR may have a listing). If you have several writings from which to choose, select the one that reflects your best and most up-to-date writing. The sample should illustrate your analytical abilities. While you should of course edit your own writing sample, do not hesitate to ask our legal writing faculty or other law professors to review your sample and offer suggestions for incorporation.

Letters of Recommendation

Judges typically require two or three letters of recommendation as part of the application. These letters help a judge to distinguish among many qualified applicants.

The best letters of recommendation are written by those with personal knowledge of your skills in legal research, analysis, and writing. You also want your letters to inform the judge about your diligence, your integrity, and your professionalism. At least one law professor should write a letter of recommendation for you. Thus you should make good use of opportunities to participate in class discussions, visit professors during office hours, and/or serve as a research assistant (or request to do an independent study under the professor's supervision) so that your chosen faculty recommenders know enough about you to write something meaningful.

INTERVIEWING WITH A JUDGE

Pre-Interview

Research the court and the judge. It may help if you are aware of any pending cases in, or opinions by, that court. Also seek guidance from our Career Services Director and from those faculty members who are serving as your references. They may be able to connect you with current or former clerks who might help you prepare.

Interview Goals

If you are offered an interview, you know that you have the qualities on paper that the judge is seeking. At the interview, the judge is looking for a “fit.” A law clerk works very closely with a small group of people: the judge; the judge’s assistant; one or two other clerks; and a court reporter or bailiff. The judge wants to know that you will be a good addition to this tightly-knit working group in chambers. While a few judges pose legal questions during the interviews or require applicants to perform a writing exercise (giving you a file and requiring you to draft a short memorandum, for example), most judges ask ‘getting to know you’ types of questions. They truly are trying to get a sense of your personality, temperament, and work style. This is your chance to present yourself as someone who can do the work required and also be someone the judge would want to have in his or her chambers on a daily basis.

Qualities Judges Seek

Legal Analysis

Some judges may pose hypotheticals to assess your analytical abilities.

Journal Experience

Be prepared to discuss your role on *Duquesne Law Review* or *Duquesne Business Law Journal*, and what you have written. If, for example, your Note or Comment will be published, be prepared to discuss the subject. Also be prepared to discuss articles that you have worked on and edited.

Legal Writing Ability

Re-read your writing sample and be prepared to discuss it at length and demonstrate a sophisticated understanding of the issues involved.

Thoughtful and Prudent Judgment

When asked a question, be measured in your response and demonstrate your awareness that there may be other legitimate positions or arguments that pertain to the issue.

Professional and Polite Demeanor

You will be interacting with attorneys, other court personnel, and the public. Dress professionally and conservatively for your interview. Excessively long hair, unkempt facial hair, unusual or large jewelry, visible tattoos, and revealing clothing can all draw unwanted attention and jeopardize your chances before the interview has even begun.

Composure

Federal courts especially are formal and high-pressure environments so judges seek those who have temperaments well suited to handling the workload, the stress, and the heavy sense of responsibility.

Work Ethic

Judges will expect that you are willing to work late or over a weekend if there are deadlines. Do not expect to dictate your own working hours.

Discretion

You will be working on cases involving sensitive information, so seek to convey during the interview that you possess discretion, tact and trustworthiness.

Humility

It is better to be direct and admit you do not know something than to bluff your way through it. (Attempts to bluff become readily apparent to judges who are used to dealing with attorneys and litigants who may be dodging a question.)

Presenting Yourself

Conduct yourself formally and professionally, which includes dressing conservatively. Interpersonal skills and polish are important so greet and speak with respect to all courthouse personnel. It is best not to bring your smartphone or other electronic device to the interview; if you do bring it, turn it off and do not look at it. Also, be respectful of the judge's time by answering questions fully and succinctly.

Judges may inquire about why you want the position so be prepared to speak generally about clerking and specifically about that court. The judge may also want to know about your commitment to living in the relevant geographic locations (particularly if you are interviewing with judges in areas beyond Pittsburgh and or your hometown). You should also know something about the kinds of cases that the court typically hears and be able to articulate something about the location and about the judge such as opinions or expertise. Judges will expect you to ask questions about the tasks that clerks conduct. Examples of possible questions include: What is the most important quality you look for in your clerks? What do you wish your clerks did more or less of in their work for you?

Meeting with Current Clerks and Assistants

Many judges will have you meet separately with their current clerks and assistants. Be mindful that these interactions are still part of the interview so conduct it formally and courteously. Current clerks and assistants will report back to the judge about you and provide their impressions. You should prepare questions to ask the law clerks—for example, you could ask about their expectations for the new clerk, as well as about any opportunities to observe court proceedings.

Post Interview

Write and send a formal thank-you note to the judge, each clerk, and the judicial assistant after the interview. If the judge's decision will be made quickly, it is fine to email your note to the clerks and assistant as well as sending a formal note. BUT never email the judge and realize that your chosen form of correspondence speaks to your professionalism; a formal letter is the professional correspondence style. Be prepared in the event you are offered the position in the few days following the interview; know what your answer will be—and respond quickly. Note that some judges may make offers during or at the close of the interview. Once you accept the clerkship, contact all of the judges with whom you have outstanding applications to withdraw from consideration and withdraw any pending applications in OSCAR. It is an expected courtesy.

Well-written thank you notes should reflect something distinctive about your conversation with the judge. The following is an example:

Dear Judge _____:

It was a pleasure meeting with you yesterday. Thank you very much for the opportunity to interview with you for a law clerk position for the 2017-18 term. I enjoyed learning more about the jurisdiction of the _____ (court) and particularly about the duties of your law clerk.

I am pleased that you enjoyed reading my paper/article and that you have expressed an interest in reading my Law Review Note. I will send you a copy of the Note upon its completion (or publication).

As I indicated in my interview, I am keenly interested in serving as your law clerk. Please contact me if you require further information. I look forward to hearing from you.

Sincerely,

ETIQUETTE OF ACCEPTING A JUDICIAL CLERKSHIP

You should be prepared at the time of the interview to accept the judge's offer of a clerkship. If you do not anticipate being in a position to accept an offer if one is made, then withdraw your application and do not accept an interview so as not to waste the judge's time.

It is impolite to not accept a judge's offer immediately. In fact, it is assumed that you will accept. Federal judges as well as many state court judges are offended if you do not accept immediately. The competition for these positions is so high that judges need your response quickly. Unlike other legal employers, judges will not let you hold their offer while you wait for one you deem more desirable.

DUQUESNE UNIVERSITY SCHOOL OF LAW
FORMER LAW CLERKS ON THE FACULTY

University President and Professor Ken Gormley

Honorable Donald E. Ziegler
U.S. District Court for the Western District of Pennsylvania

Professor Steven Baicker-McKee

Honorable Glenn E. Mencer
U.S. District Court for the Western District of Pennsylvania

Professor Julia M. Glencer

Honorable Joseph F. Weis, Jr.
U.S. Court of Appeals for the Third Circuit

Honorable D. Michael Fisher
U.S. Court of Appeals for the Third Circuit

Honorable Joan Orié Melvin
Superior Court of Pennsylvania

Professor Rhonda Gay Hartman

Honorable Alan J. Bloch
U.S. District Court for the Western District of Pennsylvania

Professor Bruce Ledewitz

Honorable Robert Taylor
U.S. District Court for the Eastern District of Tennessee

Professor Tracy McCants Lewis

Honorable Max Baer
Supreme Court of Pennsylvania

Professor Jane Campbell Moriarty

The Superior Court of Massachusetts

Honorable Ralph J. Cappy
Supreme Court of Pennsylvania

Professor John T. Rago

Honorable Donald J. Lee
U.S. District Court of the Western District of Pennsylvania

Honorable Joseph A. Del Sole
Superior Court of Pennsylvania

Honorable Jeffrey A. Manning
Allegheny County Court of Common Pleas