

AN UNOFFICIAL GUIDE TO APPLYING FOR CLERKSHIPS

This guide, which was collectively written by members of the YLS class of 2006 and updated by the class of 2009, is not meant to be a comprehensive clerkship guide. Rather, it offers an introduction to the clerkship process and some informal advice that will hopefully inspire applicants to consider what they wish to achieve by clerking and assist applicants in distinguishing between clerkship options.

I. General Clerkship Advice

Why do you want to clerk?

While this question may sound silly, many people apply to and accept clerkship positions that do not necessarily fit with their short or long term career objectives. All too often, this is the result of inertia: applicants not stopping to think about what they hope to achieve from a clerkship or discerning how one clerkship is different from another.

There are many reasons one might want to clerk. For example:

- » You may want an intense writing experience because you are interested in academia;
- » You may want experience in a trial court because you want to be a litigator;
- » You may want to work in an appellate court because you want to see what good (and bad) appellate briefs look like;
- » You may want exposure to many areas of the law to get an idea of what you would enjoy practicing;
- » You may want to have exposure to attorneys practicing in the state in which you intend to practice;
- » You may want a strong mentor who will be a resource throughout your legal career;
- » You may want to develop a network of colleagues (former clerks and co-clerks) whom you will stay in touch with during your legal career.

You may have any or all of these goals in mind, or, indeed, goals beyond those listed. But, depending on how you weigh these or other priorities, the list of judges to whom you should apply varies dramatically.

The “Prestige Factor”

Many students at YLS pursue clerkships because of their perceived prestige. While prestige is most often tied to circuit court clerkships, these comments are equally applicable to prestigious district court clerkships. Some applicants prioritize clerkships perceived to be the “most prestigious” over those that would better develop their skills and interests. Take a second, though, to think about how much weight you should assign to “prestige” as a factor in selecting a clerkship—and indeed whether you want to accept someone else’s definition of prestige.

Certainly if you want to pursue academia or a Supreme Court clerkship, prestige is an important factor, as is a circuit court clerkship. On the other hand, many clerkship

applicants already have jobs lined up for after their clerkship, so the prestige of the clerkship is of no significance (and clerkship bonuses are generally - but not always - the same as between district and circuit courts).

In addition, some boutique litigation firms and government employers place greater value on hiring district court clerks given that they arrive with more practical experience. Furthermore, once you begin work, few will evaluate your competency as an attorney based on which judge you clerked for—more often, you will be evaluated based on the work you do. In short, prestige should not drive you to apply for clerkships in which you will otherwise be unsatisfied.

You and “Your” Judge

While prestige may be overvalued as a factor selecting clerkships, the character of the judge is often undervalued. You will likely be spending a substantial amount of time with the judge, and whether your judge promotes a collegial environment within chambers and is interested in your development as a young attorney will likely play a significant role in whether you end up enjoying your clerkship. Indeed, as any former clerk will tell you, the degree to which you enjoy your year or two as a clerk is highly correlated to whether you like your judge “as a person.” It is surprising, therefore, how little people know about the character of the judges to whom they apply.

Why are applicants less proactive about seeking out the best mentors for them? The most obvious answer is that learning more about the personalities and styles of different judges takes time. It certainly involves more work than simply applying to all of the judges in a certain geographical area or narrowing your list of judges based on rumors circulating around the law school. But it is worthwhile to invest more time in researching judges, regardless of your interest in prestige, since this is someone whom you will need to work with very closely for at least one year. For many, this will be a once-in-a-lifetime opportunity; an opportunity that veteran attorneys often describe as the highlight of their legal careers.

Federal v. State

Because state trial courts often do not have clerkship positions, the most common state court clerkship is with the highest court of the state. The advantage of a state court clerkship is that you will likely learn more about the Bar for that state by clerking for state court judges. You will also become more familiar with that state’s law, which will likely be the law you predominantly apply in your practice. Therefore, a state court clerkship is a great option if you intend to practice law in a particular state for an extended amount of time following the clerkship. (This guide is geared primarily toward federal courts only due to a lack of experience with and information about state courts, not because of a preference for federal courts.)

Circuit v. District

Needless to say, there are myriad differences between circuit and district court clerkships. You will learn a great deal of law anywhere you clerk; the specific skills you learn, however, are significantly different between circuit and district courts. Depending on

what career you intend to pursue after your clerkship, you may find one type of clerkship more rewarding and more helpful in your later career or you may find that clerking for both a district and circuit court would be useful. Circuit court clerkships focus on researching and writing. You spend the vast majority of your time drafting bench memos and opinions. Circuit court clerks work on far fewer opinions in a year than district court clerks, but their opinions tend to be longer and address, on average, more complicated legal questions. Circuit court clerkships also, obviously, offer more opportunities to witness appellate briefing and arguments. For these reasons, circuit court clerkships are particularly useful for individuals interested in appellate litigation or in academia. Many people describe the nature of the work in circuit court clerkships as not too dissimilar from their work in law school.

District court clerkships are markedly different from a typical law school experience and will expose you to elements of legal practice that you did not encounter in law school. District court clerks are responsible for many more cases at a given time and must respond to last-minute motions with greater frequency than circuit court clerks. Therefore, a district court clerkship improves your ability to multitask and prioritize your legal work. Most importantly, district court clerkships help you become comfortable with the nuts and bolts of trial practice. You will read dozens of complaints and witness each stage of the lifecycle of civil and criminal cases. District court clerkships are incredibly useful training for individuals interested in a career in general litigation. Certainly, the fast pace and variety distinguishes the district court clerkship. Another interesting distinction is that district court judges are not required to negotiate with a panel of judges in issuing their rulings; this may result in less opportunity to know how other judges work or to interact with other clerks.

Your interest in particular substantive areas may help to determine whether you should pursue a circuit or district court clerkship. Immigration law, for example, arises much more often in circuit courts than in district courts, as appeals taken from Board of Immigration Appeals decisions bypass district courts and are heard directly by circuit courts. By contrast, criminal law enthusiasts may enjoy the unique opportunity to see defendants standing trial, giving pleas, and being sentenced that arises in district court. One important caveat here is that even among district courts, some district court judges do not have their clerks work on criminal matters (see below for further discussion). Patent law is also relatively more prevalent in district court. Appeals taken from district courts in patent cases go to the Federal Circuit rather than the local circuit court. Therefore, if you are particularly interested in patent law, you should clerk for a district court or, depending on the strength of your interest, the Federal Circuit. If you choose to clerk for a district court, make sure that the district to which you apply handles a high volume of patent cases. Other geographic areas with certain concentrations of subject matter include D.C. for administrative law, and the Southern District of New York for securities law.

As a final note, at the appellate level, except for the D.C. Circuit, clerks are required to travel when the court meets for oral argument in a central location [but different circuits meet more or less frequently]. District court clerkships generally do not require clerks to

travel.

When to Clerk

There is no need to rush into a clerkship. While many choose to clerk immediately after graduating, there are a number of advantages in waiting to apply after you have had some legal work experience. First, a number of judges have stated a preference for clerkship applicants who have had prior legal work experience. Few, if any, judges would not consider applicants with prior experience. Second, waiting to apply until after you graduate permits you to apply off-cycle, which allows you to send your applications on a “rolling” basis—applying to a few judges at a time in a manner that reflects your preferences for certain clerkships. Third, clerks who have one year of legal work experience will be paid a higher salary than clerks without experience. Finally, waiting to apply will give you more time to research judges.

A critical consideration that is often overlooked in deciding when to clerk is whether you can afford to clerk. If you wish to clerk immediately after graduating, it is highly advisable to gather all of your loan documents and determine when your repayment begins. Many clerks are shocked to see their loan repayments skyrocket in the middle of their clerkship (typically in April) to 50% of the take-home clerkship salary, even after consolidating their loans. If you are unprepared for such high loan repayments, this can force you to incur even more debt during your clerkship and may effectively limit your career options after your clerkship. This is not a rare occurrence and should not be taken for granted. Also consider how you will be paying for your bar review course. Even if your firm will reimburse you for the course, it may take awhile to get a reimbursement check from the firm and the bar expenses can reach approximately \$5,000.

Where to Clerk: Geography

Deciding on which geographic regions to apply to can be challenging. There are a few factors related to geography that you may want to take into consideration. First, as you may already surmise, there are certainly “more popular” areas of the country. For circuit courts, these are the Second, Ninth and D.C. Circuits. For district courts, these are the Central and Northern Districts of California, the Southern and Eastern Districts of New York, and the District of D.C. To the extent that you have an interest in clerking outside of these areas, you will face considerably less competition. At the same time, it is important to realize that it may be difficult to “break into” some geographic areas. Judges who have not hired YLS clerks in the past may be reticent to hire YLS clerks in the future. Therefore, if you plan to apply to a judge who has not hired YLS clerks recently, it may be worthwhile trying to find someone who knows the judge who can recommend you or serve as a reference.

A clerkship may offer a unique opportunity to live in a new city for one or two years. Before selecting a new city, though, make sure to consider whether you will be happy living there. Consider questions like: Is it important to see your family or friends regularly? If so, will they be nearby or are there direct flights to them? Do you have a car or can you travel in the city using public transportation? Consider questions like these before deciding to apply to a city you have never lived in before.

II. Distinguishing Between Judges

Below is a non-exclusive list of factors that you can use to distinguish between judges to whom you are considering applying for a clerkship.

Senior vs. Active Status

A federal judge has the option of taking senior status if the judge is at least 65 years old and his or her age plus years of service on the federal bench is greater than or equal to 80. For example, a judge who is 65, and who has served as a judge for fifteen years, may elect to take senior status. Active judges have full caseloads and are fully involved in all aspects of the court. Newer active judges may be less familiar with their role as a judge or their view of the clerks, but that may mean greater interaction with the judge while chambers are still young and developing. Active circuit judges who have been on the bench longer often have greater responsibilities in assigning and resolving cases, depending on the circuit.

Senior judges have the option of taking diminished caseloads. It is important to understand what kind of caseload a senior judge maintains as this may dramatically affect your clerkship experience. Senior district court judges, depending on the district, may have the discretion to select the types of the cases they work on (e.g. they may focus primarily on criminal cases or, alternatively, civil cases). Senior circuit court judges typically do not sit on *en banc*. Senior judges may be more comfortable with the significant responsibilities of being a judge, have more clearly defined duties for the clerks, and be able to share his or her wealth of knowledge concerning the federal judiciary. Senior judges are also some of the most well-known judges given their time on the bench and because they are more likely to have had YLS clerks at some point. But, the fact that senior judges are typically older and may be closer to retirement may be one that affects the potential for future mentorship and interaction in your legal career.

Chief Judges

Chief judges typically handle more of the administrative work for the circuit or district and therefore sometimes have an extra clerk to help with the extra burden. You may wonder if there is something special to be gained from clerking for a chief judge. The answer to that question may depend on the judge; in the Ninth Circuit, for example, the Chief Judge sits on every *en banc* panel, while the rest of the judges are drawn at random. It would be worthwhile, therefore, to determine what the position involves for the particular chief judges in whom you are interested.

Frequency of Contact

This area may be one of the more obvious distinctions, but it bears repeating. Clerks report significant disparities in the amount of contact they have with their judges. Some judges are in town most of the time, and often have lunch with their clerks. Some judges, however, travel often and therefore building a relationship may be more difficult. Some are gone for a portion of the year. Some chambers are set up in a manner that does not allow for easy contact with judges and some chambers simply have a culture of not

bothering the judge. No matter how wonderful the judge is, if you only have minimal interactions with the judge, it can be a disappointing experience.

It is worthwhile to ask clerks what kind of interactions they have with their judge. Do they interact on a daily basis? Do they eat lunch with the judge regularly? Does the judge come in and casually chat with the clerks? Are the clerks free to talk to the judge at any time? How close are the clerks' offices to the judge's chambers? These questions can give you a good sense of the atmosphere of the office. Of course, the answers to these questions are highly correlated to whether the clerk perceives the judge as a good mentor.

Hours

The length of the typical workday varies greatly across clerkships. Workloads and work hours differ across courts, jurisdictions, and judges. The job demands may range from 8-hour days and no weekends to 14-hour days and most weekends, or worse. District court clerks often have longer hours with a more constant workflow, while circuit court clerks may have more flexibility in their work times but greater fluctuations in workload. The amount of work may also depend on the judge's requirements—for example, the level of detail required in writing assignments and the involvement in draft-writing can markedly affect the amount of time you spend in chambers. While most clerkships are only one year in duration, you should carefully consider your optimal work-life balance and whether this affects your preference for courts or judges.

Clerk Reunions

Judges may or may not have occasional reunions for prior clerks. This is a good chance to meet other young lawyers and, depending on how long your judge has been on the bench, older lawyers who may serve as mentors.

Duties

Circuit Clerks

Clerk responsibilities differ across the various circuits and among judges within the same circuit. Finding out more about a clerk's responsibilities for a given judge will give you a better sense of the quantity and type of work in a given clerkship. Most circuit judges require bench memos, which are memos written by clerks in preparation for oral argument. Some judges do not require them, some judges require them for every case, and some judges require them for only 1/3 of cases (circulating bench memos with the other two sitting judges for the remaining 2/3 of cases). Moreover, the bench memo itself may be different across judges; while some judges require relatively concise bench memos (15- 25 pages), other judges require bench memos routinely in excess of 50 pages. This aspect of the job results, for better or for worse, in drastically different writing requirements for the clerks.

Opinion writing may also differ across judges. Some judges greatly involve their clerks in opinion writing, even allowing them to attempt the first draft and help with subsequent revisions. By contrast, some judges do all of their own opinion writing, and use their clerks for verifying sources and content. It also may be helpful to know how different

circuits handle unpublished opinions, which comprise a majority of opinions in some circuits. For example, while some circuits divide the unpublished opinions between the judges sitting on a given panel, other circuits have the most senior active judge on the panel draft all of the unpublished opinions.

Duties

District Clerks

There are a number of potential duties for district court judges to assign to their clerks. Below are a few areas that may distinguish the work required in a district court clerkship.

Criminal Work

The work that district court clerks do on criminal cases varies dramatically. If you are considering a career in criminal law or are interested in criminal law, it is important to ask whether the judge has clerks work on criminal cases. Many judges (usually ones who were previously Assistant U.S. Attorneys or Public Defenders) do not have their clerks work on criminal cases. Others may seek help on motions *in limine*, such as motions to suppress, but do not have their clerks assist with sentencings or taking guilty pleas. In contrast, some clerks help prepare scripts for each of these proceedings, are asked to double-check the sentencing guidelines calculations, and are invited to sit in on the judge's meetings with the probation officers in preparation for sentencings. Some judges will openly discuss what sentence should be imposed with their clerks.

Number of Law Clerks

District court judges typically have four employees (except for chief judges, as explained above). Some judges have two law clerks, a legal assistant, and a deputy clerk of court. Other judges hire three law clerks and combine the latter positions into one. Depending on how the chambers are configured, this may affect the type of work that the law clerks do. For example, if the judge has three clerks, those clerks may be responsible for every type of motion that comes to the court. They may also be responsible for all administrative tasks as well as answering all questions from attorneys who call the court. If the judge has a judicial assistant, that individual will be typically be responsible for answering the phone and may also handle non-substantive motions, such as motions for extension of time or motion to appear *pro hac vice*. Since chambers can be set up differently, with different responsibilities assigned to clerks, it may be worthwhile inquiring about the duties of the clerks if this factor is important to you.

Sitting by Designation

District judges are sometimes invited to sit by designation on the circuit court for their respective circuit. This can be a unique opportunity for district court clerks to have some exposure to the work performed by circuit court clerks. It is difficult to predict when a district court judge will be asked to sit by designation, but certain district court judges do so with some regularity. If you are interested in a district court clerkship but desire some appellate experience, finding a judge who sits by designation may be a good compromise to multiple clerkships.

III. Researching Judges

Some of the information for the distinguishing factors mentioned in this guide, such as statistics about the docket loads of different districts and circuits, are publicly available online through the Administrative Office of the Federal Judiciary. Other information can be gleaned from written evaluations on file at CDO.

By far, the best way to learn about judges is by talking to prior clerks. Current clerks are also a good resource, but may have less experience working with the judge at the time you attempt to contact them. Most former clerks would be happy to answer questions about the judge. They will likely appreciate someone who shows an interest in getting to know more about the judges rather than applying blindly.

Do not expect to get a negative evaluation of a judge from a former clerk. However, you should be able to get more objective information about a former clerk's judge, such as the work hours or type of interaction with the judge. Another good strategy is to ask clerks about other judges in their district or circuit. Of course, you must evaluate how much to credit these evaluations, since they are likely based on second-hand knowledge.

As you might imagine, this process can be somewhat time consuming. It takes time to locate alums who have clerked for a particular judge, to have them call you back, and to seek out multiple viewpoints to corroborate the advice you receive. Because of the time required, it is advisable to try to narrow your list of judges before you begin more detailed research, or at least narrow the geographic areas you hope to cover. Even more important is to start early. You likely need to start your research in the spring to be ready in time to select judges to whom you will send applications. However, you should continue researching judges to whom you have applied up until the time interviews are scheduled as this may help you decide how to prioritize potential interview offers.

IV. Applying for Clerkships

Much more can be written about the actual application process, but this guide will provide a brief primer. In general, applicants should keep in mind that the clerkship process is not a reflection of their success in law school or their value as a person. This advice may sound cliché, but you will undoubtedly find it difficult to be evaluated and potentially rejected by judges to whom you apply. If your primary goal is to find a clerkship in the year you apply, it is important not to be overly intent on clerking for any single judge (no matter how strong your application is) and to apply broadly. Another valid strategy is to apply to a limited set of judges and, if you are unsuccessful, apply again the following year.

The clerkship application process is handled differently by every judge. Some judges depend on law professors and other contacts to recommend students while others rely on their current clerks to narrow down the applicant pool. Regardless of the process, every chambers will be looking at a batch of hundreds of applicants (dozens of whom are equally qualified) to interview just a handful. To restate an important point, the clerkship selection process is only *partially* merit-based. Keep in mind that each chambers has very few spots open (2 in most district courts, 3-4 in most circuit courts). Some

chambers have certain preferences, such as wanting gender-balanced chambers, but others don't care. Some judges tend to hire from specific schools or refuse to hire multiple clerks from the same school for the same session. A great academic record or enthusiastic recommenders can help you to stand out from the crowd but by no means guarantees you a clerkship with any given judge.

This guide is meant not only to help you develop a list of judges based on meaningful criteria, but also to improve your chances of getting an interview by allowing you to articulate specific aspects of a clerkship that you admire, both for your selection process and for distinguishing yourself in your application. Judges (and their clerks) like to believe that an applicant is applying to a judge because he or she is particularly excited about applying to that judge. This interest can be conveyed by a recommender or in a cover letter (though make sure not to go overboard). Taking the time to research a particular judge and briefly stating why you would be excited to clerk for that judge can improve your chances of being called in for an interview.

Good luck!