

Choosing a Judicial Clerkship

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Choosing the path to judicial clerkship

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By Sherry Karabin

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The position is considered an excellent resume builder for a young lawyer and has traditionally been one sought by recent law school graduates. However, attorneys who have been practicing for a few years are now applying. In some cases, this is because they seek a better work-life balance, but in others, they have been laid off and can't find a job.

So how does a judge choose among the many qualified candidates? *Chicago Lawyer* spoke to judges, law clerks and educators to get a better understanding of the hiring process and to see what credentials may be the most helpful in securing a position.

The push for a clerkship

A recent report by the National Association for Law Placement Inc. (NALP) paints a dismal picture for new graduates.

According to findings from its Employment Report and Salary Survey for the Class of 2010, the overall employment rate for this group fell to just 87.6 percent, the lowest it has been since 1996 when the number was 87.4 percent.

Only 50.9 percent of the graduates found a job in private practice, down 5 percent from 2009, and 9.3 percent secured clerkships at the federal, state and local levels, which was up slightly from 8.7

percent in 2009. The numbers were measured as of Feb. 15, about nine months after a typical May graduation.

Although clerkship positions rose slightly, NALP Executive Director James Leipold said "overall there has been a net erosion in the number of clerkship opportunities for new graduates.

"This trend began accelerating during the recession, when so many out-of-work lawyers began applying for federal clerkships. However, even before then judges had begun expressing a preference for experienced clerks and the number of alumni seeking clerkships began to exceed the number of recent graduates.

"At the state court level, cutbacks have compromised judges' ability to hire clerks and, in other cases, judges have allowed their current clerks who could not find a job to stay on for another term."

Leipold said he does not expect things to improve any time soon since "law schools will continue to produce more highly qualified graduates than the big firms can absorb, leaving recent graduates competing with new associates who cannot secure jobs either."

Clerkship opportunities are drying up, said Joseph L. Stone, director of the business law center clinic at Loyola University Chicago School of Law. Stone said the poor job outlook for students causes more of them to consider a judicial clerkship.

"Some of these students are hanging out their own shingles, which can be a dangerous prospect because they have no experience and no one to mentor them. But clerkships are often another popular alternative since they can be a good stepping-stone to landing a spot at a firm," Stone said. "If a judge is satisfied with a person's work, he or she may even assist the clerk in landing a spot."

Spencer Waller, a member of Loyola's Clerkship Committee, said he attributes part of the increase in applicants to the Online System for Clerkship Application and Review (OSCAR), which more federal judges use to post jobs.

"It has made it easier to apply, at least at the federal level," Waller said. "Judges are now getting hundreds if not thousands of applications."

According to statistics from the Administrative Office of the U.S. Courts, the number of judges participating in OSCAR is growing with 1,437 doing so in 2009 and 1,501 taking part in 2010. After a large increase in applicants between 2008 and 2009, the numbers dropped between 2009 and 2010 from 10,722 to 9,570.

Still, Waller said federal clerkships are often considered more prestigious, leading to more applicants than at the state level. However, landing a spot in a state court can also be difficult.

Former Cook County Circuit Judge James F. Henry said he remembers getting anywhere between 100 to 150 applications for a single position.

"When I would look at the phenomenal pool of talent these young people possessed, choosing just one would be a very difficult task," said Henry, who retired as a judge in 2007. "I understand judges are receiving even more now because of the economy."

Preparing for the challenge

With so many people vying for a limited number of positions, legal educators try to work with students early on to help them prepare for the challenge.

Waller, who teaches civil procedure to first-year students, said he talks about judicial clerkships right from the start.

"It's typically not something someone thinks about when entering law school," Waller said. "I

think it is a valuable path and I encourage students to think about it, whether they are interested in litigation or working on the transactional side. In fact, some of the best corporate lawyers I know have clerked for a year or so after school. Most commercial litigation is the result of a transaction that broke down at some point."

Waller, a former staff law clerk in the 7th U.S. Circuit Court of Appeals, said that position gave him an inside look into how judges respond to both written and oral arguments, while allowing him to hone his brief writing skills.

"I think sometimes in law school that students get the impression that the courts are like little black boxes, where cases are input and decisions are output. Unless a student clerks they will not understand all the things that go into a judge's decision," Waller said.

"I went straight from clerking to the Antitrust Division in the Department of Justice in Washington, D.C., which would likely not have been possible without my clerkship since that was one of the criteria they were looking for." Loyola students who plan to apply for a clerkship must meet with a member of the clerkship committee who helps walk them through the process. But long before that, Waller said he not only urges students to do well academically, but encourages them to get published, take relevant courses like federal jurisdiction, criminal and bankruptcy law and form strong connections with professors and other legal professionals. "Recommendations are critical, especially today," Waller said. "We also advise students to make sure the material they send judges points out their strong points quickly and concisely since judges are very busy and get so many applications. If they cannot do this, they will never get an interview."

Stone said he referred a few students to judges in need of clerks.

"A lot of judges know me and know the reputation of Loyola and consequently when they are looking for clerks they will call me and ask if I know anyone," Stone said. "For me to give a referral, I have to have seen them perform, know they do good work and feel no hesitancy in recommending them. I think that has happened two or three times in recent years."

The John Marshall Law School's Judicial Clerkship Committee is comprised of faculty members and career services staff, who assist students with the application process as well as help them to decide which judges might be the best fit.

"We encourage them to be flexible and consider various courts and locations in the country," said Kim Isemann, associate director for career services. "With so much competition, the more flexible you are the better your chances."

Students also receive individual counseling to help them strategize and the school holds panels and programs for all students, where judges discuss what they look for when hiring judicial clerks.

Isemann said students should explore the school's externship program, which gives them a preview of what a judicial clerkship might be like. They should also join a journal or participate in the honors program to help build their credentials.

"We maintain spreadsheets of alums who are both clerks and judges to help students network. The school has traditionally placed more clerks at the state level, but we have programs in place to facilitate the process at the federal level,"

Isemann said.

"Clerkship committee members serve as mentors to student applicants," said Teresa Do, assistant to the associate deans at John Marshall. "Many of them have clerked for judges so they are able to provide students with insight into the clerkship application process.

"With so many applicants, judges are looking for anything that might help distinguish one top candidate from another, so we encourage candidates to highlight skills that might be outside of the practice of law."

Mary Nagel, assistant professor and John Marshall clerk committee member, said she reaches out to those in her legal writing and civil procedure classes who show potential.

"I send e-mails right after they have completed their second year," Nagel said. "As a member of the clerkship committee, we are asked to go through the list of the top 15 percent of students and solicit anyone we believe is appropriate as well."

Nagel earned three clerkships at the state level, two early in her career and one after working in the private and public sectors for almost 20 years.

"I have spoken with a lot of federal judges and one of their concerns is that their clerks fit into their office setting harmoniously since it is a pretty confined environment," Nagel said. "I think they assume the candidates are good writers, so they may be looking for something that tells them the person has something in common with him or her.

"At the state level, more judges now have permanent or career clerks, so there are fewer positions. More and more it really is who you know in the system because these are the people who can let you know there is a spot available since they do not always come up at the traditional time students graduate."

She said she often recommends students for jobs.

"One of my professors recommended me for my first clerkship in circuit court," Nagel said. "It was a very valuable experience.

"I think judges rely more on their clerks today. It depends on the judge but some will take what their clerks write and not change a word; others have a very distinct style and they want to inject themselves into their briefs and opinions."

Chicago-Kent College of Law offers an informational program about clerkships to second-year students to let them know more about the position. Later, rising third-year students who want to go forward receive a mentor on the five-member Faculty Judicial Clerkship Committee.

"We encourage students to consider a wide variety of options, including federal and state trial court positions as well as staff and research attorney positions with state courts," said Jeanne Kraft, assistant dean for career services.

Kraft said the school recommends that students take advantage of its' externship program, which can help them make connections.

Susan Adams, clerkship committee chairwoman, said this year between 40 to 50 students expressed an interest to committee members.

"All our committee members are former clerks so we have additional insight as to what judges want," Adams said. "We encourage students who

have done judicial externships to consider options outside of the area, but we don't suggest they blitz all the federal courts, which used to be a common practice. If you send out a generic application, it will not be as effective, it needs to be personalized in some way."

In addition to being on the clerkship committee, Adams is the associate director of the legal research and writing program at Chicago-Kent. She said her former position as a clerk in the 7th Circuit gave her a "wonderful insight into the kind of brief writing that is effective," which has allowed her to relay the information to students. Alisa Rosales, associate director of law career services at DePaul University College of Law, said the school holds several panels a year designed to give students "the nuts and bolts of the application process," explain the differences between the courts as well as provide programs featuring professors and former alumni who served as clerks.

Rosales said opportunities for externships and other field placement programs are discussed when the panel meets. She said the school places much of the programming online to reach a greater number of students.

"I work with students individually on their applications because every student's needs are different," Rosales said. "Our faculty have relationships with a large number of judges in Illinois and this often leads to student referrals." The judges' criteria

Retired Cook County Circuit Judge Henry said recommendations were the main factor that influenced his choice of clerks. Henry, who served on the court for about 20 years and is now practicing at Meckler Bulger Tilson Marick & Pearson, said other judges suggested some of the candidates.

"Sometimes, a judge would hire one person, but had runners-up and might mention one of them to me," he said. "Other judges might take a clerk who wanted to continue in the position but could not stay with the same judge because the term of service was up. I did not do that."

However, Henry said he did ask for a referral from Joseph Stone at Loyola, when hiring the person as a clerk.

Henry said he worked closely with his clerks, having them listen to oral arguments and asking

them to summarize the facts and provide background on motions and briefs, search for relevant precedent and identify the key issues.

"I would go over the clerk's analysis and discuss it with him, but I never made a decision until I heard oral arguments," he said. "Afterwards, the clerk and I would talk about what was presented and whether the attorney addressed the issues and then I would have the clerk do a first draft of the opinion, which I would edit later."

Although the position does not pay a great deal, Henry said the experience could give any young attorney the tools and credentials to land any legal position, especially if it involves litigation. U.S. District Magistrate Judge Susan E. Cox said she has worked with the same clerk since she took the bench four years ago. Although she said her website states that she is not accepting applications, she still receives hundreds of them. Cox said judges follow different practices when filling their positions.

"Some hire new clerks each year, others have a permanent clerk and some have one permanent and one short-term clerk," Cox said.

She spent three years as a permanent clerk for Judge Wayne Andersen, after leaving the U.S. attorney's office to take the slot.

"I had been practicing for 15 years and been a trial lawyer for most of my career, so it was a highly unusual move," she said. "But I had one child and was hoping to have more and thought the lifestyle would be more conducive to my lifestyle. I had appeared before Judge Andersen many times and when he heard I was leaving the U.S. attorney's office, he offered me the position. "I think it gave me a different perspective and has helped me to be a better judge."

When news spread that Cox became a judge, she got many resumes, which she went through diligently, narrowing down her choices to three to four people.

She hired Mary Curry, who worked in the Chancery Division, and had "good references from judges" as well as "great writing skills and the maturity I was looking for."

"I wanted someone with previous clerkship experience because I was a new judge and I wanted to hit the ground running with a partner who knew the job," Cox said. "If I were looking for another clerk some day, I would still consider

previous experience, but it might not be as important as it was for the first hire."

Cook County Associate Judge Rita M. Novak uses two clerks, both of whom serve two-year terms, and is herself a former federal law clerk. "It seems as though law clerks are now staying in these positions longer," Novak said. "When I was a clerk, it was a position that young lawyers took for a year or two and then moved on." Novak said the growing complexity of litigation requires clerks to take on more responsibility. They now spend even more time helping judges sort out the cases and claims that need the most attention.

"I like to see what kind of courses the prospective candidate has taken and place importance on a rigorous academic experience," Novak said. "I'm looking for clerks who have achieved academic success and who can analyze well and write with clarity.

"If they have practice experience and have worked in commercial litigation or insurance law, for example, that is something I will consider, too, since those are areas that match the type of cases on my docket."

Retired Illinois Appellate Justice Margaret O'Mara Frossard said she used to receive stacks of resumes.

"What I was looking for was someone who was self-motivated, workplace ready, that could follow instructions and hit the ground running without needing a lot of guidance from me," Frossard said.

Frossard, who left the bench in 2010, now serves as director of professionalism and engagement at The John Marshall Law School, counseling students who seek clerkships.

"I think judges are looking for people to be workplace ready since the court system does not have the resources to provide extensive training," Frossard said.

She advises those who want to become clerks to make sure to include key recommendations in their applications.

"It does not matter how outstanding you look on paper, you need someone who can personally speak to your work ethic," Frossard said.

Landing the spot

Curry, a Loyola law school graduate, has been a judicial clerk since she graduated in 2005. She

began in the Cook County Circuit Court working for Judge Patrick E. McGann and later for Henry in the Chancery Division.

When Henry retired, she secured a position in the federal court system, as a career clerk for Cox.

She avoided the complicated and competitive application process since she knew a law clerk, which helped her to get her resume "in front of a judge much quicker."

Curry said her state and federal clerkship positions allowed her to experience both court systems.

"We had a much more demanding call in the Chancery Division. We would hear at least three dispositive motions a day, often resulting in written opinions needing to be drafted for each case," she said. "The state court also does not have as many resources. There are so many differences between federal and state court, including how counsel get information.

"In state court, for example, the general orders are all hand written. In federal court, everything is done online so it is a much more formal process.

"The personalities of the judges also play into what you are doing. Now I sit in on every court hearing and every settlement conference, so I spend a lot more time directly with the judge. In state court, I did not do that. I was more often in my office writing opinions."

John Marshall graduate Tara Shelke also got her clerkship as a result of a recommendation. Her moot court coach, Mary Nagel, introduced her to Cook County Circuit Judge Bill Taylor. Nagel was one of Taylor's former clerks.

"Connections are everything," said Shelke, who began her clerkship in November 2010. "The experience I am gaining in terms of writing and research is unbeatable. I've written 159 opinions in seven months. I sit in on pretrial settlement conferences and recently Judge Taylor began letting me start the process on my own. He also takes me with him to all his functions so I am able to network as well."

Shelke said she hopes to land a job handling civil litigation at a medium-to-large firm.

"I think in a year I will be ready to move on and Judge Taylor has told me that when the time comes he will help me," she said.

Chicago solo practitioner Meaghan Schneider is a former law clerk for Henry and said her two-year experience was like having "an apprenticeship in civil procedure."

Stone, director of the Loyola business law center clinic, recommended her for the position.

"My clerkship gave me a sneak peek into seasoned lawyers' briefcases, so to speak, because I had the opportunity to review the briefs and hear arguments of some of the best and brightest lawyers in the field," Schneider said.

"Another benefit of my clerkship is that Judge Henry opened up his chambers to me, allowing me to sit in on pretrial conferences and observe ongoing negotiations outside of the courtroom. I use the skills I learned as a clerk in my own practice, as an advocate, negotiator and mediator."

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