Lateral Judicial Law Clerks: A Brief Analysis of Current Trends

by Jessica Heywood and Deborah Kerker Herman

According to a recent release by the federal judiciary, online applications for federal clerkships increased 66% in 2009, for a total of 401,576 applications. Those of us in career services were not surprised by the fact of an increase — we all seemed to spend significantly more time this summer and fall counseling students regarding clerkships, reviewing résumés and cover letters, bundling applications and uploading letters of recommendations — but we were shocked at the level.

The dramatic increase was fueled by several things. A significant percentage of this year’s applicants were graduating students facing deferrals and seeking year-long opportunities. Second, many applicants were experienced attorneys who had been laid off in the latter part of 2008 and first half of 2009. Indeed, of the more than 400,000 applications submitted via OSCAR (the federal government’s Online System for Clerkship Application and Review), 52% were from graduates.

Another factor likely contributing to the rise in applications from graduates is the judiciary’s increasing desire for experienced attorneys. Some judges even have policies against hiring graduating students as law clerks. This article generally examines the subject of “lateral” law clerks in the U.S. — that is, attorneys who apply for judicial clerkships after at least one year of experience, including points to consider when counseling alumni seeking judicial law clerks and law firm policies regarding lateral law clerks. In preparing this article, we interviewed large national firms (500+) in major metropolitan areas.

Considerations for Lateral Clerkship Applicants

Experienced lawyers have a couple of advantages over student applicants when it comes to clerkships. First, graduates are not constrained by the Federal Law Clerk Hiring Plan (the “Plan”), which mandates that federal clerkship applications may not be received until after Labor Day (this year September 8, 2009). The Plan explicitly excludes graduates, who should take advantage of this exception by applying to clerkships early — preferably at the beginning of the summer — before judges begin to review applicants from current students. Many of us heard about instances this fall where judges had completed their hiring even before September 8, leaving fewer slots for current students.

Additionally, as mentioned earlier, judges are increasingly interested in hiring experienced attorneys as opposed to new law school graduates. Judges indicate that experienced attorneys bring a breadth of experience that contributes to more thoughtful writing and analysis and require little or no training. For these reasons, a good number of judges on the federal bench, particularly circuit courts, have policies against hiring new graduates as law clerks. Experienced attorneys interested in clerking may use OSCAR to identify these judges as well as consulting their own career services offices.

Law Firm Policies on Lateral Law Clerks

The law firms we interviewed were unanimous in their appreciation for clerkships as a valuable experience, specifically identifying as benefits profes-
sional development, the law clerk’s potential to provide insight into the decision-making processes of a particular court or judge, and the intellectual prestige a clerkship brings to the firm. All of the law firms we spoke with offer clerkship bonuses following completion of a clerkship and a year’s credit for time taken off for the clerkship to attorneys who pursue a clerkship immediately after law school. Not all firms provide bonuses for state-level clerkships.

Law firm clerkship policies differed, however, in the treatment of students who secure a clerkship immediately after graduation versus those attorneys who choose to leave the firm to pursue a clerkship. Law firms note the possible disruption caused by the absence of the associate and potential conflicts that may arise with the firm’s clients. Some firms actually prefer that associates pursue clerkships immediately after graduation rather than in subsequent years. Law firms award bonuses and credit to lateral law clerks on a case-by-case basis. And none of the firms we spoke with guarantees that attorneys leaving to take a clerkship will have a position upon completion of the clerkship. For some firms, this is a policy change related to the downturn. While firms are likely to welcome back star performers, some firms view lateral clerkships as a viable exit strategy for under-performing associates.

**Conclusion**

Clerkship application volume will continue to be strong as the economy struggles to recover, and experienced attorneys will continue to seek out clerkship opportunities. While many judges are seeking experienced attorneys to fill clerkship positions, law firms will not always be in a position to guarantee departing associates a position upon completion of the clerkship.

Associates should consider the possible ramifications of leaving their firms to pursue a clerkship, particularly if the associate may be interested in returning to the firm. Law firms that value the clerkship experience for associates should communicate this idea clearly so as not to discourage associates from pursuing clerkships.

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