The Value of Judicial Clerkships to a Transactional Career

by Aymara Zielina

The benefits of judicial clerkships are well recognized. Clerkships offer an opportunity to rigorously improve legal research and writing skills, as well as to learn the elements of effective advocacy. They provide a privileged view into the decision-making process of the judiciary. A clerkship can also expose graduates to a wider range of legal practice areas than they will likely encounter at any other time after completing law school. For a future litigator or student who is uncertain about which practice area to pursue, the benefits of clerking may seem evident. But how valuable are clerkships to graduates pursuing a transactional career?

Practical Skills and Career Advancement

Clerkships can be valuable to those looking at a transactional career because clerks learn to review and thoroughly analyze complex facts and laws. The ability to spot issues efficiently is paramount to success in any practice area. For corporate attorneys, having seen the consequences of a deal that unravels in litigation can help them structure better transactions for their clients. Ryan Johnson, a shareholder in the Health Law practice group of Fredrikson & Byron, notes that his experiences as a law clerk on the 8th Circuit allow him to effectively speak to corporate clients about ways to avoid future litigation. The clerkship assists him in conducting due diligence and helps him understand the potential litigation liabilities of a target entity in a proposed transaction.

Clerkships can also increase junior attorneys’ confidence in their own abilities. Many clerks fortuitously discover that despite their relative inexperience, they have the capacity to produce work product that is equal to or better than that which finds its way to court. This confidence can help junior lawyers embrace more responsibility early in their careers, leading to better advancement prospects, and can also prevent junior lawyers from becoming intimidated by more experienced counsel. Clerkships provide prestigious credentials that open doors to better career prospects, and the long-lasting relationships that clerks form with their judges and fellow clerks are not only immediately rewarding but can serve them well in the future.

Specialty Courts

Certain specialty courts offer future transactional attorneys a higher concentration of cases substantively relevant to their chosen career path. Future corporate and real estate lawyers could benefit from clerking with courts that regularly hear complex matters of business law, as well as in federal bankruptcy courts. The Delaware Court of Chancery champions itself as “the nation’s preeminent forum for the determination of disputes involving the internal affairs of … thousands … of Delaware corporations and other business entities through which many of the world’s commercial affairs are conducted” (http://courts.delaware.gov/Courts/Court%20of%20Chancery/). Similarly, the Commercial Division of the Supreme Court of the State of New York is a specialized business court that deals with commercial contract disputes, finance
and banking transactions, matters arising out of real property transactions, and UCC cases. (See www.nycourts.gov/comdiv.)

Other specialty courts similarly provide transactional attorneys with a framework for understanding the substantive law behind their chosen practice area. The United States Court of Appeals for the Federal Circuit, where 31% of the court’s cases involve patent and trademark matters, serves as solid training for an intellectual property attorney or patent prosecutor. (See http://www.cafc.uscourts.gov/about.html.) Future tax attorneys can consider a clerkship with the United States Tax Court, while those interested in international import transactions should look to the United States Court of International Trade, where they would have the opportunity to interpret federal statutes affecting trade.

Limitations

Despite the many benefits, future transactional attorneys should recognize that a clerkship does not directly train them for some of the day-to-day practices in the transactional world. Clerks may find themselves having to play catch-up on tasks such as contract drafting compared with their peers who joined law firms immediately after graduation. Potential candidates interested in transactional careers are also probably better served by clerking immediately upon graduation. After a few years of practice, they would likely attain many of the professional skills developed during a clerkship, thereby limiting its utility. Transactional attorneys several years out of law school also might be less desirable to judges than experienced litigators.

Nevertheless, the inherent value in clerking for a judge may be more important than any of its career-related benefits. Perhaps Alan C. Smith, a corporate partner at Fenwick & West and former clerk for the 9th Circuit, best summarizes the merits of clerking by calling it “one of the most intellectually stimulating experiences” of his legal career.

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