

UNIVERSITY OF MICHIGAN LAW SCHOOL

OFFICE OF CAREER SERVICES

JUDICIAL CLERKSHIP HANDBOOK 2009



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I. WHY CLERK? The University of Michigan Law School has a long and proud tradition of involvement with the judiciary, both in providing clerks (12-15% of our graduates accept clerkships every year, not including the many alumni who take clerkships) and judges (in the federal court of appeals, for example, approximately 12% of the judges are Michigan alumni). We hope this handbook will encourage you to become a part of that tradition.¹

A judicial clerkship is typically a one- or two-year position in the chambers of a judge. A judicial clerk -- sometimes called law clerk, clerk, or even elbow clerk -- serves, in essence, as a judge's attorney, and judges typically place an enormous amount of reliance on the counsel of their clerks. Clerks therefore have great responsibility and an unparalleled opportunity for learning. We spend an extraordinary amount of time in law school dissecting and analyzing court opinions. And one of law school's main goals is to train lawyers to craft arguments that will sway judges to hold for their clients. What better way could there be to round out one's law school experience than by spending a year working with the judges who produce these opinions and judgments?

A. PERSPECTIVE. A judicial clerkship allows a lawyer to view the system of justice from the perspective of the judiciary at the beginning of one's career. Unless you become a judge, you will never again have an insider's view of how judges make decisions, and how judges respond to different methods of advocacy. You will also probably never again be in as good a position to make a mark on the law, by helping a judge, as a trusted aide, to reach his or her decisions. To witness, and take part in, the judicial decision making process and the writing of court opinions, is simply an invaluable asset to anyone interested in understanding the law thoroughly and becoming an effective legal advocate or scholar.

B. EDUCATION. A judicial clerkship is an intensive period of post-graduate education. There are a wide variety of courts -- state and federal, trial and appellate, specialty -- and the work can vary widely as well, but typically, clerks read briefs, attend court proceedings, write bench memoranda analyzing parties' arguments, advise the judge on the disposition of a case, and draft opinions. Thus, a clerk is in the enviable position of thoroughly learning various substantive areas of the law, free from the pressures of advocacy and billable hours. You will learn how quickly and cogently to articulate the law in writing, and sometimes orally, in order adequately to prepare your judge. You will learn the difference between good and bad advocacy from reading briefs and watching oral arguments, and assessing their effects on your own judge's decision making in any given case. And you will master procedural minutiae without having to fear the penalties of missing a filing deadline.

C. CAREER BENEFITS. A judicial clerkship can be a valuable stepping stone for one's career. You will be working closely with a distinguished member of the legal profession, from whom you can learn a great deal. Usually a judge develops a great deal of affinity for his or her clerks, and is eager to serve as a mentor for years to come. Further, few employers -- firms, government, public interest, and the academy -- are insensible to the educational benefit and the perspective gained from the clerkship experience.

D. A GREAT JOB. Finally, a judicial clerkship is, almost invariably, an enormously enjoyable way to spend a year or two at the beginning of your practice. Talk to people who have clerked; it is rare that you will hear a complaint. You will find many former clerks who say that clerking was the most interesting job they have had in their career. And many former clerks view their co-clerks and judge and the rest of the judicial staff as a "chambers family," with whom they remain personally close for years after the clerkship has ended. Even if you don't anticipate being a litigator, or even if you don't envision yourself practicing law, you should consider a clerkship as an end in itself. Consistently intellectually challenging work that can be of enormous public consequence is rare to come by in any field, at any stage of one's career.

¹See Appendix A for a list of alumni who have clerked since approximately 1993. See Appendix G for a list of alumni who are judges.

II. MYTHS ABOUT CLERKING

A. “I CAN’T AFFORD TO CLERK.” Some students cite massive student loans as prohibiting their taking a job for which first-year pay in 2008 is over \$55,000 or more depending on location (see <http://www.opm.gov/oca/08tables/gscalcul.asp> for federal salary information; first-year lawyers are classified on the government scale as grade 11, step 1; for a description of federal law clerk salary and benefits see <https://lawclerks.ao.uscourts.gov/employinfo.htm>).² In addition, you can receive a step increase by passing the bar, and for alums there are increases for work experience. In addition, you may be able to defer interest on some school loans for the clerkship period, or arrange to make minimal payments during that time. Further, many law firms pay clerkship bonuses, helping to offset the earnings shortfall. State court clerkship salaries are noted in *the Vermont Law School Guide to State Judicial Clerkship Procedures* and can range anywhere between \$40,000 - \$60,000.

Other students cite the enormous salaries firms have been paying, and say that it’s hard to forego what could amount to upwards of a \$100,000 salary differential. There’s no arguing with the fact that the allure of money paid by the private sector creates a new challenge for those choosing public service. Remember, though, that as an incoming associate who has clerked you will often be treated as an advanced associate (essentially by receiving “credit” for the years you spent clerking). Moreover, clerkships are a credential that endures. As a former clerk, you will have your judge as a reference who is independent of both the firm’s fortunes and your fortunes at the firm. When you consider the many advantages clerkships offer, the question becomes, how can you afford not to clerk?

B. “ONLY CERTAIN PEOPLE GET CLERKSHIPS, AND I’M NOT ONE OF THEM.”

1. GRADES. Many students believe that only top students with impeccable grades can get clerkships. This is wrong. The GPAs of Michigan students who have gotten clerkships in the last seven years range from slightly above 2.2 to almost 4.3. Indeed, approximately 20% of people who have gotten clerkships in this period are in the bottom half of the class. When you consider that people at the bottom half of the class are applying in many fewer numbers, this statistic becomes especially significant.

2. LAW REVIEW. “Law review,” some students say, “owns this process. Why should I bother?” It is true that members of the Law Review apply in higher numbers than do members of other journals or students who are on no journals. But in recent clerkship seasons, more than half of the people who got clerkships were not on Law Review. And the clerkships were at all levels, including the federal courts of appeals.

3. RACE AND GENDER. There has been a lot of attention in the press given to the poor showing of the U.S. Supreme Court with respect to hiring of minorities and women. But at least half of the UMLS applicants who took clerkships in the last two clerkship seasons were women, and almost 20% of clerkships were obtained by minority students. And thanks in part to the *Grutter* decision, and recent controversies at the Supreme Court, judges are more aware than ever of the benefits of hiring from a racially diverse pool. (See Tony Moro, “High Court Clerks: Still White, Still Male,” *Legal Times*, May, 25, 2006; Tony Mouro, “Counting the Clerks,” *Legal Times*, November 3, 2003; Patricia Manson, *ABA Effort Putting Minorities on Judicial Clerkship Path*, *Chicago Daily Law Bulletin*, Feb. 11, 2000; Nealy, Jounice, “Minorities Finding Clerkships Key to Law Careers,” *St. Petersburg Times*, Dec. 25, 2000); NALP, the National Association for Law Placement, “The Courts: An Excellent Place for Attorneys of Color to launch their Careers” <http://www.abanet.org/minorities/judiciary/courts.html>. Race and gender should not discourage you from pursuing clerkships.

C. “I SHOULD JUST GET A REAL JOB.” Some students feel like they have been in school for long enough, and they are ready to embark on the full-fledged practice of law. But spending a year or two at the beginning of your career at a terrific job at which you will learn an enormous amount is not a waste of time.

²If you pass the bar of any jurisdiction the summer after graduation, you will, in the federal system, receive a substantial salary increase one year after graduation. This will be less important in a one-year clerkship, but in a two-year clerkship, it is extremely significant.

Often students who intend to pursue public-interest positions are particularly eager to dive directly into the field of their choice, rather than a clerkship. Remember, though, that clerkships provide excellent training that is often highly valued by public-interest employers, where resources for training are sometimes wanting.

D. “I DIDN’T APPLY DURING THE FALL HIRING SEASON, AND NOW IT’S TOO LATE.” Before the current Federal Hiring Plan (see Section V. A., Timing), students typically applied for clerkships in the fall of their second year. As of this writing, students are applying to clerkships in the fall of their third year (with the exception being for students applying to some state courts and alumnae, who can apply at anytime). However, there are often clerkship openings that remain into the academic year and some as late as spring of your third year. For example, some judges will begin to look for clerks long after the bulk of their colleagues have filled their slots, or will find themselves with an unexpected opening because an appointed clerk withdrew. Likewise, when new judges are appointed, they need clerks.

If you are a member of the **lawclerks listserv** (you can sign up on the OCS website by clicking on the OCS web page link to “Judicial Clerkships” or sending an email to lawcareers@umich.edu or sindling@umich.edu), you will receive postings about these openings and can apply for any that pique your interest. You can also keep abreast of newly nominated or confirmed judges on the OCS website link to Judicial Clerkships, “Judicial Nominations and Confirmations:”
<http://cgi2.www.law.umich.edu/careerservices/Nominations/Nominations.aspx>

See also the U.S. Courts site: <http://www.uscourts.gov/employment/vacancies.html>, and, http://www.senate.gov/pagelayout/legislative/one_item_and_teasers/nom_conf.html. See Appendix B. for more resource information.

In addition, it is an increasing trend that many students apply once they are in the workforce for a year or more, or before a fellowship. You may also apply for a clerkship after spending a year, or sometimes more, at a law firm. As long as you have employment plans for after graduation where you will be able to take some time off after a year, you should certainly consider this option. Be aware, however, that a year’s hiatus after one year of working may make some employers unhappy. If you have accepted a post-graduation offer of employment, you must check with your employer before pursuing this route.

III. VARIETIES OF CLERKSHIPS. Many different types of clerkships exist, with a wide range of competitiveness and types of cases. While there are certain commonalities within these variations (most clerkships involve research and writing, and require a clerk to work closely with one judge), there are clerkships to appeal to many different interests. The Law School’s database contains contact information for the U.S. Supreme Court, the U.S. courts of appeals, U.S. district courts, federal magistrate judges, federal bankruptcy judges, and state supreme courts. Contact information for other courts, however, is readily available through the many print resources in the OCS library, and many websites.³

A. FEDERAL CLERKSHIPS⁴

1. ARTICLE III JUDGES

a. UNITED STATES SUPREME COURT. At its discretion, and within certain guidelines established by Congress, the Supreme Court each year hears a limited number of the cases it is asked to decide. Those cases may begin in the federal or state courts, and they usually involve important questions about the Constitution or federal law. The court consists of the Chief Justice of the United States and eight associate justices. U.S. Supreme Court justices are authorized to hire four clerks each, with the exception of the Chief Justice, who

³For a complete list of resources about judicial clerkships, see Appendix B.

⁴For a chart of the different varieties of federal judges, see Appendix C.

may hire five. Clerks are hired for a single one-year term. Retired Supreme Court justices also can hire one clerk; the work there will vary, ranging from sitting on Court of Appeals cases when the Justice sits as a circuit judge to being “on loan” to the chambers of the Justice who replaced the retired Justice. Justices usually hire clerks who, by the time they arrive at the Supreme Court, will have clerked for at least one year for another judge, most frequently at the federal appellate level.

Certain lower-court judges have a reputation of being “feeders,” that is, “feeding” the pool of Supreme Court clerks by sending on a disproportionately high number of their own former clerks. However, new appointments to the Supreme Court make it difficult to predict who will be part of the new generation of “feeders.” Further, planning ahead for an attempt to obtain a Supreme Court clerkship by limiting your lower court applications while in law school to “feeder” judges is a high-risk strategy. That being said, attached as Appendix D to this handbook is a list of lower-court judges who have sent clerks on to the Supreme Court during the 1989-2007 period. For more information about applying to the U.S. Supreme Court, see VIII., page 17, of this handbook.

b. UNITED STATES COURTS OF APPEALS. There are thirteen judicial circuits, each with a court of appeals (the Court of Appeals for the Federal Circuit, which has jurisdiction over certain types of cases, and twelve regional courts, which have jurisdiction over certain geographic areas).⁵ The smallest court is the First Circuit, with six active judgeships; the largest is the Ninth Circuit, with 28. The First through Eleventh Circuits each comprise three or more states; the District of Columbia Circuit hears cases arising in the District of Columbia. A list of the states that compose each circuit may be found in 28 U.S.C. § 41; the number of judgeships in each circuit is set forth in 28 U.S.C. § 44. Different circuits often have different caseloads. For example, the District of Columbia Circuit has a lot of administrative cases, but not a lot of criminal law cases; the Second Circuit tends to have a lot of financial and corporate cases; and the Sixth Circuit tends to have a lot of labor-law cases. The Federal Circuit has jurisdiction over patent cases as well as cases brought against the federal government – so, given the profound importance of intellectual property law, the rethinking of the role and power of government, and the political battles between property-rights activists and environmentalists, the Federal Circuit is at the center of a lot of current legal debate.

Active judges generally hire three or four law clerks, depending on the number of secretaries (two or one, respectively) they choose to have. Chief judges may hire four or five clerks, and senior (retired) judges may have from one to three, depending on the size of the caseload they elect to maintain. Some federal judges (both circuit and district), however, have begun hiring career, or “permanent,” clerks to fill one slot in their chambers, which will reduce their need for temporary clerks.

Appellate clerks generally have no contact with the attorneys or parties in cases before the court. Typical duties for a clerk include reading the briefs and selected portions of the record (called the joint appendix) in a case scheduled for argument and preparing a bench memorandum prior to oral argument (although some courts, and some judges, do not use pre-argument bench memoranda). The format of bench memoranda can vary greatly between chambers; some judges prefer cursory, five-page treatments; others prefer a lengthy exegesis. As a general matter, though, the bench memo will contain independent research and will include a recommendation on the disposition of the case. Usually clerks attend oral argument, and discuss cases with the judge. After oral argument, if the judge is assigned to write the opinion, the clerk will usually be asked to write a first draft, which the judge will revise and edit. In some chambers, however, it is the judge who provides the first draft, and the clerk is asked to comment, edit, and provide additional research. If the judge is not writing the opinion, often the clerk will be expected to read the proposed opinion from another judge’s chambers once it is circulated. The amount of advice a clerk is asked to render on these opinions varies with the judge.

⁵For a map of the circuits, see Appendix E.

c. UNITED STATES DISTRICT COURTS. There are 89 districts in the 50 states, which are listed in 28 U.S.C. §§ 81-144. District courts also exist in Puerto Rico, the Virgin Islands, the District of Columbia, Guam, and the Northern Mariana Islands, making a total of 94 district courts. Some states, such as Alaska, are composed of a single judicial district; others, such as California, are composed of multiple judicial districts. The number of active judgeships allotted to each district is set forth in 28 U.S.C. § 133.

District judges typically hire two recent law school graduates as law clerks; many district judges offer only two-year clerkships, while others offer one-year terms.

The hallmark of the district court clerkship is variety. District court clerks are in daily contact with attorneys and parties proceeding without counsel. (While the extent to which the clerk is permitted to discuss cases with attorneys varies among chambers, what does not vary is the need for a law clerk to develop great tact and discretion if called upon to do so.) District court clerks do almost all of the things appellate court clerks do, and also have a number of additional tasks. That is, many cases are decided by dispositive motions that are briefed and argued in much the same manner as are appellate cases. A district court clerk assigned a case with a pending dispositive motion is, in essence, performing the same role as an appellate court clerk. District court judges also function as appellate judges at times, “sitting by designation” on courts of appeals. District court clerks are also heavily involved in the discovery process. They will often play the leading role in resolving discovery-related motions, and will also play a role in recommending (and sometimes participating in) pretrial conferences. Much of the discovery stage of the case turns on practical wisdom rather than book knowledge; clerks learn much by watching the process at work. Many cases settle before trial, and in-chambers settlement conferences are an important part of that process. Law clerks are asked to prepare judges for these conferences (often by reviewing the long history of multi-year cases, sometimes by researching issues likely to arise at later stages of the case), and clerks often attend the conferences as well. Finally, in those cases that do reach trial, the clerk will generally attend the trial and all related hearings. If there is a jury, the clerk may be involved in the preparation of jury *voir dire* and jury instructions. In civil bench trials, the clerk will often draft findings of fact and conclusions of law. The clerk may well be asked to participate in sidebar conferences on disputed evidentiary issues. In criminal cases, clerks are likely to be involved in the evaluation of sentencing recommendations under the Federal Sentencing Guidelines.

d. UNITED STATES COURT OF INTERNATIONAL TRADE. In the Customs Court Act of 1980, Congress created the U.S. Court of International Trade within the judicial branch, to deal with cases involving international trade and customs duties. Previously named the U.S. Customs Court, the court has the same powers in law and equity as the district courts. Most of its cases concern the classification and valuation of imported merchandise, customs duties, and unfair import practices by trading partners. The court is located in New York, NY.

2. ARTICLE I JUDGES

a. BANKRUPTCY JUDGES. A bankruptcy judge is a judicial officer of the U.S. district court who is appointed by the majority of judges of the U.S. court of appeals to exercise jurisdiction over bankruptcy matters. Bankruptcy judges are appointed for fourteen-year terms.

Bankruptcy courts are trial courts, and have jurisdiction over some of the most complex and economically significant litigation in the United States. Their clerks are exposed not only to bankruptcy law and procedure, but also to all of the other areas of law embodied in claims against the bankrupt's estate (called “adversary proceedings”). If you think you might be interested in a bankruptcy court clerkship, scan a volume of *West's Bankruptcy Reporter* to get a sense of the wide range of legal experience a bankruptcy court clerk can obtain. Again, because bankruptcy judges publish opinions, the tasks a law clerk is called upon to perform in these courts are quite similar to those of district court clerks, including drafting judicial opinions and orders of the court, attending and assisting in pre trial conferences and hearings, etc. Many UMLS have clerked for bankruptcy judges and would confirm the value of this experience. See also the American Bankruptcy Institute's link to courts and job openings:

http://www.abiworld.org/Content/NavigationMenu/Online_Resources/Courts_and_Opinions/Bankruptcy_Courts/Bankruptcy_Courts.htm

b. MAGISTRATE JUDGES. A U.S. magistrate judge is a judicial officer of the district court and is appointed by majority vote of the active district judges of the court to exercise jurisdiction over matters assigned by statute as well as those delegated by the district judges. A full-time magistrate judge serves a term of eight years. A magistrate judge may eventually become appointed to the U.S. District Court.

Duties assigned to magistrate judges by district court judges can vary considerably from court to court, and from judge to judge. Generally, however, magistrate judges are often heavily involved in criminal cases, conducting arraignments, reviewing requested warrants, reviewing habeas petitions, etc. District court judges often delegate to magistrate judges significant responsibilities in civil cases as well; magistrate judges are often asked to attempt to settle cases, and often handle the pretrial stage of complex civil cases. Magistrate judges frequently write opinions, called “reports and recommendations,” advising the district judge as to how a case should be resolved. Occasionally, magistrate judges preside over trials, at the consent of the parties. In sum, a clerkship with a magistrate judge is very similar to a district court clerkship. Although a bit dated, see The Roles of Magistrates in Federal District Courts, by Carroll Seron, Federal Judicial Center, 1983. In addition, many UMLS students have had clerkships with magistrate judges, and have written of their experiences in letters which can be found in the “Clerkship Feedback Notebooks” in the OCS library, or online at the Feedback/Report link from the OCS clerkship database. See also the Federal Magistrate Judges Association: <http://www.fedjudge.org/index.asp>

c. “SPECIALTY” COURTS. So-called specialty courts may require specific background. Examples include the **United States Tax Court**, located in Washington, DC, which hears disputes involving the Internal Revenue Service and deficiencies or overpayment of taxes, as well as some other federal tax issues; the **United States Court of Federal Claims**, located in Washington, DC, which has nationwide jurisdiction over civil claims, other than tort claims, against the federal government (such as government contract disputes, eminent domain, military pay, and patent or copyright violations by the government), as well as over claims brought by Native American tribes, and a handful of other matters; the **United States Court of Appeals for the Armed Forces**, located in Washington, DC; and the **United States Court of Appeals for Veteran Claims** (f/k/a U.S. Court of Veteran Appeals), located in Washington, DC. See Appendix B, List of Resources, for information on finding out more about these courts.

B. STATE CLERKSHIPS. Most legal disputes in this country are handled in state courts, which are the primary fora for contract disputes, torts, criminal prosecutions, divorce and custody matters, and probate of estates. While the subject matter one sees in the federal court is by no means narrow, what one sees in state courts is even broader.

1. SUPREME COURTS.⁶ If you talk to someone who has clerked for both a federal judge and a state supreme court, you will almost invariably be told that the latter was the more interesting clerkship. Why? State supreme courts are usually courts of discretionary review;⁷ the justices tend to cherry pick the most interesting cases with the best attorneys to settle the questions of the moment. In addition, since it is the state’s highest court, the ability to influence state law is tremendous. And as a substantive matter, state supreme courts develop and interpret the common law, rather than statutes; many lawyers find this a more interesting emphasis. Apart from those considerations, though, a clerk’s tasks in the state supreme courts largely mirror those of a federal appellate court clerk.

2. INTERMEDIATE APPELLATE COURTS. Not all states have intermediate courts of appeals, and the quality of the court and duties of the clerks can vary greatly. The nature of the work, however, is quite similar to that of federal courts of appeals.

⁶Actually, this section should properly be denominated “courts of last resort.” While most states call their highest court a “supreme court,” a few—e.g., most famously, New York and its Court of Appeals—do not.

⁷This is not true in states such as Alaska, where there is no intermediate court of appeals.

3. TRIAL COURTS. Students who know they wish to settle in a particular geographic area should consider applying to state trial judges for clerkships. These positions provide an unparalleled opportunity for students to get to know, and become known by, members of the local bar; usually, clerks in these positions have far more contact with attorneys and court staff than is typical in the federal court system. Further, it is an excellent opportunity for learning state-court civil procedure as well as the substance of state law. State court trial judges typically do not publish opinions, but their clerks may be called upon to research legal issues (often on short notice, such as during trial); advise the judge on rulings; and observe and assist at trials.

C. INTERNATIONAL CLERKSHIPS. There are a variety of international-clerkship possibilities that you may want to consider exploring, such as the Criminal Court in the Hague, the International Court of Justice in the Hague, the Iran Claims Tribunal in the Hague, the European Court of Human Rights, the European Court of Justice, and the WTO Appellate Body. Several UMLS faculty are involved in or have expertise in international law and familiarity with international clerkship opportunities. Prof. Bruno Simma was elected to the International Court of Justice and has made it possible for Michigan students to apply for clerkships on that court; Prof. Daniel Halberstam clerked at the Court of Justice of the European Communities in Luxembourg. The Law school also has had visiting faculty from members of the Israeli Supreme Court, including its Chief Justice, and the South African Constitutional Court, among others. In addition, you should avail yourself of the resources at the Law School's **Center for International and Comparative Law**. Assistant Dean of International Programs, Virginia Gordan., has an office in the Reading Room and additional resources if you are interested in pursuing an opportunity with an international court. See also Yale's Guide: http://www.law.yale.edu/documents/pdf/CDO_Public/cdo-tribunals_public.pdf

D. MISCELLANEOUS

1. STAFF ATTORNEY POSITIONS. Law clerks who serve many judges or an entire court are commonly referred to as staff attorneys, staff counsel, or pro se law clerks. These positions can be found in both federal and state, appellate and trial courts. The duties and responsibilities of a staff attorney vary by court, but may include reviewing appeals and correspondence, preparing memoranda, and assisting in case management and settlement procedures. The length of service for these positions varies by court. Information can be found on the Federal Judiciary website, under general employment, at www.uscourts.gov/employment/opportunities.html, or through the U.S. Office of Personnel Management at www.usajobs.opm.gov and at each state court's website.

2. ADMINISTRATIVE LAW JUDGES (ALJs). ALJs are independent, impartial triers of fact in formal administrative hearings. Over 30 U.S. government departments and agencies employ ALJs. Some ALJs hire recent law school graduates as law clerks. These positions may be for a term or an indefinite period. *Want's Federal-State Court Directory* is a good source of information on federal agencies and ALJs (e.g., FDA, NLRB, FERC, FCC, FTC, ITC, SSA, SEC, SBA, DEA, etc.). See <http://www.firstgov.gov> for links to various federal agencies.

3. TRIBAL COURTS. Some states have tribal courts that hire law clerks, although funding for such positions tends to be quite limited. Postings can often be found in Indian Country Today, a newspaper (online at www.indiancountry.com). In addition, the National American Indian Court Judges Association may list postings on its website, www.naicja.org. See also, www.tribal-institute.org, which is a clearinghouse of information for the tribal courts.

IV. PARTICULAR COURTS, PARTICULAR JUDGES: SELECTING YOUR TARGETS

A. THE MECHANICS. The Law School maintains a **database** of the names, addresses, and phone numbers of every federal court of appeals, district, bankruptcy, and magistrate judge, and every state Supreme Court justice. Also contained in the database, to the extent known, is various other information, such as a judge's law school, date of confirmation, and whether the judge has hired Michigan students in the past. The OCS database IS NOT A DIRECTORY OF CLERKSHIP OPENINGS. We do add a comment line to the judge listing when we have information about a judge's hiring needs, or if we know alums who have worked for that judge, we will put the information there. In 1999, the database was upgraded and improved to allow it to be searched via the Internet. Detailed instructions for using the database are located on Appendix F. While the database does not include

information on state trial and appellate courts, we have compiled contact information for some state courts in a notebook in 210 HH. In addition, the *Vermont Law School Guide to State Judicial Clerkships* is a major source of information on state court clerkships. You will find the guide located in the OCS library, or online at the 2007 Clerkship Resource page, or obtain the password from OCS.

To access the UMLS clerkship database, go to the Judicial Clerkships section of our website, at <http://www.law.umich.edu/currentstudents/careerservices/Pages/judicialclerkship.aspx>

and scroll down to the Judicial Clerkship Database link. Access is limited to current Michigan Law School students and staff, and security will be maintained through use of your username and password. Alums can also access the database by registering for a username and password at the Alumni network section of the UMLS website. Briefly, though, you can search for judges in a variety of ways: by name or ID number (internally assigned, and usually not of any use or interest to students), or by court or geographic location, or combination thereof. (That is, for example, you can search for the entire Sixth Circuit, or you can search just for the Sixth Circuit judges in Michigan.) You will be able to add the judges you want to a shopping cart, and when you're done, you can generate a report showing the judges' names, addresses, and phone numbers, as well as their status (active, chief, or senior) and clerkship length, as well as any available biographical information. From there, you can generate a mail merge file for use with Microsoft Word or WordPerfect. In addition, your search results will be saved separately in a network file that can be accessed by faculty secretaries when they generate your "paper" recommendation letters (electronic applications via OSCAR do not need mail merge letters prepared unless your recommender specifically asks you to do this; see below for more information on OSCAR).

Please note: We do our best to maintain a completely error-free and up-to-date list of addresses; we are, however, human beings, and in a database with almost 3000 entries, some errors are inevitable. Furthermore, the addresses are a download from the Administrative Office of the Courts—if they have a wrong address, there is no way for us to know otherwise. In addition, judges may retire or decide to stop hiring clerks and the database may not automatically reflect that (they don't notify us). *It is important that you look at the comment section of the database to see if there are any special notations, as well as check with the Federal Law Clerk Information System and OSCAR (Online System for Clerkship Application Review) for hiring status (see below).* Please draw any database errors or updates to our attention by emailing either lawcareers@umich.edu, or Tammy Sindlinger at sindling@umich.edu.

In addition to the Law School's database, students should consult the **Federal Law Clerk Information System ("FLCIS")** at <https://lawclerks.ao.uscourts.gov/>. This site, created and maintained by the Administrative Office of the U.S. Courts, indicates what application materials judges want, the length of the clerkship, and other useful information. *In fact, it is extremely important to check your list of judges against the FLCIS records.* You can and should check here about openings and filled clerkships. Unfortunately only about 60% of the federal judiciary uses the FLCIS. Although the judges may or may not update their openings or list of qualifications, the FLCIS is usually accurate as to address (this is the record the AO uses for payroll), so please check their records against ours to safeguard against any inadvertent errors. One caveat about the FLCIS: it is only as accurate as the judges choose to make it. Always check a FLCIS listing for when it was last updated to gauge the timeliness of the information.

Another new source of information and applications is the **Online System for Clerkship Application and Review (OSCAR)**. <http://oscar.dcd.uscourts.gov/>. OSCAR is an internet-based application system founded by a committee of judges and law schools, under the auspices of the US Administrative Office of the Courts (developed by the Symplicity Corporation). OSCAR permits applicants to file their federal clerkship application materials online and designate those judges to whom they wish to apply. Federal judges and chambers staff can read, sort, and manage those applications on-screen; they can also download and print those applications. OSCAR also allows letters of recommendation to be placed confidentially in applicants' online files, either directly by the recommender, or through the applicant's law school.

During the 2008 clerkship term application season (fall, 2007), almost 800 federal judges used the OSCAR system to great acclaim. For the 2009 clerkship term, OSCAR hopes that number will continue to increase and eventually become the main source of clerkship information and applications in the future. *Until that time, however, applicants are wise to check both the FLCIS and OSCAR when researching clerkship openings.*

One thing is clear, however-- *if a judge is asking for OSCAR applications, he or she will not want to receive duplicate applications in hard copy via the US postal service or overnight service.* Thus, make sure when applying on OSCAR that you also double check your list of judges who will be getting hard copies (and for whom you may have asked for a recommendation letter or included on your mailing list via the OCS clerkship database) and avoid sending both (default to OSCAR).

For links to federal court websites see: <http://www.uscourts.gov/links.html>; The National Center for State Courts' website also is a good source: http://www.ncsconline.org/D_KIS/info_court_web_sites.html (it has links to state, federal, & international court websites).

B. MISCELLANEOUS CONSIDERATIONS. Inevitably, some students fixate on a small number of clerkship opportunities, sometimes going so far as to conclude that a clerkship on any court other than the "hottest" United States courts of appeals is not worth the investment of time and money involved in applying. This has two inevitable and unfortunate outcomes: (1) sometimes students wrongly choose to apply only for clerkships that are not well-suited to their particular interests and styles, and (2) sometimes students forego clerking entirely because they were not fortunate enough to obtain one of the handful of extremely competitive clerkships for which they applied. While there are gradations in prestige between various courts, it is equally true that the vast majority of lawyers never clerked, and finding a clerkship of any stripe is pretty impressive: lawyers recognize and value the "inside perspective" that clerks gain, whether it is in a federal or a state court. Likewise, clerking is almost always an extremely rewarding experience. And the satisfaction of a clerkship tends to be far more closely correlated with one's affinity with one's judge, a matter that is unrelated to a judge's prestige or biographical data. With that in mind, consider the following:

1. LOCALE. In general, the most competitive cities for judicial clerkships are Los Angeles, San Francisco, New York, Boston, Chicago, and Washington D.C.—major urban areas with top law schools in the vicinity. That means that judges in those cities attract the largest number of extremely well-qualified applicants—and even with the best credentials, your application cannot be guaranteed to stand out. Contrariwise, judges in other cities, or judges in the same jurisdictions but whose chambers are outside the cities, attract fewer applications, and may therefore be happy to consider candidates with academic records that are not as strong. But if you are limited to one of these very competitive cities for personal reasons, be sure to give broad consideration to the type of judge to whom you apply, and not to be unduly limited. In the past students could apply in waves.” However, is not a good strategy under the Federal Clerkship Hiring Plan, which calls for most applications to be received in chambers *no earlier* than the day after Labor Day (see Section V., A.Timing). Also, once you decide to apply to a particular geographic area, don't apply to just a couple of judges who you think are the "best" or most interesting; apply to everyone in the vicinity. Then, when you get called for an interview, you can possibly leverage it into more interviews by calling other judges in the same courthouse.

2. TERM LENGTH. In general, students seem to prefer one-year clerkships, and there is therefore less competition for clerkships with a two-year term requirement. In fact, judges with two year clerkships sometimes get about half the number of applicants as judges with a one year term.

3. SENIOR JUDGES. Federal judges can elect to take "senior status" when, once they reach 65, their years of service and years of age amount to 80 (the "Rule of 80"). See 28 U.S.C. § 371(c). The caseloads of senior judges can vary considerably; some carry a regular caseload, or close to it; others will carry a drastically reduced caseload; and still others will use their senior status to enjoy "sitting by designation" in trial or appellate courts of other federal jurisdictions. Throw into this mix the fact that some senior judges have only one clerk, which means that a "drastically reduced caseload" will nonetheless be the same or more work for that clerk as a clerkship with an active judge. Often, senior judges will receive fewer applications than active judges, making these clerkships somewhat less competitive. (See: *533 SENIOR STATUS: AN "ACTIVE" SENIOR JUDGE CORRECTS SOME COMMON MISUNDERSTANDINGS, by Honorable Frederic Block, 92 Cornell L. Rev. 533).

4. CHIEF JUDGES. Chief judges in the federal court system (for state judges, the rules vary) are not nominated or appointed (except for the Chief Justice of the United States); they assume the position for a fixed number of years based on seniority. The same criteria exists for circuit and district chiefs. The chief judge is the judge in regular active service who is senior in commission of those judges who (1) are 64 years of age or under; (2) have served for one year or more as a judge; and (3) have not previously served as chief judge. Chief judges have more clerks, but have a lighter caseload than regular active judges, and more administrative duties.

5. IDEOLOGY. Some students will reflexively apply only to judges appointed by Republican or Democratic presidents, depending on the students' own politics. On the one hand, it is true that if a clerk has deeply felt ideological beliefs on which he or she feels unable to compromise—to the extent of being unable to take direction from a judge who differs—the year might be pretty miserable. But that being said, the vast majority of cases being decided do not implicate political hot buttons. Moreover, a judge's political affiliation can be an extremely inaccurate gauge of the way a judge decides cases; Earl Warren leaps to mind. Finally, many, many judges enjoy the experience of having their ideologies challenged and tested, and welcome the presence in their chambers of thoughtful clerks who can express differing views well. Thus, in all but the most extreme cases, the best advice is to *apply broadly*, without particular regard to a judge's politics, and let your own politics be reflected in your resume. A judge who is unable to enjoy alternative views will do the weeding for you.

6. PERSONALITY. Different judges have different styles. Personality and work habits of the judge can make a great difference in the quality of the clerkship experience. Certain judges can be delightful to work for; others can be aloof; and sadly, in a few rare instances, some judges are extremely difficult. There are a wide variety of resources available in the OCS library that can help you avoid applying to judges with whom you think you would clash.⁸ For example, OCS keeps a notebook of feedback forms and letters from former clerks about their particular clerkship interviews and experience, as well as a variety of biographical directories and guides. **But:** be careful before you cross out a judge on the basis of brief biographical data. It can be very hard to predict on that basis whether the judge is someone with whom you would get along. Your best resources are therefore usually human: lawyers in the area (people with whom you have worked or alumni), former clerks, other students, faculty, and career counselors.

7. KEEP APPLYING! You've heard the adage, "If at first you don't succeed, etc. etc." Remember: the clerkship process is notoriously quirky. If you don't get a clerkship initially, don't decide you are not destined to get one, and don't decide that those darn judges are too clueless to deserve you. Just keep at it. Send another round of applications out to other judges. Keep track of openings that are posted to the lawclerks listserv. Keep an eye on nominated judges, and apply when they are confirmed; we keep track of this information at our website. Many, many clerkships remain open, sometimes even months before they begin.

In sum: Don't give up – clerkships are a wonderful opportunity, and you'll regret it if you throw in the towel too quickly.

⁸See Appendix B for a list of those resources.

V. THE APPLICATION PROCESS. A beginning caveat: the judicial-clerkship selection process is unpredictable. No particular set of credentials guarantees either that you will or that you will not obtain a particular clerkship. While grades are important, there simply is no GPA cut off after which a University of Michigan student should select him- or herself out of the running,⁹ nor is there any activity or credential that is essential to a successful application.¹⁰ Judges are idiosyncratic, and there is no way to predict what about your application may strike a particular judge favorably. Because of the close working relationship that develops inside the chambers, judges tend to give special weight to subjective factors such as personality or “chemistry.” They will often choose a friend of the family, someone from their home town, someone from their own law school, or the first person they interview. They may be dazzled by tennis-playing ability or a past career as an opera singer. In any case, they will consider how an applicant is likely to fit in with his or her co-clerks and with the judge’s secretary, and whether his or her work style is likely to be compatible with their own.

Further, unlike law firms, a judge’s chambers does not have a human resources staff that sorts through incoming applications; this is a duty that falls to clerks and judicial assistants in addition to their other tasks. Therefore, it is not unheard of for applications to be lost, or to have those in charge of sorting through them do so randomly, or simply get exhausted by the process and halt it prematurely. The lesson from this is, if you apply narrowly, even if your record is stellar, you may end up with no interviews simply because of unrelated missteps in the chambers receiving your application materials.

Finally, at this writing, the hiring process is entirely decentralized. However, the Federal Law Clerks Information System, <https://lawclerks.ao.uscourts.gov/>, coupled with the new OSCAR system, provides information on which clerkships are still available. Again, keep in mind that the information is only as accurate as the judges (or their clerks or secretaries) make it, as they are the ones responsible for updating it. In addition, we will try to keep apprised of which judges are interviewing and which have hired, and notify students accordingly.

In sum: in applying for a clerkship, accept from the beginning the fact that you may not get one, or that you may not get the one you think you deserve, and that failure to get a clerkship is not a reflection on your ability. And if you apply in one round and go nowhere, don’t let this blow to your ego take you out of the game.

A. TIMING.

1. FEDERAL COURTS/ FEDERAL CLERKSHIP HIRING PLAN. In the current academic year, the University of Michigan Law School is committed to the “Clerkship Hiring Plan” developed by an Ad Hoc Committee of Federal Appellate Judges. <http://www.cadc.uscourts.gov/internet/lawclerk.nsf/Home?OpenForm>

The Hiring Plan was developed in an attempt to rationalize the increasingly early and often chaotic timing of clerkship applications, which often found students applying to the most competitive clerkships at the beginning of their second year, and more than two years out from the time they would actually begin their clerkship. Needless to say, the clerkship hiring decisions based on no more than the student’s first year grades and their selection for journals was a disservice to all of the parties to the process.

The Hiring Plan is a positive step to reforming the previous application process. The Plan contains these basic features:

⁹Indeed, more than 20% of Michigan clerks in recent years have come from the bottom half of the class, despite the fact that people from the bottom of the class tend to apply in far fewer numbers.

¹⁰Often, students believe that without Law Review on the resume, a clerkship is a pipe dream; in the words of one student, “Law Review essentially owns the clerkship process.” This is incorrect. It is true that Law Review members apply in greater numbers than members of other journals or students with no journals, and thus a higher number of clerks are on the Law Review. However, more than half of the people who got clerkships in recent seasons—at all levels, including federal appellate courts—were *not* on the Law Review.

- An arrangement ensuring that the hiring of law clerks will not be done earlier than the Fall of the third year of law school; and
- An agreement that the focus of law clerk hiring will be on third year law students and law graduates.

As of this writing, most federal Appellate Courts, Federal District Courts (including Magistrate, Bankruptcy and Specialty Courts) and some State Supreme Courts have agreed to follow the plan and begin to hire only in the fall of the school year, in a student's third year. Many law school deans, law school placement offices and legal professional organizations have also endorsed the Hiring Plan (see <http://www.nalp.org/content/index.php?pid=212>). To view a copy of the Law Clerk Hiring Plan, its summary, history, and critical dates, see: <http://www.cadc.uscourts.gov/internet/lawclerk.nsf>

Having said all of the above, you may still be wondering **WHEN SHOULD I APPLY?**

The Hiring Plan agreed to by most federal courts and followed by the UMLS calls for student clerkship applications to be sent in the fall of a student's third year. As of this writing we expect the judges to continue the Hiring Plan by requiring students to apply after Labor Day, and to have applications to federal judges arrive in chambers no earlier than the first day after the Labor Day holiday, for clerkships beginning in the fall of 2009. Likewise, recommendation letters from faculty were not to be received any earlier than the Tuesday following Labor Day, except for vacancies in the current calendar year that must be filled promptly. We have every reason to believe that the application schedule will continue into 2008, for the fall 2009 clerkship term and OCS will apprise you when the judges issue a new timetable. In the meantime, alums should note that the *Hiring Plan does not apply to them; graduates may apply at any time a judge is accepting applications.*

On **OSCAR**, applicants can create their accounts and upload materials during the summer. However, federal judges will not have access to student applications until after Labor Day. However, since alums may apply at any time, Oscar judges will have access to alumni applications on the Oscar system as soon as alums "release" their application for viewing.

Although the federal hiring plan has been in effect for over five years, it is possible that there may be some changes made to the plan. The OCS will keep you apprised of any changes as they occur – however, our understanding is that the focus of clerkship hiring will remain on 3Ls and alumni for clerkships beginning in the Fall of 2009 and later.

AS OF THIS WRITING (JANUARY, 2008), THE AD HOC COMMITTEE OF FEDERAL JUDGES RESPONSIBLE FOR THE FEDERAL LAW CLERKS HIRING PLAN HAVE NOT YET ISSUED NEW TIMING GUIDELINES. OCS WILL UPDATE YOU WHEN WE HAVE THAT INFORMATION. In the meantime, the following is a summary from last year of the important dates in the Hiring Plan for Fall 2007 (covering the 2008 clerkship term):

- First date applications could be received: Tues., 9/4/07.
- First Date and time when Judges may contact applicants to schedule interviews: Noon (EDT), 9/11/07.
- First date and time when interviews may be held and offers made: Wed., 9/19/07.

2. STATE COURTS. Applications to state courts are not technically governed by the Federal Hiring Plan, but many states have chosen to abide by the plan. Some state courts have traditionally hired in the summer between a students' second and third year, or in the fall of the third year, and will simply continue to do so. Many state courts will continue to follow their own hiring timetable. For example, the state supreme courts of Illinois, Minnesota, Oregon, Washington and Wisconsin (to name a few) hired in the spring or summer last year, prior to the Fall hiring season. These and other state courts will most likely continue to hire early.

UMLS clerkship hiring guidelines permit 2Ls to apply to those state courts that are seeking clerkship applicants early, before the fall of the third year and in contravention to the federal timetable. This doesn't mean that all state courts are going to hire early. Students should check with the courts and a judge's chambers to see when they will be taking clerkship applications.

There is no centralized source of information on applications to state courts and the timing may change from year to year. Therefore, if you know you are interested in a state court clerkship, err on the side of caution and contact the clerk of the court in which you have an interest. In addition, you should check **the University Of Vermont Guide To State Court Clerkships** for updated information on types of state clerkships, contact information and application requirements. This publication is updated each fall and is available at the OCS library, and online (contact OCS for the password or look at the clerkship webpage, under the password protected section, "2008 Clerkship Resources"). Lastly, the web site of the National Center for State Courts has links to state court web sites: http://www.ncsconline.org/D_KIS/info_court_web_sites.html

3. WHAT TO DO AS A 2L TO PREPARE FOR CLERKSHIP APPLICATIONS IN THE 3RD YEAR. Having an extra year to prepare for clerkship applications can increase your attractiveness as a candidate. Thus, students can and should use their second year in law school to improve their grades, polish a writing sample, enhance their resume (e.g., with moot court, by participating on a journal, clinic or an extra curricular activity), and very importantly, develop relationships with the faculty whom they may want to ask to be recommenders. Of course, use this time to think about which *type* of clerkship best suits your individual goals and interests and investigate the differences between the courts. Finally, use the time available during your second year to research the judges to whom you may want to apply. OCS offers many programs and panels about clerking and you should avail yourself of those opportunities.

Lastly, the Hiring Plan may stay in effect for some time to come. However, these plans have unraveled in the past, and as this manual goes to "press," there are a few judges who may not abide by the plan (some judges on the USCA 4, USCA 9, USCA 10, for example, have been known not to abide by the hiring plan). While the UMLS is committed to the Hiring Plan, rest assured that, should the plan unwind, we will reevaluate our and our peer institutions' policies and notify you accordingly. In that vein, let the OCS know if you are aware of any courts or judges who are choosing not to follow the plan and are seeking applicants earlier or in contravention of the timing guidelines put in place.

B. STUDENTS WHO ARE NOT U.S. CITIZENS. Students who are citizens of foreign countries may be able to be employed as a federal law clerk. The Office of the Assistant Legal Adviser for Treaty Affairs, U.S. Department of State, maintains the list of ally countries for purposes of restrictions on compensation of non-citizens by the federal government. Unfortunately, the list of which countries are treaty-allied with the United States changes frequently and is not a matter of public record. Therefore, if you are interested in clerking and are not a U.S. citizen, you must specifically inquire to learn if you are eligible. Ms. Mimi Wyche in the General Counsel's Office of the Administrative Office of the U.S. Courts can counsel students on this issue. She can be reached at: (202) 502-1100. The general public information number for the State Department is (202) 647-6575. The public law setting forth the treaty-allied requirement is P.L. 105-277 sec. 606. In addition, see the U.S. Office of Personnel Management website at:

http://www.opm.gov/employ/html/non_cit.asp

Citizenship requirements for applicants to state courts will depend on the individual state's laws; it would be wise to contact the court's clerk or administrator directly.

C. APPLICATION MATERIALS. Some, although not all, federal judges indicate on the FLCIS (and Oscar) website information about what materials they like to see as part of an application. Once you have selected the judges to whom you wish to apply, *you must cross-reference your list with the FLCIS website*, and tailor your application based on the information you learn there. State court judges vary in their requirements, but most ask for the same materials as their federal brethren. The basic application materials typically include the following components:

1. COVER LETTER. The cover letter should be addressed to the specific judge to whom you are applying. As discussed above, the web-based system for searching our judicial database will facilitate the mail merge process for “paper judges; directions for mail-merging can be found at the website. On OSCAR, judges may not be looking for a personalized letter. See the OSCAR system for instructions on uploading cover letters and other materials.

Your cover letter should be brief and to the point, stating that you are a student at the University of Michigan Law School and that you wish to apply for a clerkship for a specified year. It is helpful to name in the cover letter the professors who will be submitting (either independently or in sealed envelopes along with your application or via OSCAR) recommendation letters on your behalf, and to provide their phone numbers. It may be worth including information about your ties to or interest in the geographical area in question, if that is not otherwise obvious from your application materials. Sometimes it is worth briefly mentioning something particular about the judge or the court that makes you want to work there. This kind of information will help convince the judge that you will not be unwilling to pay travel expenses to come interview, or that if you are offered a clerkship, you will not spend the year weeping in your office, sorry that you have ended up in Nebraska. In general, however, it is not necessary to convince a judge of your sincerity of interest in clerking; they largely assume that to be the case. See Appendix H for more information, and sample cover letters.

2. RESUME. The resume should cover academic background, outside activities (including membership in student groups), employment experience (including first and second summer jobs, and where you have been offered a post graduation position, if known), publications (or a draft note title and indication of where it is in the review process), and any other information that might help a judge make his or her decision. *In addition, consider including your cumulative GPA and estimated ranking on your resume.* While Michigan doesn’t rank students until after graduation, we have heard from former clerks that it may be helpful to a judge who is sifting through literally hundreds of resumes to have an idea where you stand in the class, especially as that compares to candidates from other schools. Dean Baum has prepared a letter with historical class ranking information. You may want to include this letter with your application packet to the judge(s). A copy of the letter resides on the password protected Clerkship Resources page of the website. Alums can get their ranking from the UMLS registrar’s office.

Remember that the judge is looking for someone with whom he or she can work in close quarters; make sure that who you are comes through in your resume. This might be a good time to add a personal interest section to your resume to add a human dimension to your obvious academic achievements. As an alternative to listing names and numbers of your recommenders in the cover letter, it may be helpful to attach a list of references to your resume, providing the contact information.

3. TRANSCRIPT(S). An unofficial copy of your law school transcript should be included with your application materials (unless a judge specifically requires an official). In addition, it is very helpful to include the names of professors who taught your classes. You can simply add it to your transcript after downloading it from Wolverine Access. Many judges also like to see undergraduate transcripts, so be prepared and request a copy from your undergraduate institution sufficiently in advance. Occasionally a judge will ask you to provide an official copy of your transcript. In terms of transcript substance, be aware that many judges will frown on a plethora of Ps, particularly if they are for courses that are directly relevant to clerking, or if they are clustered in a single semester. Likewise, judges will be pleased to see that you are taking classes that are helpful to preparing for a clerkship, such as evidence, administrative law, jurisdiction, or federal courts. For *Oscar*, transcripts from Wolverine Access can be copied and saved into a word document, and then converted into pdf format for uploading. Make sure your name is included on your transcript, not to mention your cumulative GPA.

4. WRITING SAMPLE. Most judges also require applicants to submit a legal writing sample. Be forewarned that some require that the writing sample represent a sample of your prose that has not been edited by others—and in any event, it should not be something that has been heavily edited. If you are using a writing sample drawn from experience in law practice or as a judicial intern, you must obtain the firm’s or judge’s permission, and you may be expected to redact client names or other identifying information from the writing sample. In that instance, it is helpful to indicate on the face of the writing sample that you are presenting it with permission. If the sample is an opinion or draft decision for a judge, *you must indicate that you have the judge’s permission* and

clearly state that your sample is a draft of what you worked on for the judge (judges are *always* the sole author of their opinions). If you are using a journal note, make certain it is the version you submitted prior to staff edits. Your own subsequent edits are fine to include. It is also fine to use writing samples from work you did in school (although Legal Practice work is theoretically a fine sample, it is not ideal because so much time has lapsed between your first and third year, and a judge may want something more recent and frankly, more sophisticated). Another good sample may be a sample note you may have submitted for the law review contest, or a brief prepared for a moot court competition. The sample should be between 5 and 25 pages (optimally, 10-15); it is fine to use an excerpt from a longer piece. In either case, it is useful to provide a cover sheet which describes important facts and the general context. If you find that editing for length will sacrifice comprehensibility, by all means provide a longer sample. In addition, consider the court(s) to which you are applying when selecting your writing sample. An appellate court may be drawn to a more scholarly piece; a trial court judge may value a more concrete brief or memo.

5. RECOMMENDATIONS.

a. WHOM TO ASK.¹¹ It is typical to ask two or three law professors to write letters of recommendation for you. Federal appellate court judges typically like at least three letters; trial court judges typically ask for at least two. (Recommendations from legal employers may also be useful; if the employer in question is a judge, that is even more useful.) Clinical and legal-practice professors are fine choices for recommenders. If you are a transfer student, it is fine to rely largely on the professors at your prior law school for recommendations, but if you can develop an adequate relationship with a Michigan professor in time to request a recommendation, that would be beneficial. Recommendations from non-lawyers, or lawyers who know you only on a personal basis, are usually not helpful, except in rare circumstances.

Usually those professors who have given you your best grades are most likely to be willing to write, and can often write the strongest letters. However, a professor who has gotten to know you well and appreciates your talents—one for whom, for example, you have participated meaningfully in class, or one for whom you have worked—will often write a stronger letter than a professor who gave you a higher grade but does not know you as well; a letter that merely states the grade you received in a course adds nothing to the transcript and is unimpressive to a judge, even if the grade is an A or an A+. Of course, some students simply haven't come to know any of their professors very well; in that case, take the time to meet with the specific professor and discuss your background and aspirations. Such a meeting may help the professor write a more three-dimensional letter for you. Visiting and adjunct professors are also appropriate recommenders but make certain to allow enough time to contact them if they are not currently on campus.

Students often think that the only professors worth having as recommenders are those on the faculty who are most well-known to the outside world. This is not correct. It can be helpful to have a recommender who personally knows a judge to whom you have applied, but that is very hard to predict or control. But most judges are not likely to take a recommendation letter appreciably more seriously simply because they know of the name of the writer. In choosing a recommender, the most important consideration is how well the recommender knows you and what he or she thinks of you.

b. HOW TO ASK. When asking a professor to write a letter of recommendation, you should provide the professor with a copy of your resume and transcript (or grade list), a personal statement and writing sample, and remind the professor of which of the professor's classes you took and your grades in those classes, and ask the professor if he or she would be able to write a positive and specific letter. If you fear the professor does not know you well, offer to provide the professor with additional information about your background and any special circumstances that should be referred to in the letter of recommendation. You should also give your recommenders initially an idea of the types of judges to whom you may apply. Eventually, by early July usually, you will need to complete a final list of judges for your faculty recommenders and their secretaries. Some faculty want to see that list even earlier. Read on below.

¹¹For a list of faculty who have clerked, see Appendix I, attached.

Most students prefer to send an email to a professor initially to ask for the recommendation letter. You should always try to meet with your recommender in person if possible. If you contact your recommender by email *but do not hear a response, you should definitely follow up in person or by phone.* Many professors are as bad as many students about managing their emails; do not assume silence equals a refusal. And it can be helpful to go in person in the first instance; if you are in a position to choose among several possible recommenders, you should ask any potential recommender if he or she will write you a strong letter of recommendation. If a professor appears willing, but less than enthusiastic about writing a letter of recommendation, you may wish to reconsider. A “plain vanilla” letter may actually be a negative for you in the judge’s analysis.

If a faculty member has agreed to write a good letter for you, it is helpful to also ascertain whether your recommender would also be willing to make a phone call, or take some extra effort on your behalf, where appropriate (again, that is their prerogative). Because judges are deluged with applications, they are much more likely to consider applicants about whom they have heard independently or with whom there is some connection. If you feel stuck about whom or how to ask, please make a counseling appointment for help!

c. REFUSALS. Some professors may refuse to send letters of recommendation to more than a specific number of judges, or may be willing to recommend only a small number of students to each judge. This is their prerogative. A letter of recommendation is a favor, not an entitlement. Those professors who insist on limiting the number of letters they will send usually believe they can write more effectively if their letters are directed personally to the judges involved, and that they cannot give sufficiently strong recommendations for a large number of students applying to the same judge. Their concern is legitimate. If a faculty member should refuse to provide all of the letters you request, consider whether you might be well-advised to readjust your application strategy in light of his or her advice.

A caveat: professors can often be discouraging about your chances of getting a clerkship, and sometimes, their advice is off-base because it is premised on courts to which you are not applying, or it is based on limited or old information. It may be that the professor is discouraging because he or she does not feel comfortable writing a letter of recommendation but does not feel comfortable saying so explicitly; that is fine, but it does not mean that you should give up on clerking. If you have been told that you are not clerkship material, please talk to a counselor in OCS before throwing in the towel.

d. ADMINISTRATIVE RIGMAROLE. If your recommenders are all current Michigan faculty, the process is simple. For “Paper” judges: When you select your judges from our database and save addresses as a “merge” file, a file will be saved in a central location that faculty secretaries can access and use to produce (paper) letters of recommendation. You should inform the secretary and/or faculty member that your list is ready (note that date and time of your “saved list) and tell them when you want the letter to go out. At this writing, the Clerkship Hiring Plan encourages students to send their recommendation letters along with their application, in sealed envelopes. OCS will again most likely organize an overnight mailing for federal clerkship applications which will require recommenders to bring your clerkship letters down to OCS for collating. Outside recommenders may email an electronic formatted letter or mail us your letters. State court judges hire at all times of the year and don’t have a central date by which students must apply-therefore the clerkship mailing program coordinated by OCS is for federal clerkship applications only). We will have further information at a later date on collating faculty letters of recommendation with student applications (for delivery to chambers after Labor Day).

Note: Faculty will not typically release letters of recommendation to students. For applications going out before Labor Day (eg., for alums, state court clerkship applications, off season clerkships, etc.) or after any bulk mailing undertaken by OCS, have your recommenders send your letters directly to the judges, timed with your application’s arrival in chambers.

See the OSCAR website for instructions on submitting recommenders’ information. You should make separate lists of your “paper” judges (judges who will require a paper application sent via “snail” mail) and “OSCAR” judges (e.g., judges who are accepting applications and recommendations electronically via the OSCAR system) so that judges wanting only Oscar (electronic) submissions will not get a duplicate “paper”

submission. For judges who are not on the OCS Judge's Database or Oscar (e.g., most state trial and intermediate courts, staff attorney clerkships, and administrative law judges, to name a few), you will have to provide your recommender's secretary with the proper mailing addresses.

With a specific target date established by the federal judiciary for receiving applications immediately after the Labor Day holiday, **it is imperative that you line up your faculty recommenders long before leaving school for the summer. This means contacting potential faculty recommenders no later than the spring of the second year, prior to your leaving campus your second summer.** It is your responsibility to make sure, through contact with your recommenders *and* their secretaries, that your letters are written and sent (or uploaded onto OSCAR) in a timely fashion (or written and delivered to the OCS depending on the circumstances). You can also ask the professor to send out different batches of recommendations at different times, to coincide with successive applications by yourself.

If your recommenders are faculty at a different school, they may be willing to send out or "upload" letters directly, or it may be possible to use their former secretary during the time they were here to produce the letters. Alternatively, and for non-faculty recommenders, you can have a letter placed "on file" in OCS, and we can send out (or upload onto OSCAR) a copy of the letters from our office (you must let us know the name of the recommender(s), and the date and time of your "saved" list from the judge's database so we know who is to receive your recommendation letters). **Generic letters of recommendations for your OCS file must be received by OCS in pdf format** (email lawcareers@umich.edu). This is not optimal, however, as the letter will be generic, and judges generally prefer to see a letter addressed to them personally. One last note: please be respectful and considerate of the constraints faced by secretaries preparing these letters. July, August and early September is a very busy time for them; preparing hundreds of recommendation letters are but one of a myriad of their responsibilities. In addition, *make sure you know the name and email address of your recommenders' secretary; keep them informed of your anticipated needs and copy them on any correspondence you have with faculty about letters.*

D. THE INTERVIEW. Few judges will make a final choice without an interview. A recommendation from a faculty member and a strong transcript will get you a chance to speak with and/or see the judge, but the final selection depends on your performance in that interview. A few judges may make their selections based upon telephone interviews, but most require a personal interview, which occurs at the applicant's expense. An important caveat: *Don't take an interview for a clerkship which, if offered, you are not prepared to accept.* And be prepared for whimsy on the part of a judge offering you an interview: he or she may expect you to arrive for an interview on very short notice. Think in advance about how you will handle that situation should it arise.

1. THE CONDUCT OF THE INTERVIEW. In an interview, the judge is primarily interested in determining whether you are the sort of person with whom he or she prefers to work. Remember what we said earlier about the intimacy of the clerkship experience: the judge is choosing a companion, not simply an employee. And it is not only the judge who is doing the "choosing." You should assume that anyone you meet in the judge's chambers—not just the law clerks (who often have considerable influence over the selection), but also the judge's bailiff, secretary, and the court reporter—will form an impression of you, and those impressions are an important part of the interview. Do not treat secretaries and other support personnel as subordinates: give them the respect they deserve as the structural backbone of the chambers. This is important; the judge who will hire a clerk after his or her secretary has expressed disapproval is rare indeed.

Some judges may grill you on your substantive knowledge of the law; some judges ask their law clerks to do so. But even if the interview is not centered on testing your legal knowledge, the judge (and clerks) will almost always seek to engage you on some legal or other intellectual topic of mutual interest. Don't present yourself as a passive law student. Be prepared to talk intelligently about your courses and why you selected them, about the topics of your seminar papers or journal note, about the substance of your past work or academic experience, and about your plans for the future.

Familiarity with the judge's major opinions and with the types of legal issues that most frequently arise in the judge's court is helpful (e.g., if you are applying for a clerkship in the Fifth Circuit, you should know

about Louisiana's unique legal system and you should be aware of the circuit's significant death penalty and admiralty dockets; you should be aware of the Second Circuit's historical leadership in securities litigation, etc.). Being sycophantic, however, and praising a judge's past work is a risky business; it is more often than not perceived as impertinent rather than gracious. Consider, too, that judges often do not like to get the sense that you have selected them; unlike firms, where you should demonstrate your knowledge of the institution, an individual judge may find it unsettling if you know too much about his or her biography. On the other hand, it is not unheard of for judges explicitly to ask why you have applied to him or her, so it can be useful to have an answer in case this question is posed. As a general rule, however, do not go out of your way to demonstrate to the judge your knowledge of the judge.

The overall impression you should seek to convey is that you are grateful to have the opportunity to interview, and that you would be enthusiastic about clerking for the judge and would work hard to make him or her look good.

OCS has a notebook that contains feedback forms from students who have interviewed with particular judges, providing information on the interview itself. The notebook can be found in 210 HH. In addition, we are currently building a library of **electronic feedback surveys** from former clerks on the OCS judges' database (you can help build that library by completing a feedback form after an interview or after a clerkship term). We strongly encourage you to be prepared and read as much as you can about your judge by using these sources and others.

2. THANK YOU LETTERS. It is always good form (if time allows) to send a prompt thank you letter after an interview. As with any employer, a thank you note or letter underscores your interest in the job and serves to remind the judge of your application. It is also polite and in keeping with traditional etiquette. Of course, it goes without saying that any follow up correspondence should be *absolutely* error free.

3. MINIMIZING EXPENSE/LEVERAGING INTERVIEWS. If you are applying to clerkships that are distant from Ann Arbor, interviewing with judges can become expensive. There are some things you can do to minimize the expense and inconvenience of interviewing, however, as well as to maximize your interview options (and thus your chances of getting an offer). For example, *calling chambers to parlay interviews is an accepted part of the clerkship process*. If you have plans to be in the judge's city (for personal reasons, for non-clerkship job interviews, or for a scheduled interview with another judge), you may call the judge's chambers to inform him or her of that fact and to ask whether the judge would be interested in interviewing you at that time. Such a call will probably not yield an interview that you would not otherwise obtain; judges value their time and will not interview students they do not view as strong candidates. But the call might have the effect of accelerating the judge's decision as to whether you are "in the running." This may be especially valuable in the current timing of applications, where chambers are literally flooded with applications after Labor Day; calling chambers may get your application "plucked out of the pile" for a look.

Alternatively, it is possible that a judge will be willing to conduct a telephone interview, or even, in this era of modern technology, a videoconference interview. For the latter, the Law School has equipment that you may use. If you are interested in this option, you need to contact IT, and also talk to someone in OCS; be aware that IT needs about a week's notice to arrange such interviews. Several students obtained their clerkship offers in previous seasons via videoconferencing.

Finally, students on financial aid should check with the Financial Aid office about the availability of short-term and emergency loans, which may be available to help you to spread out the expense of interviewing.

4. WITHDRAWAL OF APPLICATION. If, after an interview, you know that you do not want to work with a particular judge, then **withdraw yourself from consideration immediately**, by phone and in writing. Withdrawing before receiving an offer will usually not affect future opportunities. If, however, you are interviewing with other judges in the same jurisdiction, additional interviews and acceptances in that same county need to be handled delicately. You should make an appointment with a career counselor if you find yourself in this situation.

E. CALLING CHAMBERS. It can be very useful to call chambers and check on the status of your application, especially in the midst of the federal hiring plan, where the courts can receive upwards of 600 or 700 applications all at once. A call to chambers can sometimes help get your application “plucked” from the stack, and at least have the effect of finding someone to look at it. Be aware, however, that sometimes the staff will find this kind of inquiry annoying; be as polite as possible, and anticipate that they may not be overjoyed to receive your call. Further, exercise extreme discretion in calling clerks. If it is a Michigan alumnus/a, you may feel somewhat confident that they will be of assistance, but be assured that their first loyalty is to their judge, not to you. And if the clerk attended another law school, you should not presume that the clerk is going to be eager to help your application along. Remember, too, that clerks usually have a full load of work to which the clerkship-application process is an often-unwelcome addition; be careful not to consume too much time with your inquiries. Make sure, however, that you do not call during the first week of the “reading period” – from the day that applications can be sent after the Labor Day holiday until noon (EDT) of September 11, 2007 when judges may contact applicants to schedule interviews.

F. OFFERS. Unlike firms, which elect to be governed by guidelines of the National Association for Law Placement with regard to the on-campus interviewing process, judges are their own masters. Indeed, one of the difficult things for students to accept about the clerkship process is the fact that you do not have the freedom to gather multiple clerkship offers and then decide which one to accept. Thus, if at any point you have resolved that you would not ultimately accept an offer from a given judge, you should withdraw from consideration by that judge promptly, BEFORE an offer is given.

Once a judge makes you an offer, there are two possible responses: To accept graciously, or to ask for some additional time before deciding. We encourage you to accept an offer once given. However, we do not believe it is improper to ask for more time, and if it is given you may contact other judges for whom you would prefer to clerk. But be aware that the judge may decide not to give you additional time. If that is so then you must decide on the spot whether to accept or not. Moreover, when judges do give additional time for consideration, it is usually rather brief; in many cases, twenty-four hours is the best you can hope for. But again, be aware. Occasionally we have learned of a judge rescinding an offer, or offering the position to another candidate by the time you call back to accept. So, while you are not obligated to accept the first offer given, you do have an obligation to the judge, and to the school, to act in a professional and straightforward way. And you have an obligation to yourself to think ahead and weigh your options carefully.

Not all judges take advantage of their power in this manner. We have found that many judges are kind enough to give you a few days before accepting an offer, which will allow you to contact any other judges with whom you have interviewed and for whom you would prefer to clerk. Consider yourself very fortunate if the first judge who offers you a clerkship is one of these. Many judges however expect an immediate response to an offer. A twenty-four hour consideration period is often the best you can hope for.

So what is an applicant to do? There are different possible responses. One response (for many students the sanest response) is to remember that there is hardly a former clerk in the United States who did not love his or her clerkship, and that the differences among judges is not great enough for you to torture yourself about not having gotten the particular clerkship you now think you would have preferred. For most students, we heartily endorse this view.

But if you are in the position in which the prestige differences among clerkships are particularly salient to you, your only solution is to think strategically before you begin to interview. Try to interview with the judges you want most before you interview with others. For example, if you much prefer a clerkship in D.C. but will be in Los Angeles for a job interview, do not write to the judges in Los Angeles requesting an interview. If one offers you an interview and a job, you can't say “no thank you, I'd rather wait to see what I find in D.C.” Please keep in mind, however, that strategic choices like these can lead to your not getting a clerkship at all. Your second-choice judges are someone else's first-choice judges; by the time your second tier interviews are held, or if you apply to a second wave of judges later, by the time those applications reaches the courthouses, you may have lost the race. A chance to pique a judge's interest by an interview when you are in town may cause a judge who would have interviewed

you last to interview you first and to select you. In short, be strategic at your own risk. And the riskier the strategy you intend to follow, the more advice you should seek before committing yourself to it.

On the other hand, you can certainly treat the clerkship interview and hiring process like an interview for any other job (with certain crucial caveats as noted above): ask the judge questions about his/her hiring schedule; ask about how much time the judge gives to consider an offer. Call chambers to follow up on your application(s) or to find out whether the judge has reached a decision.

VI. IF YOU OBTAIN A CLERKSHIP. Please let the Office of Career Services know as soon as you obtain a clerkship, or if you decide to stop pursuing one.¹² Prompt reporting of clerkship results is very beneficial to us, for general information-gathering, and very beneficial to your classmates, who may be wondering whether a particular judge has made his or her selection yet. In addition, our access to the FLCIS (which lets us know, among other things, when judges have hired) has a quid pro quo-- we have to promptly inform the judicial administrators when a clerkship candidate has been hired. If we do not meet our end of the bargain, we may not be allowed to participate. So, **PLEASE** let us know if you get a clerkship (email lawcareers@umich.edu).

You should write to your judge to accept a clerkship formally, even after accepting orally. The letter can be short and to the point, telling the judge how much you look forward to working with him or her in the upcoming year.

Once you accept an offer from a judge, make sure to write to all the judges with whom you have an application outstanding and immediately withdraw yourself from consideration. This practice should also be followed if you change your mind about wanting a clerkship for which you had earlier applied.

Finally, please help students who are coming after you by completing our **clerkship interview feedback form**, and during your clerkship year please write to us about your clerkship experience, your judge and his/her hiring criteria, and the value of your experience clerking. You can do this directly online by going to the judges' database (you need to use your keberos password for entry) via the clerkship page: <http://cgi2.www.law.umich.edu/ClerkshipNet/Index.aspx>

VII. PREPARING FOR YOUR CLERKSHIP – RESOURCES

While the scope of this manual doesn't allow an in-depth treatment of how to prepare for your clerkship, there are resources which you may wish to review. See the following selected articles and treatises:

- Baicker-McKee, Janssen and Corr, "Federal Civil Rules Handbook"
- Bartell, Laura B., *Rubin: Practitioner, Professor, and Judge: A Splendid Relationship—Judge and Law Clerk*, 52 La. L. Rev., 1429
- Broodo, Kenneth C., and Haolftis, Douglas D., *Practice in the Federal District Courts From the Law Clerk's Perspective*, 43 Baylor L. Rev., 333
- Chambers Handbook for Judges' Law Clerks and Secretaries (includes the Code of Conduct for Judicial Employees), Federal Judicial Center, 1994. See online: [http://www.fjc.gov/public/pdf.nsf/lookup/Chambers.pdf\\$file/Chambers.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Chambers.pdf$file/Chambers.pdf)
- "Chambers and Case Management," by Barbara J. Rothstein
http://www.fjc.gov/library/fjc_catalog.nsf. In general, see all of the Federal Judicial Center's publications under "Orientation for Clerks: http://www.fjc.gov/library/fjc_catalog.nsf

¹²See Appendix J for reporting form; you may simply email lawcareers@umich.edu; or go to the clerkship database to complete a report form.

- Chemerinsky, Erwin, Federal Jurisdiction, 4th Edition, Aspen Publishers
- Cochran, Rebecca, “Judicial Externships: the Clinic Inside the Courthouse”
- Lexis and Westlaw training for judicial law clerks (offered each spring on campus).
- Louis J. Sirico, Jr., *Judging: a Book for Student Clerks*, Matthew Bender/Lexis Nexis, 2002
- Understanding the Federal Courts, Administrative Office of the U.S. Courts
<http://www.uscourts.gov/about.html> and <http://www.uscourts.gov/faq.html>
- Nancy Wanderer, "Writing Better Opinions: Communicating with Candor, Clarity, and Style." 54 Me.L.Rev. 47.

VIII. CLERKING AT THE U.S. SUPREME COURT. It goes without saying that obtaining a clerkship at the U.S. Supreme Court is a plumb job and quite an extraordinary accomplishment. The University of Michigan Law School has had at least one graduate clerking at the court each term for the last ten years. Needless to say, the process is just as quirky and unique as obtaining a lower federal court clerkship, intensified of course by the fewer spots, the ultimate prestige of the job and the necessity of having superior credentials (and a federal appellate court clerkship is usually a prerequisite).

Justices start considering applications during a student’s third year in law school, typically in October, but some of the Justices review applications much later. For example, Justice Souter typically hires last and often does not review applications until January of the year for which he is hiring. All in all, there is no set time or established application process for applying to the Justices on the U.S. Supreme Court. Indeed, the only commonality is the variety in each justices’ preferred timeframe for interviews and applications.

Having said that, the application materials to Supreme Court Justices do not differ greatly from the materials you would send to lower court judges (although it goes without saying that a Supreme Court clerkship is extremely competitive, requiring top grades and credentials). An application should consist of a short cover letter, resume, law school transcript, writing sample, and three to four letters of recommendation (sent directly by your recommenders). Letters should be from at least two professors who know you very well, and eventually you should approach your lower court judge for a recommendation.

In addition, some successful applicants to the U.S. Supreme Court apply twice or even three times before getting their coveted clerkship at the court. For example, it is not unheard of to apply as a law student in the third year, again while clerking for an appellate judge, and once again while working as an attorney. Also, keep in mind that protocol dictates that you send an application to ALL of the Justices, including a retired Justice, who can hire one clerk. Lastly, since there may be quite a large amount of time between when you first send your application materials to the court, and when you actually get an interview, you should update your application periodically. Certainly you want to keep the Justices informed of your contact information, such as a new telephone or mailing address, and send any new information about awards, fellowships, published writings, or other clerkships you obtain.

IX. Questions or Comments? Please let us know if you have suggestions to improve this manual or additions you’d like to see that may be of further help for students traversing the sometimes squirrely clerkship application terrain. Email either lawcareers@umich.edu or rakaplan@umich.edu with any comments or suggestions. Thank you!