

Excerpt from
Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks
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[Pp. 24-25]

Many law clerks serve the court for a year or two, and need to start thinking about future employment shortly after their clerkships begin. Other clerks serve for a longer period of time, but may also decide to pursue other professional opportunities. The ethics rules place limits on how you engage in activities related to future (or past) employment. Be mindful of three issues in particular.

First, a job search may create new conflicts of interest. Ask your judge if you may apply for a job with a firm that represents a party currently before the court. If you interviewed with a firm but have not accepted an offer, your judge has discretion about whether you may work on matters involving the firm. Once you have accepted an offer, however, the ethics rules take the decision out of your judge's hands. You may not work on any pending or future cases involving your future employer.

Second, do not let down your guard regarding confidentiality during your job search. Exercise care when preparing applications. Ask your judge whether you may submit written work from your clerkship as part of your application. While some judges may permit you to use a redacted bench memorandum, draft opinion, or order as a writing sample, others may not.

Maintaining confidentiality can be particularly challenging during job interviews. Prospective employers may probe for insight into your judge's deliberative process and your contributions to judicial opinions, but your confidentiality obligations remain firmly in place. Check with your judge before you interview. You should be able to speak generally about your role as a law clerk without divulging specific cases or legal issues.

Third, prospective employers may offer gifts or benefits that raise ethical issues. Generally, you may accept benefits that employers customarily provide in connection with bona fide employment discussions, such as meals or hospitality during the application process.

Once you accept a position, an employer may offer additional benefits, such as a clerkship bonus, compensation for bar-related expenses, or an invitation to a firm retreat. During your clerkship, you may only accept bar expenses and relocation expenses. You may not accept clerkship bonuses or other financial incentives (such as interest-free loans or salary advances). You should generally decline invitations to major firm events, such as retreats, although you may want to check with your judge regarding invitations to other firm events, as circumstances vary.

Finally, your ethical obligations impose certain ongoing restrictions that follow you to the next step in your career. You may not participate in any matter that was pending before your judge during your clerkship. Your judge may have a policy about whether you may

appear before the judge and, if so, how much time must first elapse. The court for which you clerked may also place restrictions on your participation and appearance in matters. It may be helpful to check on these restrictions before your clerkship ends. And, of course, your confidentiality obligations continue. Former law clerks must observe the same restrictions on disclosing confidential information as current clerks do.

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