

The Politics of Clerkships:

How Social Activism and Judicial Ethics Can Coexist

NALP Conference - April 6, 2022

During this program, we will consider some hypothetical clerkship candidates and how their educational and professional experiences, their clerkship goals, and their personal involvement in politics and social activism can impact their search for a judicial clerkship.

Assumptions

In order to keep the focus on the issues of social activism, politics and judicial ethics, please assume that all of these students have competitive GPAs and demonstrated legal writing experience (through law review or journal membership or a professional publication).

Meet John . . .

John is a second year student who comes to see you at the beginning of spring semester. He grew up in Alabama, where most of his family still lives, and went to college in Texas. John worked for a public relations firm for two years before starting law school. He will be working for a large corporate law firm during his 2L summer and he does not view himself as particularly political. John is interested in appellate court clerkships and he would like to stay close to home. He recognizes that many of the federal judges in his target areas are fairly conservative. John is concerned that his 1L summer experience may disqualify him with many of the judges to whom he hopes to apply. During his 1L summer, John worked for the Southern Poverty Law Center where his work focused on children's rights and mental health access issues.

Concerns:

1. John is concerned about his 1L summer job being a turn off to his target judges. How would you advise John to present his 1L summer work experience on his resume?
2. Similarly, what advice would you offer John as he thinks about drafting his cover letters?
3. John has not yet secured recommenders. What considerations should John think about as he starts to secure his letters of recommendation?

Notes:

Meet Regina . . .

Regina is a second year student who was politically active during her time in college. She worked on a few state level campaigns, including one for a universally well-respected but somewhat conservative candidate. Regina also served in the US Navy for six years prior to law school, and is an active member of the law school's Veterans organization. At the beginning of fall semester, Regina makes an appointment to speak with you about clerkships. She interned for a state appellate court judge during her 1L summer which sparked her interest in clerking. While she is open geographically, she is hoping to target her applications to liberal or progressive judges.

Concerns:

1. What advice do you have for Regina as she starts to build a list of target judges?
2. Regina is concerned that her military experience and work on a conservative political campaign impact her search. What advice can you offer her as she prepares her application materials?
3. After sending out her applications, Regina secures an interview with an appellate court judge. The judge is known for asking candidates to describe their judicial philosophy during the interview. Regina is concerned about how to answer this question. What advice do you have to offer to her as she prepares for the interview?

Notes:

Meet Elliott . . .

Elliott came to law school with an extensive public service background and hopes to one day hold political office. In college, Elliott volunteered on a presidential campaign, interned for a US Senate committee, and worked as a legislative aid for their hometown Congressman. Elliott continued to build their public service experience during law school by interning for the state Attorney General's Office as a 1L, participating in a employment law clinic during 2L year and working for the Brennan Center on voting rights issues during 2L summer. In the fall semester of their third year, after securing a one-year immediate post-grad fellowship which will focus on voting rights, Elliott comes to talk to you about the value of a clerkship. Elliott shares that a mentor has suggested that a clerkship could be a helpful credential, but Elliott is reluctant to pursue what they perceive as a "generic" professional experience. They have an active social media presence, where they routinely express support for social justice organizations and advocate for policies and political positions that are resonant to them.

Concerns:

1. How would you address Elliott's concern about a clerkship being a "generic" experience?
2. Elliott decides to give clerkships a shot. In light of Elliott's long-term political goals (and lingering reluctance), how would you advise Elliott to select judges to whom to apply?
3. Elliott creates a small list of judges to whom they will apply. All of the judges on the list have a record of continued community service while on the bench. If selected to clerk, Elliott wants to stay involved in the community groups in which they are now active. How would you advise Elliott to bring this up during the interview/offer process?
4. Elliott quickly secured the "perfect" clerkship (wahoo!). Fast forward to the early days of the clerkship, and Elliott attends a voting equality rally at the state capitol. The following day Elliott discovers that a local reporter quoted them in a story about the event. Does Elliott need to be concerned about this being an ethical conflict? If so, how should Elliott raise this matter with the judge?

Notes:

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Federal Code of Conduct for Judicial Employees

Political Activity

Federal judicial employees should not “. . . actively engage in partisan political activities.” Canon 5(A)

Judicial employees may participate in nonpartisan political activity “. . . only if such activity does not tend to reflect adversely on the dignity or impartiality of the court or office and does not interfere with the proper performance of official duties.” Canon 5(B)

State Codes of Conduct for Law Clerks

Below is a selection of state codes of conduct addressing the political activity of law clerks. This list is not a comprehensive restatement of each code. Instead, only the main differences are highlighted below.

Arizona	Code of Conduct for Judicial Employees Canon 4: A judicial employee . . . shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.	Rule 4.1. <i>General Activities</i> “In general, a judicial employee may participate in any political activities that do not give the impression the judiciary itself endorses political candidates or supports political causes, except when assigned to do so regarding measures to improve the law, the legal system, or the administration of justice.” Rule 4.5. <i>Workplace Activity</i> “During scheduled work hours or at the workplace, judicial employees shall not engage in political campaign activities and shall not display literature, badges, stickers, signs, or other political advertisements on behalf of any party, political committee, agency, candidate for political office or ballot measure.” AZ ST CJA § 1-303
	Code of Judicial Conduct	Rule 4.2 provides that law clerks are also subject to the same restrictions on political activity as judges in Canon 4 of the Code of Judicial Conduct,
Florida	Code of Conduct for Law Clerks	Canon 7. <i>A Law Clerk Should Refrain from Political Activity</i> Law clerks may not be prohibited from engaging in partisan political activity during personal time, provided such activity is conducted entirely independent of their judges and without reference to their judges or their judges' offices. A law clerk should otherwise refrain from political activity while conducting official duties. Law clerks should not act as their judges' official representative in any partisan political activity.” FL ST 18 J CIR 94-27

New Hampshire	Law Clerk Code of Conduct Canon 6: A law clerk should refrain from inappropriate political activity	A law clerk should not “solicit funds for . . . or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions” NH R S CT RULE 46 CLERK COND Canon 6
Pennsylvania	Code of Conduct for Employees of the Unified Judicial System	Employees of the Unified Judicial System shall not publicly endorse or oppose a candidate (examples include wearing buttons or hats or using social media “in a manner that clearly and distinctly indicates the employee’s intention to publicly endorse or oppose a candidate.”) While judicial employees may attend free, public campaign sponsored events, they “. . . may not demonstrate support for, or opposition to, a candidate running for publicly elected office (such as wearing buttons or hats) while attending the event.”
South Carolina	Code of Conduct for Staff Attorneys and Law Clerks Canon 7: A staff attorney or law clerk should refrain from certain political activity	“A staff attorney or law clerk may engage in political activity that does not tend to reflect adversely on the dignity of the court or his office, or interfere with the proper performance of his official duties, subject to the following limitations: A. he should not use the prestige of his office to advance political interests of others” S.C. App. Ct. R. RULE 506 Canon 7