

Working Effectively with Your Judge: An Outline for Remarks

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Preface

Judge D. Brock Hornby (D. Me.) prepared this as an outline of introductory remarks he gives to new law clerks when they start work in his chambers. He based this outline on one prepared by Justice Eileen E. Gillese of the Ontario Court of Appeals. He offered the outline to the Federal Judicial Center for its use in education programs for federal judges and law clerks.

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Introduction

Think about your clerkship from three different perspectives:

- 1) What your judge needs and expects from you during the clerkship
- 2) What your career aspirations are, and how you can further them during the clerkship through skills acquisition, education, observation, acquaintance/networking, etc.
- 3) What your personal aspirations are, and how you can maintain a healthy balance, understanding that balance is not necessarily a day-by-day or week-by-week objective, but an overall life description

Being a professional requires: taking initiative; proactively recognizing needs and meeting them, even when inconvenient; enthusiastically embracing tasks; adhering to high professional standards; becoming a lifelong learner; taking responsibility for your own development and happiness.

Your Judge's Needs

I once heard Chief Justice Beverley McLachlin of Canada say that her law clerks' primary assignment is to help make her the best judge possible. That is the most comprehensive description I have heard of a law clerk's job responsibilities. Some specifics, ranging from the mundane to the profound:

- Be reliable:
 - always be on time in arriving at the office;
 - always be on time in completing your assignments;
 - answer every question the judge has asked you;
 - always be completely accurate
 - scrupulously observe confidentiality (if uncertain, discuss with your judge what these requirements are)
- Manage expectations
 - If in doubt, ask the judge what he/she needs and by when
 - Consult the judge immediately (and in advance) if you cannot meet a deadline, explain the problem and offer a realistic date by which you can complete the work. But also understand that

professionals must sometimes work “overtime” to complete assignments on time.

- Ask for help if you are having a problem
 - *e.g.*, finding case documents
 - *e.g.*, reconciling competing demands.
- Be proactive. For example, be alert to demands coming in (a TRO or other emergency matter; a summary judgment motion ready for ruling); take a preliminary look and ask the judge if you can do anything to assist him/her; this is especially important when the judge is traveling; but don’t invest significant time until directed because the matter may be simple for the judge, or the judge may have other priorities for your time (many motions are routine—although not to you—and require no research; the judge may have a “sixth sense” of what cases/issues will go away on their own); look for law review articles or notes that might assist the judge with a difficult question
- For particular opinions or memoranda:
 - Strive for the simplest and most direct language possible. Law is complicated enough!
 - Start with the statutory and/or regulatory language; always consult a relevant authoritative treatise (discuss with the judge which these are); then consult the case law, with a clear understanding of the ranking of cases and courts
 - Think through the consequences of any decision—for this case; for future cases. Use common sense; could you justify this outcome to a person on the streetcorner?
 - Co-ordinate with the judicial assistant to ensure that there is no confusion on who makes revisions, how and when; formatting; bluebooking, etc.
- On interchange with your judge:
 - The judge wants to know your considered and educated views—offer them at a relevant and convenient time, *e.g.*, during the edit/citecheck stage. This includes interpreting the language of the statute or the case; discussing whether the outcome serves the purpose of the statute or case holding; and what effect it will have as a precedent. Off-the-cuff views, on the other hand, are seldom helpful, unless the judge specifically asks for them.
 - Create the opportunity for open communication with your judge. There is no substitute for face-to-face interactions. See your judge! Dangers of email and voicemail

- Do not wait to be invited. Drop by, but be sensitive to the work habits of your judge. Ask whether it is a good time. Don't be insulted if the judge says "Not now." Be alert to when the pace is frantic. Look for decompression times (as at the end of the day) to have a more relaxed conversation.

Your Career

- Manage your career aspirations—don't wait for your judge to arrange things or make suggestions.
- Skills training:
 - Watch trials, read jury charges, observe settlement conferences, guilty pleas, sentencings, revocation hearings, citizenship ceremonies, etc. Watch a few proceedings in State Court, Bankruptcy Court, and Magistrate Judge Court
 - Go to a courtroom at least once a week for at least 15 minutes:

CAUTION: Your judge's need for your work product on a timely basis must take first priority at all times.

- Watch motions—civil and criminal, regardless of your areas of interest. What works and what doesn't? What is the etiquette in the courtroom? The Case Manager (courtroom deputy) and Court Reporter are your best friends in those rooms—how do you approach them?
- Watch lawyer performance critically to see what is effective with the judge, with the jury, with a witness, etc.; ask yourself what you would emulate or do differently. (Try to read the relevant documents before watching.)
- Think of every assignment as an opportunity to improve your research skills (your judge may suggest avenues or shortcuts of which you are unaware), your oral presentation skills (discussions with the judge), and your writing skills.
- In what areas and skills do you have previous experience? Which are strengths and which need development? What substantive areas did you miss in law school? What assignments provide you with the opportunity to develop those skills/areas? Do you need some support in order to work effectively in those areas? Whom might you see to get that support?

- If you have a particular area of interest, look for opportunities to work in that area; speak with a judge on the court who has worked in the area or has special expertise; watch for (or ask clerical staff to help you watch for) cases in the area so that you can look at the pleadings, watch when it is argued, etc.
- Ask for feedback including criticism.
 - Criticism is hard to give and take. But it is an opportunity to improve. Make it easy for your judge to offer criticism. For example, after the judge has read your memo you might ask something like:
“Was the analysis detailed enough? Is there any way that the memo could be improved?”
 - Handle criticism well—it is a hallmark of professionalism and maturity. “Thank you” is the best answer and, if appropriate, follow up with “What can I do? Or “Would you like me to redraft/rewrite/revise (fill in the appropriate word)”?
- Ask questions—engage your judge. It builds the human connection and you learn a lot.
 - *E.g., Why did that happen? Why did you handle it that way? Was that effective?*
- Networking:
 - Become acquainted and interact with your counterpart law clerks throughout the building, in the Bankruptcy Court, the Circuit Court of Appeals, and in the State Court across the street; learn about their career plans/avenues, skills, etc.; Remember that friendships and acquaintances you make this year can provide networking opportunities and longlasting friendships throughout your professional career
 - Get to know the judge’s previous and incoming law clerks. When they phone or visit the office, take the opportunity to establish a connection. They will be interested in you as well.
 - Stay in touch with your law school dean and/or professors and/or the law review. You can’t talk about cases you are working on, but you can suggest useful note or research topics, comment on the values of (or gaps in) your legal education, etc. Starting the network process now will assist you later.

- Broaden your horizons:
 - Talk to your judge about his/her professional, but “extracurricular” activities, such as court administration, legal education, law reform, etc.
 - Volunteer to help with school age students who come in, moot court programs, tours of the building, etc. All this will build your confidence and involvement with the court and the court system.
 - Get to know other staff and find out what they do—e.g., Clerk’s Office, Probation Officers, U.S. Deputy Marshals, Bankruptcy Court personnel, Magistrate Judges and their staff. But maintain a professional distance from advocates such as Assistant United States Attorneys, Federal Defenders, etc.

Personal

Solicit information about area activities from other staff members and the judge (hiking; mountain climbing; biking; skiing; restaurants; cultural events; sports events; etc.) You want to enjoy your time outside the office and make the most of it. There is much to discover.

If you need time to interview for your next job, be sure: (a) the judge knows in advance, (b) your co-clerk will not be absent; (c) the commitment is on the calendar. Same for doctor’s appointments, etc.

Making friendships with other law clerks is easiest. They are in similar circumstances age- and career-wise and facing similar pressures and responsibilities. Don’t miss this wonderful opportunity. But also look for opportunities to meet and interact with nonlawyers, perhaps by joining a nonlegal organization (do be aware of political restrictions)

Volunteer. Many organizations need your help.

Read. Biographies. History. Plays. Poetry. Good fiction. Nonlaw! (Or consult the judge’s library of law-related relaxing reading, like the Rumpole series by John Mortimer)