

§ 2.2 Protocol

A. Confidentiality and Loyalty

Law clerks owe judges complete confidentiality *as to case-related matters*. You cannot say anything about a case that is not a matter of public record or otherwise permitted. Canon 3D of the Code of Conduct for Judicial Employees states that employees should not:

- disclose confidential information received in the course of official duties, except as required in the performance of their duties;
- employ such information for personal gain; and
- comment on the merits of a pending or impending action.

Instructions you receive from your judge and discussions about his or her legal assessment of a case should also be treated as confidential. Unless expressly authorized by the judge, you should never comment on the judge's views or offer a personal appraisal of the judge's opinions; the judge is the only one who can or should communicate whatever personal views he or she wishes to have known publicly. After the judge acts, the action or opinion (and if there is an opinion, its reasoning) is a matter of public record. You should neither comment on them nor try to explain them. Further, you must resist the temptation to discuss pending or decided cases with, or in the company of, friends or family. Even discussions of pending cases with staff from other chambers should be circumspect, and some judges forbid it.

Many district courts have rules forbidding court personnel to divulge information about pending cases. The Codes of Conduct Committee has developed a model confidentiality statement for judges to use with their chambers staff. The statement is available on the J-Net as Form AO 306 (<http://jnet.ao.dcn/resources/forms/model-confidentiality-statement>). Even if your judge does not use the confidentiality statement, you should refer to it for guidance on your duty of confidentiality.

Law clerks should be careful about publicly discussing their judge and chambers-related activities beyond case-related matters. For example, clerks should not publicly discuss their judge's personal views about political, social, or other matters that could arise in litigation, nor should clerks reveal a judge's travel plans. In general, clerks should respect and protect the privacy

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*of their judge. However, nothing in this handbook, or in the Code of Conduct, prevents a clerk, or any judicial employee, from revealing misconduct, including sexual or other forms of harassment, by their judge or any person. Clerks are encouraged to bring such matters to the attention of an appropriate judge or other official.**

1. Communication with the Media

Some judges are opposed to having chambers staff discuss anything at all with the media; you should determine your judge's policy in this regard. You should not respond to questions of substance, comment on a pending matter, or reveal judicial confidences, even when a reporter requests information "just for background." You may direct requesters to information that is in the public record and provide comments on technical and administrative matters, if the judge agrees. With the judge's permission, you may also discuss how the court works in general and its rules and procedures.

Some courts have designated employees to handle media inquiries, and written guidelines for press inquiries may be available from your judge or the clerk of court.

2. Communication with Attorneys

Law clerks must be firm in resisting any effort by attorneys to gain improper advantage, to win favor, or to enlist sympathy. You should not engage in any discussion with counsel about a pending case or a decision that has been reached by the judge. Indeed, some judges do not permit their law clerks to have any communication with attorneys at all. Regardless of the exchanges permitted, you should never discuss or divulge confidential information.

Law clerks who are permitted to communicate with attorneys should abide by the following:

- Do not give any advice on matters of substantive law.
- If the lawyer asks about either local procedure or general federal procedure for handling a matter, you may read or refer the lawyer to the appropriate federal rule or local court rule. If

* Clarifying language in italics added December 18, 2017.

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