

Want to Clerk? Consider the Federal Circuit, Former Clerks Say

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- Technical background helpful but not necessary
- Tight-knit court makes for collegial atmosphere

The Federal Circuit may be a specialized court, but it draws law clerks with diverse backgrounds.

Most people think patent law when they think of the U.S. Court of Appeals for the Federal Circuit—and patent cases did account for about two-thirds of the court's docket in 2020. But law students and attorneys without technical backgrounds shouldn't be discouraged from applying to clerk there, former clerks said Thursday at a Federal Circuit Bar Association webinar.

Abby Colella, now a managing associate at Orrick Herrington & Sutcliffe LLP in New York, sought out a clerkship on the Federal Circuit more for its Washington location than its intellectual property focus.

"You need to be interested and willing to learn about the science," she said. "But you can learn on the job." Colella clerked for Judge Timothy B. Dyk from 2017 to 2018.

Diverse Backgrounds

Even clerks with technical backgrounds will have to learn other parts of the court's docket, which includes trade, government contracts, trademarks, federal personnel, and veterans' benefits cases.

"No one should count themselves out," Shayon Ghosh, an associate at Williams & Connolly LLP in Washington, said. "The judges have really varied hiring practices and look holistically at all kinds of different things." Ghosh clerked for Judges Kathleen M. O'Malley and S. Jay Plager from 2017 to 2018.

The judges hire clerks with different backgrounds: Some have technical backgrounds, others don't. Some have clerked at a district court, while others haven't.

Read each judge's description of what they are looking for, Colella said. About half say in their postings that they will consider clerks without technical backgrounds, she said.

Even without a science background, Colella said she was able to rely on fellow clerks when she had technical questions. And they turned to her for expertise on other issues.

"I'm not going to be the person who is the expert in chemistry, but I could really understand the administrative law," Colella said.

Show an Interest

Showing you have an interest in the court's docket—whether that's the patent cases or otherwise—is key to setting yourself apart from other applicants, the panelists said.

Especially because it's a specialized court, explain your interest in your application, Deepa Kannappan, an associate at Cooley LL in Palo Alto, Calif., said.

"Otherwise judges will wonder why you're applying to them or why you're applying to the circuit at all," Kannappan, who clerked for Judge Raymond T. Chen from 2018 to 2019, said. "They'll just assume it was a stock letter that you sent to every judge that you're potentially interested in."

Interested applicants can also make themselves attractive by taking law school courses in patent law and other intellectual property topics, federal courts, and administrative law, the panelists said.

Ghosh reassured applicants who are out of law school that it's alright if they didn't take those classes. "I don't think that not having taken any of them is a deal-killer in terms of getting or being able to succeed at a Federal Circuit clerkship," he said.

Work and Play

The day-to-day work of clerking involves helping judges prepare for oral arguments, which the court hears the first week of every month. They also help draft and edit opinions, and communicate with other chambers.

“There’s also the social aspect of clerking, which was never even advertised to me, and I think was the biggest plus of working at the Federal Circuit” [in particular], Kannappan said. She talked about moving to D.C. and hanging out with a group of young attorneys who are all interested in the same topics.

“I do think that that’s a specific benefit of the Federal Circuit as opposed to other courts,” Colella said, citing the fact that unlike other appellate courts all of the judges are located in the same building.

Those friendships and working relationships follow clerks into their professional lives. “One of the nice things about the Federal Circuit community is that cohesion and collegial feeling continues past your clerkship time,” Ghosh said.

Career Prep

The exposure to so many briefs and arguments is invaluable in private practice after the clerkship ends, the panelists said.

Clerking gives you great insight when writing a brief, Colella said. “Who’s reading it, how are they reading it, what is going to make it a good brief,” she said. “You’re exposed to a constant sea of briefs in a year.”

Clerks learn to use briefs as a way to teach the court about their case. “I think it’s often a natural tendency to want to focus on the fire and brimstone, the parts where you explain why you’re right, but you really need to lay that foundation first,” Ghosh said. “That’s something that I think is easy to forget but less easy to forget if you have the experience of clerking first.”

Kannappan said she also learned the valuable lesson of admitting when she didn’t understand something.

“I was really scared of not knowing things, and it took me a really long time to get over that,” she said. She had to learn when to go to co-clerks or her judge for help.

“It was hard for me to learn that in the first couple months, but then life got so much better once I was OK with knowing what I know and what I don’t know,” she said.

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