

The Lasting Benefits of a Judicial Clerkship

APPELLATE & TRIAL SUPPORT | OCTOBER 17, 2016

Carlton Fields associate Nick Brown joined the firm after a clerkship with Judge Nelly N. Khouzam of Florida's Second District Court of Appeal in Tampa. Although he was hired for a two-year clerkship, Brown enjoyed it so much that he stayed for an additional year. In a recent conversation, which has been edited, he talked about the arguments judges don't want to hear, the importance of professionalism, and the inside information he acquired that helps him in his appellate practice today.

Q. *Why did you choose to clerk after graduating from law school?*

Mr. Brown: Part of the reason I wanted to clerk was because I heard that clerkships offer experience you can't get at a law firm. My particular clerkship, at the appellate court, also gave me the opportunity to see a wide variety of cases, from criminal to family law, to complex civil appeals, to emergency petitions. Working on a tremendous range of cases helped me determine firsthand what I might want to work on long term and gave me real, broad experience. By the time I left my clerkship, I had dabbled in nearly every area of law that a state court can address.

Q. *How do you apply that broad experience today?*

Mr. Brown: Though I'm getting much deeper into certain areas of law — like complex commercial and tort litigation, insurance coverage disputes, and real property litigation — I have a body of general experience to pull from. My clerkship cued me in to various analogies and differences between areas of law, and gave me context for what I do now. Sometimes knowing how another area of law works, or how an issue might be treated in another context, can improve your perspective, allowing for better advocacy.

Q. *What other advantages did your clerkship provide?*

Mr. Brown: One of the biggest benefits was the opportunity to work directly with judges, the people who actually call the shots and determine what the law means. While there is also much to be gained by starting out in private practice, there you learn from attorneys who tell you what will matter to judges. With a clerkship, you have the amazing opportunity to skip the middleman and learn directly from the judge.

Q. *What were some of the biggest lessons you learned from working closely with judges during your clerkship?*

Mr. Brown: First, you learn which types of arguments are likely to be effective and which are likely to turn the judge off. A lawyer may think a particular argument will be persuasive, but what persuades attorneys isn't always the same as what persuades judges. You also learn that judges often put a tremendous emphasis on professionalism. Having judges explain that importance to you is invaluable. And beyond having it explained, when you work with a judge you're bound to see both positive and negative examples play out in the courtroom. Despite what some people think, behaving unprofessionally probably won't help your client.

Q. *What type of unprofessional or ineffective behavior did you see during your clerkship?*

Mr. Brown: For example, a lot of people think that by attacking your opponent, you somehow boost your credibility, or hurt theirs. But almost uniformly, judges want to hear what's right or wrong about the legal issues, the argument, and the facts presented, not about what the attorney thinks of opposing counsel's practice or the bad things opposing counsel has done. Judges hear so much of this in so many cases that they're often numb to this tactic. Not only will it probably not have the impact you're hoping for, but it can also damage you in terms of credibility. It can turn the judge off immediately, despite any truth to your argument. As a clerk, you see it happen repeatedly. The judge will turn to you and say, "These guys just don't get it; I want to hear about the arguments and the issues, not how bad they think the other lawyer is." Although a good portion of the Bar has learned this principle, it is not necessarily self-evident, and I can assure you it's a lesson many longtime practicing attorneys have yet to learn.

Q. *How have you applied these lessons in private practice?*

Mr. Brown: I've had situations where co-counsel from another firm wants to raise weak arguments. Had I not clerked and seen firsthand how certain arguments are received, I don't know that I'd oppose them as strongly as I do. Many lawyers seem to think, "What's the worst that can happen? If I'm wrong, the court will just reject the argument." But that's not the worst that can happen. Rather, in addition to wasting time and money on an argument that goes nowhere, you can also lose precious credibility with your decision-maker. Then, when the court gets to an issue of yours that might actually have legs, the court may not treat it as well. After all, your last argument was not well thought-out and this one might just be more of the same. So, I learned it is not a game of "throw everything at the wall and see what sticks," instead it takes serious forethought not only into each argument itself, but also into how each is likely to be received.

Q: *Were there any surprises during your clerkship?*

Mr. Brown: Yes, I was surprised by how much advocacy was involved. I don't mean advocacy for a party, but for a position. For example, I thought I would mostly be researching and writing in a vacuum. This will of course differ by clerkship, but I was pleasantly surprised to find that when we conferenced these cases with the other two judges on the panel, my judge became my client. In many cases, the panel agrees on the issues, but sometimes they don't. So, we actually had conferences where I would argue or defend a legal issue in front of a three-judge panel. My job was to persuade the other judges that our position was legally correct and that the panel should vote with us. It's not quite the same as arguing for a client, but there are many parallels. For example, I was forced to hone my advocacy abilities and get comfortable arguing issues before judges—skills that are critical for any kind of litigation practice.

Q: *Were there any surprises once you entered private practice?*

Mr. Brown: Yes, when I was in law school and at the court, I assumed most lawyers understood basic internal court procedures, such as the typical "life" of a case. But once I started working in private practice, I realized that even many very smart, experienced lawyers are unaware of the specifics of how things work behind the scenes, including for example when and by whom certain decisions are likely to be made. So even beyond the substantive legal experience, my clerkship gave me valuable information that is far from public knowledge.

Q: *What type of information did you get?*

Mr. Brown: Every court has its own idiosyncrasies. But at the Second District, for example, the judges typically don't read your briefs in the exact same form that you file them. Lawyers assume they just print out the briefs and read one after the other in order, but they don't. Instead, most judges there use what's called a "compilation," a single document that interweaves all of the parties' briefing issue-by-issue rather than party-by-party. So, the judge reads everything all parties have to say regarding issue 1 before getting to issue 2. While this is no secret—the Second District advertises it—many lawyers don't know about this practice.

Q: *How does this impact the way you write briefs in private practice?*

Mr. Brown: In this case, it means you can't assume the judges have read the entire initial brief by the time they read the first page of the answer brief. It also means that, by the time a judge gets to the argument on page 50 of your brief, it might be closer to page 100 of the court's document, by which time the judge might be less receptive than she was 50 pages back. Knowing how your brief, arguments, and thoughts will be digested by the court, mechanically, can have a tremendous effect on how you write a brief. You have certain assumptions about what readers know, and if they're going to read your words in a different order than you expect, that may require substantial changes from the traditional presentation.

Q: *As a law student, did you have any misperceptions about clerking?*

Mr. Brown: When I was in law school, I thought clerking for a couple of years might put me behind in my private practice career. I didn't realize that many law firms give clerks credit toward the partnership track based on the length of time spent clerking. So, when you clerk and then start at a firm, it can be as though you've been working for the firm since you graduated from law school in terms of seniority. For example, when I started at Carlton Fields, I was treated as a lateral hire and came through the door already having years toward the partnership track under my belt. For people who are concerned that clerking will put them behind their peers who go straight into private practice, this is important to remember and explore with potential employers—it can literally save you years! And even more important, the substantive experience I gained by clerking allowed me to jump seamlessly into real legal work immediately upon moving to private practice. I expected my clerkship to be a great experience, but I didn't realize the full extent of the longterm benefits that came with it.

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