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Law clerk hiring system under fire, including in 9th Circuit

DC Circuit refuses to make judges and students delay contact

By John Roemer

The frenzied, stressed system by which federal judges choose law clerks took a turn further into chaos this week when the U.S. Court of Appeals for the District of Columbia Circuit announced that the rules for hiring clerks are dysfunctional and judges there will no longer follow them.

The rules - known as the federal law clerk hiring plan - seek to level the field by requiring judges and third year law school candidates for clerkships to hold off on contacting one another until specific dates in late summer.

Problem is, the plan is voluntary and not every judge - including prominent members of the 9th U.S. Circuit Court of Appeals - and law student follows it.

Scoring choice clerkships with a distinguished federal judge has long been a fraught endeavor for law students. A clerkship in a top jurist's chambers can make a career. Many are tempted to game the system by sending packets, including grades and cover letters, to desirable judges as early as the end of their first year of law school.

Likewise, judges avid for prize clerks schmooze and network with law professors and senior partners who have spotted outstanding summer associates. Then the judges grab star students as soon as they can.

Chief Judge Alex Kozinski of the 9th Circuit has been the outspoken voice of the rule breakers.

When judges in the late 1980s first proposed a plan to organize clerk selection, some predicted it would work only if "a few bad apples" didn't screw things up. Kozinski volunteered in a piece titled, "Confessions of a Bad Apple" that he would be "the self-appointed spokesperson for this bushel of spoilsports" who believe that "efforts at reform cannot, will not and should not succeed" because an open market works best.

In 2011, he told a New York Times reporter that he began to recruit clerks "at birth." This week, he wrote in an email, "There were never any rules. It was a voluntary plan that judges were free to join, which I never did. The D.C. Circuit merely acknowledged the reality that the joint hiring plan never really worked."

In 2008, Kozinski clashed with Deborah L. Rhode, a Stanford Law School ethicist, over Kozinski's effort to interview students there as prospective clerks earlier than the plan envisioned.

"We had a meaningful exchange of views," Rhode told the Daily Journal. "He appears to have a sense of entitlement and to feel an insularity from accountability."

This week, Rhode denounced the D.C. Circuit's announcement. "What a appalling example to young clerks the D.C. judges are setting, that because others don't follow the rules, they don't have to either," she said. "This will simply make it more difficult for law schools and students to know where they stand."

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Intellectual Property

Federal Circuit blocks Apple's injunction hopes in Samsung patent case

A federal appeals court dealt Apple Inc. a sound, if anticipated blow Thursday, unanimously denying the company's request for an en banc hearing to reconsider a preliminary sales ban on a Samsung Electronics Co. Ltd. smartphone.

Alternative Dispute Resolution

Harry W. Low

Retired judge Harry W. Low, a neutral at JAMS, now 81, has interrupted his day job refereeing business disputes many times over the years to rush to contain blazing political and legal crises around the state.

Litigation

San Mateo attorneys prepare for bankruptcy fight

The lengthy legal and personal skirmish between San Mateo-based plaintiffs' attorneys Terry O'Reilly and Michael Danko will continue in a different venue - bankruptcy court.

City of Oakland, Justice Department squabble in court over marijuana dispensary

The Justice Department, in a bid to toss Oakland's lawsuit regarding the federal government's forfeiture action against a mammoth East Bay marijuana dispensary, claimed Thursday the city lacks jurisdiction in the case.

Government

San Mateo County will likely lay off four commissioners, close courtrooms

San Mateo County Superior Court will likely lay off four of its commissioners and terminate up to 21 staff positions this summer, which means four courtrooms will shutter indefinitely due to ongoing state budget cuts.

Litigation

Judge approves \$308 million in attorney fees in price-fixing class action

A federal judge on Thursday tentatively approved most of the recommendations for attorney fee awards in an ongoing class action alleging price fixing of flat panel displays.

Former "Idol" contestant sues law firms, networks

David B. Sentelle, the D.C. Circuit's chief judge, declined to speak with a reporter. The circuit's deputy clerk, Marilyn Sargeant, declined to comment further, saying the announcement speaks for itself.

As the D.C. Circuit's announcement put it, "During the past few years, a significant and increasing number of circuit judges around the country have hired in advance of the plan's interview and offer dates, and it is likely that they will continue to do so."

Laurie L. Levenson, a professor and the law clerk adviser at Loyola Law School, said that judges have been hiring on their own schedules for years. "This is the worst-kept secret in the country," she added. "The judges who follow the rules are the exception."

She explained that the resulting anarchy has been particularly hard on law schools like hers that don't rank with Harvard, Yale and Stanford. "There's a two-tier system, and we don't have a shot," she said, pointing out that Loyola follows the hiring rules. "Judges will cherry-pick clerks from the schools they like most, and everyone else is in the position of competing for slots likely already filled."

Another disadvantage, Levenson and others said, is that judges who grab the first clerk they like will never get to see the wide range of candidates available.

Senior Circuit Judge Stephen S. Trott of Boise, Idaho, said he never thought the clerk hiring plan would work and has not participated in it. "It's an East Coast premise that there are far fewer good candidates than jobs," he said. "In fact, there are thousands of very fine law students who make excellent clerks. I get mine from the University of Idaho College of Law, and they serve us as well as those from any other good school."

The competition appears fiercest over jobs in circuit chambers known to feed clerks to the U.S. Supreme Court. Kozinski said he has sent close to 50 "upstairs," as judges put it. Circuit Judge Diarmuid F. O'Scannlain, another nationally prominent 9th Circuit jurist, said he has sent about 20 on to the high court.

O'Scannlain said he has tried to follow the rules but, "When people with strong credentials get contacted by other chambers, I arrange a telephone interview. I hear recommendations from law professors and lawyers who see students doing summer associate work. Some come over the transom, people who apply with stellar grades. If other [judges] are jumping the gun, I'm not going to let myself be prejudiced."

Erwin Chemerinsky, the founding dean of UC Irvine School of Law, said the D.C. Circuit's announcement "will further speed the collapse of the hiring plan. It is unfortunate, because it makes it harder for students to know when to apply to individual judges."

At his school, Chemerinsky said, "we try to accommodate what judges want. For those on plan, we send them [clerk application] materials on the plan's schedule. For those who hire early, we try and fit their schedule."

Rory K. Little, a professor and the chair of the clerkship committee at UC Hastings College of the Law, said that only a handful of judges actually compete at a hectic level of competitive hiring

"Probably five or six percent of federal judges care about this," he said. "Most judges hire those they want when they want without all the hassle. The D.C. Circuit, the 2nd Circuit, the 7th Circuit and the 9th Circuit seem to have the judges who get excited about this hot little competitive world. True, a clerkship in Alex Kozinski's or Richard Posner's chambers can lead to a Supreme Court clerkship and make a career. But mostly, it's like a lot of little kids playing in an important sandbox."

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An "American Idol" contestant booted from the show 10 years ago is suing Gibson, Dunn & Crutcher LLP, Morrison & Foerster LLP, E! Entertainment Television Inc. and Fox Inc. for libel

Morrison & Foerster lawyers score defense win for roofing company

Morrison & Foerster LLP lawyers persuaded a trial court judge in Placer County to wipe out a \$7.41 million verdict against roofing company Monier LLC this week.

Government

Judicial ethics advisers picked

The state Supreme Court has appointed three new members to the court's Committee on Judicial Ethics Opinion, which provides ethics advice to judges and lawyers statewide.

Mergers & Acquisitions

Dealmakers

A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

Litigation

Court revives alleged informant's discovery quest

A Mexican resident who claims he was working as an FBI informant when arrested as part of a drug bust won a second chance to make his case following a 9th U.S. Circuit Court of Appeals opinion published Thursday.

Law Practice

Arizona attorney shooting victim 'not expected to survive,' firm says

Mark Hummels, a partner at Osborn Maledon PA and president of the Phoenix chapter of the Federal Bar Association, is on life support and is "not expected to survive," according to the firm.

Solo and Small Firms

Quite the Catch

A blossoming romance inspired a business litigator and a family lawyer to join forces, resulting in a nimble - if somewhat peculiar - Los Angeles boutique.

Securities

Are fears about the SEC's discipline regime justified?

Lawyers fret. It's in their nature. Lawyers who practice before the Securities and Exchange Commission have at times fretted about the double gauntlet of disciplinary authority they face. By **Jasmine Singh**

Litigation

eDiscovery: protect information stored on personal electronic devices

Where can we look for protection of potential