

WISCONSIN COURT SYSTEM

Job Title: Law Clerk

Division: Court of Appeals

Reports to: Appointing Judge of the Court of Appeals

Summary Description

The appellate law clerk provides his or her appointing judge with professional legal writing, reasoning, and research assistance that is similar in some respects to that provided by in-house counsel to a company. The law clerk must be highly diligent and detail-oriented in order to produce the high-quality, high-volume work expected by the appointing judge, and to help the appointing judge assure that the parties and the public are properly served by opinions that are issued in a timely manner, based on clearly explained, accurate legal reasoning. The clerk must also have the highest integrity, including exercising discretion regarding confidential or sensitive issues in cases.

Job Duties and Responsibilities

The law clerk is responsible for completing all duties and responsibilities in a timely and efficient manner at an extremely high level of quality.

Drafting Opinions

The law clerk's primary responsibility is to prepare draft opinions for cases assigned to his or her judge, and to closely review opinions drafted by the judge. Initial drafts by the clerk or the judge are either for "three-judge" cases that are decided by a panel of three judges or for statutorily mandated "one-judge" cases that are decided by a single judge.

In preparing a draft opinion, the law clerk:

- reads and analyzes the parties' briefs and all pertinent rulings of the circuit court;
- identifies and properly frames the issues in the case (which in many cases does not neatly align, and in some cases does not align at all, with the way the parties have framed the issues), and determines the most accurate, efficient, and expeditious way to analyze each issue;
- for each issue, researches and verifies the correct standard of review and applicable procedural and substantive law;
- reviews the appellate record and identifies the pertinent facts, which includes verifying facts cited by the parties and the trial court, and supplementing those cited facts with additional facts from the record to ensure a complete analysis

(Note: while some cases involve simple appellate records, in other cases the record is very complex and/or voluminous, consisting of numerous electronic documents and/or boxes of documents; additionally, in some cases there may have already been multiple appeals, and if the case is the review of administrative agency decisions, the matter may have already been reviewed at multiple levels, all of which must be assessed);

- drafts the opinion, with an accurate recitation of pertinent facts, and an analysis of the relevant law for each issue as applied to those facts, including proper legal citation, formatting, grammar, spelling and punctuation in accordance with the Wisconsin Court of Appeals Style Manual and the Bluebook;
- engages with the authoring judge regarding suggestions, questions, or concerns raised by the judge in a process that can be extensive, and, for three-judge cases, by the other judges on the panel after their review of the draft opinion, and makes all revisions consistent with direction from the authoring judge; and
- assists the judicial assistant and the authoring judge in preparing the opinion for final release.

When reviewing an opinion drafted by the authoring judge, the clerk searches critically and carefully for any areas in which the clerk believes the judge's draft may lack clarity or suffer from any other shortcoming. This key role calls for essentially the same skill set used in drafting an opinion, as outlined above, but this time exercised with a critical eye to the judge's draft.

Other law clerk responsibilities related to drafting (or to making suggestions to judge-drafted) opinions include:

- for one-judge opinions involving the termination of parental rights, preparing the draft opinion (or making suggestions) according to the above-referenced requirements, and ensuring its completion and release within the statutory deadline—no more than thirty days from the date of filing of the final brief with the Court of Appeals;
- in three-judge cases where the law clerk's appointing judge does not fully agree with the majority, assisting the judge in writing a separate dissenting or concurring opinion to be issued with the majority opinion; and
- in cases where oral argument is scheduled, assisting with argument preparation, which may include writing bench memoranda that summarize the relevant facts, proper standards of review, applicable law, and compiling proposed questions for the parties or a list of problematic issues.

The time required to draft and complete an opinion, or to make insightful suggestions to a judge-drafted opinion, varies widely because cases differ in complexity and in nature (*e.g.* criminal law, civil law, constitutional law, probate, family law, administrative agency review, municipal law, etc.). Examples of factors that affect drafting or suggestion time are the number of the parties to the appeal; the number of issues on

appeal; the volume and form of the appellate record (number of documents, paper documents, electronic records, other media, or a combination); the quality and volume of the parties' briefs and appendices; the novelty of the legal issues raised; the availability of relevant legal precedent; and the discovery of unanticipated facts or legal precedent.

Editing

The law clerk is also responsible for reviewing and editing orders and opinions drafted by staff attorneys. These draft opinions are checked for clarity and accuracy in statements of law, accuracy of legal citations and conformity with the Style Manual and the Bluebook. They are also proofread for proper formatting, grammar, spelling and punctuation. After the law clerk has completed his or her review, the judge then reviews the opinion or order and considers the law clerk's suggestions.

Other Duties and Responsibilities

In addition to the duties specified above, the law clerk also has the responsibility of:

- coordinating the selection of law student interns; supervising, providing projects and feedback for, mentoring, and evaluating the work of those interns, thereby assisting in the training and the nurturing of future lawyers;
- keeping abreast of any changes in the law, both statutory and from case law, particularly from opinions released by the Wisconsin Supreme Court and other districts within the Court of Appeals; and
- performing any other tasks as assigned by the appointing judge.

Term of Employment

The appointment is typically for one, or perhaps at the most two, years at the judge's discretion.

Knowledge and Abilities Required

- Superior legal writing and analytical abilities
- A high degree of knowledge of substantive and procedural civil law, with the ability to come up to speed quickly in such areas as municipal law, family law, criminal law, constitutional law, administrative law, applicable standards of review, and legal processes (state and federal)
- Attention to detail and the ability to shift quickly from one area of the law to another and one project to another
- Excellent legal research skills

- Proficiency with computers sufficient to allow the law clerk to independently draft legal opinions and orders, conduct legal research, access and use diverse computerized court docketing systems (the circuit court and the appellate courts have distinct and different docketing systems that are accessed separately)
- Strong communication skills
- Supervisory skills for managing interns

Education and Experience Required

A degree from an accredited law school is required at the start of employment.

Discretion

A law clerk works under the direction of the appointing judge who provides guidance and direction. A law clerk is expected to accomplish her/his tasks with a high level of professional competence and to independently manage his/her assigned caseload.

Contacts

This position involves working very closely with the appointing judge and the appointing judge's judicial assistant. Contact also occurs on occasion with other law clerks, staff attorneys, and potentially other court staff, and with Wisconsin law schools regarding student interns.