PRESENTED AT
36th Annual Jay L. Westbrook Bankruptcy Conference
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A Peek Under the Robes

Judge/Law Clerk Panel

UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

Moderator:
Hon. H. Christopher Mott, U.S. Bankruptcy Court, WDTX

Panelists:
Hon. Tony M. Davis, U.S. Bankruptcy Court, WDTX
Sarah Darnell Wood, Law Clerk, WDTX

Hon. Mark X. Mullin, U.S. Bankruptcy Court, NDTX
Scott Everett, Law Clerk, NDTX

Hon. Brenda T. Rhoades, U.S. Bankruptcy Court, EDTX
Leslie R. Masterson, Law Clerk, EDTX

QUESTION 1

How much input does the Law Clerk have in deciding how the Judge might rule on a case?

Answers:

- A Bunch: ***2 Judges; 3 Law Clerks***
- A Little: ***1 Judge***
- None: ***0***

Comments—Question 1

- **Judge: Depends on case and ruling**
- **Law Clerk: Yes, lots of input; but does not necessarily means lots of influence. The decision is the Judge's 100%. "*Law Clerk proposes; Judge disposes*"**
- **Law Clerk: Judge makes ultimate decision, but asks for recommendations**
- **Law Clerk: We discuss and develop rulings collaboratively**

QUESTION 2

How many times has the Law Clerk privately expressed disagreement with a decision the Judge has actually made?

Answers:

- Less than 3 times: ***1 Law Clerk***
- More than 3 times: ***2 Judges***
- Never: ***1 Judges; 2 Law Clerks***

Comments-Question 2:

- **Judge: I respect my Law Clerk when he/she disagrees. And my Law Clerk does not always admit it when he/she disagrees, *"but I know better"***
- **Judge: I encourage my Law Clerk to be candid with me and give me best advice. Many times we agree, but sometimes we do not agree**
- **Judge: Never disagree, but we usually discuss cases before ruling**
- **Law Clerk: Never disagree outside of Chambers**
- **Law Clerk: We have open discussions all the time about when Judge is wrong *("ha ha")***
- **Law Clerk: Sometime we may disagree on the precise result, but we rarely (if ever) disagree on general result**

QUESTION 3

Generally, who prepares the first draft of an Opinion?

Answers:

- Judge: ***1 Judge; 1 Law Clerk (see comments)***
- Law Clerk: ***2 Judges; 2 Law Clerks***

Comments-Question 3:

- Judge: **Sometimes Judge prepares draft, sometimes Law Clerk**
- Law Clerk: **Judge prepares draft, but not always**

QUESTION 4

Does the Judge communicate with the Law Clerk while on the bench during a hearing or trial?

Answers:

- Yes, specify how: ***3 Judges; 3 Law Clerks*. All use sametime instant *"chat"* messaging; some frequent, some infrequent**
- No: **0**

SURPRISE QUESTIONS

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Title search: A Peek Under the Robes: Judicial Panel

Also available as part of the eCourse
2017 Jay L. Westbrook Bankruptcy eConference

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"A Peek Under the Robes: Judicial Panel"