

PRESENTED AT  
36<sup>th</sup> Annual Jay L. Westbrook Bankruptcy Conference  
November 16-17, 2017  
Austin, Texas

# A Peek Under the Robes

## Judge/Law Clerk Panel



### 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

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## 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

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#### 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**

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## **SURPRISE QUESTIONS**

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