

NEWS FROM WASHINGTON

When Associates Leave Their Jobs To Clerk at the Supreme Court

The nontraditional career move is increasingly common, law firm leaders say.

BY TONY MAURO

S ometime this summer, four associates will leave the Bancroft law firm in Washington. But they haven't been wooed away by a competitor. Instead, they will head to clerkships—three at the U.S. Supreme Court, and the fourth at the U.S. Court of Appeals for the D.C. Circuit.

This career path runs counter to the traditional trajectory that has added luster and clout to clerking at the Supreme Court in recent years. The clerkship usually comes first, then the job with a veteran Supreme Court firm—along with a hiring bonus upwards of \$300,000.

More and more, the revolving door between the court and law firms is spinning in the other direction.

"I don't begrudge them for pursuing that brass ring," said Bancroft founder Viet Dinh, a former clerk to Justice Sandra Day O'Connor. "A lot of us think it was the best year of our professional lives."

Bancroft associate Barbara Grieco, who will clerk for Justice Samuel Alito Jr. next term, said, "There are not many job opportunities that would entice me to leave here, but if there are any, this is it." She has been working mainly on Supreme Court cases at Bancroft,



CAREER PATH: Bancroft associates Barbara Grieco, left, and Taylor Meehan are leaving this summer to clerk for justices Samuel Alito Jr. and Antonin Scalia, respectively.

including this term's *Integrity Staffing Solutions v. Busk*, a win for the firm and for employers over worker compensation.

Taylor Meehan is heading to Justice Antonin Scalia's chambers this summer after about a year as an associate at Bancroft. "It's a once in a lifetime opportunity," she said. Still, she thinks the small-firm feel of Bancroft has "some parallels" with working at the high court.

Meehan looks forward to the same "one-on-one mentoring" she has got-

ten at Bancroft. Meehan worked on the firm's briefing in the pending redistricting case *Arizona State Legislature v. Arizona Independent Districting Commission*.

Justices themselves have helped drive the trend, hoping that their law clerks will have a year or two of law firm experience under their belts—in addition to top law school grades and an appellate clerkship—before arriving in their chambers. Justice Clarence Thomas has spoken of hiring potential clerks a term or two

Four Associates to Leave Bancroft for Clerkships

before he'll need them, then urging them to go to a law firm in the meantime.

This pathway works for veteran Supreme Court law firms as well, especially if the lawyers come back to the firm after their year at the high court.

"We don't mind the disruption in our office" caused by the departures, Dinh said. "If they ask about it, we say OK. We encourage it."

Even though Bancroft partner Paul Clement and other firm partners and associates are on the briefs in many of the top Supreme Court cases each term, it is still a relatively small firm, with six partners, six associates and two of counsel. Losing four associates at the same time is significant, although Dinh says new hires will be arriving soon.

RECEIVING BONUS IF THEY COME BACK

As for the associates who leave, Dinh said, "It's certainly our hope they will come back, though we obviously don't have an agreement ahead of time that they will."

When or if they return, Dinh said, they would still receive the \$300,000-plus Supreme Court hiring bonus that has become standard. "I would never want them to pay a market penalty to come to work for Bancroft," he said.

Other firms with deep Supreme Court experience have seen the same firm-to-court trend. Sidley Austin's Carter Phillips said at least four Sidley associates have left for Supreme Court clerkships in recent years.

"My view is that it is an amazing experience and if someone can succeed in landing a clerkship, he or she should jump at it," Phillips said. Working at the firm first gives a future clerk "a real idea of what goes into putting a case before the court, which will help as a law clerk."

Then, after the clerkship is over, Phillips said, "the young lawyer has a real understanding how the court works, and

obviously the firm has a leg up on recruiting the lawyer back."

Gibson, Dunn & Crutcher partner Thomas Hungar said several associates have left that firm for clerkships in recent years, and three more are expected to do so this summer.

"It's considerably more common than 10 or 20 years ago," Hungar said. Justices used to like their clerks fresh from appellate clerkships, before they've experienced the "adversarial perspective" of litigation, he said. "Now they seem to find value in having a mix."

ENCOURAGED TO APPLY

At Bancroft, neither Grieco nor Meehan arrived at the firm with a future Supreme Court clerkship already arranged. But it was part of the conversation early in their time at the firm, and partners encouraged them to apply, they said.

Associate Harker Rhodes IV will clerk for Justice Anthony Kennedy in the fall, and Ray Tolentino will work for new D.C. Circuit Judge Nina Pillard. Michael McGinley left the firm last year to clerk for Alito this term.

Will the associates' jump from law firm to courthouse put them in the position of reading and making recommendations about petitions they worked on at Bancroft? Dinh said they would have to recuse themselves from any case they worked on at the firm, and Grieco and Meehan said they would be careful to adhere to whatever ethical rules their justices establish.

They also said they'll be open to petitions that may not be as polished as those bearing the Bancroft name. Meehan, who clerked on the Eleventh Circuit before coming to Bancroft, said, "Briefs can surprise you. There are a lot of talented writers out there."

One expert on Supreme Court clerks said he finds it unsettling that lawyers who



DIEGO M. RADZINSKI

RETURN: Bancroft's Viet Dinh said "it's certainly our hope they will come back" to the firm but that there's no agreement ahead of time.

are writing petitions one year and reading petitions the next year for a justice will then return to private practice with even more expertise about what buttons to push to get the court's attention.

"It is really part of the larger trend of the growth in power of the Supreme Court bar, this elite cadre of specialized attorneys," said Artemus Ward, a political scientist who has co-authored two books about high-court clerks. "There is no question that clerks coming from private practice will be more powerful and influential with their judges and justices. They can promote issues and interests that align with their firms, and when they return to those firms use their clerking experience to continue to do the same legal briefs, oral argument and ongoing contact with the judges they used to clerk for."

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