

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

CLERKING IN NEW JERSEY

Featuring

**Robert Ramsey, Esq.
Garden State CLE Senior Instructor, Author**

And

**Daniel M. Rosenberg, Esq.
Attorney, Judicial Law Clerk for
Hon. Justice Peter G. Veniero (ret.)**

Program description

This 1.0 credit CLE takes you inside the life of clerking for a Justice on the NJ Supreme Court. This program explores what the clerks are looking for and how to best structure a brief. Also discussed are the keys to successful advocacy before the Supreme Court.

I. Introduction

- **Daniel Rosenberg, Esq.**
- **Most attorneys begin careers as clerks, mostly Superior Court – learn more during clerkship than in real practice**
- **Clerked for Justice Veniero**
- **Process to clerk – former process: apply after first summer in law school – current process: apply at the end of second year in law school – get information from career services at law school**
- **Researched Justice Veniero and was interested in him based on hearing good things from others who know him**
- **Also applied to Justice Long and interviewed**
- **Interviewed with Justice Veniero and was hired – hired first semester, second year**
- **Experience depends on what judge/justice you clerk for**
- **Applied to various different courts for clerkships**
- **First day of work – chambers in Hunterdon County because that is where Justice Veniero lives**
- **Worked from Hunterdon courthouse – every other week to Trenton**
- **3 law clerks for each Justice and then Chief Justice has 4 clerks**
- **Clerks worked independently and collaboratively**
- **Reviewed petitions for certification, divided between the clerks, research law, and then write a synopsis of facts and law and then opinion of whether cert should be granted or not**

II. Petitions for Certification

- **Want to bring a big picture component of the argument to the clerk so that the clerk can see the importance of the case**
- **Things to highlight in your papers:**
 - **Is the underlying decision published?**
 - **Is there a divide in the appellate division?**
 - **Statewide application?**
 - **Opportunity to comment on US Supreme court ruling – state constitutional interpretation**
 - **Rule of court needs to be construed/interpreted**
- **Need to get law clerk's attention to get in the door**
- **Need 3 Justices to agree to grant certification**

III. Process for granting cert

- **Recommendation of the clerk to the Justice**
- **Petitions were assigned and clerks would get them and draft memorandum for Justice who would then read the summary**
- **Justice would make recommendations**
- **Court would meet every 2 weeks and would discuss the petitions and discussion then vote**
- **Sometimes more discussion on cases**
- **Develop an idea of what is cert worthy and what is not**
- **Logistics of granting cert. are handled by the clerk of the court**

IV. After cert is granted

- **Chief Justice would assign cases to who is going to write the opinion**
- **Clerks would be assigned a case – draft bench memorandum that summarizes issues and arguments, laying out the law, and giving opinion – bench memorandum would go to entire court**
- **Clerk would draft memorandum and get sent to the court, sometimes a Justice would call and ask for clarification on points in the memo**
- **Justices rarely discussed the case before oral argument**
- **Justices evaluate memorandum and oral argument and then make a decision**
- **Advocacy in the brief by the litigants is very important because clerks are articulating their arguments**
- **Justices will have briefs and bench memorandum**
- **When appearing before the Court, consider Justices are well prepared**
- **After oral argument, preliminary meeting with all Justices to discuss how they were leaning and then the opinion would be assigned to one Justice to write**
- **Justice Veniero would assign a clerk to the case – Justice Veniero would write his own opinions but clerk would do additional research – clerk would get a draft from the Justice – every fact cited to the record – other Justices may not operate this way**
- **Justice Veniero would meet with all clerks and discuss opinions**
- **Other Justices expected clerks to write the first draft of the opinions – but each Justice had their own way of doing the work**
- **Justices may call back and forth to discuss cases amongst themselves**

V. Quality Control

- **Fact checking, proofing, accurate citations**
- **After opinion is drafted, it gets sent out and before it goes on Lexis it is returned to the clerks to do a final check**
- **Sometimes clerks do not have the depth of knowledge on an issue to relate to other cases, i.e. State v. Lark and State v. Pena-Flores**

VI. Secrecy

- **Work of the court remain secret and only released to court in authorized way via publication or order**
- **No phone calls from attorneys**
- **Clerk orientation with appellate clerks and Supreme Court orientation**
- **No one can know what you are working on**

VII. Ethics

- **Leaks from inside the court can be a problem**
- **No specific ethics training, per se**
- **Respect for the Justice was the overriding basis of how the clerks conducted themselves**

VIII. Oral argument

- **Attended oral argument when the clerk wrote the bench memo**
- **Questions by Justices were not asking for their own benefit but for other Justices who they are disagreeing with**

IX. After oral arguments

- **Clerks would need to know citation form for writing the opinion**

X. Clerkship experience

- **Helped to become a better lawyer from discussions that took place in chambers**
- **Death penalty cases – treated different from other cases, great deal of significance, significant legal issues, great advocacy by all parties – controversial decisions**

XI. Keys to success for successful advocacy before the NJ Supreme Court

- **Well written brief – scholarly and persuasive**

- **Proofreading is very important – minor errors take a little away from the strength of the argument**
- **Be professional but not strident – make the point but don't take any shots at the opposing side – don't inject emotions into the brief**
- **If too clear cut, then question whether all points are considered – be careful not to dilute the brief – less is more**
- **Consider making the brief easy for the reader to see the points you are trying to make**
- **Don't bury the lead argument – put the best issue up front – start off with strongest argument to get petition granted – must persuade the clerk**
- **Read every case you have cited in your brief to prepare for oral argument**
- **Justices and judges may or may not know prior to oral argument their position – oral argument will be the way to get the points across and maybe point something out that was not considered**
- **Preparation for oral argument and know everything that is going on – remain composed – gives more credibility to the argument**
- **Just have fun at oral argument – do the best you can – there is a great deal beyond your control**