

Thesis Title : Solving the Backlog in the Thai Supreme Court: A Comparative Study of the Role of Law Clerks in the Supreme Court of the United States and the Supreme Court of Thailand

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ABSTRACT

At present, the Supreme Court encounters backlog—the amount of which is rising each year—due to (i) external factor; the appeal to the Appeal Court and the Supreme Court in Thailand being a matter of right to appeal and (ii) internal factor; the supreme court procedure. It is found that the number of the Supreme Court Judges is not consistent with the increasing cases in the Supreme Court which is the only highest court in Thailand. This results in the backlog in the Supreme Court every year and the backlog tends to grow. Therefore, the Supreme Court determines to admit law clerks who will attend the Investigation on case management in higher courts done by Office of the Supreme Court in accordance with the Supreme Court Order No. 89/2548 dated November 10, B.E. 2548. The objective of the Project is to train the law clerk to assist the Supreme Court Judge in preparing draft judgment of non-complicated cases, so that the cases are decided more quickly. The law clerk works as the Associate Judge's assistant in the Decision Drafting Division. The qualification of this specific law clerk must be more selective than those of general law clerks. Despite of such law clerk's assistance, there is no explicit sign of success in speeding up the procedure.

The problems in those law clerks' job may be arisen by several causes, however, the author views that to resolve the problems it should, at the first place, begin at the legal education system. The author did the comparative and analytical study of the law clerks' job between the

Supreme Court in Thailand and the US in term of the roles and other relevant matters. It is found that the roles of law clerk in Thai Supreme Court is relatively less than in US Supreme Court; i.e. in practice the law clerk in Thai Supreme Court does not achieve (or miss) the anticipated objectives. Most of the jobs are more like the administration works. Meanwhile, the law clerk in the US Supreme Court is assigned to study the cases, summarize and provide the facts and legal issues to the judges, and to draft the judgment from time to time. This is to efficiently relieve the judge from unnecessary jobs and allow the judge more time to focus on discretionary jobs.

The author views that the legal education and legal training must be revised and developed, as well as the law clerk must be encouraged to write legal articles (focusing either on law journal, law review or other legal writing) during his/her study in the college. The courses and teaching/studying methodology should be improved and diversified. In addition, the roles of the law clerk should be upgraded to be of more helpful to the Associate Judge. Initially, the law clerk may be assigned to prepare simple draft judgment or a case which merely involves an order such as a case dealing with a petition to withdraw the appeal from the Supreme Court or the cases resemble to the precedent cases. The more complicated jobs will be assigned upon his/her progressiveness.