NALP Best Practices Guide for Managing Law School Employment Outcomes

Preface

Ensuring the uniformity, transparency, reliability, and integrity of public information about law school employment outcomes is essential. To that end, the National Association for Law Placement (NALP) previously produced a best practices guide designed to assist all law school members with collecting, maintaining, and reporting law graduate employment data. Since then, the American Bar Association (ABA) has significantly increased the granularity of its requirements, culminating in the ABA Section of Legal Education and Admissions to the Bar's Council (the Council) adopting an 11-page audit protocol, which governs the employment outcomes law schools report beginning with the Class of 2015.[1] The Protocol provides specific guidelines regarding how reported data must be substantiated as well as how it will be reviewed by the auditor that the ABA will retain. Because the Council is the accrediting body for law schools, adherence to the protocol is mandatory.

ABA Standard 509 requires that all reported employment data be "complete, accurate, and not misleading."[2] The Protocol's stated purpose is to "identify systemic reporting issues."[3] Individual law schools are responsible for accurately reporting their own law graduate employment data in a variety of settings, including on their own websites, in their admission and promotional materials, and to a variety of outside organizations, including NALP.

Employment outcome information for law school students and graduates is generally obtained through law school surveys and other data collection methods. Obtaining information about the employment circumstances of graduating students is the shared responsibility of the law school community, but managing the process generally falls upon the Career Services Office (CSO) professionals charged with providing counseling and career development services to students and alumni. Indeed, the ABA requires law school deans and CSO lead officials to sign an acknowledgment form when submitting employment data, certifying the data's accuracy to the best of their knowledge.

NALP has updated these best practices to assist law school members with creating internal operating procedures that will provide the necessary consistency and transparency that the Protocol was designed to achieve, while also meeting their school's educational and informational needs. These best practices however do not replace the Protocol nor does following these recommendations substitute for compliance with the Protocol itself. Each institution must carefully review the Protocol to ensure compliance with the ABA's requirements.

During the 2014-2015 school year, several law schools volunteered to be "beta-testers," working with the Protocol on a preliminary basis. These best practices reflect lessons learned from those involved in the beta-testing, input from the ABA, and insight from the accounting firm the ABA retained as shared during the 2015 NALP Annual Education Conference. It is fully contemplated that these best practices will evolve over time in response to further changes in the industry and/or regulatory changes that may be adopted or imposed. These best practices also will evolve as NALP law school members discover efficiencies when applying the Protocol at their institutions.

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[1] Protocol for Reviewing Law Graduate Employment Data, and Statement of Procedures for Collecting, Maintaining, and Reporting Law Graduate Employment Data (Protocol) (http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_june_protocol_and_statement_employment_data_final.authcheckdam.pdf)

[2] ABA Standards for the Approval of Law Schools

[3] Protocol, *see footnote 1.*

Introduction

This *Best Practices Guide* is divided into three main categories: collecting data, maintaining data, and reporting data. This information is provided to NALP members to serve as a *guide*, and it is up to each individual law school to determine which steps and methods are appropriate for its respective Career Services Office (CSO) and institution, taking into account available resources.

Some universal principles that should be considered when reviewing this *Guide* and instituting any suggested best practices are:

1. **PROFESSIONAL JUDGMENT.** Career services professionals should uphold the highest ethical standards throughout the data collection, maintenance, and reporting process. The Protocol specifically authorizes career services professionals to use their best professional judgment when collecting, maintaining, and reporting employment data; however, that judgment must be sufficiently documented. (Protocol, Introduction, para 2.)

2. **DOCUMENTATION!** Good documentation is the foundation to compliance with the Protocol. CSOs should find a consistent way of memorializing each attempt to reach graduates. Proper documentation includes the name of the person obtaining the information, the date the information was obtained, and the type of communication (email, phone call, in-person conversation). (Protocol II. A. para 2.) Employment information obtained by telephone or other oral communication must be committed to writing as soon as it is obtained and before the reporting deadline; otherwise it will not be considered as support for a reported outcome. (*Id.* para 4.)

3. **CONSISTENCY.** Schools should strive to report consistent information to the various data collection bodies when practicable, and should memorialize specific instances where the data is inconsistently reported due to divergent definitions or instructions from those bodies. For example, NALP and the ABA apply different definitions to the same jobs in some instances.

4. **COOPERATION.** Law schools should educate and encourage students as early as possible in law school to cooperate, communicate, and assist in the data collection process, particularly as data received directly from graduates is deemed to be most reliable. CSOs should maintain ongoing contact with students and recent graduates regarding employment status. Contact should not be just about collecting employment data. Instead, data should be collected in conjunction with counseling, sharing of information, and providing job postings, networking tips, and other relevant information pertinent to the job search process.

5. **REGULATIONS.** All applicable regulations and laws must be followed throughout the data collection, maintenance, and utilization processes.

6. **TRANSPARENCY.** The ultimate goal of the data collection process is to create and maintain an open and transparent system for providing employment information to all interested constituents, both inside and outside of the law school setting.

7. **COMMUNICATION**. Law schools should collect and report requested graduate employment data to NALP in order to allow NALP to generate national aggregate numbers, provide a wide variety of national benchmarks for each graduating class, and to facilitate continued sharing and updating of best practices.

Collecting Data

Law schools should develop a comprehensive, consistent, and well-documented approach to the yearly task of employment data collection, including a timeline of critical steps in identifying/defining the class; soliciting and recording employment status and ABA-required employment data points for each graduate in the class; and reporting to the ABA, NALP, and other requesting entities.

When developing your approach to employment data collection, keep in mind these underlying tenets: (1) the Protocol indicates a strong preference for employment data obtained directly from the graduates, allowing for information from third-party sources only when a school cannot obtain information directly from the graduate (Protocol II. A. paras 2 & 3); (2) each graduate employment record must be supported by accurate, contemporaneous, and verifiable documentation (Protocol II. para 1); and (3) the employment record for each graduate must contain supporting documentation for all of the ABA-required "key" data points:

a. Employment Status
b. Employment Category
c. Full-Time/Part-Time
d. Long-Term/Short-Term
e. Law School/University Funded[4]
f. Employment Type
g. Employment Start Date — before employment status determination date
h. Employer Name and Street Address, Email Address or Website

(Protocol I. B. para 3).

Create and foster a culture of data reporting among your students. Make the expectation of data reporting clear throughout each student's law school career, from the time they are a prospective student, to their 1L Orientation, after each summer or semester, and through graduation and beyond. Take every opportunity to emphasize the importance of information sharing and participation in the collection and use of employment information with your students (for example, during CSO orientation for 1Ls when presenting where 1Ls work during their first summer).

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[4]   In July 2015, the Council of the ABA Section of Legal Education and Admissions to the Bar adopted a new definition of long-term employment that now excludes school-funded positions that pay less than $40,000 per year, even if they are to last one year or longer. CSO professionals should always ensure that they are working from the ABA's most current definitions, as these are likely to continue to change over time.

Define your class for the current reporting year.
Early in the fall semester, work with your registrar's office to determine who will be members of that year's graduating class. Check back with your registrar's office throughout the year because members of that class can change as students' graduation dates shift. At some point after graduation, you will need to finalize the exact members of that year's graduating class.

Depending upon how many graduating classes a school has in one year, CSOs may have to engage in this process for each one of those graduating classes. Most law schools have a spring graduating class. However, if you also have a winter graduating class and/or summer graduating class, then those graduates will need to be ascertained per the above.

Reach out to students in their final year and survey them while they are still in school. In early fall, once you have an idea of who will be graduating, you should reach out to those students in a variety of ways (surveys, emails, phone calls, etc.) in order to gauge what their needs will be during their last year. This is a great way to engage your graduating students, obtain an idea of what help they may need, and also potentially secure some employment status information.

The Protocol encourages, but does not require, employment surveys to be conducted at graduation (Protocol II. B. para 1). However, schools must request post-graduation contact information from students before they graduate and maintain a record of such information (*Id.*). To that end, the Protocol provides that law schools should consider extending school-issued email accounts after graduation through the reporting deadline to help ensure a direct line of communication with graduates (*Id.*, para 2). Further, "[l]aw schools should make all reasonable efforts to contact students before graduation and on multiple occasions thereafter to encourage graduates to directly complete and as necessary and appropriate update their employment surveys." (Protocol II. B. 1.)

The ABA does not require a specific form of graduate employment survey, but does require that the survey include at minimum all of the questions in the ABA

Employment Questionnaire, and recognizes that the NALP Employment Report and Salary Survey does include all of the ABA Employment Questionnaire questions (Protocol II. A. para 2 and fn. 3). Surveys can be administered via a content management system (such as Symplicity), a hard copy questionnaire, or another electronic format.

Working collaboratively with the Dean and other departments in the law school community, you may decide to condition certain services related to graduation upon completion of the survey. Some schools require graduating students to complete the survey prior to receiving their caps and gowns or exam numbers. Other schools use an incentive-based approach where every student who completes a survey prior to leaving campus is invited to an ice cream social or entered into a drawing for a prize.

Obtain student information after graduation. For those who have reported that they are unemployed, who reported incomplete information, or who have not reported anything, CSOs should continue to reach out to such graduates throughout the reporting period in order to obtain updated or missing information. The timing and method of outreach will depend on the school and staffing, but should ensure enough time to make best attempts to locate those graduates who do not report, who report incomplete information, or who previously reported that they are still seeking employment, and to enter the data that is obtained. It is highly recommended that while following up, CSOs offer assistance to and have ongoing communication with those who are either unemployed and seeking or under-employed. For those graduates who are not responsive to the survey or other direct outreach, CSOs may try additional contacts by using a method described below.

Locate employment information for non-responsive graduates. Despite best efforts, there is always some portion of the class that will not respond to surveys, emails, or other attempted contacts. In those situations, schools can try one or more of the following methods commonly used to find non-responsive graduates.

■ **Directly from Graduates**

— Periodically call, text, or email recent graduates again, directly or through social networking sites

— Request information on forms graduates complete to receive diplomas

— Attend bar admission ceremonies, or similar events, to connect with recent graduates and ask about their employment status

— Request bar cards that graduates complete if a bar admission ceremony is held on campus

■ **Indirectly from Graduates**

— Monitor social networking sites, including Facebook and LinkedIn, for comments related to employment status

— View resumes uploaded on a content management system or other resume collection sites

■ **Third Party Provided Information**

— Check state bar websites, which often list employer names

— Contact family members, parents, or spouses whose contact information may be on file with your admissions, registrar, or public affairs offices.[5]

— Send a list of unknown graduates to others in your law school — dean of students, faculty, alumni office, registrar — asking if they have any updated contact information. Note that you may rely on communications between a graduate and an employee of your law school outside the Career Services Office provided the communications are properly

5   The Protocol notes, in Section II.B.2. that "schools may rely on communications with a graduate's employer or family member, provided that the communications are properly documented." At the 2015 NALP Annual Education Conference panel entitled "How to Maintain a Graduate Employment File that Complies with ABA Requirements," the term "family member" was specifically delineated to include only parents, siblings, grandparents, or spouses.

documented by the law school employee providing the data (Protocol II. B. 2.). See **Documentation**, page 2, of this *Guide* for the detailed documentation requirements.

— Contact previous employers to see if a graduate is still working there, and if not, if they have any contact information for that graduate.

— Receive contact information from classmates and/or friends; but note that it is not permissible for law schools to rely on information received from individuals other than the graduate, such as communications with other graduates, except a graduate's employer or family member, and only then, if properly documented (Protocol II. B. 2.). See **Documentation**, page 2, of this *Guide* for the detailed documentation requirements.

— Perform a Google or other internet database search to see if they are listed on an employer's website

Take reasonable steps to confirm data. If employment data information is obtained by a source other than directly from the graduate, then CSOs should take reasonable steps to confirm that the information is accurate. CSOs should use their professional judgment and the highest ethical standards when determining usefulness and reliability of information and when reporting this data. All employment status data must be based upon a fact-based finding.

Document the source of information. It is important to collect and maintain data on the sources of information you use to gather your graduates' employment information. It is recommended that CSOs collect and maintain the following:

— The date the information was received

— The actual information that was received

— The source of the information, whether it came directly from the graduate, employer, family members, someone on campus, an internet site, or other source

A best practice also would be to maintain notes on each of the above every time additional employment-related information is received. This way, the progression of what is learned, by whom, and from what source, is tracked for all information, including type of job, length of position, salary, etc. CSOs should also document attempts to find recent graduates, particularly when those efforts are not successful. There are many different documentation systems that can be used. They can vary from an electronic format, such as an Excel spreadsheet, to a hard copy format, such as a notebook that contains a survey or profile on each graduate, and/or printouts from LinkedIn, websites, etc.[6] Whatever format is used, it is important to document each step taken and each piece of graduate employment information obtained.

It is also important to freeze data at important benchmarks required by various recipients of employment data, such as NALP and the ABA, so that the information can be recalled as of a specific date, if necessary. This is true even in the instance of a school continuing to gather additional information for different purposes after those benchmarks have passed.

Update Employment Data. Employment outcome data provided by the graduate "will be presumed to be accurate." (Protocol II.A.) Law schools must, however, update the collected data if they later learn that any aspect of it is no longer accurate. "The reported data must accurately represent the most current known employment information regarding a graduate as of the employment status determination date." (Protocol II.B. para 1.)

Document the time and resources involved in collecting data. CSOs may choose to document the amount of time and resources expended in collecting the necessary employment data. This information may be particularly useful for CSOs that are short-staffed as the data collec-

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[6] Section II.D. of the Protocol indicates a preference that all supporting information and documentation be maintained in an electronic format. At a minimum, it is stated that law schools "must maintain an electronic database that contains all of the data reported to the ABA for each graduate."

tion process can be time consuming and may take away resources from CSOs in assisting students and graduates in their career development needs.

Maintaining Data

CSOs may use different methods to maintain the data collected. While the vast majority of law school members will rely on an employment tracking system, such as a content management system, others will create their own database or spreadsheet, and still others will continue to use hard copy surveys. These methods will depend on each office's human, technological, and physical plant resources. Whatever the method, CSOs should track the source of information, as mentioned above, in addition to tracking the data points requested by NALP and the ABA.

It is important that the data, source of information, and process used to obtain the information be consistently memorialized and be retrievable for submission in a file for each graduate. Because the Protocol is so specific on the point of data maintenance, highlights are directly quoted here:

— "Law schools must maintain an electronic database that contains all the data reported to the ABA for each graduate." (Protocol II.D. para 2.)

— "If the school does not use an electronic employment tracking system, the law school must create its own database, such as an Excel spreadsheet, to maintain each graduate's employment data." (*Id.*)

— Each graduate's file must contain: "any response to the employment survey; copies of any written communications containing reported information; copies of information from third-party sources such as law firm websites and social media sites; and contemporaneous notes of any oral communications containing reported employment information." (Protocol II.D. para 1.)

— "Law schools must maintain all records relating to their reporting of employment outcomes for at least four years." (Protocol II.A. para 5.)

Schools should maintain some system by which they continue to identify and document attempts to locate those who are unknown or about whom they are missing information, including the identity of those staff who make the attempts, such as creating a key to decode each staff member's initials. CSOs should also maintain records for and continue to work with those who are both unemployed and underemployed. Schools should maintain the data, as well as the underlying progress notes, that they report to NALP and the ABA each year and must retain such information according to the Protocol's 4-year minimum requirement as well as the individual school's document retention policies.

Reporting Data

ABA Standard 509 sets forth required disclosures for all accredited law schools, including disclosure of employment outcomes (509(b)(7)). The form, manner, and timeframe for publishing employment outcomes under Standard 509 are set forth in Managing Director Barry Currier's Memorandum to Deans of ABA-approved Law Schools dated July 14, 2014, Re: Compliance with Standard 509 ("509 Compliance Memorandum"). All accredited law schools must comply strictly with the form, manner and timing of prescribed employment outcomes disclosures, or risk sanctions under Rule 16 of the Rules of Procedure for Approval of Law Schools (509 (a)), and/or be subjected to a Red Flag Review, as defined in the Protocol, for a period of up to three years. (Protocol I.A. para 3.)

Schools may want to publish employment-related data that goes beyond that required under Standard 509. Such disclosures are allowed, provided they are complete, accurate, and not misleading to a reasonable law student or applicant, and the school uses due diligence in obtaining and verifying such information (509 (a)).

When providing employment-related data beyond the ABA-prescribed Employment Summary Report, schools

should use raw numbers rather than relying solely on percentages, particularly as there are several different formulas in the market from various sources such as NALP, the ABA, and *US News*. CSOs should work with the Dean, faculty, and others in the school to present employment information to current and prospective students in a format that promotes an understanding of the current state of the legal employment market. Schools can use both NALP's aggregate national data and data from the school to convey this information.

Reporting starting salaries. If an individual school chooses to publish salary data, then the underlying number of salaries reported and used to support that data should also be published. However, if there are fewer than five reported salaries for any employment category, schools are urged not to report any salary statistics in that category in order to protect graduates' privacy. Additionally, law schools should consider providing national salary statistics, as provided by NALP, because that data can provide a more comprehensive picture of graduates' starting salaries.

Educating law school faculty and administration about employment data. Career services professionals should make reasonable efforts, in conjunction with and upon consultation with the Dean, to educate the faculty and other administrators regarding law school employment data. In conducting this education effort, it may be helpful for CSOs to use the ABA prescribed Employment Summary Report to review employment outcomes. CSOs could also conduct interdepartmental meetings, including other student services departments, to discuss current employment issues at their law schools and trends in the national legal recruiting arena. Communications professionals, in conjunction with CSOs, should assist any law school spokesperson with a response or presentation to any media outlet regarding employment data.

Conducting internal review of employment data. CSOs should work with the Dean to determine who is best suited to conduct a complete review of all publicly available employment data distributed by the law school. This should include not only information on the CSO website, but information available through all other components of the law school, including but not limited to other law school offices, such as: Admissions, Communications/Public Affairs, Student Affairs, Dean's Office, Financial Aid, and Alumni/Institutional Advancement. All employment data published by any arm of the law school should be reviewed by the CSO before it is used.

Resource Links

- **Protocol and Statement on Review of Law Graduate Employment Data:** http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_june_protocol_and_statement_employment_data_final.pdf

- **"How to Maintain a Graduate Employment File that Complies with ABA Requirements," presented at 2015 NALP Annual Education Conference:** http://www.americanbar.org/groups/legal_education/committees/data_policy_and_collection_committee.html

- **ABA Standards and Rules of Procedures for Approval of Law Schools 2014-2015, Chapter 5 (for Standard 509):** http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter5.authcheckdam.pdf

- **509 Compliance Memorandum:** http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_july_standard_509_revised_compliance_memo_with_attachments_and_links.authcheckdam.pdf

- **NALP Employment Report & Salary Survey (ERSS) Info website:** http://www.nalp.org/erssinfo

- **ABA Questionnaire (for entry of data):** http://www.abaquestionnaire.org/main/login.aspx

- **ABA Employment Summary Report website:** http://employmentsummary.abaquestionnaire.org/

- **Frequently Asked Questions: Protocol for Reviewing Law Graduate Employment Data, and Statement of Procedures for Collecting, Maintaining, and Reporting Law Graduate Employment Data:** http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/Questionnaires/2015_employment_data_faqs.authcheckdam.pdf

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