

TO: Fred Thrasher, NALP Deputy Director
Nicole Vikan, Board Liaison
NALP Board of Directors

FROM: Melissa Lennon, Chair, Judicial Clerkship Section

DATE: January 31, 2013

RE: **Judicial Clerkship Section Quarterly Report**

Never a dull moment in the world of clerkships. The last three months has seen a lot of activity, recapped below.

Federal Law Clerk Hiring Plan Developments

In order to have a fuller discussion of the hiring plan, the judges expanded their November meeting to include a law school deans from a variety of schools, and also extended the meeting from a half day to a full day. The morning half of the meeting included the deans, members of the federal judiciary and our own Susan Staab (Univ. of Chicago). In that session, the deans endorsed the idea of a plan, and stressed the need for transparency regarding the hiring preferences of judges. In the second half of the meeting, which did not include the deans, the discussion included topics such as the numbers of applications received, timing of applications, and law school influence over hiring plan compliance. Several changes to the plan and to OSCAR were agreed upon at the second half of the meeting, and are now in effect.

After the meeting, the deans followed up with a letter. The letter endorsed the plan, stating it provided organization and fairness. The letter acknowledged the system was unraveling and as judges opted out of the plan, law student applicants and their law schools would likely have to do the same. The letter urged the Judicial Conference to make the plan participation made mandatory, and predicted many dire consequences if the status quo persisted or deteriorated further, such as earlier and less informed applications, inadequate recommendations, disadvantages to diverse students, and a generally chaotic situation.

The OSCAR Working Group responded with appreciation and stated that the meeting reinforced that the judges and schools share the goal of a clear, effective and efficient hiring process. Judge Burgess presented the recommendations and concerns of the OSCAR Working Group to the Judicial Resources Committee. Although there seems to be support at that level for greater transparency in the law clerk hiring process, and for not commencing hiring until all grades from the first two years of law school are released, there is insufficient support for making plan participation mandatory for judges. Therefore, the OSCAR Working Group has published a 2013 plan that is voluntary for judges, but also speaks to voluntariness for schools.

The 2013 Federal Law Clerk Hiring Plan:

Critical Dates:

- August 19, 2013 (noon EDT): applications received
- September 3, 2013 (noon EDT): interview invitations issued
- September 9, 2013 (10 am EDT): interviews scheduled and offers made

Other Guidelines:

- The Federal Law Clerk Hiring Plan (Hiring Plan) provides guidelines regarding the hiring of third-year law school applicants. Plan participation by judges and law schools is voluntary.
- Judges following the Hiring Plan agree to not hire law clerks earlier than the fall of the law clerks' third year of law school. The Hiring Plan does not cover applicants who have graduated from law school. Therefore, judges may accept applications, interview, and hire law school graduates at any time.
- Law schools and law faculty members will discourage potential law school applicants from submitting applications that will be received before the law school student application receipt date specified by the Federal Law Clerk Hiring Plan. The law schools will not facilitate the release of official law school transcripts and will discourage faculty members from sending letters of reference that will be received before the law school student application receipt date specified by the Federal Law Clerk Hiring Plan. The law schools will discourage faculty from making calls on behalf of law school applicants before that date.
- Law schools are strongly encouraged to use OSCAR's electronic application process. However, if judges request any paper applications, law schools will bundle applications (including cover letters, resumes, recommendations, transcripts, and writing samples) so that each applicant's materials arrive together and all applications from a particular school arrive at the same time in accordance with the Hiring Plan critical date.
- Third-year law school applicants are strongly encouraged to ensure that any paper applications and all related materials arrive in accordance with Hiring Plan critical date.
- Judges may make offers as soon as interviews are permitted under the Hiring Plan. Generally, it is for the judge to determine the terms upon which an offer is extended. However, judges are encouraged not to require an applicant to accept an offer immediately without reasonable time to weigh it against other viable options that remain open to the applicant. This would not prohibit an applicant from accepting an offer on the spot.
- When setting up an interview with a clerkship applicant, a judge should make clear to the applicant his or her clerkship offer's policies or practices. For example, a judge may have a policy or practice of making offers and entirely filling his or her clerkship slots, even if more interviews are scheduled for that day. The applicant should be told this in a timely fashion, so that the applicant's decision to accept or decline the interview is appropriately informed. Applicants should also be informed if the judge will ask them to make a decision on the spot.
- Judges are encouraged to consider using video conferencing in lieu of personal interviews.

The D.C. Circuit Court Notice

Since the Law Clerk Hiring Plan dates and guidelines were announced, the Judges of the important D.C. Circuit Court released the following notice about hiring clerks for the 2014-2015 Term:

Although the judges of this circuit would uniformly prefer to continue hiring law clerks pursuant to the Federal Law Clerk Hiring Plan, it has become apparent that the plan is no longer working. Because participation in the plan is voluntary, a significant percentage of all United States circuit judges must agree to follow it if it is to work appropriately. During the past few years, a significant and increasing number of circuit judges around the country have hired in advance of the plan's interview and offer dates, and it is likely that they will continue to do so. As a result, continued adherence to the plan is no longer fair and equitable to either students or judges.

We stand ready to work with the judges of the other circuits to develop an appropriate successor to the current plan. In the meantime, however, the judges of this circuit will hire law clerks at such times as each individual judge determines to be appropriate. We have agreed that none of us will give "exploding offers," that is, offers that expire if not accepted immediately. Rather, when a judge of this circuit gives a candidate an offer, the candidate will have a reasonable time to consider the offer and interview with other judges before accepting or declining. Additional practices applicable to individual judges may be found on the judges' OSCAR pages.

Although the number of law schools that place students on the D.C. Circuit Court is relatively small, the ripple effect of this notice is large. The notice has just been public for a few days. Members schools will need to make their own decisions about how best to serve their students, but at this time, there is a great deal of confusion in the land. The Judicial Clerkship Section will schedule a conference call in the near term to discuss these issues.

Work Group Status Reports

OSCAR (Chair, Susan Staab, Univ. of Chicago): OSCAR Version 7 is being tested now, and will be released in April. There are two significant technical enhancements. Judges will now be required to indicate whether they are hiring through the plan or, if off-plan, when they would like to receive their application materials. Also, there is a limit of 100 applications per applicant, which will be calculated on a rolling basis.

State Courts (Chair, Michael Ende, Hofstra): No update.