

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

FROM: Melissa Lennon, Chair, Judicial Clerkship Section

DATE: April 4, 2013

RE: **Judicial Clerkship Section Quarterly Report**

At the time of the last Board update on the Drama formerly known as the Federal Law Clerk Hiring Plan, the Administrative Office of the United States Courts had set forth a deadline of August 19, 2013 for 3L applications. Shortly thereafter, the D.C. Circuit Court announced its intention to abandon the plan and allow individual judges to hire on their own timeline. Members of the NALP Judicial Clerkship Community worried that it might be even more difficult to keep up with any other changes that would flow from this announcement. NALP members, as usual, were right.

The Judicial Clerkship Section held a conference call in February to discuss the status of the plan, and many voiced concern about the lack of transparency and challenges with access to information. Members discussed the fact that OSCAR cannot currently be used to apply to off-plan judges because the OSCAR system acts as a de facto enforcer of the plan deadline by not releasing student applications until that date. We expressed concern about the continued usefulness of OSCAR if more and more judges decided to accept applications and complete their law clerk hiring in the spring and early summer.

Members reported that they were planning to call all federal judges in their jurisdiction to determine hiring preferences in light of these changes. On the conference call, we acknowledged that outreach at this time might be met with some uncertain responses from judges, but school members could not afford to delay.

Some members reported that their regional law school consortia were coordinating phone calls and were going to share results. These types of collaborative efforts could be very helpful, but unfortunately, any efforts we make to gather information can be flawed. By way of particularly personal example, my local law school group, the Greater Philadelphia Area Law Schools (GPALS) agreed to share calls across the Third Circuit. One of the architects of the plan was an Eastern District of Pennsylvania judge, and our region has typically been fairly compliant since that time. Our round of calls more or less verified their traditional compliance with the plan. About two weeks after all of our calls were complete, however, the judges of the EDPA decided to abandon the plan and make individual timing decisions. We are now starting from scratch, but are finding that many judges do not have an idea yet of how they will proceed.

In the meantime, the judicial OSCAR working group got together and came up with an alternate deadline of June 30 for the release of applications. **Please note that this proposal is not public information.** This proposal eliminates the reading period date and interview scheduling date that was previously contained in the plan. The OSCAR working group solicited feedback from various law school deans about this new scheme, and received the following types of responses:

- OSCAR should just release applications when they are finalized.
- Because of the amount of hiring that is occurring outside of the plan, it does not make sense to continue promoting a non-mandatory system.
- A June 30 deadline is very problematic for students in summer employment programs, as scheduling interviews would be quite a challenge. When post-graduate employment could be jeopardized, some students might forgo applying for clerkships all together.
- It is too late in the process to change from a three date system to a single release date.
- There is already widespread confusion about the process and adding another date would not be helpful.
- A single release date will negatively impact students not in large urban areas.
- OSCAR can serve the hiring process best by allowing applications to be released as soon as they are finalized.

The NALP OSCAR Working Group also sent the following communication to Judge Burgess:

As members of the NALP OSCAR Working Group, Anne Tausch from the Administrative Office informed us of the recent proposal from the Judicial Working Group to move to a single date earlier in the year and proposing June 30<sup>th</sup> as a date to release third-year law school student applications to judges. We had the opportunity to confer with some of our colleagues about the proposal from the Working Group, including those who work with us on OSCAR testing and enhancements. Although not a large or formal group, these were very experienced clerkship counselors from a broad range of law schools. One point on which we all agreed was our commitment to OSCAR's continued vitality and growth.

This year, the erosion of compliance with the hiring plan has reached a point that threatens to undermine OSCAR's utility. As more judges elect to follow an alternative schedule, second-year students and their recommenders are, for the most part, forced to spend a great deal of time, effort and money to ship paper applications to chambers around the country. It would be far more helpful to judges and applicants to release electronic second-year applications to judges when they are finalized, just as with alumni applications. The hiring plan schedule could remain a useful benchmark for those who prefer the fall, but it should be untethered from the information and application components that are the vital services of OSCAR. In the current fluid hiring regime, the release of second-year applications will strengthen the incentives to use OSCAR and enhance trust in the information it provides.

At this point, permitting the release of second-year applications would be more effective in retaining participation in OSCAR than tweaking any hiring plan date. We mourn the loss of a predictable schedule as much as anyone, and we look forward to the day when a consensus once again is reached about a schedule. In the meantime, however, we strongly support the role OSCAR can play in providing current hiring information and streamlining the application submission process.

We do not know where the judges OSCAR working group stands on their June 30 proposal. The group is not set to convene until late May. I am sorry to leave the Judicial Clerkship Section at a time of relative chaos, but know Amy Perez of the University of Miami will serve the needs of the clerkship community very well.