

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

FROM: Melissa Lennon, Chair, Judicial Clerkship Section

DATE: October 25, 2012

RE: **Judicial Clerkship Section Quarterly Report**

It seems that much has happened in our quiet little section of NALP in the last several months. A recap follows.

NALP Website

As a result of the concerns expressed by members, and as a result of the deliberations at their July meeting, NALP issued the following:

NALP STATEMENT ON THE FEDERAL LAW CLERK HIRING PLAN

August 1, 2012

NALP supports policies and procedures that strive to create a level playing field in the legal hiring arena, and programs that support equal access to all legal jobs. The Federal Law Clerk Hiring Plan created by the federal judges' Ad Hoc Committee on Law Clerk Hiring provides a practical way for students from all law schools to compete fairly for consideration for some of the most highly sought post-graduate legal employment opportunities in the United States. A growing number of federal judges have chosen not to participate in the voluntary plan. As a result, some law schools have elected to facilitate the applications of students applying to off-plan judges. NALP understands that each law school must apply its own policies and rules for assuring that the recruiting activities involving its own students are as fair as possible.

NALP supports the idea of a hiring plan for federal judicial clerkships that ensures an equal opportunity for all eligible law students to compete fairly for available opportunities. NALP believes that the OSCAR system and the federal judiciary's OSCAR Working Group can and should continue to play an important role in ensuring that all law students have access to the available information about federal clerkship hiring, and NALP encourages all federal judges to continue to use OSCAR as their primary tool for communicating with potential clerkship applicants and for collecting clerkship applications and related materials.

This statement was published in NALP Now and on the NALP website. After consulting with Jim Leipold, Marilyn Drees and others, I sent the statement to Judge Tim Burgess, who serves as the leader of the OSCAR Working Group of the Administrative Office of the United States Court.

Activities of the Judges OSCAR Working Group

Later in August, Judge Burgess corresponded with the Judges OSCAR Working Group members, which includes our members Susan Staab (Univ. of Chicago) and Eric Stern (Berkeley). Judge Burgess shared some insight into the ideas being evaluated by the OSCAR Working Group. These ideas include the possibility of switching to a late May release date for applications, and reconsideration of the single release date and reading period structure. Judge Burgess also told the group that surveys were being sent to law school deans, federal judges and recently hired law clerks to seek feedback about those ideas, the operation of OSCAR and the Plan in general. Those surveys have been completed. In order to have a fuller discussion of the Hiring Plan, the judges expanded their November meeting to include a number of other law school deans from a variety of schools, and also extended the meeting from a half day to a full day. He also welcomed more immediate feedback from the group.

Response of the NALP OSCAR Working Group

In September, the NALP OSCAR Working Group collaborated on the following response to Judge Burgess's solicitation of feedback:

Thank you for providing insight into the ideas being evaluated and surveyed by the OSCAR Working Group. We appreciate the efforts of the Working Group to investigate options and to increase participation in OSCAR and the Hiring Plan. As administrators in law school career services offices, we write to share some of our thoughts. It seems that the Hiring Plan is at a crossroads. As noted in the August 28 correspondence to the OSCAR Working Group, surveys will be administered to judges, law schools deans, and recently hired clerks to seek feedback about moving the critical dates to May and to only one date for receiving applications with no other defined dates. These two prospective changes present real concern for our constituents.

Before considering specific issues with the single May release date, we would note two overarching concerns: timing and stakeholder confidence. If the hiring plan schedule is moved earlier, law schools

would need more lead time than mid-November. Law school career services offices need time to schedule and prepare clerkship programming and materials for applicants. If a May date is selected for the 2013 hiring cycle, schools would need to start preparing within the next four to six weeks, informing faculty about letters of recommendation requests, organizing and scheduling student programming and materials, planning and training administrative support, and adjusting budgets to allow for additional support staff/another mass mailing. Law school clerkship coordinators and clerkship committees are meeting now, or will be meeting very soon, to begin assessing 2012 outcomes and considering what to do for the next cycle. In addition, as a practical matter, by November 15, most law schools are about two weeks away from final exams, leaving very little time for programming or other preparation for applicants. All of these processes are adaptable to a certain extent, but only with sufficient notice. Finding out about a May 2013 release date in November 2012 will not provide law schools, including prospective faculty recommenders, the time necessary to plan and execute an efficient application cycle.

It is the erosion of confidence in compliance on both sides, judges and applicants, that has led to the problems with this hiring plan, as with the plans that preceded it. Law schools need a high degree of confidence that a significant majority of judges will comply with any new schedule. From a law school perspective, it is helpful to know that judges think an alternative schedule is preferable, or less burdensome, but it is especially important that the judges indicate, whether as part of the survey or otherwise, that if a particular new schedule is implemented, they will comply with it.

We also have some concerns specifically about a May release date. A May release date will also force students to rely heavily on 1L faculty to write recommendation letters. The 1L faculty tend to teach very large classes. Because they don't get a chance to get to know a significant number of students well, letters may not be as personalized or substantive as they need to be for clerkship applications. Students may not ask fall semester faculty for recommendations because students often prefer to see their grade in a given class before making a final decision as to which professors to ask for recommendations. Similarly, faculty often do not complete letters until obtaining class grades. Due to the timing of generating applications, preparing and producing letters of recommendation, and the overall administrative processes involved, students may need to secure recommenders before fall semester grades are available. Furthermore, a significant number of students request recommendations from their second summer employer, which would not be possible with a May date.

It is also important to note that not all grades and class ranks will be posted and available to judges via transcripts in May. Making clerkship decisions before second year grades and recommendations are available compromises the process for all parties. Registrars Offices and faculty are committed to grading and submitting 3L grades for graduation and bar certifications and therefore 2L grades are typically delayed. This timing will deny judges the benefit of the students' academic achievement in their advanced law school subjects. Also, although they are small in number, some law schools are on

the quarter system and would therefore be in final exams during May, hindering their ability to prepare application materials or travel for interviews.

The impact of a single release date without a reading period is also troubling. The absence of a reading period would create a “free for all” rather than a level playing field for both applicants and judges. The single date will increase pressure on judges to make decisions even more quickly and will impose significant burdens on students who wish to clerk in different cities. A single release date with immediate interviews would give the impression that judges were not taking the opportunity to carefully review applications. It will also create the perception that judges in areas with high concentrations of law students will receive an unfair advantage. A single release date could also result in hardship for student applicants due to the cost of traveling on very short notice, and may create a perverse incentive for students to concentrate their applications in the city in which they are working during the summer (adding to the “high concentration” unfairness noted above).

We recognize that there is not one ideal time for this process, but we wanted to share our concerns regarding the proposed May dates as you deliberate over possible changes. We know and appreciate that you have the difficult task of balancing many competing concerns. We appreciate your efforts to canvass the opinions of various constituencies and genuinely hope that a workable consensus emerges. Thank you for your leadership and hard work on this challenging issue.

Response of Judicial Clerkship Section

Immediately after the Judges OSCAR Working Group sent surveys to law school deans, we convened a conference call of the Judicial Clerkship Section. We made sure our members were aware of the survey sent to deans and sent around copies where necessary. Our hope was that deans would request assistance from their career services offices to draft their responses. On the call, members discussed the issues raised by the questions, and expressed an overall sense of frustration with judicial non-compliance with the Plan. The concerns reflected in the call were basically similar to those expressed in the memorandum above.

Current Status

At this time, we have learned that survey responses were received from 117 schools and 492 law clerks. The OSCAR Working Group meeting is scheduled for November 15. We hope to hear very soon the decision of the judges about the future of the Plan.

Work Group Status Reports

OSCAR (Chair, Susan Staab, Univ. of Chicago): The group has started its testing of Version 7 of OSCAR.

State Courts (Chair, Michael Ende, Hofstra): Michael continues to solicit information for inclusion of additional states, although none have been added at this time.

RFPs for 2013 Annual Conference

We were very pleased that all four of our RFPs were accepted for presentation at the 2013 Annual Conference in Tampa.

- (1) OSCAR Got a Makeover – Version 7: presented by the OSCAR staff to demonstrate new features and enhancements to OSCAR;
- (2) Judicial Clerkships – The Winning Application: presented by Diane Cross (Cincinnati) and Jocelyn Salvatori (California Western) to discuss resume, cover letter, writing sample and letters of recommendation content in successful applications;
- (3) Caught Between a Clerkship and a Hard Place: Guiding Clerkship Candidates in a Down Economy: presented by Pascale Bishop (Univ. of Florida) and additional school and firm speakers to address pressures faced by firms when graduates have an interest in clerkships and student decision making when their summer firm is not willing to defer an offer;
- (4) Hot Topics in Clerkships: presented by Amy Perez (Miami) and Melissa Lennon (Temple) to address any recent issues.