

TO: Fred Thrasher, NALP Deputy Director
Melissa Lennon, Board Liaison
NALP Board of Directors

FROM: Amy Perez, Chair, Judicial Clerkship Section

DATE: October 16, 2013

RE: **Judicial Clerkship Section Second Quarterly Board Report**

Following is a brief synopsis of our activities since the last board report:

Q2 Section Conference Call

The Judicial Clerkship Section held its second quarterly conference on August 8th. The majority of the conversation centered on the members' feedback and impressions regarding the 2013 law clerk hiring season. We also discussed the Section's accepted conference proposals and article ideas. The call was well attended by section members.

OSCAR Work Group / Federal Clerkship Hiring Plan Work Group

Vice Chair: Susan Staab, University of Chicago School of Law (OSCAR Work Group)

Vice Chair: Amy Killoran, Georgetown Univ. Law Center (Hiring Plan Work Group)

This past quarter, the OSCAR and Federal Clerkship Hiring Plan Work Groups, in addition to Melissa Lennon and myself, collaborated on a survey to capture information about the 2013 federal clerkship hiring season. The survey was distributed to 146 NALP member law schools through the Judicial Clerkship Section. Responses were received from 69 schools, which represents just under half of the recipients. The primary themes, including some statistics and representative comments, were submitted to the Judges' OSCAR Working Group in a written memorandum, a copy of which is attached hereto.

In sum, the memorandum outlines that the 2013 clerkship season raised real concerns with school members about diminished utility for OSCAR, both as a means of providing information and as a vehicle for submitting applications. Schools struggle to determine accurate information about judges' hiring preferences and find their applicants are challenged by the lack of transparency. Schools overwhelmingly favored opening OSCAR earlier to second-year students ("2Ls") and de-linking students' OSCAR applications from a fixed Hiring Plan date.

The law schools' feedback on the 2013 hiring season will be discussed during the Federal Judges' OSCAR Working Group conference call this Friday, October 18th. Susan Staab and Eric Stern will be present on the call. While we have no control over the judges' discussions or decisions, we hope they will be interested in the experiences of the law schools and applicants this season.

Annual Education Conference Accepted Program Proposals

Vice Chair: Samantha Williams, Arizona State University, Sandra Day O'Connor School of Law

The following four of the Section's six Annual Education Conference program proposals were accepted:

Alumni Judicial Clerkships: They're here to stay ... if only for a year or two

What started as a reaction to the recession now appears to be a permanent trend - graduating law students and young attorneys applying for federal clerkships. And, in recognition of this trend, Federal District Court judges – in particular – are now routinely seeking out and hiring as clerks attorneys with between one to three years of law firm experience. This program will examine the issues that both Clerkship Advisors and Law Firm Recruiting Professionals have had to address in counseling and working with these new attorneys as we all adjust to what looks like a trend that is "here to stay."

Presenters: Eric Stern, Amy Perez, Georgia Emery Gray, Lisa Dickinson

From Seattle to Secaucus: State Court Clerkships Today

This program will provide an overview of the state court clerkship application process. It will focus on getting student buy-in for state court clerkships, the application process (including changes stemming from the economic downturn and the new Federal Law Clerk Hiring Plan), and successful application strategies. The program will also re-introduce the Insight & Inside Information for State Court Clerkships, which has been revised and expanded by the NALP State Court Work Group on Judicial Clerkships as a supplement to the Vermont Guide to State Court Clerkships, and will provide sample surveys about state court hiring.

Presenters: Amy Killoran, Michele Hoff, Molly Stafford

Hot Topics in Judicial Clerkships

Federal law clerk hiring has become even less organized and predictable as compliance with the federal law clerk hiring plan has continued to decline. The instability in the federal process has had a ripple effect on state court hiring as well. These changes are forcing law school counselors and law student employers to adjust their programs to the changing reality of clerkship hiring. Program participants will have a chance to discuss the "state of play," assess activity and trends on the horizon, and share tips and strategies for successfully navigating the changing landscape.

Facilitators: Amy Perez, Marilyn Drees

Opportunities in U.S. Tribal Justice Systems

This program will explore the opportunities available to law students and graduates in the more than 200 U.S. tribal justice systems, and provide guidance on how to access those opportunities. The program will offer an overview of the tribal justice systems and ways they intersect with the state and federal systems. It will identify the types of externship, internship and clerkship opportunities that may exist, and provide guidance on how to navigate the relevant application process. It also will explore perceived barriers that might keep students from pursuing these opportunities, and offer resources CSOs can use to counsel students.

Presenters: Susan Schell (additional presenters' names are forthcoming)

In addition, the following articles were published in the September 2013 Bulletin:

Understanding the Judiciary's Decision-making Process for Law Clerk Recruitment

The OSCAR Program Manager offered insights into the Judiciary's decision-making process for the

Oscar Program, and, more recently, the Federal Law Clerk Hiring Plan.
Author: Laura Simon

Patent Pilot Program Year Three: What's in It for Your Students?

The consolidation of patent cases among fewer judges in a given district means great opportunities for students, as this article explains.

Author: Shannon M. Schaab

State Court Work Group

Vice Chair: Molly Stafford, University of the Pacific, McGeorge School of Law

The *Insight and Inside Information for Select State Court Clerkships* resource was updated during the second quarter to include updated hiring information for New York State.

Currently, this resource includes the following 25 states: AZ, CA, CO, CT, DC, FL, GA, IL, IA, MA, MD, MN, MO, MS, NE, NJ, NV, NY, OH, OR, PA, RI, TN, TX, and VA. Requests for additional state reviews, as well as updates, will be made to NALP members during the third quarter. This resource is posted on the NALP website, under Professional Resources>Career Services>Resources for Judicial Clerkships.

Diversity and Inclusion Working Group

Vice Chair: Jolynn Caroline, University of Illinois College of Law

As mentioned in the previous Board Report, Stacey Kielbasa appointed Jolynn Caroline to also serve as the NALP Liaison to ABA Judicial Division Standing Committee on Minorities in the Judiciary. Melissa Lennon and I continue to work with Jolynn on ways for the Section to address diversity and inclusion in judicial clerkships, including updating the brochure currently entitled "The Courts: An Excellent Place for Attorneys of Color to Launch Their Careers."

Please do not hesitate to contact me should you have any questions regarding the above. Thank you for the opportunity to serve the Judicial Clerkship Section!

Amy G. Perez, Esq.

Student Development & Judicial Clerkships Director
University of Miami School of Law
Phone: (305) 284-1880
aperez@law.miami.edu

TO: Federal Judges' OSCAR Working Group
FROM: NALP Judicial Clerkship Section
DATE: October 10, 2013
RE: Feedback on the Most Recent Hiring Season

Thank you for allowing the Judicial Clerkship Section of NALP the opportunity to share with the OSCAR Working Group the experiences and feedback of our law school members concerning the most recent hiring season. To collect and synthesize information more efficiently, we distributed a questionnaire to 146 NALP member law schools through the Judicial Clerkship Section. Responses were received from 69 schools, which represents just under half of the recipients. The primary themes, including some statistics and representative comments, are discussed below.

Overall, the responses reveal that the 2013 clerkship season raised real concerns about diminished utility for OSCAR, both as a means of providing information and as a vehicle for submitting applications. Schools struggle to determine accurate information about judges' hiring preferences and find their applicants are challenged by the lack of transparency. Schools overwhelmingly favored opening OSCAR earlier to second-year students ("2Ls") and de-linking students' OSCAR applications from a fixed Hiring Plan date.

Law schools support de-linking OSCAR and the Federal Law Clerk Hiring Plan and providing earlier access to the OSCAR system.

Nearly 75% of respondents favored treating student applications like alumni applications – i.e., releasing them when finalized rather than holding them until a specified release date, such as this year's Hiring Plan date of June 28. One school suggested that judges be given the option to have their own "release dates" when OSCAR would release applications to that particular judge, which is an option apparently available for Staff Attorney Offices in OSCAR.

Law schools also expressed the belief that de-linking OSCAR applications from the Hiring Plan would motivate judges to post on OSCAR and to accept online applications. Considering that OSCAR allows judges to perform keyword searches and other functions that are impossible with paper applications, allowing all applicants to participate would likely make law clerk hiring more transparent. This would allow students to spend less time trying to figure out the nuances of judges' hiring timelines, and instead use that time to research the jurists themselves, craft better application materials, and send more targeted applications, all of which would benefit the hiring process for everyone.

Furthermore, law schools reported a growing concern that, moving forward, OSCAR may continue to lose its functionality even as an information source if the class of 2015 is not given access to the system soon. For example, we are aware of six judges on the DC Circuit, at least one judge on the Ninth Circuit, and one judge on the Eastern District of Pennsylvania who have posted

positions or indicated in their OSCAR profiles that they wished to receive applications from 2Ls via email. Other judges are currently using OSCAR to advise members of the class of 2015 about their hiring timelines. This is all despite the fact that current 2Ls do not currently have access to this information in OSCAR. This situation puts students at a disadvantage and strengthens their incentive to rely upon alternative (and, unfortunately, sometimes inaccurate) sources of information. Although there was no clear consensus as to a date that 2Ls should be given access to OSCAR, more than 50% of respondents indicated a preference for a date earlier than January 1, 2014.

In addition, because of OSCAR's link to a fixed Hiring Plan date, as more judges move away from that voluntary timeline they lose some incentive to use OSCAR even as a place to post information about hiring for law students. Many survey respondents forcefully advocated that OSCAR should be a clearinghouse for learning about and applying for judicial clerkships and supported efforts to strengthen that role.

Judges looked beyond OSCAR to share information.

One significant point of concern among respondents was the appearance of a greater incentive for judges to find alternative methods of sharing hiring information outside of OSCAR and to create their own application schedules. During the 2013 hiring season individual law schools, law professors and even student organizations reported receiving emails (not all via OSCAR), letters, and/or phone calls from judges to advertise their hiring preferences, which, in many cases, included accepting applications prior to June 28.

More concerted efforts were also made by entire courts to increase transparency regarding their hiring timelines outside of OSCAR. For example, in January 2013, the DC Circuit Court of Appeals announced that the court was abandoning the Hiring Plan and that individual judges within the DC Circuit would hire on their own schedules for the 2014-15 term (<http://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20Human%20Resources%20-Law%20Clerk%20Hiring>). The judges of the Third Circuit Court of Appeals voted to abandon the Hiring Plan, and the Eastern District of Pennsylvania soon followed. The Southern District of New York went so far as to create a webpage (<http://www.nysd.uscourts.gov/lawclerks>) to disseminate information about each judge's hiring preference. The website states:

In light of the fact that a number of courts and judges are no longer following the Federal Law Clerk Hiring Plan, the judges of this Court recognize that there is uncertainty and misinformation among law students as to the timing and process for clerkship applications. Although most judges of this Court continue to adhere to the core of the Hiring Plan, there is some variation among judges. In order to increase transparency, the Court has created this webpage to allow judges to post information regarding their law clerk vacancies and hiring practices.

Schools saw a surge in email and paper applications.

With respondents reporting a 65% overall decrease in applications submitted via OSCAR this year versus last year, it seems apparent that fewer students in the class of 2014 used OSCAR as a means of applying as compared to the class of 2013. Over 40% of respondents experienced an increase in email applications compared to last year among their students, with many judges requesting that applications from 2Ls be submitted via email in advance of the June 28 Hiring Plan release date. From the law school's perspective, email applications are cited as the most labor-intensive application method because they require individual, multi-step handling.

A common belief among law schools is that many of the judges who began requesting applications via email would have accepted applications via OSCAR if the system provided for immediate release of applications, as is the case with alumni applications. Judges who were instructing 2Ls to submit applications via email were simultaneously accepting applications from alumni via OSCAR, with several judges explicitly posting in OSCAR that 2Ls should send applications via email in advance of the June 28 Hiring Plan date. In fact, more than two thirds of the 166 judges who, according to OSCAR, accept email applications also accept electronic applications via OSCAR.

With regard to the number of students' paper applications this year versus last year, nearly a quarter of respondents reported an increase, while other schools lacked the data to respond because their school did not bundle or track the mailing of paper applications. Notwithstanding these figures, based on the comments received and other anecdotal comments from law schools throughout the application season, we suspect that, like email applications, paper applications also saw a fairly dramatic increase this year versus last year.¹ In fact, two schools reported a 90% increase in paper applications, many of which were mailed to judges hiring ahead of the OSCAR release date.

Some specific comments regarding the increase in email and paper applications included:

- We don't track or bundle paper applications, but I know from talking to recommenders and students that there was a significant increase in paper applications.

- Paper applications were used more often during this hiring cycle than in recent years for several reasons: a) OSCAR profiles were not updated in a timely manner and therefore applying electronically was not always possible or an efficient approach, and b) the timing of the Hiring Plan date change announcement and the immediate action that was required by students and law school services made it easier to work with paper applications. Applicants were more competitive using this method.

¹ One school that reported a decrease in the number of paper applications this year attributed the decrease as being "directly related to the federal courts' abandoning the former application timeline."

- Paper applications skyrocketed because judges were asking students (via their postings in OSCAR) to apply early/off plan by either sending in paper applications or sending email applications.

Activity related to the timing of applications, interviews and offers also seems to support the notion that students relied increasingly on email and mail as a means of applying for clerkships this year. For example, nearly 80% of respondents saw their students first begin to apply for clerkships before June, with 45% first beginning the application process before or during February. In addition, two-thirds of schools reported significant interview activity by the Class of 2014 before June. With regard to offers, 65% of respondents reported that their students first began to receive offers before June, while schools in general reported offers coming in nearly as frequently in February through May as on June 29 or later.

Confusion regarding judges' hiring timelines and the reliability of information in OSCAR contributed to a decrease in clerkship applications.

This hiring season, 61% of respondent schools reported an overall decrease in clerkship applicants, with 58% reporting a decrease in top students applying for judicial clerkships. One school wrote, "*[s]ome students, several of them top candidates, simply chose not to apply given the chaos of the application process this year.*" The most cited reasons for not applying included confusion regarding judges' hiring timelines, the reliability of information posted in OSCAR, time constraints and the risk of jeopardizing a full time offer from a summer employer.

Students' uncertainty surrounding when judges were hiring, including the difficulty in ascertaining whether judges were "on plan" or "off plan," was a significant deterrent in applying to clerkships. Schools also reported confusion about the reliability of the data in OSCAR – where some judges indicated that they were "on plan" but may have in fact hired earlier. Some schools reported that they felt pressure to advise students to mail paper applications in addition to submitting OSCAR applications online, since many judges were unclear or unsure about whether they would follow the Federal Law Clerk Hiring Plan or even use OSCAR. This anecdotal evidence was borne out in some judges' OSCAR profiles – judges who had indicated they preferred to receive applications online only through the OSCAR system, and who posted positions in previous years, simply updated their profiles in 2013 with the information that they had finished hiring for the 2014 term, without ever posting a position. The lack of information, and the frustration it caused among students, "*caused many students to opt out [of applying to clerkships] because they were unsure of how or when to apply.*"

Some schools reported judges interpreting the June 28 date in several manners – some as the date when applications should be received; others as the date when interviewing and offers could occur. One school wrote that judges' "*varied approaches ... to June 28 added to [students'] difficulty. Many judges of interest to our students decided to treat June 28 as an interview/offer date and asked for documents before that date (which meant more paper, in many cases).*"

One result of this confusion was a surge in calls to chambers by law schools and applicants. As a result of the various off-cycle hiring announcements from courts and individual judges, law schools

within the same cities or regions (e.g. Philadelphia law schools, New York City law schools, and the West Rocky Mountain Consortium) reported organizing coalitions to make telephone calls to chambers to inquire about judges' hiring schedules. On the other hand, some law schools reported putting the onus on their students to make calls to chambers out of concern for providing inaccurate information to students.

The June 28 OSCAR release date also posed problems for students and their summer employers. In many cases, it was impossible for students to know that early in the summer whether their employer would be supportive of a clerkship. Schools reported that many students were concerned about applying to clerkships and interviewing while they were at their summer jobs, specifically how that might affect their chances of receiving a post-graduate employment offer for those at law firms. The students who worked at law firms were particularly concerned about asking for time off to attend clerkship interviews, when summer associate programs at law firms have already shrunk to periods as brief as eight weeks. This concern over applying and interviewing while at summer jobs was especially troubling to students working in public interest, who worried about how this would impact their relationship with and future reference from an employer. Specific comments on this point included:

- It was difficult to prepare applications while also getting off to a good start at their summer employers.

- [Students] felt too rushed, weren't able to pull together recommenders, and couldn't spare the time to do the applications right in the middle of their summer positions.

- Students were concerned that interviewing during their summer jobs might affect their chances of receiving a full time offer. Many 2L summer associates did not wish to compromise their efforts at the job in order to prepare applications and possibly travel for interviews. The fact that many 2Ls were out of town rendered it rather challenging to coordinate the delivery of paper recommendation letters. Many who started the process did not complete it.

Conclusion

This past hiring cycle, the unfortunate erosion of compliance with the Hiring Plan has reached a point that threatens to undermine OSCAR's utility. In the current fluid hiring regime, providing access to OSCAR for 2Ls would enhance the transparency of the hiring process for all applicants and remove a potential barrier to judges' use of OSCAR as the primary source of hiring information. In much the same way, enabling OSCAR to be more flexible in its treatment of applications during uncertain times can simplify the hiring process for applicants and judges alike. These changes could persuade judges who have drifted away to return to OSCAR, make OSCAR more attractive to new users, and enhance confidence in the system and in the information it provides.

We hope that the OSCAR Working Group finds these reported experiences of the law schools and applicants this season helpful in evaluating next steps. Please do not hesitate to contact us if we can be of any additional assistance.