

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

FROM: Melissa Lennon, Chair, Judicial Clerkship Section

DATE: June 28, 2012

RE: **Judicial Clerkship Section Quarterly Report**

The Judicial Clerkship Section held a conference call after the Annual Meeting to discuss the status of RFPs, work group activity and, most notably, to follow up on our conversation regarding language on the NALP website regarding the Federal Law Clerk Hiring Plan. The discussion brought to light some challenging issues, discussed at length below. For this reason, I will try to keep the rest of the report brief.

### **Work Group Status Reports**

**OSCAR (Chair, Susan Staab, Univ. of Chicago):** Because it was not confident the new system could be fully tested before the start of the clerkship season, the OSCAR staff made a decision to delay the rollout of Version 7 until November or December, 2012. Susan explained the training that will be available for the current version, and shared some ideas about explaining the new version.

**State Courts (Chair, Michael Ende, Hofstra):** Michael gave us an update on the status of the guide, highlighted a few states that are top on the list for inclusion, and solicited volunteers.

### **RFPs for 2013 Annual Conference**

We narrowed our focus to four RFPs:

(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.

### **Language on the NALP Website regarding the Federal Law Clerk Hiring Plan**

By way of background, the Judicial Clerkship Section began this conversation at the request of the Board as a result of a routine clean-up of the NALP website. After the recitation of the Federal Law Clerk Hiring Plan (“Plan”) dates, the website had the following language:

*NALP urges its member schools and employers, and encourages nonmembers, to continue complying with the terms of the plan in a unified support effort. Thanks to the success of the hiring plan application schedule for the past six years, and the guidance from the ad hoc committee, the promulgation of separate NALP guidelines is no longer necessary.*

There is no doubt that the second sentence of that paragraph was out of date and needed to be removed. The removal of the first sentence, however, could be read to indicate that NALP was no longer urging its member schools to follow the Plan. The Judicial Clerkship Section members briefly discussed this narrow point and suggested the website could simply recite the Plan dates and provide a link to OSCAR for further information. Another suggestion was to recite the dates, state “NALP supports the Federal Law Clerk Hiring Plan,” then follow up with a link.

### **Compliance with the Federal Law Clerk Hiring Plan**

The debate about the website language led us inevitably to a discussion of judges who are not Plan compliant and how schools deal with that reality. Members voiced concerns about:

- Which judges are off-Plan and how to find out that information;
- Pressure and questioning from Deans and faculty clerkship committees about what other schools are doing;
- Clerkship advisor feelings of being “the only school” who is still following the Plan, and thus fears of following a rule that is out of date and disadvantaging their students; and
- How to engage in discussions and information sharing about what schools do to help students applying in jurisdictions where off-Plan hiring is the norm.

One member expressed the sentiment that it was disconcerting that the language would be dropped from the NALP website, as that would send a signal to schools that they either didn't have to follow the Plan guidelines, or there was less force behind the guidelines or, worst of all, we were acknowledging that the Plan was effectively dead. Others said this is a confusing and challenging issue and NALP has a responsibility and obligation to provide guidance to its school members. For certain members, it was clear they were looking for support from NALP on these issues.

The discussion brought out more serious concerns about how our newer members and others who might not have a long history of robust federal placement feel that the process is not transparent and NALP is not helping them obtain information. Many school side members are accustomed to an environment where documents, resources and information are more fully shared without concerns about giving away a competitive advantage. Detailed information about which judges are off-Plan, how students obtain clerkships with those judges, and what schools (whether that be faculty, alumni or CSO) do to help those students is not likely to be shared in the same way. It is sensitive and likely to be protected. This feels alien to many of our members.

## **Update**

Since the time of our conference call, it appears that two schools with a strong history of federal clerkship placement, Georgetown and Stanford, have made an institutional decision to bundle and send applications to off-Plan judges before the September 4 deadline. It is my understanding that Harvard, Yale and Penn have not, at least for now, made a similar decision, and will only bundle and send applications consistent with the Plan guidelines.<sup>1</sup> Obviously, the actions of these types of schools sends a signal to the rest of the law school community, and right now the signal is decidedly mixed.

### **The Bigger Picture**

There are at least two other serious concerns that were not discussed on the call, but have been raised in subsequent discussions with several other Section members. First, how does a lack of public information and transparency about how and when to apply impact diverse applicants? It is easy to conclude that the more hidden, “passed down from one generation to the next,” information is about particular judges, the more likely it is not going to reach diverse or out of the mainstream applicants. One might argue it is not likely those applicants were going to obtain those positions anyway, but it seems patently unfair to create a system with such an uneven playing field for the arguably most elite position a recent law school graduate can have.

Second, in the absence of the Plan, what is the alternative? For career services offices already stretched to the limit, a landscape without any guidance at all about deadlines is very troubling. Although not directly addressed in the conference call, fear of this possibility has been discussed among section members.

### **Next Steps**

At a minimum, NALP needs to decide what language to put on its website, with the understanding that our choices will send a signal to Judicial Clerkship section members. Upon reflecting on the comments and sentiments of the section, the Board could then consider potential next steps. These steps might include some public

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<sup>1</sup> Please see blog references: <http://clerkshipscramble.blogspot.com/2012/06/georgetown-dumps-hiring-plan-blames.html> and <http://abovethelaw.com/2012/06/the-law-clerk-hiring-plan-r-i-p/>

advocacy in support of the Plan or some work more behind the scenes. Before any affirmative steps, however, perhaps the current situation and variables might call for some more organized fact-gathering, research and analysis. There is a diversity of strongly-held opinions on this hot topic and some pressing issues facing our members.

It is important to acknowledge we did not create this problem and we cannot solve it. It is also important to acknowledge that NALP may not be able to influence the hiring proclivities of Article III judges. We do, however, have as our mission to promote fair practices in recruiting and support diversity and inclusion in the profession. It seems that a thoughtful discussion, and perhaps some action, may be required.