

NALP Principles & Standards

DISCUSSION PAPER for PROVISIONAL YEAR

*Submitted by the NALP Part V Task Force to the NALP Board of Directors
February 5, 2009*

Introduction and Brief Review of Task Force Work to Date

In light of continued expression of concerns from many quarters of the NALP membership, then-President Gihan Fernando appointed an ad hoc Task Force to consider the Principles and Standards for the Timing of Offers and Decisions. That group¹ met first at the 2007 NALP conference, and continued its work with meetings in June and July of 2007. In the fall of that year, after extensive consultation with the NALP membership, the Task Force made a recommendation to the NALP Board to implement, among other specifics, a 45-day rolling timeframe for offers made to candidates not previously employed. In February 2008, the NALP Board adopted the Task Force's recommendations, with some amendments made in the membership notice and comment period, making the new Part V Principles and Standards ("provisional Part V") effective immediately on a one-year provisional basis.

The Task Force was charged with monitoring member reactions and experiences during this provisional period. Throughout the fall 2008 recruiting season, the Task Force invited member input through a series of three conference calls in November 2008 and other outreach. In December 2008, the Task Force met to review member feedback and responses in order to make a final recommendation to the

Board, prior to the publication of the proposed Part V guidelines to the NALP membership for a vote on their permanent adoption at the annual NALP conference in April of 2009. This report seeks to briefly summarize the Task Force's considered review of issues raised by the membership during the provisional period. In some portions, this report includes language first shared with the Board and the membership in the Task Force's Discussion Paper published in December 2007.

I. Task Force Recommendations

After extensive discussion, outlined below, the Task Force recommends: one change to provisional Part V, with a corresponding editorial change to Part IV relating to reaffirmation of offers by law student candidates who were previously employed; one change to provisional Part V, clarifying the December 15/December 30 timeframe for offers from employers having a total of 40 or fewer attorneys in all offices; the addition of an Interpretation addressing offers made prior to the commencement of fall interview programs; and the addition of a new Interpretation addressing releasing offers.

The recommended changes are:

1. Regarding offers to law student candidates previously employed, add the following language to Parts V.B.3 and V.C.3.:
 - a. *Law students should reaffirm these offers within 30 days from the date of the offer letter. Employers may retract any offer that is not reaffirmed within the 30 day period.*
- OR
- b. *Law students should reaffirm these offers within 30 days from the date of the offer letter. Offers that are not reaffirmed within 30 days from the date of the offer expire.*

¹ The Task Force is chaired by Thomas Schoenherr, Assistant Dean for Public Interest, Fordham University School of Law, and includes Elizabeth Armour, Director of Employer Relations, Suffolk Law School; Norma Cirincione, Director of Alumni and Associate Life, Cleary Gottlieb Steen & Hamilton LLP; Lisa Dickinson, Attorney Recruiting and Development Manager, Kirkland & Ellis LLP; Gihan Fernando, Assistant Dean, Office of Career Services, Georgetown University Law Center; Michael Gotham, Director of Recruiting and Retention, Perkins Coie LLP; Steve Marchese, Director, Career & Professional Development Center, University of Minnesota Law School (N.B. Steve Marchese left his position at UMLS and the Part V Task Force in October, 2008); Susan Robinson, Associate Dean for Career Services, Stanford Law School; LeaNora Ruffin, Assistant Dean, Career Development Office, Widener University School of Law; Lynne Traverse, Recruiting and Professional Development Manager, Bryan Cave LLP; Jo-Ann Verrier, Vice Dean for Administrative Services, University of Pennsylvania Law School; and Charlotte Wager, Hiring Partner, Jenner & Block LLP.

2. Edit Part IV.G.2 of the Principles to reflect the reaffirmation language in Parts V.B.3 & V.C.3.
3. Regarding employers having a total of 40 or fewer attorneys in all offices, replace the second to last sentence of Parts V.B.4 and V.C.4 with the following language:

Offers made on or before December 15 should remain open for at least three weeks following the date of the offer letter or until December 30, whichever comes first.

4. Add an Interpretation, as follows:

Interpretation 20: Offers Prior to Commencement of Fall Interview Programs

Q. How long must an offer to a law student candidate not previously employed remain open if the offer is given prior to the start of a student's fall interview program?

A. In light of NALP's strong commitment to allowing candidates to make independent and considered decisions, offers made before a law school's fall interview program begins to a law student candidate not previously employed should not expire until at least 45 days from the first day of the law school's fall interview program. Employers should contact the appropriate law school(s) to determine these dates. See NALP Principles & Standards PART IV F. and PART V.

5. Add another Interpretation, as follows:

Interpretation 21: Releasing Offers

Q. Are students required to contact employers to release offers?

A. Part V.A.2 states, "(law student) Candidates are expected to accept or release offers or request an extension by the applicable deadline." Professional standards dictate that students contact employers to release their offers.

The Task Force respectfully requests that these minor changes be made to provisional Part V and that, with these changes, its recommendations be submitted to the NALP membership for vote at the Annual Meeting in April 2009.

Below, the Task Force outlines our consideration of the many issues brought to our attention and considered during the provisional period.

II. Review of Member Feedback

Member participation in the three conference calls held in November, 2008 was excellent, with 160 participants in the first call on November 6, 180 in the second on November 12, and 90 in the third on November 18 (total = 430). Additionally, the NALP staff fielded questions about provisional Part V and related issues from members throughout the fall season. NALP Board members shared concerns raised by members directly with them. Finally, the Task Force members had their individual experiences and the reports of their colleagues in mind as it undertook its review of member feedback at a meeting in December 2008.

A. Positive Experiences Reported by Many Members

The first issue of note is the consistent reports from throughout the membership that provisional Part V was working and working well. This feedback came from all quarters of the membership: various employer types of various sizes and law school members all reported good results, and few problems, with the new guidelines.

The discussion following addresses the perceived problems and the Task Force rationale in its consideration of each.

B. Rescission of Offers

Members raised concerns about offer rescission and whether the Timing Guidelines might address this important issue.

The Task Force noted that, in fact, the number of rescissions throughout the fall 2008 season appeared to be small and localized. Reports were that some firms handled rescission and/or summer program oversubscription very well, by contacting career service office personnel and candidates potentially impacted and providing consumer information, letting the candidates know that the summer programs were full or oversubscribed so that the candidates could make informed decisions.

Noting that the issue of rescission is covered in the current Principles and Standards Part IV.G.,

Task Force members agreed that this phenomenon was a result of the economic crisis and was unrelated to the Timing Guidelines changes.

ACTION/DECISION: The Task Force recommends no change to provisional Part V or the Interpretations on this point.

C. **November 15 Response Deadline for Previously Employed Candidates**

The provisional Part V guidelines recommend a November 15 acceptance date for candidates with an offer from an employer by whom they were previously employed. This reflects a change from the prior Part V guidelines, which noted a November 1 acceptance date for these candidates. The Task Force initially recommended this change to accommodate the broadest range of on-campus interview programs and to allow students to explore the full range of options.

In the process of gathering member feedback, the Task Force heard from several members, employer members in particular, who suggested that the acceptance date be returned to November 1.

The Task Force explored the underlying dynamics of the entry-level (3L) hiring process and recognized that any given “date certain” for responses from previously employed candidates has the same inherent challenges for employers seeking to reenter the entry-level market: candidates with offers must respond by that date to their prior employer, and those who accept their offers are removed from the candidate pool as of that same date. In other words, in a one-date system, employers do not know the exact number of acceptances they will have until the same date that many candidates exit the available pool of candidates by accepting their own offers.

Given this, the Task Force considered scenarios that might resolve the problem of a date certain system:

1. **Bifurcated Deadlines Based on School Interview Dates.** The Task Force considered a scenario whereby there would be two separate response dates: one response date (e.g., Nov 1 or earlier) for candidates from schools with earlier fall interview programs (e.g., prior to Sept 1) and a later response deadline (e.g., Nov 15) for

students from schools where the fall interview program commences later (e.g., after Sept 1).

The Task Force noted that an earlier date would afford employers a staggered offer timeline, allowing them to re-enter the market if necessary at an earlier point. Additionally, the Task Force discussed the possibility that students at schools with early and late interview seasons would be placed on more equal footing.

However, the Task Force recognized that offer dates are not truly “staggered” in this scenario; rather than one date certain, this system would only afford two dates certain, with the same problems associated with “date certain” deadlines outlined above. This system would create a challenge for NALP and the membership to define an appropriate trigger — where would a school with a one-week earlier interview program, but an extensive later interview program, fall in this scenario? Employers would be hard pressed to arrive at and monitor deadlines in such a system. Even if an easy definition point could be identified, students at the “early” schools would not be on equal footing with students at later start schools if they were interviewing with smaller firms, government employers, and others with later hiring timeframes.

The Task Force rejected as unworkable a bifurcated deadline.

2. **Rolling Deadlines for Previously Employed Candidates.** The Task Force considered a rolling deadline for previously employed candidates.

Students in this market are considering a range of employment options, including clerkships, fellowships, and government employers, and some of these employers are only able to make offers to candidates in October or even into November. The Task Force concluded that this date accommodates the broadest range of law school fall on-campus screening interviewing programs and call-back/fly-back interview schedules, allowing previously employed candidates to explore the broadest range of options while not exacerbating any movement toward an

earlier interview season. Additionally, it imposes no disadvantage on firms in the 3L hiring process as employers can continue their hiring at any point in the hiring process, before or after any standardized date, by exploring candidates at a wide range of law schools and from throughout the NALP member talent pool.

However, the Task Force also recognized that employer members are best able to manage their hiring processes with the maximum amount of information from candidates. Accordingly, the Task Force sees the value of resuscitating the reaffirmation provision from the previous Standards specifically for candidates who were previously employed.

ACTION/DECISION: The Task Force recommends retaining the November 15 response deadline for previously employed candidates, and recommends adding the following language to Parts V.B.3 and V.C.3.:

Law students should reaffirm these offers within 30 days from the date of the offer letter. Employers may retract any offer that is not reaffirmed within the 30 day period.

OR

Law students should reaffirm these offers within 30 days from the date of the offer letter. Offers that are not reaffirmed within 30 days from the date of the offer expire.

In addition, the Task Force recommends edits to Part IV.G.2 of the Principles to reflect the reaffirmation language in Parts V.B.3 & V.C.3.

D. Changing the “Sunset” Provision Date from December 30 to December 15 or December 1.

Provisional Part V includes a sunset provision: the guidelines suggest that offers made after December 30 are to be kept open for two weeks. A member suggested that this date be moved earlier. While acknowledging that an earlier sunset provision might allow employers to turn their attention to first-year hiring sooner, the Task Force concluded that keeping the sunset provision at the end of December allows employers

(particularly employers who make offers later in the process, such as government agencies, smaller firms, and public interest organizations) and students still engaged in the recruitment process to equitably conclude their processes.

ACTION/DECISION: The Task Force recommends retaining the December 30 sunset provision.

E. Call-back or Offer Kick-Off Date

During the provisional period, members inquired as to the Task Force’s consideration of call-back or offer kick-off dates. The Task Force discussed these possibilities extensively in its initial deliberations and decided against these schemes. As noted in the initial December 2007 Discussion Paper to the membership:

1. **Call-Back Kick-Off Date.** “Timing guidelines might also include parameters at the initial stages of the interviewing process. In its discussions, the Task Force considered the idea of identifying a date (e.g., the Tuesday after Labor Day) before which no call-back interviews could take place. The guidelines would suggest that no employers begin their call-back processes before this date.

Advantages: A post-Labor Day start to call-backs reduces the pressure on employers, who are finding it increasingly difficult to staff both on-campus and in-office interviews in the busy August season. Currently, attorneys and recruiting staff are expressing frustration about the multiple efforts required of them at this time of year. A post-Labor Day start permits employers more discrete time segments for delivering a cohesive recruitment strategy and reduces the pressure of early interviews. This system allows for a more condensed call-back period, permitting more consistent comparisons of the candidate pool.

Disadvantages: Deferring all call-backs until after Labor Day reduces the time available for employers to schedule all their call-back interviews in a timely manner. Deferring call-backs to after Labor Day would eliminate two to three weeks typically used for call-back interviews in August and force interviews to continue later in the recruiting

season. Additionally, such a schedule reduces interview opportunities for students — and employers interested in these students — who are spending the summer in a place distant from their law schools. These student candidates would be unable to complete call-backs while in that region before returning to school. There is the possibility that some employers would find ways to deviate from this system, for example, by forgoing call-backs altogether and instead making on-the-spot job offers at initial interviews. Indeed, on-the-spot offers are a standard marketing technique for some number of member firms — how would this type of system come into play for these employers? Finally, this system might put moderate but additional pressure on schools to attempt to schedule their interview programs prior to Labor Day, so that their students can be included in the earliest call-backs.”

Also noted in the initial December 2007 Discussion Paper to the membership:

2. **Offer Kick-Off Date.** In keeping with the idea of instituting a guideline at the front end of the hiring process, Task Force members discussed the possibility of instituting an offer kick-off date, that is, a date before which no offer could be made to a student candidate (e.g., the third Monday in September).

Advantages: Such a system allows employers the time to consider more fully their applicant pools before beginning to make offers. The consistent start date might reduce pressure employers now experience to get their offers out as quickly as possible as a marketing technique. The process would be more transparent to all participants and student candidates would know when they could expect to hear from employers.

Disadvantages: This system might put additional pressure on firms to condense their call-back interviews to ensure that they have seen the maximum number of candidates in call-backs before the offer kick-off date. As a corollary, this system might put additional pressure on schools to hold their interviewing programs prior to the offer kick-off date. Again, there is the possibility that some

employers (with a “wink and a nod”) might find ways around the system, letting student candidates know informally that they are being considered for an offer. And this system clearly interferes with the on-the-spot offer marketing techniques. An offer kick-off date might engender lost enthusiasm over time on the part of the firms and candidates and could potentially lead to requests for even more call-backs, extending the courtship period up until this later offer date. Additionally, this system does little to solve the problem of predicting yield. Both of these last two scenarios also beg the question of “enforcement”: it is unlikely a school would feel compelled to ban an employer who extended an early call-back or offer to their student, as compared to the current situation, where an employer might be barred from campus for failing to give a student the accepted amount of time to decide on an offer.”

ACTION/DECISION: The Task Force again concluded that both scenarios are unworkable, unenforceable, and inadvisable and recommends no changes to provisional Part V on these grounds.

F. Reducing the Rolling Offer Period from 45 to 30 Days

At the request of members who stated that a shorter time period would allow employers to make decisions more rapidly, allowing for a more substantial trickle-down effect on offers, the Task Force considered reducing the rolling deadline period for candidates not previously employed from 45 to 30 days.

The Task Force compared this request from some members with the reports from a much larger contingent of members that the 45 day rolling deadline period worked well. In fact, many noted that this particular season would have been much more challenging without the new 45-day rolling deadline.²

In considering a shorter period, Task Force members concluded that 45 days was sufficient time

² This feedback from members pleased the Task Force, which challenged itself with devising a new Part V that would serve members well in all economic climates. Certainly, the new guidelines were tested in a particular economic climate this year.

for students to complete their research and explore multiple options, while 30 days may not be long enough. Indeed, the Task Force members wondered if a shorter period might create pressure on the already condensed call-back period, as 30 days could be too short a time for students to complete their call-backs.

ACTION/DECISION: The Task Force recommends retaining the 45 day rolling offer period.

G. Possibility of a Second Provisional Year

The Task Force discussed whether any benefits might be derived by requesting the membership to evaluate the new guidelines through a second provisional year. As noted, the fall of 2008 demonstrated that provisional Part V worked well in a down cycle. The next major test for any NALP guidelines will come in a year when the market is in an up cycle. Without confidence that the coming recruiting season will provide that opportunity, the Task Force decided that a second provisional year will not allow the NALP membership to garner any particularly novel information about the new guidelines.

ACTION/DECISION: The Task Force recommends against an additional provisional year.

H. Reducing the Five Offer Limit

The Task Force considered recommendations to reduce the maximum number of offers held open at any one time from five to three, or from five to three at a date certain.

The Task Force noted that dropping the offer limit on a date certain would disadvantage students at schools with later fall interview programs and those candidates who have later call-backs.

ACTION/DECISION: The Task Force recommends retaining the five offer limit throughout the fall recruiting season.

I. Clarification of “Reasonable” Number of Offers to Be Held Open in Multiple Markets

The Task Force considered a member request to provide more guidance as to what constitutes a “reasonable number of offers in any one market”

when a candidate is seeking opportunities in multiple offices, as per Interpretation 3.

In considering this request, the Task Force noted that reasonableness is an accepted standard and that this provision has been comfortably utilized in past hiring seasons. The Task Force observed that students looking in multiple markets have varying issues and that the number of offers a candidate reasonably needs to maintain may vary from market to market and situation to situation. Noting that the current interpretation recommends that candidates in this situation, who will be few in number, consult with their career services offices to determine what is appropriate, the Task Force determined that limiting a candidate seeking opportunities in multiple locations to a specific number of offers was too constricting, but that allowing a specific number per location was overly broad.

ACTION/DECISION: The Task Force opted not to alter the language in Interpretation 3.

J. Offers Made to Candidates at Exceedingly Early Points in the Hiring Season

Members reported anecdotes about offers made from time to time prior to August 1 to law student candidates not previously employed. Accordingly, the Task Force considered whether provisional Part V might be altered to address the potential challenge this presents for candidates if extremely early offers would be expiring before candidates have been able to complete their interviewing. The Task Force recognized the need to ensure that candidates have time to make an independent and considered decision without the fear of an offer expiring or their being unable to obtain an extension.

The Task Force decided to add an Interpretation to address this situation and encourage members’ fair action on this point.

ACTION/DECISION: The Task Force recommends the following new interpretation:

Interpretation 20: Offers Prior to Commencement of Fall Interview Programs

Q. How long must an offer remain open to a law student candidate not previously

employed if the offer is given prior to the start of a student's fall interview program?

A. In light of NALP's strong commitment to allowing candidates to make independent and considered decisions, offers made before a law school's fall interview program begins to a law student candidate not previously employed should not expire until at least 45 days from the first day of the law school's fall interview program. Employers should contact the appropriate law school(s) to determine these dates. See NALP Principles & Standards PART IV F. and PART V.

K. Consideration of Removal of "At Least" Immediately Preceding "45 Days"

Task Force members considered a request from a member to remove "at least" from Parts V.B.1 and V.C.1.

This change would, in essence, alter 45 days from a minimum to the default number of days. Task Force members noted that 45 days was intended to serve as a minimum period of time designed to give students time to consider their options, but that this period was not intended as a cap.

ACTION/DECISION: The Task Force recommends keeping the language on this point as is.

L. Standardization of the Small Employer Provision to a Two Week Offer Response Deadline after December 15 (Parts V B.4. and C.4.)

In reviewing provisional Part V, Task Force members noted that current Parts V.B.4 and V.C.4 create a discrepancy in the amount of time offers from employers with 40 attorneys or fewer in all offices should be held open depending on whether the offer letter is dated December 15 or December 16. Offers dated December 15 would have a minimum three-week response deadline. Offers dated December 16 or later would have a minimum two-week response deadline.

The Task Force decided to rework this language to standardize the response time for offers from employers with fewer than 40 attorneys in all offices.

ACTION/DECISION: The Task Force recommends replacing the second to last sentence of Parts V.B.4 and V.C.4 with the following language:

Offers made on or before December 15 should remain open for at least three weeks following the date of the offer letter or until December 30, whichever comes first.

M. Candidates Who Neglect to Release Offers

The Task Force discussed the unfortunate circumstance that arises when candidates do not communicate with employers and do not release their offer prior to the expiration of 45 days or November 15. Task Force members considered changing the language in Part V.A.2 to "decline" from "release."

Task Force members opted to retain the current language, noting that the word "release" suggests to students that peers might be able to get the offer upon their action. The Task Force agreed to add an Interpretation indicating that although a response is not required by the Principles and Standards, professional business etiquette calls for candidates to communicate their decisions to employers as soon as they know their plans.

ACTION/DECISION: The Task Force recommends no change to provisional Part V on this point, but recommends the following new Interpretation:

Interpretation 21: Releasing Offers

Q. Are students required to contact employers to release offers?

A. Part V.A.2 states, "(law student) Candidates are expected to accept or release offers or request an extension by the applicable deadline." Professional standards dictate that students contact employers to release their offers.

N. Consideration of 1L Hiring Guidelines

The Task Force has continually, throughout its deliberations, considered whether changes to Part V require any alterations to the 1L timing guidelines. However, the Task Force agreed that

it was outside its charge at this time to make recommendations to the 1L hiring guidelines and that it would defer any such changes for the NALP Board's consideration in future years. In discussion Task Force members noted that moving the employer contact "kick-off" date to a January timeframe would align the process with public interest and government recruiting, but it also would rule out contact (e.g., receptions, interviews) over the holiday break. Task Force members suggested that an article detailing and explaining Interpretation 14 might be helpful to the membership.

ACTION/DECISION: The Task Force recommends no change to provisional Part V or the Interpretations on this point.

0. Review of Interpretation 10: "Application of Offer Acceptance Deadlines for Positions Following Judicial Clerkships"

Task Force members discussed the ambiguity in Interpretation 10, which states that offers to candidates with judicial clerkships be held open until November 15 of the final clerkship year. Task Force members suggested that a future Recruitment Practices Advisory Group and Judicial Clerkship Section ensure that this Interpretation comports with actual and best practices.

ACTION/DECISION: The Task Force recommends no change to provisional Part V or the Interpretations on this point.

P. Application of Offer/Acceptance Deadlines to Dual Degree Students and Post-Graduate Fellowship Recipients

Task Force members discussed the impact of the timing guidelines on students in dual degree programs and recipients of limited length (one- to two-year) fellowships. Task Force members recommended that a future Recruitment Practices Advisory Group draft a new Interpretation addressing the application of offer/acceptance deadlines to dual degree students and post-graduate fellowship recipients.

ACTION/DECISION: The Task Force recommends no change to provisional Part V or the Interpretations on this point.

Respectfully Submitted,
Members of the Part V Task Force



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