

# **The New Face of Fall Hiring: The Effects of the New Judicial Clerk Hiring Plan on Other Hiring Practices**

*Preliminary Assessment and Recommendations  
by the NALP Judicial Clerkship Working Group*

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## **INTRODUCTION**

From January through March, 2003, the NALP Judicial Clerkship Working Group (JCWG) conducted focus group discussions about the new judicial clerk hiring plan with public and private sector employers in Atlanta, Boston, Chicago, New York, San Francisco, and Washington. The private sector participants represented a spectrum of law firms, from large local firms to small branch offices. The public sector participants represented large government employers and a variety of public interest organizations that offer public interest fellowships or sponsor candidates for project-based fellowships, e.g., Skadden Public Interest or Equal Justice Works Fellowships.

The JCWG's goal in hosting these discussions was to hear employers' perspectives on the points of difficulty with the new clerkship schedule. Through the discussion of those issues, the JCWG has drafted recommendations for employers and the students who seek to work with them. The variety of employers and relatively small size of the focus groups allowed views to be aired fully and permitted meaningful discussion of questions and proposals. This report summarizes the major concerns of the participants and proposes recommendations. The issues affecting the public and private sector differ substantially. Therefore, each sector is treated separately.

NALP strongly supports the new hiring plan as a rational solution to a chaotic process. It ultimately seeks to help in any way possible in harmonizing the new hiring schedule with existing fall hiring processes. The JCWG hopes that these recommendations will lessen complications for employers, ease anxiety for students, and help ensure the success of the new hiring plan. In addition, the JCWG recognizes that this is the beginning of an ongoing conversation, and, by approving permanent committee status for the JCWG, the NALP Board has established a means by which the discussion can continue and expand. Especially in this year of transition, employers and law school counselors are urged to report their experiences in the Fall 2003 application process to the NALP Judicial Clerkship Committee, to allow an accurate assessment of the process, and to form the basis of recommendations for improvement.

## **A BRIEF REVIEW OF THE FEDERAL CLERKSHIP HIRING PROCESS AND THE NEW HIRING PLAN**

The hiring of federal clerks is an unorganized process at best. Once it begins, it tends to progress quickly. Even under the new regime, judges are not obliged to interview at any particular time in the fall, but some number of judges, perhaps only a handful, will feel compelled to start interviewing early in September. Their reasons for starting quickly will vary, but one common rationale is that they want to feel sure that they have the broadest pool from which to choose.

Once even a few judges begin interviewing, the candidates can start to push the hiring timetable with the time-honored practice of "parlaying" or "leveraging" interviews. Specifically, when a candidate receives an interview invitation from a judge, the candidate contacts other chambers in the area where he has applications pending to let the other judges know he is coming to the area to interview and would appreciate the opportunity to speak with them on the same trip. Many times, some of the other judges will schedule an interview with that candidate, even if they had not necessarily intended to start interviewing candidates at that time. Judges are motivated by altruism—helping the candidate reduce his expenses by avoiding multiple interview trips—and by a touch of self-interest—insuring that they get the opportunity to talk with a promising candidate before another judge hires him. Parlaying has a "snowball effect" on the interviewing process; once somebody starts, it is difficult for others to fall far behind. Most judges, regardless of when they start interviewing, want to finish as soon as they can. Clerk hiring preoccupies the chambers and can impede the regular, and necessary, work of the judge. The sooner the distraction is eliminated, in the judge's view, the sooner the chambers can return to focus on the main business of the court.

In the past, these incentives pushed clerk hiring earlier and earlier into a student's law school career. Though the early hiring was led by the federal judges, many state courts felt compelled to follow because they feared falling too far behind their federal counterparts.

By 2001, the federal hiring timetable had reached a point of frustration for many judges. The problems and the ultimate solution are discussed in detail at the web site devoted to the new hiring plan, [www.cadc.uscourts.gov/lawclerk](http://www.cadc.uscourts.gov/lawclerk). The web site summarizes the basic principles of the new plan for the coming year:

***No applications may be submitted, references given, interviews conducted, or hiring offers extended until after Labor Day 2003.***

And

***The process [in 2003] will involve only applications for Law clerk positions for the 2004-2005 term.***

The new schedule affects nearly all legal employers in some way. The next two sections will consider the effects on public sector and private sector employers in turn.

## **PUBLIC SECTOR EMPLOYERS**

Hiring practices of public sector employers vary greatly depending on each organization's needs and resources. Some public sector employers, including government agencies, hire new lawyers into permanent positions. These employers generally hire in the spring or summer of a student's third year of law school, and will likely not be severely affected by the change in the judicial clerkship hiring plan. Many public interest organizations and some government honors programs, however, hire new lawyers by offering them fellowship positions or by sponsoring them for funded fellowships. These honors programs and fellowships usually range from one to three years in length. Hiring for these positions typically occurs in the fall of a student's third year of law school and overlaps in time with the judicial clerkship hiring process.

The primary focus of the public sector focus group discussions was the potential consequences of the timing for students applying for both clerkships and fellowships. Public sector employers who attended the focus groups ranged in both size and mission. They represented sponsors of *project-based fellowships* (an organization works with an applicant to develop a project and apply for funding from an outside source), *organization-based fellowships* (an organization offers a temporary job to a new lawyer for a finite term), and government honors program employers. Below are recommendations for employers and law school counselors as to how to manage the overlap.

### ***Project-Based Fellowships***

Most project-based fellowship applications are due between September and December. A project-based fellowship application can be lengthy and require a great deal of time and effort to prepare by both the student and the organization. These applications present a picture not only of the applicant's qualifications, but of the project's feasibility and the organization's ability to supervise and benefit from the project. The amount of work an organization puts into a fellowship application varies. Some organizations design a project that meets substantial and perhaps urgent need of the organization, invite students to apply to partner on that project, and select a student from that pool of applicants. Other organizations work with students who approach them with an idea for a fellowship proposal. No matter how the fellowship project idea originates, most employers agree that the commitment of time and effort is substantial. They note that if a student withdraws from the fellowship process to accept a clerkship, after the organization has committed its time and effort to the application, it would be frustrating, and sometimes detrimental to the organization. This detriment is most apparent to those organizations that have selected a student for a designated project. These organizations have identified a critical need, and have committed to work with a student. Having that student withdraw, with no other means of sponsoring a replacement, can severely inconvenience an organization which has no alternate resources available to fund that project. The detrimental impact of a student withdrawing from the fellowship process to accept a judicial clerkship may be slightly less on those organizations which have agreed to sponsor a proposal designed and originated by the student, for they may have less time and fewer resources already invested in the project.

## ***Organization-Based Fellowships***

Organization-based fellowship employers, as well as some government agencies' honors programs, also hire in the fall of a student's third year of law school, and in some cases in the spring. Since a student's withdrawal of an application from these processes still allows the employer to select another fellow from a pool of applicants, there is less conflict for students who wish to also pursue a clerkship.

Many of the organization-based fellowship employers who attended the focus groups stated that they usually wait to extend fellowship offers until very late in the year, and fear having more candidates withdraw in the middle of the process because of clerkship offers. Government employers echoed this sentiment and added that they are not able to defer a government position for a year and that candidates are required to apply no more than one year in advance for their positions. Employers underscored the importance of a candidate's timely withdrawal from these processes.

### **What Fellowship Applicants Can Expect:**

**1. Organizations likely will ask students about their intent to apply for judicial clerkships during their initial screening for applicants in the fellowship process.**

The student should be honest about her intentions to apply for clerkships and avoid an awkward and potentially reputation-damaging situation later. Even if the employer does not ask, the student should still disclose plans to apply for clerkships and discuss the ramifications of the overlapping application processes.

**2. The student's answer will likely be a factor in an employer's decision to sponsor her for a project-based fellowship**

Many employers indicated that, all things being equal between two potential applicants, the organization would sponsor the applicant who was not applying for clerkships. Some employers indicated that applying for clerkships simultaneously would not deter them from sponsoring a student.

**3. Students may be asked to make a formal commitment to forego clerkship applications until project-based fellowship decisions are made.**

If a student feels uncomfortable about formally agreeing to forego the clerkship application process, the student should consider seeking another sponsor. If the student makes the commitment, he must refrain from applying for clerkships until fellowship decisions have been made.

**4. Employers may sponsor multiple candidates for one project to decrease the chances of losing applicants to a clerkship withdrawal.**

Sponsoring multiple candidates for one project likely will decrease the chances of any of those candidates receiving a fellowship for that project. It should be noted that fellowship funders often consider an employer's commitment to the student as a positive factor in the student's application and if the organization commits to two students for the same project, that commitment may appear weak.

**5. Employers may sponsor multiple candidates for different projects within its organization.**

If the organization is large enough to sponsor more than one applicant, each for a different project, the fellowship funder likely will not take a negative view of the practice. However, it is possible that the funder may ask the organization to rank each project in order of importance and this could affect the fellowship selection process. Students should ask their sponsoring organization if it is sponsoring more than one project and if so, to disclose the ranking.

**What Employers Can Expect:**

**1. Students seeking postgraduate fellowships may be applying concurrently for judicial clerkships and may receive offers any time after the clerkship process starts in September.**

It is expected that the majority of clerkship offers will be made prior to most of the fellowship decisions. It is very likely that students will be forced to act upon a clerkship offer before a decision is made on their fellowship application.

**2. Some fellowship funders will allow a deferral of the fellowship application if a student withdraws to accept a judicial clerkship.**

The Skadden Fellowship Program has announced that it will allow a deferral of both the fellowship application (prior to a disposition) and the fellowship itself (after an award has been made) to students who receive a clerkship offer. Other funders have not announced a policy in this regard. The student should also work with the organization to ensure that the organization is similarly willing to sponsor the student after the completion of a clerkship.

**3. Employers should expect more applications than usual.**

Applications will be received from graduates currently clerking, third year law students seeking fellowship positions only, and third year law students seeking both clerkship and fellowship positions. In the past, a majority of clerkship decisions would have been made in a student's second year of law school, prior to any fellowship deadlines in their third year.

**4. Employers should expect that if they interview between September and December, they likely will interview some students who will withdraw from the process prior to a decision in favor of a clerkship.**

### **Recommendations for Law School Counselors:**

1. Advise students applying concurrently for clerkships to consider applying for organization-based fellowships where a withdrawal will not hamper the employer's opportunity to have a Fellow.
2. Advise students who want to apply for a project-based fellowship to consider proposing a self-selected project to an organization instead of agreeing to be sponsored for a project addressing an urgent need of the organization.
3. Advise students that if they apply for a project-based fellowship addressing an urgent need of the organization, consider foregoing the clerkship process until fellowship decisions have been made. Also advise them about clerkship positions which might be available later in the fall or in the spring.
4. Advise students to consider applying for clerkships which begin after the fellowship period. Some judges prefer to hire graduates with one or two years experience for their chambers. However, clerking directly after a fellowship eliminates the opportunity for the Fellow to continue with the project if the project has been successful.
5. Advise students to consider foregoing the fellowship process, but make sure they are aware that if they are unsuccessful in obtaining a clerkship, they will have lost the opportunity to apply to some project-based fellowships and special government hiring programs, which accept students only right after graduation or a clerkship. If they are particularly interested in retaining those options, given the highly competitive nature of the clerkship process, recommend that they apply more broadly, both in terms of location and type of court.
6. Urge students to withdraw promptly from consideration of fellowships once they accept a clerkship position.
7. Remind students that their summer employers can be excellent sources of information about judges and clerkships. They should be alert to opportunities to attend court, to seek advice from attorneys who are former law clerks, and to talk with lawyers who have appeared before various judges about their assessment of those judges.
8. Advise students that faculty recommendation letters are preferred by judges. Employers may be sought out by telephone for references.

### **Recommendations for Employers:**

1. Establish a uniform policy for your organization regarding the sponsorship of students who are also applying for clerkships and disclose this policy clearly in your sponsorship publicity materials and directly to applicants.

2. Organizations applying for Equal Justice Works (EJW) Fellowships should consider pursuing both Route A and Route B applications for desired projects. Route A Fellowships are awarded to the applicant, but Route B Fellowships are awarded directly to the organization and give it more flexibility with regard to staffing. (See EJW website at [www.equaljusticeworks.org](http://www.equaljusticeworks.org)).

3. Consider sponsoring law graduates who are already in a clerkship for projects addressing urgent needs of the organization.

4. For organization-based fellowship employers, consider (a) moving deadlines or interview periods to later in the fall, ideally after many of the major fellowship decisions and clerkship decisions have been made; or (b) consider interviewing more candidates to offset the withdrawal of law clerks during the interview phase.

5. Any new policies regarding clerkship applicants or changes in applications deadlines or interview schedules should be disclosed quickly and widely, and included in all publicity and application materials, in order to have the least impact on your recruiting success.

## **PRIVATE SECTOR EMPLOYERS**

Some participants noted that hiring clerks during the students' third year was not a new idea, though it had not been that way for several years. While there was a general consensus that larger firms would adjust to the new timeline more easily, all firms raised some logistical concerns regarding the process. Smaller firms, including small branch offices of multi-national firms, contemplated a potentially serious impact on their recruiting planning. For them, losing even a few people to clerkships would make a significant difference in their entering class. The concerns raised focused exclusively on planning and information issues; the firms uniformly recognized the benefits of clerkships and no one suggested that students should be discouraged from applying for clerkships or should forego a clerkship opportunity if it were offered.

### ***Dealing with Summer Associates***

Firms need information to plan their hiring strategy for the following year as well as the following summer. Some information can be extrapolated from past experience, such as the number of students in past recruiting classes who have clerked. There is no basis to assume that the number of clerkship applications overall will increase, which makes past statistics a useful gauge. Firms will also be interested in more specific information from current summer associates about their plans, as well as information about the progress of clerkship hiring as it is going on.

The other key component for the new hiring plan is preparation, for both firms and students. Students will be contemplating the possibility of applying for clerkships and will need to gather information and begin preparing application materials. Aside from preparing for a new round of hiring, firms can prepare for the inevitable questions from their summer associates,

reflecting the students' need for information about the firms' view of the clerkship experience and the hiring process. Firms can also assist their summer associates considering clerkships by making information resources available to them and clarifying their policies and expectations regarding writing samples and references.

### **What Students Can Expect**

#### **1. Employers will seek information about students' plans during the summer and fall.**

Most employers indicated they would ask students near the end of the summer whether they were planning to apply for clerkships. Some employers planned to ask students shortly after they arrived. In virtually all cases, the firms indicated that they simply needed data for planning purposes and summer associates' responses would have no bearing, negatively or positively, on their standing at the firm. Employers wanted students who applied for clerkships to keep them apprised of their status in the fall.

#### **2. Employers will expect students to provide prompt, straightforward responses to inquiries about clerkships.**

Summer associates need not have absolutely made up their minds about clerkships at any point in the summer, but they should be candid when asked about their plans, whether they have made a definite decision or are undecided. They should recognize that if they decide to apply, there is a chance that judges will contact their summer employers, even if they are not specifically listed as a reference. In addition, if their status changes—if they accept a clerkship, for example—they should notify employers promptly.

#### **3. Employers are willing to assist with the clerkship process to the extent they can, but students need to be both considerate and clear in making requests.**

If students plan to use one of their summer writing projects as a writing sample, they need to ascertain the proper procedures for obtaining permission from the employer and modifying the document to preserve confidentiality. For writing samples, as well as requests for members of the firm to act as references, make the contact as early as reasonably possible.

### **Recommendations for Law School Counselors**

1. Consider ways to keep employers apprised of the progress of clerkship hiring in the fall, to give them a sense of when hiring is heating up or winding down.

2. Remind students that their summer employers can be excellent sources of information about judges and clerkships. They should be alert to opportunities to attend court, to seek advice from attorneys who are former law clerks, and to talk with lawyers who have appeared before various judges about their assessment of those judges. They should also



understand that employers have an obligation to provide them with information about their policies regarding clerkships, and they should feel free to ask questions.

3. Advise students that faculty recommendation letters are preferred by judges. While letters of recommendation from summer employers are not out of the ordinary, employer references are often more likely to be sought out by telephone.

### **What Employers Can Expect:**

#### **1. Students will be extremely anxious about telling employers whether or not the plan to apply for clerkships.**

If a firm asks summer associates whether they are applying for clerkships, particularly before they know if the firm will give them an offer, they will be very worried about whether their response will be held against them somehow. This is true regardless of the response they would give. Students who want to apply for clerkships may be afraid to tell the firm because they are worried that the firm will be less likely to make them an offer if they might not be available the next year. In addition, students who apply and do not receive a clerkship will worry that they will be stigmatized as unsuccessful or underqualified. Students who do not want to apply for clerkships may be worried that they will be perceived as insufficiently energetic or ambitious, or as lacking confidence in their abilities.

#### **2. Students will be particularly interested in resources that can assist them with clerkship applications.**

Students will be interested in learning more about judges and what it is like to clerk. They also may seek advice and help with their writing samples or references.

### **Recommendations for Employers**

1. Make the firm's attitude toward clerkships clear from the beginning of the summer program, to insure that students understand the ramifications of their decision. Students need to know how strongly the firm values clerkships, whether the firm will defer their employment offers when they clerk, and whether the firm offers particular incentives to clerks

2. Defer the inquiry until after decisions about offers are announced, if at all possible. If that is not possible, consider asking summer associates to report their clerkship plans anonymously. If the primary concern is numerical data, anonymous reporting would provide the raw numbers that firms need without the anxiety for students. When seeking information about clerkship plans from summer associates, be absolutely clear about the information sought and the reasons for seeking it.

3. Make sure attorneys and staff understand the clerkship application timetable. Remind members of the firm that recommendations for clerkship applicants, whether written or oral, are not appropriate during the summer.
4. Consider programs or events during the summer that would assist students thinking about clerking. For example, former clerks at the firm could give a luncheon talk about their experiences, or summer associates could be given opportunities to attend court proceedings.
5. Identify the print, online and human resources that would be helpful to summer associates researching clerkships and make the information readily available.
6. Publicize the firm's policy regarding use of summer associate work as a writing sample. Encourage attorney supervisors to give feedback on whether a particular assignment could be a good writing sample.
7. Consider ways to facilitate responses to judges who call the firm in the fall to inquire about summer associates. For example, work with the assignment coordinators or others involved in summer associate supervision to identify attorneys who worked with particular summer associates, or disseminate a list of the mentors assigned to summer associates, to help insure that random calls are routed to an appropriate person.

### ***Recruiting Other Third-Year Law Students***

The general perception among participants was that third-year students would bear the brunt of the uncertainty associated with the new hiring regime. All third-year applicants are likely to face a longer wait as firms sort out their vacancies, and third-year students concurrently applying for clerkships are more likely to remain in limbo until they know whether or not they would be clerking.

#### **What Students Can Expect:**

1. **Employers will ask students about their clerkship plans, and students concurrently applying for clerkships may face some disadvantage.**

Students applying to firms in the third year have always faced some degree of uncertainty because the firms' hiring needs were not fully determined until the previous summer associate class made their decisions. The fact that some of those summer associates will be applying for clerkships increases the uncertainty. Although many firms are comfortable with keeping all third-year applicants on the same footing, some firms may prefer dealing with candidates who have no contingent plans for the upcoming year. Firms also typically have less flexibility with their summer programs, and may be unable to "convert" a third-year applicant who obtains a clerkship to a summer associate prospect.

Students should not hesitate to inquire of prospective employers how they evaluate candidates who are also applying for clerkships. Students must be candid in apprising employers of their clerkship plans, and of any decision they make regarding a clerkship.

**2. Employers are more likely to defer making offers to third-year applicants, and may interview more candidates.**

Although employers will interview third-year candidates during fall interview programs, they will probably expand their "waiting lists" and make permanent offers later.

**Recommendation for Law School Counselors**

1. Advise students to be as clear as possible about the types of employment opportunities that interest them if they get a clerkship (summer employment at the firm before the clerkship, for example).

2. Consider additional methods of marketing your third-year students later in the fall or into the spring term. Because it is difficult to predict, particularly in this first year, how close firms will come to their hiring targets, firms could have unfilled positions after the end of the fall hiring season. Law schools might consider offering (or expanding) a "post-season" resume collection, including third-year students in any spring interview programs, or simply enhancing data collection on third-year or alumni jobseekers to facilitate timely responses to employer inquiries.

**What Employers Can Expect:**

**The bulk of clerk hiring will be completed before the current NALP offer deadlines.**

The clerkship hiring process is not, and never will be, terribly orderly and predictable. As noted in the introduction, however, it does tend to move relatively quickly once interviewing starts. Based on recent past history, it is likely that the most competitive circuit judges will complete their hiring in September and highly probable that the vast majority of circuit judges will complete their hiring in October. The various judges in the federal district courts (district, magistrate, and bankruptcy judges) usually hire after the circuit judges, but even under that timeline, many of them will likely hire later in October and in November. State courts will likely not be very far behind this schedule. Certainly, there will be judges hiring in December, January, and February, and some students will ask for extensions of the December 1 deadline because they still have clerkship applications pending, but the bulk of clerk hiring should be over by early December.

## **Recommendations for Employers**

1. Be prepared to explain at the outset the firm's policy on making/deferring offers for applicants with clerkships, as well as the availability of pre-clerkship summer associate positions. The firm's policies toward clerks and clerkship applicants are important pieces of information for students making interview decisions. Ideally, those policies would be publicly available on the firm's web site. [NOTE: This information is also valuable to second-year students who are considering firms for the following summer.]
2. Be aware of the high levels of anxiety among applicants in the clerkship hiring process, and take care to avoid exacerbating the tension by pressing applicants about their status.

## **LOOKING FORWARD**

In the coming year, the NALP Judicial Clerkship Committee will gather information from employers and law schools about how the hiring process actually worked. Once again, all members are strongly encouraged to report to committee members the positive and negative aspects of the new fall hiring regime. The committee plans to use the questions raised and the experiences detailed to clarify existing guidelines and to develop new recommendations.

Based on the conversations in the focus groups, the JCWG believes it would be worthwhile to initiate discussions with the large fellowship funders about the feasibility of modifications to the fellowship timeline to avoid such direct conflict with the judicial clerkship hiring process and mitigate the impact on sponsoring organizations. While efforts will be made in the coming months, employers and law school counselors should assume that deadlines will remain firm for Fall 2003.

An additional task lies outside the purview of the JCWG. A number of focus group participants tied the clerkship issue to the more general issue of the timing of offers and acceptances under the current NALP principles and standards. Because NALP has appointed a task force specifically to consider the general timing issue, the JCWG believed it was inappropriate to address general timing questions in this context. The questions and suggestions raised in the focus groups were relayed to the task force. The NALP Judicial Clerkship Committee will continue to work cooperatively with the task force as appropriate.

*[NOTE: See next page for list of Judicial Clerkship Committee members.]*

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