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# Tips for Capturing 2014 Federal Court Clerkships

Carl W. Tobias

*University of Richmond*, [ctobias@richmond.edu](mailto:ctobias@richmond.edu)

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# Tips for Capturing 2014 Federal Court Clerkships

*Carl Tobias\**

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Now is a perfect moment for analyzing 2014 clerkships because law students across the country have completed their productive summer employment and are poised to commence their final year. Below are ideas which could help aspirants secure those coveted positions that start during next August.<sup>1</sup>

## I. APPELLATE COURT CLERKSHIPS

Clerkship prospects, apart from the Editors-in-Chief of the *Yale Law Journal* and the *Stanford Law Review* or persons who earned the best Harvard or Columbia Law School grades, ought to forget about

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\* Williams Chair in Law, University of Richmond. Thanks to Jay Bybee, Margaret Sanner and Cassie Sheehan for ideas, Mindy Fenick for processing, and Russell Williams and the Hunton & Williams Summer Endowment Fund for generous, continuing support. Errors that remain are mine.

1. I rely substantially here and below on Edward R. Becker, Stephen G. Breyer & Guido Calabresi, *The Federal Judicial Law Clerk Hiring Problem and the Modest March 1 Solution*, 104 YALE L.J. 207 (1994); Alex Kozinski, *Confessions of a Bad Apple*, 100 YALE L.J. 1707 (1991), and on articles in ABOVE THE LAW.

pursuing clerkships at the U.S. Court of Appeals for the District of Columbia Circuit, America's second most important court. The tribunal posted a late-January notice which announced that judges would hire recruits whenever court members deem employment appropriate; it explicitly stated that the previously successful 2003 Federal Law Clerk Hiring Plan is apparently not working.<sup>2</sup> This striking proclamation publicly recognized what observers had detected regarding circuit employment,<sup>3</sup> although the court ignited a hiring firestorm that engulfed innumerable *district* jurists.

Moreover, applicants can forgo the Second, Seventh and Ninth Circuits, as their clerkships are highly competitive and prestigious or the courts specifically encompass rather desirable places to reside. However, judges on several tribunals, including the Fifth, Eighth and Tenth Circuits, which might not possess these attributes in the same degree, may have plentiful openings.<sup>4</sup>

## II. THE STATE OF PLAY IN THE DISTRICT COURTS

The D.C. Circuit notice triggered a remarkable hiring frenzy among certain districts and a multitude of jurists. Some courts and numerous judges have already employed clerks, but most of the remaining 94 districts and many particular jurists completed relatively limited hiring, and a small number have yet to implement endeavors. Myriad courts and judges have delayed, perhaps showing respect for the prior scheme that capably operated the last decade. This process relied upon the Tuesday which succeeds Labor Day as the crucial benchmark when aspirants could present, and jurists receive, clerkship applications; judges were correspondingly to wait the next week before scheduling potential interviews and first conduct them seven days later after which jurists might provide offers.<sup>5</sup>

Complications frustrate efforts to identify exactly what happened once all the D.C. Circuit judges said they would abandon the

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2. U.S. Court of Appeals D.C. Circuit, *Notice Regarding Law Clerk Hiring by D.C. Circuit Judges for the 2014-2015 Term*, Jan. 29, 2013; see also David Lat, *The Law Clerk Hiring Plan: Really, Really Dead Now*, ABOVE THE LAW (Jan. 30, 2013), <http://abovethelaw.com/2013/01/the-law-clerk-hiring-plan-really-really-dead-now/>.

3. The notice confirms this. Why judges defect is unclear and varies. Some may want freedom of action, oppose cartels, or find the plan allows "cheating," "exploding offers," inefficiency and nontransparency. Kozinski, *supra* note 1, at 1724; Aaron Nielson, *Law Clerk Hiring Plan is Dead*, NAT'L L.J., Feb. 11, 2013. *But see* Louis F. Oberdorfer & Michael N. Levy, *On Clerkship Selection: A Reply to the Bad Apple*, 101 YALE L.J. 1097 (1992).

4. Think Mississippi, North Dakota, and Oklahoma.

5. See REPORT OF THE AD HOC COMMITTEE ON LAW CLERK HIRING (2002).

plan.<sup>6</sup> Considerable material seems to lack public availability; specific relevant data can be anecdotal. There concomitantly are complex variations among the plethora of schools which comprehensively assist possible clerkship seekers and the 94 courts and 1200 jurists; many candidates have responded differently. Nevertheless, I may afford a representative portrait by consulting directly accessible information.

Numerous students were uncertain about how to proceed once the D.C. Circuit expressed its view. They had recently begun the fourth semester and were undertaking time-consuming duties on law review editorial boards, and most judges delineated few hiring practices in 2013. A number of schools were correspondingly unclear regarding precisely how to advise students. They had little concrete particularized material on jurists' endeavors and cautiously subscribed to the guidance of the National Association for Law Placement ("NALP"), which might not have initially developed a very explicit reaction to the D.C. Circuit declaration. However, by April, ostensibly in a concerted attempt to save the eroding plan, the Online System for Clerkship Application and Review ("OSCAR") Working Group judges carefully designated June 28, rather than August, the first date when third year prospects could apply, specifically recognizing one day to proffer clerk submissions, arrange potential interviews, conclude those sessions and make offers.<sup>7</sup> Nonetheless, early last year, some preeminent institutions, including Stanford and Georgetown, proposed that rising 3L students act during the pertinent spring, information which received broad circulation the past year, while other schools did propound similar 2013 advice.<sup>8</sup>

Much variability presently exists. Numerous jurists slowly mustered responses to the D.C. Circuit announcement or have not cogently addressed the court's ideas, although since February, more have eschewed the plan and the new OSCAR Working Group iteration. Most chief judges, who have administrative responsibility for their districts, honor the notions because the jurists can find the approaches relatively constructive or want to serve as examples for colleagues. Judges who hired ahead of the committee's prescribed starting deadline

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6. The information below is premised on conversations and emails with many federal judges, law faculty, career services officers, and law students throughout the U.S. and on the hiring information which jurists provide.

7. *Federal Law Clerk Hiring Plan Date Change*, OSCAR BLOG (Apr. 10, 2013), <https://oscar.uscourts.gov/blogpost/1/14/hiring-plan-date-change>; David Lat, *Clerkship Hiring Is Getting Earlier and Earlier*, ABOVE THE LAW (April 11, 2013), <http://abovethelaw.com/2013/04/clerkship-hiring-is-getting-earlier>.

8. Letter from Larry Kramer, Dean, Stanford Law Sch., to Federal Judges (June 29, 2012); Memorandum from Georgetown Univ. Law Ctr. on Clerkship Application Process (June 1, 2012); David Lat, *The Law Clerk Hiring Plan, R.I.P.*, ABOVE THE LAW (June 11, 2012), <http://abovethelaw.com/2012/06/the-law-clerk-hiring-plan>.

provided rather limited information deploying any source, especially OSCAR.

Individuals could effectively procure greater material by surveying the instructions which a number of jurists publicize through OSCAR and websites they or courts maintain, but numerous members rarely access either to disseminate comprehensive notice of salient procedures. One reliable way for aspirants to derive relevant information would be phoning or emailing chambers and solicitously pursuing guidance from law clerks or judicial assistants. The inquiries can elicit details related to multiple significant practices, notably screening, predilections, and timelines which govern applications, interviews, and offers. However, some chambers proscribe these actions.

#### *A. District Courts That Are Finished Hiring*

A small number of courts and myriad jurists have now employed law clerks. For instance nearly all D.C. District judges completed hiring recruits and are now looking for clerks for 2015.<sup>9</sup> A majority of Pennsylvania Eastern District jurists held interviews by April; they cautiously awaited reports on fourth semester grades before offering people clerkships. Several additional districts have finished employment.

#### *B. District Courts That Are Substantially Done*

Numerous remaining courts implemented much hiring. For example, nearly all Georgia Middle and Southern District judges concluded the regular employment process this April.<sup>10</sup> Numbers of jurists in the Maryland District Court and Texas's Southern District concomitantly reviewed applications, efficaciously conducted interviews, and hired for positions then.<sup>11</sup>

#### *C. Districts That Are Practically Finished Hiring*

Some courts have almost completed employment. For instance, approximately half the Virginia Eastern District complement received

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9. This was predictable because the D.C. District Court has traditionally hired early and because of the D.C. Circuit announcement. The court's clerkships have long been exceptionally prestigious and highly competitive.

10. Most Northern District judges had not started then. *See infra* note 17 and accompanying text.

11. Some Texas judges follow the plan. Diverse reasons animate jurists. For example, the Maryland judges have always hired early. *See infra* notes 12–13 and accompanying text (furnishing additional judges' preferences).

prospects' submissions, permitted interviews, and hired by summer, while numerous judges are close. More particularly, the Alexandria Division of the court had almost reached total capacity by August. Florida's Southern District could be filled, as numbers of members prefer lawyers who specifically have practice skills for two-year posts.<sup>12</sup> The Southern District of California is analogous; numerous jurists promote interns, renew clerks' terms and convert the attorneys to career employees.<sup>13</sup>

#### *D. Districts That Are Partially Done*

Several districts and a multitude of judges have partially concluded hiring. Illuminating are jurists respectively on California's Northern District, the Missouri Eastern District in St. Louis and New York's Eastern and Southern District Courts, who rapidly held interviews and expeditiously proffered multiple clerkships.<sup>14</sup> Nevertheless, most judges serving in the above-canvassed tribunals and other districts followed the June OSCAR timeline or have yet to publicly stipulate procedures.<sup>15</sup>

#### *E. Districts That Are Somewhat Finished Hiring*

A relatively small number of additional courts and jurists have promptly finished considerable employment. Illustrative are the comparatively few judges on the Arizona District Court and the Central District of California who swiftly reviewed and carefully picked applicants for clerkships by late April.<sup>16</sup> Four Minnesota District jurists chose recruits before the OSCAR date, although seven judges rely on the plan.

#### *F. Districts That Have Recently Started Or Not Begun*

Some courts and numerous jurists may not have completed hiring. Prominent examples are a few Georgia Northern District Court

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12. Southern Florida resembles Southern California. *See infra* note 13 and accompanying text.

13. Each judge decides individually. Few honor the plan or use OSCAR, and others' systems are not public.

14. The Southern District posts most judges' measures; some used rolling review but did not interview or offer until June 28. U.S. District Court, S.D.N.Y., Law Clerk Hiring Information, <http://nysd.uscourts.gov/lawclerks>; David Lat, *A Quick Update on Law Clerk Hiring*, Above the Law (June 4, 2013), <http://abovethelaw.com/2013/06/a-quick-update-on-law-clerk-hiring/>.

15. For example, one third of New York Southern and Eastern District judges honor the plan.

16. Numerous judges on each court and others honor the plan. *See supra* text accompanying note 15.

judges, who only sought and received possibilities' input around mid-summer.<sup>17</sup> A number of Montana District jurists employ clerks the year aspirants begin work. Plentiful courts and judges spanning the country observe the hiring plan's nascent recommended starting period or the former September time. Instances are the California Eastern District, Pennsylvania's Middle District, and jurists on numerous other courts, including the Arizona District and the California Southern District, which I already considered.<sup>18</sup>

### *G. Districts That Remain Unclear*

A multitude of tribunals have prescribed nominal employment-system guidance or have appeared unclear, ostensibly because the vast majority were reluctant to impose a uniform court-wide position upon each judge.<sup>19</sup> The Illinois Northern District enhances appreciation. A July OSCAR search for the court's jurists who posted openings revealed that most specified they are complying with the hiring plan, six are not, and many have yet to indicate clerking preferences.<sup>20</sup> Nearly half of New York Eastern and Southern District Court judges purportedly honor OSCAR's recognized benchmark.<sup>21</sup> Almost half the Central District of California members stated they are relying on the plan, but a few have not solidified particular measures. Finally, other courts and jurists circulate little information regarding salient processes.

## III. APPLICATION PROCESS

District judges usually have 500 submissions. Because OSCAR now restricts applications to 100,<sup>22</sup> prospects must select wisely. However, the lack of transparency complicates this assignment. Persons who send paper transmittals need to cautiously enclose all clerkship materials in a single package for ease of tracking. The huge numbers also dictate cover letter and resume length; both constituents must be short and sweet, one page. The former should convincingly explain why aspirants desire to clerk and possess important legal skills

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17. *See supra* note 10.

18. *See supra* notes 13, 16, and accompanying text.

19. The lone courtwide approach seems to be that of Pennsylvania's Eastern District. *See supra* p. 4.

20. *N.D. Ill. Positions*, OSCAR, [https://oscar.uscourts.gov/applicant/positions/judges/judges\\_list?s=ApplicantPositionSection&mode=list&tab=judge&tabmode=list&subtab=searchresults](https://oscar.uscourts.gov/applicant/positions/judges/judges_list?s=ApplicantPositionSection&mode=list&tab=judge&tabmode=list&subtab=searchresults).

21. The latter posts many jurists' systems on its website. *See supra* notes 14–15 and accompanying text.

22. OSCAR Blog Post, <https://oscar.uscourts.gov/blogpost/1/13/OSCARVersion7limitof100ClerkshipApplications>.

for being valuable contributors and how collaboratively they would operate as teammates within chambers. Applicants should provide several recommendation letters, two which pair law school faculty craft and one an employer, namely a practitioner, develops. The writing sample in turn must prove sufficiently concise that the document will provoke reading, yet long enough to display brilliant analytical, comprehensive research, and compelling drafting, abilities. Federal jurists have no tolerance for typos.

#### IV. INTERVIEWS

Clerkship interviews resemble law firm and legal employment “call-back” sessions, although certain aspects will be peculiar to the bench generally or the specific court members.<sup>23</sup> Judges have diverse perspectives, needs, interests, and hiring regimes. Most clearly are of even temperament, intelligent, diligent, ethical, and independent. Students ought to learn everything they can respecting particular jurists’ discrete backgrounds, notably: schools attended, career employment history, and circumstances of appointment.<sup>24</sup> They must correspondingly investigate judges’ previous writing, especially opinions.

Aspirants should concomitantly attempt to predict the kinds of queries which jurists and the staff will pose. Numerous interviews could be meant to detect whether applicants have secured the requisite capabilities and directly elicit whether they interact cooperatively with other people. The questions, accordingly, might cover an expansive spectrum from inquiries regarding the newest judicial determinations on controversial topics, like religious freedom, global warming or pornography, to favorite extracurricular activities, Supreme Court Justices, or poets.

Most jurists will not specifically make final hiring decisions at interviews because they normally prefer to meet each candidate and choose who appeared strongest and would function best on a collegial team and with the permanent staff in chambers. As Ninth Circuit Chief Judge Alex Kozinski trenchantly elaborated: “If you have two young male hot dogs, you may deem it particularly important to have a third clerk who is a bit older, or female, or had a prior career.”<sup>25</sup> A rather

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23. Career Development Offices maintain summaries of previous students’ interviewing experiences, which can be instructive.

24. Helpful sources of biographical information are ALMANAC OF THE FEDERAL JUDICIARY (2013); JUDICIAL YELLOW BOOK (2013); and THE AMERICAN BENCH (2012–2013).

25. Kozinski, *supra* note 1, at 1722; Patricia Wald, *Selecting Law Clerks*, 89 MICH. L. REV. 152, 153 (1990).

small, but growing, number do extend offers while interviews proceed or at their conclusion, so aspirants must come prepared for this eventuality.

## V. OFFERS

Jurists variously notify students to offer positions, yet some features of the process resemble several which are deftly used by law reviews in diligently considering manuscripts. Numerous judges when making offers expect a prompt, but not immediate, response. The special practice essentially is akin to a law journal “short fuse” or “exploding offer.”<sup>26</sup> Certain jurists withdraw proffers that students fail to accept during the phone conversations in which applicants receive them; critics aptly characterize the procedure as a “disappearing offer.”<sup>27</sup>

Some court members will effectively grant aspirants a week to reach determinations. Persons with the intestinal fortitude could leverage those employment opportunities for situations which they perceive as superior.<sup>28</sup> Indeed, a few judges encourage this prospect by requesting that students inform chambers expeditiously after capturing offers.<sup>29</sup>

## VI. CONCLUSION

I hope that these tips for capturing 2014 federal clerkships will prove valuable to students. Best of luck in this worthy endeavor.

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26. Kozinski, *supra* note 1, at 1716; see Carl Tobias, *Manuscript Selection Anti-Manifesto*, 80 CORNELL L. REV. 529, 535 (1995); Wald, *supra* note 25, at 152, 156.

27. Kozinski, *supra* note 1, at 1716; see Deborah Pines, *Federal Judges Try to Fix Frantic Clerk Hiring Process*, N.Y.L.J., June 14, 1993, at 1. Those judges who hired early generally employed these forms of offers.

28. This resembles law review leveraging. Tobias, *supra* note 26, at 537–38; see Wald, *supra* note 25, at 156.

29. Christopher Avery et al., *The Market for Federal Judicial Law Clerks*, 68 U. CHI. L. REV. 739, 818 (2001); *supra* note 6. Judges employ rather diverse methods to *not* extend offers. Most using OSCAR provide notice online that positions are filled, but some do not. A number using paper applications do not notify aspirants that they have hired. Students who receive no interview invitations by August can presume that most judges have hired.