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TO: Gregory J. Murphy, Esq., Chair
Barry Currier, Managing Director
Council of the ABA Section of Legal Education and
Admissions to the Bar

FROM: David Montoya, NALP President
James G. Leipold, Executive Director

DATE: August 8, 2017

We write on behalf of the NALP Board of Directors in response to the June 2017 Council action that made changes to the public reporting form for law school employment outcomes, the Employment Summary Report. Our law school career services members were caught by surprise that the change was made without any notice or process for hearing from the law schools themselves, and have been bewildered by the claim that it will simplify the data collection regime, when it will do no such thing. We would ask the Council to reconsider or reverse its decision, or at least delay implementation of the changes until such time as the impact can be effectively evaluated. We would also urge the Council to make no further changes to the Employment Questionnaire (EQ) at this time.

School Funded Positions on the Employment Summary Form

The harm created by the revised Employment Summary Form is that it theoretically allows schools with greater resources to “hide” their school-funded positions from the US News ranking methodology leaving schools with fewer resources to be penalized for their school-funded jobs by those same rankings. We support all law schools’ efforts to provide funding for public interest fellowships regardless of specific funding levels, and recognize that in this time of compromised tuition revenue schools are not equally situated to fund these important public service opportunities.

NALP would likely support in part the recently adopted revision of the Employment Summary Form to the extent that it now counts school funded positions above the



line as jobs that are categorized as Bar Passage Required, JD Advantage, etc., as that conforms with NALP's longstanding practice. You may recall that NALP opposed the original decision to move these jobs below the line. It has been NALP's longstanding practice to count school-funded jobs in the employment categories in which they logically and factually belong, *and* to report the total number of school funded jobs. We urge the Council to consider a similar practice.

One possible solution is to require schools to publish a revised Employment Summary Form that would provide simpler and more streamlined consumer information, but to also require that schools publish the detailed information currently published, as this provides the most transparency and the greatest level of detail. Barry Currier has suggested this dual publication as a bridge for a single year; there is no reason this dual publication could not be continued indefinitely.

Alternatively, NALP would likely support a further revision to the Employment Summary Form that would provide the total number of school funded jobs and still preserve the distinction between such jobs that pay \$40,000 or more and those that pay less than that. Reasonable minds can certainly differ on how law school funded positions should be reported, as is evidenced by the lively recent debate on this matter on the deans' listserv. NALP's practice differs from that of the ABA in that we count school funded jobs in the category in which they belong (e.g., Bar Passage Required), *and* we count the total number of school funded jobs that are of fixed duration (this excludes jobs of indefinite duration and to which job candidates other than the law school's graduates can apply, for instance long-term jobs in the law school's admissions or career services office). We recommend the consideration of a similar practice by the ABA, as that provides consumers with the most complete information.

It is worth noting that the total number of school funded jobs has dropped dramatically, and the trend data suggests that they will continue to diminish in number. The number of school funded jobs peaked at 1,735 for the Class of 2011 where they represented 4.9 percent of all jobs obtained by the class, but that number has come down steadily over the last four years. Most recently the number of jobs fell to just 758 for the much smaller Class of 2016, and these jobs now represent just 2.4 percent of all jobs obtained by the class.

Changes to the Employment Questionnaire

We also write to express concern over the suggestion in Barry Currier's memo to Council that further changes be made to the Employment Questionnaire (EQ) to eliminate the collection of data fields that are not reported on the Employment Summary Form. All the data currently collected through the EQ can easily be mapped to the revised Employment Summary Form adopted by the Council in June, and therefore no changes are required. **Changing the Employment Questionnaire will compromise the data necessary for transparent employment reporting, and will compromise NALP's ability to collect the data we seek to collect.**

For nearly 50 years NALP has been collecting law school graduate employment and salary outcome data, analyzing it, and publishing our detailed findings by sharing the data analyses with the public, the press, and our membership. In addition to aggregate national findings, we are able to provide analyses by

region, state and city, and we also provide analyses based on race and ethnicity, gender, age, disability status, LGBT status, and type of law school attended. This annual research represents an important contribution to the profession that allows us to measure changes to the legal job market with a great deal of specificity, and to measure disparities in employment patterns between different groups of graduates.

Much more recently, as you know, the ABA has put in place a system for law schools to collect and report their employment outcomes data to the ABA, and to then publish a common set of consumer information on each law school website. This school data is then subject to an audit process. NALP has collaborated closely with the ABA in the implementation of this process over a period of years, and we have adapted our processes and definitions to conform as closely as possible with the ABA protocol in order that schools might readily report their employment outcomes data to both NALP and the ABA. Having worked with this data over a period of many decades, we can say with confidence that the data now being submitted by the schools is of a very high quality – indeed the data set is of a higher quality than it has ever been as schools have committed significant additional resources to the endeavor. Likewise, our law school members have adapted their processes to comply with the technicalities presented in the Audit Protocol. The work of the career services staffers to investigate, collect, document and verify employment data has been carefully developed to satisfy the current requirements. Sudden changes to the EQ will be disruptive and will by definition require additional resources to implement.

Important ABA/NALP Collaboration

All of which is to say that our processes are interconnected, and changes made to the ABA EQ will require changes to the NALP processes. We all have a vested interest in ensuring that the data that is collected each year is consistent so that year-over-year comparisons can be made as we measure and report on the changes occurring in the legal employment market. No change should be considered lightly and ideally all changes, when necessary, should be worked out collaboratively between our two organizations to ensure our mutual ongoing ability to provide meaningful analysis of the job market for new law school graduates. The system has grown quite complex, admittedly, and making even simple changes is not easy.

While Dean Mahoney's memo to the Council dated May 30, 2017, suggested that the changes made on the Employment Summary Report would lighten the burden placed on career services offices in collecting and documenting the employment outcomes of their graduates, that is not true because that process is governed by the Protocol developed by the ABA for the audit process – a process that has been in place only for a short period of time. The changes made to the Employment Summary Report have not lightened any of the burdens imposed by the Protocol. And it goes without saying that it took much deliberation and collaboration to adopt the current standards and Protocol. Similarly, any change to the EQ would require parallel changes to the Protocol. Schools have invested considerable time and resources in implementing the Protocol, and there is real value in maintaining consistency in that process year over year. Frequent or annual changes to the EQ and the Protocol will inevitably sow confusion and lead to increased reporting errors – errors that in the current audit regime can have considerable consequences for law schools. In addition, it is important to keep in mind that the data collection and storage process now happens largely electronically, with two proprietary software systems supporting law schools in this

endeavor – Symplicity and 12Twenty. Any change to the EQ requires program changes from both companies, and once changes are made in those systems, NALP's ability to collect data not captured in the current versions of those systems would disappear.

Any changes that are made to the EQ should be reached collaboratively with NALP and the ABA working together to determine a common data set, and should be done in consultation with the deans and career services professionals at the law schools after careful consideration and a period of notice and comment. There is also a significant lead time necessary to make such changes. For instance, the NALP questionnaire for the Class of 2018 will be finalized and released in November 2017 so that schools can begin to use it for tracking the employment outcomes of their December graduates.

We appreciate the time and energy you continue to devote to these important matters, and are grateful for the opportunity to share these comments with you. As you know, we have a substantial shared history in collaborating on the incredibly important task of reporting accurate employment outcomes. NALP and the ABA both hold fairness and access to accurate information as core values. We hope that we can continue to walk this path together.