

April 1, 2020

Chief Judge Janet DiFiore
New York State Court of Appeals
20 Eagle Street
Albany, NY 12207

Dear Chief Judge DiFiore:

We, the undersigned deans of all fifteen accredited law schools of New York State, write to the Court of Appeals regarding our graduating students in the Class of 2020 who planned to take the July 2020 New York bar exam. We recognize that New York's courts are currently confronting profound uncertainties due to the spread of the novel coronavirus (COVID-19) and that this Court in particular faces numerous unexpected challenges. We join you in the concern about the impacts this will have on ensuring access to justice, a shared priority among all our schools.

We also appreciate the Court's March 31, 2020, announcement that it plans to hold the bar examination in early September and is actively considering the use of practice orders to allow 2020 graduates to practice law under the supervision of licensed attorneys. Indeed, for a variety of reasons explained below, much uncertainty due to this unprecedented crisis remains in all our minds about the viability of a fall 2020 exam. We believe our students (and their prospective employers) need and deserve more certainty in their plans for the next few months or they will be severely impacted economically, and any further delays in their admission to the bar will exacerbate our shared access to justice concerns. Accordingly, we applaud the Court's willingness to consider alternative solutions to allow our graduates to enter the profession in a more timely, certain, and still responsible and accountable way. We understand and appreciate that the Court faces the unenviable task of balancing the needs of future members of the bar and the constituents and communities they will soon serve. We believe our proposals below, which broadly align with the Court's stated plans, achieve that balance. We understand that students of our respective schools will be sending the Court their own views on the best path forward.

The decision to postpone the July exam wisely prioritizes the health and safety of all members of the legal community. Those same considerations make it difficult at this time to identify a reliable alternative date. As the coronavirus crisis escalates—and federal guidelines and state and city government orders continue to extend the ban on large, public gatherings and to call for social distancing and isolation—no one can predict with confidence when it will be feasible to administer an in-person examination.

As leaders of New York State's legal educational institutions, we are especially concerned about the impact on our students of the delay and uncertainty caused by the postponement of the July 2020 bar exam. Many of our students have shared the ways in which the COVID-19 pandemic has already forced them to adapt quickly and without warning to the new demands of challenging personal situations, from increased family obligations and caregiver responsibilities, to financial strain and sudden job loss, to extreme anxiety about their own health or the health of loved ones. Despite these challenges, our students remain committed to their legal education, in part because

the vast majority of them are counting on graduation and admission to the bar to earn their livelihood.

Delay in the admission of our 2020 graduates to the New York bar is likely to cause our students profound harm in a time already marked by suffering, intensifying financial hardship and exacerbating the unfairness of their plight. Even if a date for a September examination is set quickly, the unpredictable public health situation means that our graduates will still lack the certainty needed to structure their lives and finances. This uncertainty will particularly disadvantage graduates who already would have struggled to piece together financing to bridge the time between graduation, taking the exam, and starting work—even if the exam had been administered in July. Graduates in those circumstances are disproportionately likely to come from communities underrepresented in the profession. Many such graduates have relied upon loans to finance their legal education and do not have families able to support them financially, and some are in the position of financially supporting others. Delaying the date of admission to some unknowable future date threatens real harm for these graduates.

We would also note that delaying the admission of 2020 graduates is likely to harm the communities they seek to serve. The COVID-19 crisis will surely increase the critical need for legal services in a system already highly dependent on an annual influx of newly licensed lawyers. A recently published working paper addressing COVID-19's impact on legal licensure outlines the need for new lawyers in an average year:

In 2018, the most recent year for which we have data, 24,398 graduates of ABA-accredited law schools took jobs that required bar admission. Almost half of those jobs (48.6%) were with government (2,725); public-interest organizations (1,812); firms of 1-10 lawyers (5,556); and firms of 11-25 lawyers (1,763). Employers in these four categories rely heavily on new lawyers to meet client needs.¹

Notably, these four categories of employers serve many low- and middle-income individuals and small businesses, “groups that already struggle to obtain services from our legal system.”² The economic crisis triggered by the pandemic and the preventative responses to it will surely only increase the demand for legal services among those already underserved populations. Newly-barred lawyers are necessary to meet that need.

As members of the legal profession, we take seriously our obligation to “seek [to] improv[e] . . . access to the legal system” and to “be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.”³ We are concerned that delaying the class of 2020's admission will turn crisis into catastrophe for the most vulnerable in our society.

For all of these reasons, we endorse the Court's consideration of alternative routes to legal practice for 2020 law school graduates that enable our graduates to enter the profession in a predictable and orderly way.

¹ Claudia Angelos et al., *The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action* (Ohio State Univ., Moritz Coll. of Law, Ctr. for Interdisciplinary Law & Policy Studies, Legal Studies Working Paper Series No. 537, Mar. 22, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3559060 (citing NALP, Class of 2018 National Summary Report, https://www.nalp.org/uploads/NationalSummaryReport_Classof2018_FINAL.pdf).

² *Id.*

³ MODEL RULES OF PROF'L CONDUCT preamble [1], [6].

At a minimum, we believe that—rather than proceeding department by department—the Court should adopt a broad and universal system of *provisional, temporary* authorization for 2020 graduates to practice law under the supervision by an attorney admitted to practice law in New York. This approach would be functionally analogous to already-in-place temporary practice orders permitting supervised legal practice by graduates awaiting the results of their bar exam.⁴ It would offer temporary relief to the class of 2020 and the communities they seek to serve without dispensing with the requirement of passing the bar examination. We further propose that this provisional admission system be structured to create an eighteen-month window from the date of graduation, enabling all 2020 graduates to practice law until they sit for the bar in either February or July 2021 and receive their results. Graduates who are not able to pass the bar during this eighteen-month period would have their provisional admission rescinded until they do pass.

In addition, we ask the Court to give serious consideration to going beyond this temporary, practice-order approach in one important respect. In light of the challenges of preparing for the bar examination while holding down a full-time job, we believe the Court should consider allowing members of the Class of 2020 who successfully complete a period of supervised practice to seek admission to the bar without sitting for the bar examination. Even more than a regime of provisional permission for supervised practice while preparing to sit for the bar, such an approach would mitigate the harm caused to the Class of 2020 by the postponement of the July 2020 bar examination.

In a time of great uncertainty, we are grateful to the Court for its demonstrated leadership in responding to that crisis as aggressively as it has. We expect that other jurisdictions will follow suit. We urge the Court to take a further step in this direction, protecting the members of our profession and the communities they serve by adopting an alternative route to bar admission when client need is most urgent and circumstances most precarious. We further urge the future consideration of the administration of the bar exam online. Although we recognize that moving the exam online requires careful exploration of technological complexities and coordination among jurisdictions, it is evident that, were such an option feasible now, it might enable the profession to adapt more deftly to the unanticipated challenges of this global emergency. We welcome the opportunity to meet with the Court to discuss any and all of these ideas at an appropriate time.

Thank you in advance for your consideration of this request.

Respectfully,

⁴ See New York Judiciary Law § 478, <https://www.nysenate.gov/legislation/laws/JUD/478>.

Alicia Ouellette
President and Dean; Professor of Law
Albany Law School

Michael T. Cahill
President, Joseph Crea Dean & Professor of Law
Brooklyn Law School

Aviva Abramovsky
Dean and Professor of Law
University at Buffalo School of Law

Melanie Leslie
Dean and Samuel Belkin Professor of Law
Benjamin N. Cardozo School of Law

Gillian Lester
Dean and the Lucy G. Moses Professor of Law
Columbia Law School

Mary Lu Bilek
Dean and Professor of Law
CUNY School of Law

Eduardo Peñalver
Allan R. Tessler Dean and Professor of Law
Cornell Law School

Matthew Diller
Dean and Paul Fuller Professor of Law
Fordham University School of Law

Judge Gail Prudenti
Dean and Executive Director of the Center for Children, Families and the Law
Maurice A. Dean School of Law at Hofstra University

Anthony W. Crowell
Dean and President, Professor of Law
New York Law School

Trevor W. Morrison
Dean and Eric M. and Laurie B. Roth Professor of Law
New York University School of Law

Horace Anderson, Jr.
Dean and Professor of Law
Elisabeth Haub School of Law at Pace University

Michael A. Simons

Dean and John V. Brennan Professor of Law & Ethics
St. John's University School of Law

Craig M. Boise
Dean and Professor of Law
Syracuse University College of Law

Elena B. Langan
Dean and Professor of Law
Touro Law Center