

March 26, 2020

New York State Bar Association
Task Force on the New York Bar Examination
1 Elk Street
Albany, NY 12207

Dear Task Force Members:

We are encouraged to see that your Task Force is meeting to discuss administration of the New York State Bar Examination (“NYBE”) in July 2020. As law students who will graduate from law schools across the United States in May 2020, we believe that the New York State Bar Association (“NYSBA”) should address this matter as soon as possible to ameliorate the anxiety that many law students—particularly those that the COVID-19 virus will have a disproportionate adverse impact on—feel about their futures in the legal profession.

We respectfully request that you recommend that New York State adopt an emergency diploma privilege for the class of 2020 in light of the COVID-19 pandemic. An emergency diploma privilege would best address inequities that would result from delayed or modified administration of the NYBE and ensure access to justice for the millions of people whose lives have been upturned in recent weeks.

An emergency diploma privilege would entail granting a license to practice law to each person graduating from an accredited law school in December 2019 or May 2020. A group of legal scholars with expertise in law licensing—including professors from the CUNY School of Law, New York University School of Law, and the Jacob D. Fuchsberg Law Center at Touro College—recently suggested this approach as a viable and effective strategy, and we commend their working paper on the topic of alternatives to the July 2020 bar examination to you for your review.¹

We write primarily to supplement the analysis contained in that working paper. We believe that an emergency diploma privilege would best rectify any COVID-19 related inequities in the administration of the NYBE for the class of 2020, without compromising the quality of attorneys licensed in New York State.

COVID-19 will have—and already has had—a disproportionate impact on immunocompromised law students, low-income law students, law students ailing from COVID-19, and law students who have significant family obligations. On top of the stress of exams, papers, and job applications, many of us have been forced into isolation, away from our friends, families, and support networks. Some of us now have to support our family members who are at high-risk for contracting coronavirus or who have lost their jobs. The COVID-19 pandemic has been stressful for all of us, particularly those who experience persistent mental illness. COVID-19 has forced us to put our lives on hold.

¹ Claudio 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. The working paper is annexed hereto.

An emergency diploma privilege would remove uncertainty and alleviate much of the stress brought on by COVID-19 in a way that other alternatives could not. Postponing the bar examination until restrictions on large gatherings are lifted would delay our legal careers and force law graduates to spend time studying during the course of their employment. Postponement would also prevent new attorneys from joining the bar at a time when the legal profession will need new attorneys who are willing and able to represent the millions of people who will have lost their jobs and homes as a result of COVID-19. Online administration would disadvantage those students who lack access to adequate internet connections, while administration in small groups would still put us and our families at needless risk of exposure to COVID-19.

The other non-examination alternative recommended in the legal scholar's working paper—supervised practice—would disadvantage public interest law graduates. Compared to Big Law firms, legal services organizations often do not have structured mentorship programs or high degrees of supervision for first year associates. This pandemic may last far into our first year of practice, requiring many of us to continue working from home. While online supervision, phone calls, and video conferencing may allow for some supervision, nothing can replace in-office, person-to-person supervision and job training.

The emergency diploma privilege would best rectify the inequities brought about by COVID-19, particularly for those students who may be forced to deal with COVID-19 over the summer. As an alternative, however, the State could adopt what the legal scholars call an emergency diploma privilege-plus approach. Graduates could use their time during the summer—when we would traditionally study for the bar—to take online courses or CLEs designed to impart the same knowledge tested on the NYBE.² The State should also consider granting reciprocity to other states that grant diploma privileges to graduates of ABA-accredited law schools in New York State.³

An emergency diploma privilege with or without additional requirements also would not compromise the quality of representation in New York State. Setting aside the current debates over whether the bar examination accurately tests for the minimum competencies required in the legal profession, New York State has a very high bar pass rate. In July 2019, 86% of first-time NYBE takers who graduated from ABA-accredited law schools passed the NYBE.⁴

COVID-19 has suddenly and dramatically altered our world. Most of us grew up through traumatic, world-shattering events. In our childhood, we watched as the Twin Towers collapsed on September 11th, and we watched as our country launched an unjust war in the Middle East. We watched our parents struggle to retain their jobs and homes in the face of the 2008 housing crisis and recession. We watched Hurricanes Katrina, Irene, and Sandy destroy the homes and lives of millions of people.

² Such courses might be similar to the New York Law Certification courses that the Task Force has recently recommended for study by the NYSBA. See REPORT OF THE NEW YORK STATE BAR ASSOCIATION TASK FORCE ON THE NEW YORK BAR EXAMINATION 76–77 (2020).

³ See Angelos et al., *supra* note 1, at 5.

⁴ N.Y. State Bd. of Law Exam'rs, *New York Bar Exam 2019 Statistics*, https://nybarexam.org/ExamStats/2019_NY_Bar_Exam_PassRates.pdf (last visited Mar. 23, 2020). The 2019 NYBE statistics are annexed hereto.

Through all of those crises, we have been resilient. Indeed, many of us chose to take up law as a vocation so that we could work to rectify the injustices that contributed to those events or created more injustices in the wake of them. Now, when we should be celebrating our entrance into the legal profession, we have been forced to isolate ourselves from our friends and colleagues, afraid that we might not be employed, that we might not be able to pay rent, or that our family and friends might die.

In all likelihood, the COVID-19 pandemic will not be resolved by July, or even by September or October. We understand the importance of the bar examination as a method for measuring legal competencies. However, we do not believe that our careers should be put on hold in these circumstances. We must begin the hard work of rebuilding the lives of our friends, families, and neighbors through upholding the rule of law and fighting for justice.

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