

STATE OF MINNESOTA
In Supreme Court
FILE NO. ADM10-8008



**In re: Temporary Waiver of the Bar
Exam Requirement for Admission to
the Bar and Provision of Emergency
Diploma Privilege**

**PETITION FOR
EMERGENCY RULE WAIVER**

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioners, applicants to the Minnesota Bar who are registered for the Minnesota Bar Exam (“Bar Exam”), respectfully request the Court waive the bar examination requirement of Minnesota Rules for Admission to the Bar and grant diploma privilege for applicants to the Minnesota Bar currently registered for the July 2020, September 2020, and February 2021 Bar Exam administrations who otherwise qualify for admission (“Applicants”).

In support of this petition, Petitioners state the following:

1. The Minnesota Supreme Court has exclusive and inherent authority to govern the practice of law in Minnesota, including attorney licensure requirements. *See In re Dolan*, 445 N.W.2d 553, 557 (Minn. 1989) (recognizing this Court has inherent authority to waive education requirements for attorney licensure in an “exceptional case.”); *In re Murray*, 821 N.W.2d 331 (Minn. 2012) (waiving the bar examination requirement based on individual hardship).

2. Rule 4 of Minnesota Rules for Admission to the Bar requires passage of the Bar Exam to obtain attorney licensure unless an applicant meets exceptions specified in the Rules, such as having practiced law in another jurisdiction.

3. An “exceptional case” is required to justify waiver of bar admission requirements. *In re Dolan*, 445 N.W.2d at 557.

4. Current circumstances justify such an exceptional case with regard to Applicants.

I. The COVID-19 Pandemic Created Exceptional Circumstances in Minnesota which Warrants Emergency Diploma Privilege.

5. On January 30, 2020, the World Health Organization’s Director-General declared the outbreak of SARS-CoV-2, the virus that causes COVID-19, to be a Public Health Emergency of International Concern pursuant to the binding authority of International Health Regulations and issued temporary recommendations to all nations.¹

6. On March 11, 2020, the World Health Organization described COVID-19 as a global pandemic.²

7. On March 13, 2020, Minnesota declared a peacetime emergency in response to COVID-19 under Executive Order 20-01.

¹ VERTIC, *COVID-19 as a Public Health Emergency of International Concern (PHEIC) under the IHR*, <https://extranet.who.int/sph/covid-19-public-health-emergency-international-concern-pheic-under-ihc>.

² Helen Branswell, *WHO Declares the Coronavirus Outbreak a Pandemic*, STAT News (March 11, 2020), <https://www.statnews.com/2020/03/11/who-declares-the-coronavirus-outbreak-a-pandemic/>.

8. The Governor has extended this peacetime emergency three times.

9. Per Executive Order 20-75, Minnesota’s peacetime emergency is extended through July 13, 2020 and “may be further extended by an executive order on or before July 13, 2020.”

10. Throughout the pandemic, Applicants have experienced hardship creating profound inequity that must not be ignored. Applicant impact statements demonstrating these hardships—which reflect hardships many Applicants face—are attached as **Exhibit A** and described below. Such hardships include:

- a. financial stress and housing uncertainty from income loss and employment uncertainty;
- b. increased child care responsibilities due to school closures and limited child care availability;
- c. obligation to support family and friends who suffered job loss or who have heightened risk, have fallen ill, or have died from COVID-19;
- d. mental health impacts, such as anxiety, depression, grief resulting from death of close family members by COVID-19, and social isolation from compliance with public health recommendations;
- e. lack of appropriate study space from prolonged closure of places of public gathering and family members forced to work from home; and

- f. moral obligation to contribute to pressing public health issues, including housing and hunger relief efforts.

The virus and these challenges create profound inequalities among Applicants.

11. These exceptional times resulted in significant public health and economic impacts throughout Minnesota which have been borne disproportionately by communities of color and low-wage workers. For this reason, administration of the Bar Exam will result in further disparate impacts.

12. Notably, COVID-19 has disparately impacted Black, Latinx, and Indigenous Minnesotans.³ The racial health disparities in Minnesota are well documented.⁴ Latinx Minnesotans test positive for COVID-19 at nine times the rate of White Minnesotans. Black Minnesotans test positive eight times the rate of White Minnesotans. These statistics exist despite Black and Latinx comprising thirteen percent of Minnesota's population. Indeed, Black and Latinx Minnesotans suffer forty-four percent of all COVID-19 infections statewide. The unequal impact of COVID-19 on communities of color is exacerbated due to the increased risk of exposure many Black, Latinx, and Indigenous Minnesotans face as essential workers in jobs that are "often underpaid, lack

³ "As a result of systematic disparities, communities of color and Indigenous communities are at higher risk of multiple health issues such as diabetes, heart disease, severe asthma, and obesity. This puts them at higher risk for severe illness from COVID-19." COVID-19 Data by Population, Minnesota COVID-19 Response, <https://mn.gov/covid19/data/community-data/data-by-population.jsp>.

⁴ *Id.*

health benefits, and have few worksite protection.”⁵ Furthermore, while five percent of White Minnesotans with COVID-19 require admission to an Intensive Care Unit (ICU), eleven percent of Indigenous Minnesotans require ICU care. The disparate impact of the COVID-19 pandemic exacerbates existing systematic barriers for Black, Latinx, and Indigenous Applicants.

13. COVID-19 has harmed communities of color in the workforce and has “magnif[ied] Minnesota’s racial wealth gap [which] has existed for decades.”⁶ One in three people of color in Minnesota’s labor force applied for unemployment insurance during the pandemic.⁷ Likewise, low-income workers are less likely able to work from home which leaves them vulnerable to COVID-19 exposure. The disparate impact of COVID-19 and its economic effect exacerbates pre-existing systematic barriers for Black, Latinx, and Indigenous Applicants.

14. Asian Americans and Pacific Islanders have been discriminated against nationally and locally due to harmful racial rhetoric relating to COVID-19.⁸ This community has

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Human Rights Watch, *Covid-19 Fueling Anti-Asian Racism and Xenophobia Worldwide* (May 12, 2020),

<https://www.hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide> (“Government leaders and senior officials in some instances have directly or indirectly encouraged hate crimes, racism, or xenophobia by using anti-Chinese rhetoric.”);

Donald Trump Calls Covid-19 'Kung Flu' at Tulsa Rally, *The Guardian* (Jun. 20, 2020),

<https://www.theguardian.com/us-news/2020/jun/20/trump-covid-19-kung-flu-racist-language>.

experienced widespread discrimination and maltreatment, ranging from hate crimes, harassment, discrimination, and microaggressions.⁹ These experiences contribute to stressors experienced by Applicants within this community, including fear and trauma caused by racial harassment.

15. To preserve fairness and equity in provision of attorney licensure in light of these exceptional circumstances and substantial inequitable impacts, the Court should waive the bar examination requirement and grant emergency diploma privilege for Applicants.

II. Hyper-Local Impacts of a Resurgent National Civil Rights Movement Created Exceptional Circumstances in Minnesota which Warrants Emergency Diploma Privilege.

16. The killing of George Floyd by members of the Minneapolis Police Department, charged as second-degree murder by the Minnesota Attorney General, and the subsequent civil unrest has left districts of Minneapolis burned to the ground and sparked riots across the nation and globe.

17. On May 25, 2020, George Floyd was killed by Minneapolis Police Officers while in their custody.

⁹ Riham Feshir & Hannah Yang, *'I Don't Have the Virus': Asian Americans in Minnesota Confront a COVID-19 Backlash*, MPR (Mar. 25, 2020), <https://www.mprnews.org/story/2020/03/25/asian-americans-in-minnesota-confront-a-covid19-backlash>.

See Minnesota State Bar Association, *MSBA Statement on Anti-Asian Discrimination During COVID-19 Pandemic*, Bench and Bar (April 8, 2020), <https://www.mnbar.org/resources/publications/bench-bar/columns/2020/04/08/msba-statement-on-anti-asian-discrimination-during-covid-19-pandemic>.

18. On May 26, 2020, community members protested George Floyd's killing throughout Minneapolis including at the location of his death and at Minneapolis Police Department's Third Precinct. Demonstrations persisted throughout the night and into the morning of May 27, 2020.

19. On May 28, 2020, Governor Walz activated the Minnesota National Guard under Executive Order 20-64 in response to incidents of property damage, rioting, and arson throughout the Twin Cities and greater Minnesota.

20. On May 29, 2020, Governor Walz issued a mandatory curfew for the entire Twin Cities region. Many municipalities also issued curfew orders. The curfew order remained in effect until June 6, 2020.

21. On June 3, 2020, the Minnesota Attorney General charged former Officer Chauvin with second-degree murder for the death of George Floyd. Three other former Minneapolis Police Officers were charged with aiding and abetting second-degree murder.

22. Protests and demonstrations that began on May 26, 2020 continue to take place both in Minnesota and across the world.

23. On June 17–18, the United Nations Human Rights Council held an “urgent debate on current racially inspired human rights violations, systemic racism, police brutality against people of African descent and violence against peaceful protests” in the wake of George Floyd's death and police brutality directed towards the ensuing peaceful

demonstrations.¹⁰ The debate was followed by a decision to “prepare a report on systemic racism, violations of international human rights law against Africans and people of African descent by law enforcement agencies, especially those incidents that resulted in the death of George Floyd and other Africans and of people of African descent” and “examine government responses to anti-racism peaceful process peaceful protests, including the alleged use of excessive force against protesters, bystanders and journalists.”¹¹

24. Applicants are deeply affected by their proximity to the center of international reckoning. Many are calling it the second Civil Rights Movement. The communities most deeply affected are largely immigrant communities, low-income communities, and communities of color.¹² These inequalities have the potential to further disadvantage Applicants from these groups in taking the Bar Exam.

25. Applicants living in diverse neighborhoods across the city were directly affected by unrest. They watched their communities burn. Neighborhoods forsook sleep and

¹⁰ *Human Rights Council Calls on Top UN Rights Official to Take Action on Racist Violence*, UN News (June 19, 2020), <https://news.un.org/en/story/2020/06/1066722> (“The UN’s top rights official, Michelle Bachelet, is to spearhead efforts to address systemic racism against people of African descent by law enforcement agencies, the Human Rights Council decided on Friday. The resolution – decided unanimously without a vote - follows a rare Urgent Debate in the Council earlier in the week, requested by the African group of nations, following the death of George Floyd in the US state of Minnesota.”).

¹¹ *Id.*

¹² Maya Rao, *Riots, Arson Leave Minnesota Communities of Color Devastated*, Star Tribune (June 2, 2020), <https://www.startribune.com/570921492/>.

formed watch groups to prevent their communities from being destroyed.¹³ Communities which included Applicants washed graffiti from their libraries and churches, cleared the streets and sidewalks of debris, and organized food and sundries drives for those who had lost their only accessible grocery store. They grieved for George Floyd and the racism and violence his death represented. Applicants include members of these affected communities, and they are disparately impacted by the localized upheaval in Minneapolis over the preceding weeks.

26. Applicants have been broadly affected by the urgency of protests and demonstrations following the killing of George Floyd. Many Applicants feel exercising First Amendment rights is paramount to personal and professional identity. In recent weeks, participating in demonstrations have placed Applicants in the line of so-called ‘less lethal’ bullets, tear gas, and a semi-tractor-trailer truck, among other things.¹⁴ Applicants have volunteered their resources to support injured protestors as volunteer medics, supported First Amendment rights to free speech and assembly as Legal Observers with the National Lawyers Guild, volunteered as hotline staff for the Legal Rights Center, and participated in food relief and cleanup efforts.

¹³ Liz Sawyer, et al., *After Four Nights without Police Presence, Neighborhoods Protect Themselves*, Star Tribune (May 31, 2020), <https://www.startribune.com/570901702/>.

¹⁴ Holly Bailey, et al., *Chaotic Scene in Minneapolis after Second Night of Protests after George Floyd’s Death*, Wash. Post (May 28, 2020), <https://www.washingtonpost.com/nation/2020/05/27/george-floyd-minneapolis-reaction/>.

27. Further, the national spotlight on police brutality created a unique opportunity for advocacy and compelled many Applicants to directly act on this issue within their communities.

28. The death of George Floyd and subsequent Civil Rights Movement has caused significant disparate impacts among Applicants which must not be ignored. Applicant impact statements demonstrating these hardships—which reflect hardships many Applicants face—are attached as **Exhibit A** and described below. Such hardships include:

- a. mental health impacts, including stress and trauma due to hyper-local incidents of racism and violence perpetrated in the community;
- b. ethical and moral obligations to participate in civil rights advocacy and community support initiatives, including, but not limited to: legal advocacy, medical assistance, and hunger relief efforts, as well as professional responsibility to aid in efforts that promote justice and equity in the criminal justice system; and
- c. significant physical hardships, which include sleep deprivation, housing displacement, and anxiety induced by the overall circumstances.

29. To ensure fairness and equity in the provision of attorney licensure in light of these exceptional circumstances and prevent substantial inequitable impacts, this Court

should waive the bar examination requirement and grant emergency diploma privilege for Applicants.

III. The Planned Exam Administration Is Uncertain, Unsafe, and Disparately Impacts Applicants.

30. COVID-19 and the public health concern regarding its spread remain unabated. Between June 1-15, 2020, Minnesota had over 5,000 new COVID-19 cases.¹⁵

31. Approximately one in three confirmed cases in Minnesota have occurred in Hennepin County, where the Bar Exam will be administered.¹⁶ Nearly half of all confirmed cases have been located in Hennepin or Ramsey County, where the state's three law schools are located.¹⁷

32. Per Executive Order 20-74 issued June 5, 2020, “[a]ll persons currently living within the State of Minnesota who are at risk of severe illness from COVID-19, as defined by Executive Order 20-55, are strongly urged to stay at home or in their place of residence . . .”

¹⁵ Situation Update for COVID-19, Minnesota Department of Health, <https://www.health.state.mn.us/diseases/coronavirus/situation.html> (calculated based on data available on June 18, 2020 and which may be incomplete due to the need to confirm reports and reporting delays).

¹⁶ 10,512 out of 31,675 cases (33.19%) of cases have been located in Hennepin County. *Id.* (calculated based on data available on June 18, 2020 and which may be incomplete due to the need to confirm reports and reporting delays).

¹⁷ 14,640 out of 31,675 cases (46.22%) of cases have been located in Hennepin and Ramsey Counties. *Id.* (calculated based on data available on June 18, 2020 and which may be incomplete due to the need to confirm reports and reporting delays).

33. Under this same executive order, “[a]ll indoor social gatherings of more than 10 people . . . are prohibited” unless meeting specific exceptions outlined in the order.

34. Further, critical businesses were allowed to re-open at fifty percent capacity and non-critical businesses at twenty-five percent capacity subject to preventative protective measures. The Minnesota State Board of Law Examiners (the “Board”) has not clarified to Applicants what authority within the executive order would allow the Bar Exam to occur.

35. The same executive order “strongly recommended” wearing of cloth face coverings in social settings where social distancing is difficult. However, the order conceded that “[cloth face masks] are not yet known to be protective of the wearer . . .”

36. Executive Order 20-74 stated “all persons . . . who are at risk of severe illness from COVID-19 . . . are strongly encouraged to stay home . . . and follow the provisions of Executive Order 20-55.” This language strongly encourages at-risk persons to stay home except to engage in necessary activities—of which an occupational licensing examination would not be included. Executive Order 20-55 defines “at-risk persons” as those 65 years and older, persons with underlying respiratory or pulmonary medical conditions, and persons who are diabetic, immunocompromised, or obese. This list is not all inclusive. As established, COVID-19 disparately impacts Black, Latinx, and Indigenous populations in Minnesota.

37. The COVID-19 pandemic created unique challenges for the legal profession. It makes administering a July Bar Exam uncertain and unsafe. The pandemic will likely have a disparate impact based upon the race, ethnicity, age, and health status of those asked to choose between their health or sitting for the exam required to practice law.

38. The Board requires Applicants to sit in large groups of 20-50 individuals for over seven hours over the course of two days, with the potential for groups above 50 to be in the same room separated into “divided sections.”¹⁸

39. The Board’s plan places examinees at undue risk of contracting or spreading COVID-19.¹⁹ Further, this undue risk presents serious concern to Applicants who are at increased risk of severe illness from COVID-19 or who live with or care for immunocompromised and at-risk persons.²⁰

¹⁸ Minnesota State Board of Law Examiners, Frequently Asked Questions Related to the July 2020 and September 2020 Exam Administrations (Last Updated 6/08/2020), <https://www.ble.mn.gov/wp-content/uploads/2020/05/COVID-19-Jurisdiction-Admission-s-FAQs.pdf> (“the Board has limited each room or *divided section* to no more than 50 examinees, with most rooms seating between 20 and 30 applicants. The capacity in each room will be at roughly 33% of the normal capacity . . .”) (emphasis added).

¹⁹ Terry Gross, *Amid Confusion About Reopening, An Expert Explains How To Assess COVID-19 Risk*, NPR (June 17, 2020) <https://www.npr.org/2020/06/17/879255417/> (comparing indoor and outdoor settings and risk of COVID-19, where in an indoor setting, the viral aerosolized particles a “person is breathing in that conference room is going to build up over time. And so, yes, you are going to be a greater risk in that kind of a setting.”).

²⁰ Centers for Disease Control and Prevention, *Coronavirus Disease 2019: Groups at Higher Risk for Severe Illness* (last updated May 14, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

40. The Board's public-facing information regarding accommodations states that any reasonable accommodations must be made by June 1, 2020.²¹ This deadline is prior to the date many Applicants received their exam administration assignment from the Board—June 9, 2020. While Petitioners were told verbally at the June 19, 2020 public meeting that reasonable accommodations can still be made, this information is not publicly accessible.

41. COVID-19 is highly infectious. The disease spreads quickly throughout the population.²² The disease resulted in widespread infection among people in large gatherings²³ and in areas of prolonged air exchange.²⁴ It is for precisely these reasons that the Governor limited gatherings and closed places of public accommodation.

42. The Board modified Bar Exam administration in light of these concerns. However, the modifications are insufficient to ensure safe administration and mitigate COVID-19's disparate impact on Applicants. The Board's plan is not supported by public health guidelines or current scientific knowledge of the disease's spread. Large

²¹ Frequently Asked Questions Related to the July 2020 and September 2020 Exam Administrations (Last Updated 6/08/2020), *supra* note 18.

²² Saira Baloch, et al., *The Coronavirus Disease 2019 (COVID-19) Pandemic*, 250(4) *Tohoku J Exp Med*. 271-278 (2020).

²³ Brian McCloskey, et al., *Mass Gathering Events and Reducing Further Global Spread of COVID-19: A Political and Public Health Dilemma*, *The Lancet* 395, 1096-1099 (March 2020).

²⁴ Lisa Brosseau, *COMMENTARY: COVID-19 Transmission Messages Should Hinge on Science*, *CIDRAP News* (March 16, 2020) <https://www.cidrap.umn.edu/news-perspective/2020/03/commentary-covid-19-transmission-messages-should-hinge-science>; *see also* Gross, *supra* note 19.

groups pose a risk to public health, particularly in an indoor setting.²⁵ While a cloth mask requirement is intended to reduce the likelihood of spreading the virus, a cloth mask is insufficient to mitigate the risk of COVID-19 during prolonged periods of air exchange.²⁶

43. It is unclear when COVID-19 will subside. Research suggests COVID-19 will persist in waves.²⁷ Such uncertainty renders administration of the September Bar Exam impractical, unsafe, and likely to have disparate impacts among Applicants.

44. Courts across the country, including the Minnesota Supreme Court,²⁸ recognize physical safety is of utmost importance during this time. Notably, Washington and Utah

²⁵ Gross, *supra* note 19 (explaining longer presence indoors with others leads to greater risk of COVID-19 infection).

²⁶ World Health Organization, *Advice on the Use of Masks in the Context of COVID-19* (June 5, 2020), WHO Reference Number: WHO/2019-nCov/IPC_Masks/2020.4 (recommending that non-medical fabric masks should have a minimum of three layers of differing materials, and should be promptly changed when soiled or wet); Center for Infectious Disease Research and Policy, *The Osterholm Update: COVID-19: Special Episode on Masks and Science* (June 3, 2020) https://www.cidrap.umn.edu/sites/default/files/public/downloads/special_episode_masks_6.2.20_0.pdf (“currently there is inadequate information to answer critical questions about how well cloth masks protect anyone from being infected or infecting others.”).

²⁷ See Sam Whitehead & Carrie Feibel, *CDC Director On Models For The Months To Come: ‘This Virus Is Going To Be With Us,’* NPR (Mar. 31, 2020), <https://www.npr.org/sections/health-shots/2020/03/31/824155179/> (quoting CDC Director, Dr. Robert Redfield, on the need to prepare “most likely, for another wave that we would anticipate in the late fall, early winter where there will still be a substantial portion of Americans that are susceptible”); Kristine A. Moore, et al., *COVID-19: The CIDRAP Viewpoint - Part 1: The Future of the COVID-19 Pandemic: Lessons Learned from Pandemic Influenza*, CIDRAP at 6 (April 30, 2020) https://www.cidrap.umn.edu/sites/default/files/public/downloads/cidrap-covid19-viewpoint-part1_0.pdf.

²⁸ See *Order on Continuing Operations of the Courts of the State of Minnesota under a Statewide Peacetime Declaration of Emergency* (Minn. Mar. 20, 2020).

Supreme Courts granted emergency diploma privilege due to these exceptional, dangerous, and unjust circumstances. Applicants should never be forced to risk their physical health and safety, nor that of their community, to take this examination where emergency diploma privilege is a safer alternative.

IV. Emergency Diploma Privilege Is Necessary to Ensure Safe, Expedient, and Equitable Attorney Licensure to Address Exceptional Circumstances and Immediate Legal Needs.

45. Diploma privilege is sufficient for bar admission. *See* Wis. Sup. Ct. R. 40.03 (1979); *Order Granting Diploma Privilege and Temporarily Modifying Admission Practice & Practice Rules*, No. 25700-B-630 (Wash. Jun. 12, 2020) (**Exhibit B**); *Order for Temporary Amendments to Bar Admission Procedures During COVID-19 Outbreak* (Utah Apr. 21, 2020).

46. American Bar Association’s accreditation of law schools and the Minnesota Rules of Professional Responsibility are the state’s primary and secondary safeguards against unfit practitioners. The Bar Exam filters out a small fraction of practitioners. *See In re Hansen*, 275 N.W.2d 790, 798 (Minn. 1978) (“[W]e rely primarily on the educational process, and we use the bar examination only to weed out the small number who are unfit to practice law despite their exposure to educational environments of high quality.”).

47. The standard articulated in *In re Dolan* to waive *educational* requirements is, consequently, quite high. *See In re Dolan*, 445 N.W.2d at 557 (“A decision to grant a waiver [for educational requirements] . . . will not be lightly made and must depend on,

among other things, the demonstrated competence of the applicant in the years of practice following law school.”). Thus, the exam requirement is not the primary means by which Minnesota licenses legal practitioners. *See Hansen* 275 N.W.2d at 798 (Minn. 1978).

48. The vast majority of Minnesota law school graduates pass the Minnesota Bar Exam on their first attempt.²⁹ The first-time examinee pass rate for the July 2019 Bar Exam was 84.65 percent with a 77.96 percent overall pass rate.³⁰ Moreover, the overall July Bar Exam passage rate has ranged from 73.22–90.14 percent since 2012.³¹

49. Alternatives are insufficient to address these exceptional circumstances nor the immediate need for legal practitioners to respond to them.

50. An online examination in July could mitigate safety concerns related to COVID-19 exposure.³² However, an online examination would not mitigate the

²⁹ Minnesota Bar Exam passage rates for first-time examinees according to Minnesota law schools’ ABA-required disclosures are: 93.97% for the University of Minnesota Law School, 81.98% for the University of St. Thomas School of Law, and 74.38% percent for the Mitchell Hamline School of Law. *See First Time Bar Passage: Details 2019*, University of Minnesota Law School (2020) <https://www.law.umn.edu/sites/law.umn.edu/files/barpassageoutcomes.pdf>; *First Time Bar Passage: Details 2019*, University of St. Thomas School of Law (2020) <https://www.stthomas.edu/media/schooloflaw/2020ConsumerBarPassageReport.pdf>; *First Time Bar Passage: Details 2019*, Mitchell Hamline School of Law (2020) <https://mitchellhamline.edu/admission/wp-content/uploads/sites/4/2020/02/Consumer-Bar-Passage-2020.pdf>.

³⁰ *Bar Results*, Minnesota State Board of Law Examiners (last visited Jun. 21, 2020), <https://www.ble.mn.gov/bar-exam/bar-results/>.

³¹ *Id.*

³² Indeed, Indiana, Michigan, Nevada provisioned an online examination. Yet, the Board failed to facilitate an online examination. It is now unlikely an online examination could be provisioned in time for the July administration.

emotional and physical hardships described herein. It would also raise new concerns on access to reliable technology. Moreover, it is too late to pursue this option without adverse impacts on Applicants.

51. Furthermore, delaying the examination is unlikely to mitigate the risk of COVID-19 exposure. Experts have expressed the likelihood of reemergence of the disease in future waves. Likewise, delaying the examination would cause community hardships such as delayed employment for applicants and a shortage of new lawyers at a time legal counsel is desperately needed.

52. Extended supervised practice is an insufficient substitute to bar admission and the full privileges and responsibilities of a licensed, practicing attorney. Supervised practice is unnecessarily burdensome on current practitioners, particularly those engaged in rapid-response legal services providing access to justice to Minnesotans with the least access to representation.

53. Moreover, current supervised practice rules in Minnesota do not relieve the requirement of bar passage to attain attorney licensure. Supervised practice in lieu of full licensure is an insufficient substitute for law school graduates who will still be required to study for and pass the Bar Exam in the midst of active client representation facilitated by the supervised practice rules.

54. Supervised practice is also insufficient for Applicants requiring admission as a prerequisite for military service in defense of this state and nation.³³

55. More importantly, the Board offers insincere assurance that an expedient, equitable path to full licensure will be offered should the July and September administrations be canceled due to COVID-19.³⁴

V. Emergency Diploma Privilege Is Required to Support Minnesota’s Communities and Applicants through the Ongoing Pandemic and Civil Unrest.

56. Emergency diploma privilege would support Applicants and communities in Minnesota affected by current events.

57. Emergency diploma privilege would enable a new class of lawyers to begin their advocacy careers by supporting their struggling communities. Applicants with jobs pending timely bar admission include those expecting to assist communities most affected by the pandemic and civil unrest. Applicants hope to address legal issues that are the direct or indirect result of the pandemic. This includes helping people with

³³ *E.g. Congratulations on Your Selection For Appointment into the Judge Advocates General's Corps!*, U.S. Army Judge Advocate General's Corps Personnel, Plans, and Training Office (last visited Jun. 21, 2020), <https://www.jagcnet.army.mil/Sites/jaro.nsf/homeContent.xsp?open&documentId=4BE9FEB4D00CA36B85258030004229C6> (“[You] are required to submit your certificate of good standing from the highest court of the State, Territory, Commonwealth, or D.C. in the USA.”).

³⁴ *See* Minnesota State Board of Law Examiners, *supra* note 12 at 4 (stating if July and September 2020 administrations are cancelled due to COVID-19, applicants will sit for February 2021—notwithstanding that February 2021 may also be canceled due to COVID-19).

applications for unemployment benefits, eviction and foreclosure proceedings, state and federal public benefits, health insurance claims, and bankruptcy proceedings. Applicants also hope to address legal issues stemming from recent civil unrest, including civil rights actions, criminal defense and prosecution, and legal assistance to advocacy organizations.

58. Applicants will benefit from timely bar admission effected through emergency diploma privilege. Diploma privilege will mitigate challenges caused by those assigned to the September Bar Exam; ensure timely bar admission for Applicants who have opted for the February exam solely due to these circumstances; acknowledge the disproportionate impacts posed by current events; allow Applicants relying upon timely bar admission to maintain pending employment offers and to financially support themselves and their families; and enable Applicants to provide legal services to those affected by the pandemic and civil unrest.

59. In light of the exceptional circumstances surrounding the COVID-19 pandemic, the hyper-local impact of the George Floyd killing and subsequent unrest, and the uncertain, unsafe, and disparate impacts of proceeding with the proposed examination plan, Petitioners respectfully request that the Court waive the bar examination requirement of Minnesota's Rules for Admission to the Bar and provide for emergency diploma privilege for all applicants to the Minnesota Bar registered at the time of this petition who otherwise qualify for admission. Applicants who have signed on in support of this petition for emergency diploma privilege are listed in **Exhibit C**.

Date: June 22, 2020

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EXHIBIT A

Applicant Impact Statements

Impact Statement 1

“Because of COVID I lost my job and a significant portion of our family's income (my husband is a teacher with a small income and he doesn't get paid at all in the summer). As a result, we've both had to take up part time jobs in retail to supplement our income which has cut into my studying time significantly. In addition, because of COVID and the events following George Floyd's murder, I have had to seek help for severe anxiety and depression. Having both of those has made studying extremely difficult because they make it hard to focus for long periods at a time. Also, because the law school library has been closed, I've been forced to study at home in the small space I share with my husband and two dogs. It doesn't make for a super wonderful (or quiet in any sense of the word) study space.”

Impact Statement 2

“The social isolation and civil and political unrest of the past few months have had a profound effect on my mental health. Combined with the added stress and isolation of preparing for the bar and working in order to pay my rent, I'm far from okay. I would like to seek help, but I fear starting therapy or trying new medications so close to the date of the exam. My inability to take these necessary steps has affected my performance at work, my relationships, and my ability to effectively prepare for the exam.”

Impact Statement 3

“I am a law student married to someone on the autism spectrum. COVID's disruption to daily routines has meant I've had to devote considerable amounts of time to helping my partner, especially helping them adjust to a new job once social distancing made their dream job impossible, and they were let go. This work made my final semester, and bar prep, exceedingly difficult, and I had just about given up entirely when I was told that I am one of the unlucky few who had been moved from July to September. This brief respite is welcome, but I will have to begin studying again soon . . . knowing all the while that the September bar could be cancelled, or I could catch COVID the day before, and have to repeat this whole process this winter in anticipation of the February exam. I have not even had time to locate a job. My spouse's new job does not give insurance, so it looks like I'll have to begin work by late August, when my student insurance runs out. The board currently expects me to take the bar in early September.”

Impact Statement 4

“I had a panic attack the first week of the riots, and the isolation from the pandemic has triggered my depression. Every once in a blue moon I deal with suicidal thoughts and being alone has made that worse and have had to deal with those thoughts multiple times since the pandemic started.”

Impact Statement 5

“In addition to my successful completion of my JD I have also acted as a caregiver and roommate to my sister. My sister has been diagnosed with rheumatoid arthritis, sjogren's syndrome, and fibromyalgia. These debilitating autoimmune disorders require both significant help to complete the tasks of daily living and make her susceptible to COVID-19. She is one of the immunocompromised that the CDC advises being socially isolated due to the greater risks to life and health associated with COVID-19. As her caregiver, if I get COVID-19 I would not necessarily know I was exposing her to a life-threatening disease. Introducing a new caregiver so I can isolate after the July, September, or February Bar exams would again increase the risk she faces by introducing another person. We have been isolating longer than Minnesota has been shut down due to the risk and until there is a vaccine that is widely distributed we will remain isolated from areas of public accommodation and the rest of our family. Even though many Minnesotans are not taking the threat of COVID-19 seriously, it is life-threatening to my sister. The challenges of being a caregiver have grown exponentially due to the hardship of the global pandemic and my ability to prepare for the bar exam has been disproportionately affected. Granting diploma privilege would enable me to do remote legal work in a timely manner without putting my sister's health at risk. The disability of an applicant or that of their family should not be preventative to admission to the Bar.”

Impact Statement 6

“My husband and I live in a one-bedroom apartment. He is working from home and will be until October at earliest. He is on phone calls all day long and has his workstation computers set up on our kitchen island. That is the only proper workspace in the apartment. I am studying for the bar in our bedroom laying on the bed for 8+ hours a day. We don’t have room for a desk in the apartment right now. On top of a less than desirable study location, I definitely do not have any quiet. His phone calls sound like they’re taking place in the bedroom even with my headphones on.”

Impact Statement 7

“My firm moved my start date from early September to January of 2021, meaning that I’ll have 4 months of unanticipated unemployment. Can’t say for certain how I’ll be affected at this point, but it is an added item of stress.

“Also, I want to express some concern about the test itself. The last time I checked, the rules state that we all have to wear masks. While this is sensible in terms of safety, I don’t think the Board is taking into consideration the effect that has on mental function, especially because a portion of the exam will be graded compared to students in other jurisdictions. Additionally, I think the waiver (if they are still doing it) is inappropriate because it seems to be highly coercive in that we all have to take this test [for bar admission].”

Impact Statement 8

“I had a family member who lived in the Fargo/Moorhead area die of COVID-19 in late May. The challenges of a pandemic have prevented our family from engaging in our typical grieving rituals and have been a distraction from bar study. I have been extremely worried about whether or not my relative would also come down with COVID after visiting him on his deathbed, and we have not been able to host a funeral. The rituals surrounding death revolve around coming together to heal the wounds that the deceased person has left to mitigate the pain of their passing. Our family has not been able to do any of that. While any death is hard, a death of a family member during COVID adds additional challenges and makes it even harder to recover from the grief.

“I have also participated in peaceful protest in the wake of George Floyd’s murder. I was at the 35W bridge when the truck went into the crowd. I can speak to my own experience and from my angle I was unable to see that people jumped out of the way of the truck. The group I was standing with estimated that 20-30 people had likely died, and I ended up having some minor shock. Unsurprisingly, I was unable to study for the rest of the evening.”

Impact Statement 9

“I live in a racially diverse neighborhood in the Twin Cities metro. During the riots and protests, government officials publicly stated they had intelligence that out-of-state actors were expected to target communities of color. I felt it necessary to stay up over three nights to keep neighborhood watch, especially in light of the reported under-capacity of first responders. Nor was I alone in my fears. I have neighbors who stayed up even more nights than I did—to reiterate—based on statements made by our very own state government. These events had an adverse impact on my ability to study. Since then, my productivity has seriously diminished while my body struggles to adjust its circadian rhythm.

“I want to emphasize the event of George Floyd’s killing and following civil unrest have an impact far beyond any physical effects. The Board is asking examinees to study for the most important exam of their careers through trauma, fear, and tragedy that carries the weight of centuries of oppression. The current expectation that Black examinees and allies soldier on invalidates the notion that the Minnesota Bar carries cultural sensitivity. If those with the decisionmaking power insist in carrying on with the bar exam, it will resolve in the minds of many in the legal community any illusion that the Minnesota Bar intends to foster an inclusive, diverse bar.”

Impact Statement 10

“I am writing to offer my support for the emergency diploma privilege petition before the Minnesota Supreme Court. These last few months have been a constant source of stress unlike any other I have experienced. Not only has the pandemic personally impacted mine and my family’s financial stability, health, and safety, the protests have also negatively affected me. My partner is a police officer who worked from 3:00 pm to 2:00 am the first week of protests in the Twin Cities. It was a terrible time for both of us. The constant fear of not knowing what to expect when he went to work, when I would hear from him, or what dangerous situation he would face each night, coupled with the overwhelming stress of Bar prep subsumed two weeks of my life. I have had an incredibly hard time focusing and committing myself to Bar prep when so many emotionally and mentally draining situations arise with frightening frequency. These are exceptional times that require exceptional measures. I hope you take this measure to protect this class of future lawyers’ seriously-at-risk physical, emotional, and mental health.”

Impact Statement 11

“I have been impacted by the lack of appropriate study space because I studied at school, alone, and I had planned to do so for the bar while my kid was at the Y all day. Now, I'm at home with my wife who works full-time, dogs, and an 8-year-old.

“Social isolation is huge. My wife and I both suffer from depression and anxiety, and we both regularly relive some of that through social interaction. We can't do that now at all: we get along ok and aren't fighting, but we both need others as well.

“The Cub/Target area that burned at Lake and Minnehaha was where we did nearly all of our shopping. We live 2 blocks N of Lake Street and just S of Little Earth. We had AIM and the National Guard eventually blocking off streets around us and patrolling all night. I slept about 2 hours a day for the first 2 weeks, mostly during the late mornings. My wife and dogs were constantly on edge with helicopters overhead all night, fireworks and gunshots filling any dead space. I also feel trapped because I can't really do much of anything legally right now. I can't work pro bono, don't have time to work anyway.”

Impact Statement 12

“In responding to community needs during this time of crisis, I have repeatedly supported protesters’ free speech and assembly as a Legal Observer with National Lawyers Guild since late May; I have continually participated in food relief efforts in my community just west of Midway for the past 2 weeks; and engaged in personal advocacy. As a result, I have lost study time due to these urgent obligations to my community, experienced sleep deprivation, faced intimidation by police, and feared for my life during a community protection effort targeted by gunfire. Needless to say, I have had little time and peace of mind to study in the last few weeks. I know I am not alone in facing these challenges during these exceptional times, and it deeply concerns me that there may be stark inequity in bar admission as a result.

“In addition, I have asthma and a history of respiratory illness, which has caused both myself and my physician concern for increased risks to my health due to COVID-19. For this reason, I am particularly concerned about the safety of taking the exam under the provided testing conditions. Beyond fear for my personal health impacts, I am concerned about the reckless disregard for the safety of the most vulnerable in our communities in administration of an exam that flies in the face of available scientific data and government public health guidelines.”

Impact Statement 13

“In the beginning of my second week of bar exam study, George Floyd was killed by the Minneapolis Police. My partner and I quickly were called to action; we attended multiple protests, demonstrations, and food/supply drives to support our community members. Once, while walking outside our apartment on University Avenue to see what the hundreds of protesters were doing heading away from 35W, I had to race back inside because I could already smell the teargas wafting over our lawn.

“We had a ‘go bag’ by the front door, just in case our neighborhood was the next one to be under attack. We heard pops outside, unsure if they were gunshots, flash-bang grenades, or fireworks. Protesters kept marching past our home, sometimes sitting on our steps to clear their eyes from chemical weapons. I attempted to balance keeping up with the news, participating in protests, connecting others with resources, and doing my best to keep up with my bar exam study. Needless to say, the bar exam studying was not going well. Then, in the beginning of week four of the ten weeks of bar exam study, I was notified by the Minnesota Board of Law Examiners that I did not get a seat in the July bar exam and would instead be sitting for the September bar exam administration.”

Impact Statement 14

“My family has been directly impacted by the public health crisis. My father has late-stage Parkinson’s Disease and resides in a nursing home. His nursing home has been on lockdown and visitors have not been allowed to enter since February 2020. My other family members, such as my mother, several aunts & uncles, also have preexisting conditions, so when the virus started to spread I experienced a lot of anxiety. It made it extremely difficult to focus on school and work.

“The uncertainty of whether the July bar would happen was extremely difficult for me and took a toll on my mental health. The uncertainty also made it incredibly difficult to plan my finances: I honestly worried whether I would be able to afford rent this summer and basic things like food and essentials.”

Impact Statement 15

“I moved to remote working starting late March due to the pandemic, and it has taken a huge toll on me. My regular therapy session could no longer address the anxiety and acute depression I was suffering. And I hit bottom in my life. I couldn't get out of bed, couldn't speak, couldn't ask for help, and couldn't see the purpose of continuing to live. Even though I didn't have any active thoughts of suicide or self harm, the lack of energy made me feel like I lost my soul.

“With assistance, I resumed contact with my therapist and have been attending individual sessions twice a week. I have also started to try out group therapy to fill in the

gaps between my individual sessions. But changes are slow to come. At best, I could say I stopped getting worse. It was far away from getting better in any sense. Recently, I started to take antidepressants, but as you may know, medication is no magic switch. It takes time to balance my brain chemistry, and I still need frequent therapy sessions in the meantime. Everything finally started to get back to normal. Or at least it felt so.

“Then the killing of George Floyd by the police hit the nation. As a person of color and experience working in the criminal justice system, it further strengthened my impression of what has always been happening in the society—systematic racism, police brutality and the public's insatiable appetite of retribution. I felt powerless and helpless. Changes are slow to come, just like my health.

“My partner and I moved out of the city to a rural town during the nationwide protests. As an interracial gay couple just moving into a rural town, we couldn't help but worry about our safety and how people would react to our harmless, not even intimate, behaviors. I saw people frown upon us simply because of the fact that we walked side by side holding arms. Then came the worst thing to happen in my life so far. An unwelcome interaction with the police at our apartment. Being told by a white female officer how my fear and concern about the police and my safety were not reasonable, how white male police officers are the safest officers I can deal with, ‘statistically speaking’ (this is verbatim), how I was somehow the one at fault for failing to embrace the town culture and giving the people here the benefit of the doubt. She even accused me of not treating

the police as human beings when I was simply telling her how afraid I felt when the police showed up. The sheer racism and white privilege made me sick. But once again, I felt powerless and helpless. I wanted to scream. I cannot fathom how bad it could escalate at a public place if this interaction happened at my own home.

“These are the situations I have to deal with while studying for the bar exam. I leave you to decide how I can focus and work hard, when society cannot even provide me a safe environment to live peacefully. I have been repeatedly told that I should not care about other people's thoughts and should just carry on with my own mission. But I challenge you to think whether it was easy for you to say so or give such advice because you don't have to deal with these ‘unusual,’ ‘abnormal’ concerns and burdens in your everyday life, and whether it has anything to do with your identity privilege.

“Thank you for the time. Now I must carry on with my life.”

EXHIBIT B

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF STATEWIDE RESPONSE)	ORDER GRANTING
BY WASHINGTON STATE COURTS TO THE)	DIPLOMA PRIVILEGE AND
COVID-19 PUBLIC HEALTH EMERGENCY)	TEMPORARILY MODIFYING
)	ADMISSION & PRACTICE
)	RULES
)	
)	No. 25700-B-630
)	
)	
)	

WHEREAS, the court recognizes the extraordinary barriers facing applicants currently registered to take the bar examination in either July or September 2020, or the limited license legal technician (LLLT) examination in July 2020; and

WHEREAS, the Court has reviewed Washington’s Admission and Practice Rules (APRs) to consider whether any of its provisions should be modified to accommodate current applicants who have received juris doctorate degrees from ABA accredited law schools or have completed all requirements to sit for the July 2020 LLLT exam;

The Court by majority hereby enters the following order establishing temporary modifications to some provisions of the current APRs:

- 1) APR 3 and 4 are modified to the extent that applicants for admission to practice law who are currently registered for either the July or September 2020 bar examination and who have received a Juris Doctorate degree from an ABA accredited law school, and applicants currently registered to take the LLLT examination scheduled for July 2020, are granted the option of receiving a diploma privilege to practice in

ORDER GRANTING DIPLOMA PRIVILEGE AND TEMPORARILY MODIFYING
ADMISSION AND PRACTICE RULES

No. 25700-B-630

- Washington. The bar examinations in July and September 2020 will still be offered for those who do not qualify for the diploma privilege and those who wish to take the exam to receive a Uniform Bar Exam (UBE) score.
- 2) The diploma privilege option will be available to applicants currently registered to take the examinations who are taking the tests for the first time and those who are repeating the tests.
 - 3) The court delegates to WSBA the appropriate discretion to determine the timelines for eligible applicants to notify WSBA of their intent to receive the diploma privilege in lieu of taking an examination, and whether or to what extent any registration fees may be refunded.

DATED at Olympia, Washington this 12th day of June, 2020.

For the Court


CHIEF JUSTICE

EXHIBIT C

Applicant Support of Petition for Emergency Diploma Privilege

Applicants in support of this petition and in solidarity with the communities we serve:

Nathan Fawley, University of Minnesota Law School '20

Eric T Rosenberg, Mitchell Hamline School of Law '20

Tram Bui, Mitchell Hamline School of Law '20

Michelina Lucia, University of Minnesota Law School '20

Shashi Gowda, University of Minnesota Law School '20

Michael A. Gale-Butto, University of Minnesota Law School '20

Kimberly Medina, University of Minnesota Law School '20

Dustin Cade Hilliard, University of Minnesota Law School '20

Grant Abrams, University of Minnesota Law School '20

Grace A. O'Meara, University of Minnesota Law School '20

Hillary K. Hoffman, University of Minnesota Law School '20

Jiaqi Li, University of Minnesota Law School '20

Andrew J. Prunty, University of Minnesota Law School '20

Michelle Rodenburg, University of Minnesota Law School '20

Edward Peilen, University of Minnesota Law School '20

Linfan Zha, University of Minnesota Law School '20

Taylor Gunderson, University of Minnesota Law School '20

Sara Filo, University of Minnesota Law School '20

Brittany Turany, University of Minnesota Law School '20

Mackenzie Gerber, University of Minnesota Law School '20

Kyle Nelson, University of Minnesota Law School '20

Samantha Carmickle, University of Minnesota Law School '20

Hannah Hughes, University of Minnesota Law School '20

Katie Scott, University of Minnesota Law School '20

Jack Kall, University of Minnesota Law School '20

Hudson Peters, University of Minnesota Law School '20

Allison Mitchell, University of Minnesota Law School '20

William Dooling, University of Minnesota Law School '20

Catalina Hotung, University of Minnesota Law School '20

Seung Sub Kim, University of Minnesota Law School '20

Alexander M. Walker, University of Minnesota Law School '20

Emily Thornton, University of Minnesota Law School '20

Alex Park, University of Minnesota Law School '20

Sara Halimah, University of Minnesota Law School '20

Deanna Cortney, Mitchell Hamline School of Law, '20

Gabriel Ramirez-Hernandez, Mitchell Hamline School of Law '20

Leo P Spott, Mitchell Hamline School of Law '20

Graciela Grace Hernandez, Mitchell Hamline School of Law '20

Kammi Jo Hoeffler, J.D., Mitchell Hamline School of Law '20

Aaron P. White, Mitchell Hamline School of Law '20

Madison J. Flodeen, Mitchell Hamline School of Law '20

SJ Spitzer, Mitchell Hamline School of Law '20

Allan Aguilar, University of St. Thomas School of Law '20

Aurelia Phillips, University of St. Thomas School of Law '20

Bonny Birkeland, University of Minnesota Law School '20

Brianna M. Walling, Mitchell Hamline School of Law '20

Jackie Fielding, University of Minnesota Law School '20

Kristina Ludewig, Mitchell Hamline School of Law '20

Cassandra Kuebler, Mitchell Hamline School of Law '20

Michelle Gibbons, Mitchell Hamline School of Law '20

Lily Ansel, Mitchell Hamline School of Law '20

Aleena Wilson, Mitchell Hamline School of Law '20

Liam P.D. Nuhring, Mitchell Hamline School of Law '20

Madeline Carey, Mitchell Hamline School of Law '20

Mark Ficken, University of Minnesota Law School '20

Yue Lor, Mitchell Hamline School of Law '20

Kelly Nelson, Mitchell Hamline School of Law '20