



FLORIDA STATE UNIVERSITY  
COLLEGE OF LAW

Shepard Broad College of Law  
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STETSON LAW



April 7, 2020

**Via Electronic Mail**

Hon. Chief Justice Charles T. Canady  
Hon. Justice Jorge Labarga  
Hon. Justice Alan Lawson  
Hon. Justice Carlos G. Muñiz  
Hon. Justice Ricky Polston  
Supreme Court of Florida  
500 South Duval Street  
Tallahassee, FL 32399-1925

David C. Reeves, Esq., Chair  
Michele A. Gavagni, Executive Director  
Florida Board of Bar Examiners  
1891 Eider Court  
Tallahassee, FL 32399-1750

**Re: Florida Bar Examination Contingencies in Light of COVID-19**

Dear Chief Justice, Justices, Mr. Reeves, and Ms. Gavagni:

In these unprecedented times, we come together as the deans of Florida's twelve law schools to address the impact of COVID-19 on the licensure of new attorneys in our state. In doing so, we join our decanal colleagues in New York, Texas, Washington D.C., and other forthcoming jurisdictions, to offer insights about logistical matters, observations regarding the pandemic's impact on law students, and our ideas for proposed solutions. We also seek to assist the state in meeting the increased public demand for legal services that will likely arise in the wake of COVID-19. Above all, we express our alignment with the Court and the Board of Bar Examiners that some rigorous process is necessary to ensure the competency of new attorneys, even in these tumultuous circumstances.

At the time of this letter, Florida is one of the states [most affected](#) by COVID-19 in all of the United States, and among only seven states with more than 13,000 reported COVID-19 cases. Urban centers in Florida have been [particularly affected](#), including the locations of several of our law schools. In our communities, we have ill students, we have students who are caring for ill family members, and we have students who are enduring hunger and unstable living situations due to extreme hardships posed by COVID-19. We are doing what we can to support them, as we prepare and brace for what is expected to be a worsening of conditions in the coming weeks.

Several of us participate in daily briefings with our counterparts at Florida's medical schools about the tremendous impact of the virus in our region, and their predictions for the near future. We are preparing for this situation to persist, and potentially return in waves throughout the year.

The legal repercussions of the pandemic will undoubtedly increase demand for legal services in Florida, making the licensure of new lawyers a matter affecting the entire legal profession, not just recent graduates. Access to justice is a core value in our state, thanks to the persistent efforts of the Court and the Bar. New lawyers have always been on the frontlines at our government agencies and public-interest organizations. Law firms helping individuals and businesses survive this crisis will also depend upon junior attorneys to handle an influx of new matters. Our graduates will be needed more than ever, and the marketplace needs to know when to expect them.

Merely delaying the bar exam to a future date pushes a problem down the road, to a time that is just as uncertain as July. We know that the Court and the Board are already contemplating many possible solutions. With utmost respect for the effort and expertise of the Court and the Board of Bar Examiners, we offer the following for consideration:

#### **(1) Facilities and Logistical Support for a Socially-Distanced Bar Exam**

It is difficult to imagine a traditional administration of the bar exam in our current situation. Assembling 3,000 people in a single building, taking their fingerprints, lining them up elbow-to-elbow in a security line—the image seems far removed from the way we are living today. But we recognize the practical necessities involved with administering a secure test, and some are unavoidable.

The guidelines pertaining to social distancing and prohibitions of large assemblies may continue for months. Many capable, eager, and practice-ready candidates may be unwilling, in light of the risks and warnings from public health experts, to appear for an examination under traditional exam conditions. There will be many who cannot do so safely, due to pre-existing medical conditions or recent contact with infected persons. Government directives also may render it impossible for examinees to make travel arrangements or find hotel accommodations at a single testing location. Moreover, administering the bar examination online itself would pose serious and possibly insurmountable challenges, especially given the shortness of time and resources to prepare for such a significant move.

In light of all of the above, we offer our campuses and classrooms around the state for administration of the bar exam, at no cost, if the Court and the Board wish to use them. This offer is contingent, of course, on our adherence to any federal, state, or local restraints on our ability to reopen our campuses.

We share the desire for exam security. We will work with you to provide secure testing locations in accordance with your requirements and pursuant to government safety guidelines. We offer facilities to enable simultaneous small-group testing with ample spacing between examinees. That our respective campuses canvas the entire state will allow many examinees to take the exam where they live, or within a relatively short commuting distance. We also would work with you in identifying and making available trusted law school staff members or alumni who may be trained to serve as exam proctors.

Below is an approximate and preliminary inventory of our classrooms that we are able to make available:

<b>Florida Law Schools (Locations)</b>	<b>Classrooms Available for Socially-distanced Bar Exam</b>
Ave Maria School of Law (Naples)	10
Barry University School of Law (Orlando)	20
Florida A&M University College of Law (Orlando)	8
Florida Coastal School of Law (Jacksonville)	10
Florida International University College of Law (Miami)	13
Florida State University College of Law (Tallahassee)	25
Nova Southeastern University College of Law (Davie/Fort Lauderdale)	12
St. Thomas University College of Law (Miami Gardens)	20
Stetson University College of Law (Gulfport/Tampa)	14
University of Florida College of Law (Gainesville)	25
University of Miami School of Law (Coral Gables)	25
WMU-Cooley Law School Tampa Bay (Riverview/Tampa)	20
<b>Total</b>	<b>202</b>

This initial inventory includes classrooms directly or indirectly under our control. We expect that we can secure additional classrooms and convention spaces on some of our extended campuses. Many of these rooms are large, and can be partitioned, making it possible to accommodate all or close to the typical number of summer bar examinees.

We recognize that this decentralized approach would constitute a massive logistical undertaking. Test security is a critical priority, and we know that the Board of Bar Examiners would need unprecedented access to (and control of) our facilities. But we believe it is *possible* to spread the administration of the bar exam across the state, to allow localized administrations with safer, smaller groups. If the Court and the Board wish to explore this option, we stand ready and eager to help you.

## **(2) Administrations of the Bar Exam in Both July and September**

The National Conference of Bar Examiners (NCBE) [announced](#) on April 3 that they are prepared to offer three administrations of their bar exam content in the coming months: The regularly-scheduled summer administration on July 28-29, as well as two administrations in the fall on September 9-10 and September 30-October 1. We are not constrained to these options only, and we imagine the NCBE will cooperate with an alternative plan, as they have done for other large jurisdictions. In Florida, we are focused on the NCBE's administration of the Multistate Bar Exam (MBE) only, which is administered on the second day of testing.

There is wisdom in keeping the July administration as scheduled (particularly if the Board were able to administer it in multiple locations throughout the state, in smaller groups). It also would be understandable to delay the administration until the fall, adopting a "hope for the best by then" approach.

We propose that Florida adopts a third option: Do both. We encourage administration of the bar exam in July *and* September. This approach would give examinees more opportunities to test, and more flexibility to accommodate diverse circumstances. It also will reduce the number of examinees at each administration, which will make it easier to impose safety measures and ensure exam security.

## **(3) Make It More Efficient for Examinees to Take the Bar Exam in Parts**

Florida [is among](#) a majority of non-UBE jurisdictions that allows examinees to transfer in their MBE score from another jurisdiction and only take the local portion of the exam. Florida also permits examinees to take the two components of the Bar Exam (the Florida-specific "Part A" and the Multistate "Part B") in separate administrations. In other words, examinees may take just Part B in July and then return the following February to take Part A. If they achieve the necessary minimum score on both parts of the exam separately, they are deemed to pass the entire exam.

Few examinees test in this manner, opting instead to take both parts of the exam in a single administration. The ability to take the bar exam in parts, however, will become critically important if the bar exam is delayed. Under normal, non-pandemic circumstances, logic would suggest that a delayed bar exam is easier to pass. The examinees, after all, would have more time to study. But an extended study period—and delayed licensure—will mean significant financial and logistical hardship for many of our graduates, especially in these unprecedented conditions. Many students have carefully budgeted their final semester and their bar exam summer. The COVID-19 crisis has already placed a significant financial burden on students. If the exam is not administered as normal in July, a large number of examinees will need to work jobs while they study, to support themselves and, in many cases, their families.

Certainly, many of our out-of-state and later-in-life examinees work full-time while they study for the Florida Bar Exam as their second or third license. We wish to convey, however, the seriousness of this particular burden upon first-time examinees. Very few first-time bar takers are significantly employed while they study for the bar exam. And with good reason. Our respective internal statistics indicate that students who must work while studying for their first bar exam pass at a substantially lower rate compared to students who are able to study full-time for the brief and intense period following graduation.

Because Florida already allows examinees to take the exam in parts, we propose the following measures to make that option more accessible to more examinees:

- The examination fee should be lower for examinees taking only one part of the exam (not just waiver of the laptop fee). *Any cost savings that the bar is able to offer, no matter how small, is important at this time.*
- If examinees initially register to take both parts of the exam, and later decide to proceed with only one part, they should receive a refund of the excess cost and the laptop fee, if applicable. Alternatively, the sum paid could be credited to a future administration of the exam.
- Examinees should be free to take either part of the exam first: Part A or Part B. Currently, first-time examinees must take Part B first, and Part A later. Examinees should be able to take whichever component they feel most prepared to pass on a given administration. Under the current system, Part A is already administered separately—for out-of-state examinees and for repeat examinees. First-time takers also should have this choice.

#### **(4) Expanded Certified Legal Intern Status**

We hope you consider our eagerness to help address logistical concerns as evidence that we sincerely agree with the mission of the Court and the Board to ensure the competency of new attorneys. We must, however, join our decanal colleagues around the country and urge for stronger measures during this time of crisis.

We propose that the existing [Certified Legal Intern](#) (CLI) program be expanded to permit candidates who clear character and fitness investigation to practice law under supervision until they have the opportunity to pass the bar exam. We respectfully propose the following revisions to the existing rules:

- Candidates who did not obtain CLI status during law school may obtain it for the first time following graduation from an ABA accredited law school in the State of Florida and completion of the character and fitness review required to sit for the Florida Bar Exam.
- This CLI status shall remain effective for twenty-four months from the date of certification by the Florida Bar, or the publication of results from four administrations of the Florida Bar Exam, whichever comes later.
- Certified Legal Interns may work on all legal matters in the State of Florida so long as they are supervised by any attorney licensed to practice law and in good standing in the State of Florida.

- Fees associated with seeking CLI status shall have extended deadlines, with options for partial payment over time. Character and fitness investigation should proceed even if such fees are not completely paid (pending complete payment by a reasonable final deadline).

These changes will allow our graduates to enter the workforce with minimal delay after graduation. This flexibility will provide a financial lifeline for them and their families. Coupled with additional exam administrations, and opportunities to take the bar exam in parts, the CLI option would diminish the long-term impact of the crisis upon our graduates' careers. This option will also bring new lawyers directly to the frontlines in a time of increased need for legal services.

#### **(5) Admission Without Examination**

Should the Court decide not to expand the Certified Legal Intern program, we would ask that it 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. We ask that this be the case especially should the bar examination not be administered by October 1<sup>st</sup> because of the continuing effects of COVID-19.

All well-intentioned ideas for administering the bar exam during the COVID-19 pandemic—including our own enumerated above—are rooted in optimism. But by most accounts, we are in the early stages of a situation that is worsening. It may be a long time before conditions permit a traditional administration of the bar exam. A mass licensure delay will have permanent implications for this class of new lawyers and the legal profession. Extended uncertainty makes it worse, and will cause graduates significant hardship, in particular those in weaker socioeconomic positions, who disproportionately are likely to be members of groups underrepresented in the legal profession.

Admission without examination would provide a path for new lawyers to work with established members of The Florida Bar in ensuring access to justice during this unprecedented time. Moreover, Florida is uniquely poised to offer this temporary solution. The Florida Board of Bar Examiners has one of the most rigorous character and fitness examination processes in the nation. We also do not underestimate the importance of our responsibility to teach our students and certify them to you as ready to enter the profession.

We ask the Court to seriously consider if the character and fitness certification along with a period of supervised practice is enough to ensure the competency of new lawyers at this time. We do not make this recommendation lightly. Nor do we do so with an aim to abolish the bar exam. We ask the Court to consider this as a proportional response to a temporary global crisis.

We are grateful to the Court and the Board of Bar Examiners for the expedient measures that have already been taken. We have confidence in your judgment, and we recognize that there are no perfect solutions. We welcome the opportunity for dialogue, and we stand ready to help.

Chief Justice Canady, Justices Labarga, Lawson, Muñiz, & Polston  
Mr. Reeves and Ms. Gavagni  
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Thank you in advance for your time and consideration.

Respectfully yours,

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