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Nancy A. Lopez

August 11, 2020

Via Email and Post
rules@dcapeals.gov
Clerk, D.C. Court of Appeals
Historic Courthouse
430 E Street, N.W.
Washington, DC 20001

Re: Establishing Diploma Privilege in the District of Columbia
for 2020 Law Graduates In Addition to an Online Bar Exam

Dear Chief Judge Blackburne-Rigsby,

Washington Council of Lawyers, the public-interest voluntary bar association for the District of Columbia, together with the undersigned organizations, write in favor of extending diploma privilege to 2020 law school graduates to gain temporary admission to the D.C. Bar in response to the current COVID-19 public health crisis.

There are two principal reasons we support diploma privilege for 2020 law school graduates:

1. The impediments to studying for and taking the bar exam in the midst of the COVID-19 crisis negatively affect the fairness of the exam and disparately impact low-income law students, including persons of color.
2. The delays and problems in the administration of the bar exam will postpone the admission of 2020 law graduates to the practice of law. Thus, there will be fewer attorneys who can represent low-income litigants, presenting an additional barrier to access to justice in the District of Columbia.

We acknowledge the challenges being faced by the Court, recent law graduates, and the public due to the COVID-19 public health crisis. We applaud the Court's work in pivoting to offer an online bar exam in October and entering into reciprocity agreements with other jurisdictions. However, we think some form of diploma privilege is an important option to offer as well. To be clear, we favor a temporary diploma privilege that is limited to 2020 law graduates and extends only for a set period of time until recent graduates are able to take and pass an in-person bar exam.

As to the first issue, the design and facilitation of the bar exam is meant to be one that is fair and equitable to the examinees. This is why the exam is taken across the country on the same dates, the questions are the same for all examinees of that jurisdiction, the types of settings are the same, and any distractions within that testing environment are the same. However, due to COVID-19, it is not possible for examinees to take the bar exam in the usual common environment. Some recent law graduates lack reliable internet access and a quiet, distraction-free location where they can take the exam, making an online bar exam offered in October an alternative replete with challenges. These challenges disproportionately impact law students of color, who already are underrepresented in the legal profession. For this reason, offering an online bar exam as the only avenue to obtaining a D.C. Bar license raises issues of racial justice. Diploma privilege provides an alternative way for recent law graduates to move forward with their legal careers during the COVID-19 pandemic.

Offering an online exam is a significant challenge. Just last week, the Michigan bar exam encountered technical difficulties in the administration of their online bar exam. See [First Online Bar Exam Marred by Tech Problems](#), (July 28, 2020); Detroit Free Press, [Michigan Online Bar Exam Crashes in Middle of Testing; Hacking Attempt Blamed](#), (July 28, 2020).

This spring, the College Board offered online Advanced Placement exams for high school students. To do this, the College Board converted the exams to “open note” exams, reduced the content covered, the length, and the format of the exams, addressed accommodations for students with disabilities, and offered make-up exams for students who experienced technical glitches during the administration of the exams. Those exams were much shorter than a bar exam, with far less at stake. See College Board, [AP Coronavirus Updates](#).

Problems also have arisen with online licensing exams in other fields, such as the American Board of Surgery exam, a two-day exam that recently was administered online. After the first day, the online proctoring system crashed, and the American Board of Surgery was forced to cancel the exam. See The American Board of Surgery, [FAQs - 2020 Virtual General Surgery Qualifying Exam](#); The Recorder, [Law School Grad: California Bar Exam Decision Is a ‘Hurtful Half-Measure’](#), (July 22, 2020). Offering a form of diploma privilege provides a helpful “belt and suspenders” safety net to recent law graduates and bar exam administrators facing the many possible problems that could occur with the administration of an online bar exam.

Access to justice is another serious concern. We know that the demand for free and affordable legal services will rise dramatically in the coming months.

"Most important, the COVID-19 crisis almost certainly will increase demand for all types of legal services. Businesses are experiencing unprecedented closures and other disruptions. Employees in broad segments of the economy have already lost jobs; more will do so. The working poor, with few assets or employment-related benefits,

have been particularly hard hit. Families are suffering from lost income, diminished savings, and increased needs to care for their children and elderly members. Soon, many of these families will suffer from the death of a loved one." Claudia Angelos, Sara J. Berman, et al., [The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action](#), Ohio U., Legal Studies Working Paper Series No. 537 (March 22, 2020).

Diploma privilege could allow some recent law graduates the ability to serve as new staff attorneys, fellows, or volunteers at legal services providers. If these new lawyers were able to practice law, with the appropriate supervision as is required by the ethical rules, they would be able to assist a greater number of individuals in need of legal assistance than if they were working as non-lawyer volunteers. Some law firms may develop fellowship programs where they allow recent graduates to work on-site at a legal services provider until they are licensed. Again, diploma privilege would enable these individuals to have maximum impact in their work.

Other law graduates may opt to seek law firm employment or solo practice. Diploma privilege would enable them to launch their careers in the direction of their choosing.

We are cognizant of the role that the bar exam plays in protecting clients, but the current pandemic calls for creative solutions. States like Wisconsin and New Hampshire offer diploma privilege licensure to graduates of law schools within their borders every year. Notably, their rate of disciplinary action is no more or less than any other state that requires a bar exam.¹ Further, because what we propose is a temporary diploma privilege that would expire at a fixed date far enough in the future to allow our current graduates to sit for and pass a bar exam, any additional risks to the public are minimal and temporary.

Oregon, Utah, Washington State and Louisiana have established temporary diploma privilege licensure for 2020 graduates of their law schools. See The Supreme Court of Washington, [Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules](#), (June 12, 2020); TaxProf Blog, [Oregon is Third State to Offer Temporary Diploma Privilege](#), (July 1, 2020); Nola.com, [Louisiana Supreme Court Grants 'Diploma Privilege' to Let Recent Grads Practice Without Bar Exam](#), (July 22, 2020). These jurisdictions have not made diploma privilege permanent for all law

¹ Wisconsin has approximately 15,500 licensed attorneys. American Bar Association, [National Lawyer Population Survey](#), (2019). Between 2017-2020 (present), there have been 86 disciplinary actions taken up by the Wisconsin court system. State of Wisconsin, [Lawyer Regulation - Status of Lawyer Disciplinary Matters](#), (data accessed on July 24, 2020). Over 3.5 years, that's an average of 25 per year of the licensed lawyers from a state that regularly offers diploma privilege. Other states with comparable licensed attorneys' numbers to Wisconsin include Indiana, Alabama, and Arizona, who all require a bar exam for licensure, but do not typically experience lower rates of disciplinary cases. In 2018 alone, Indiana had 59 disciplinary cases against their licensed lawyers. Indiana Supreme Court, [Orders and Opinions Regarding Final Resolutions in Attorney Disciplinary Cases](#), (2018). In 2017, Alabama had 19 cases. Alabama State Bar, [Disciplinary History](#), (2017).

graduates. They have made a tough decision, based on tough circumstances, in a tough situation -- by applying the least intrusive remedy available: temporary emergency diploma privilege.

California has declined to adopt diploma privilege. Because California has a mix of ABA-accredited and non-ABA-accredited schools, extending diploma privilege only to graduates of ABA-accredited law schools would exclude graduates of four dozen schools from the diploma privilege system. Instead, the California State Court has directed “the State Bar to implement, as soon as possible, a temporary supervised provisional licensure program — a limited license to practice specified areas of law under the supervision of a licensed attorney.” Supreme Court of California, [Letter Regarding the California Bar Exam, \(July 16, 2020\)](#). The Deans of the District of Columbia law schools have expressed their support for diploma privilege or for a provisional licensure program. We agree that a provisional licensing program could be an effective alternative to diploma privilege in the District of Columbia.

The COVID-19 public health emergency has called upon all of us to adapt to our current situations and develop new procedures to move forward and advance our goals. For these reasons, we believe it would be appropriate for the District of Columbia to establish a temporary diploma privilege for 2020 graduates.

We are experiencing a unique moment in history -- a moment that has placed all of us in various levels of stress and uncertainty for several months, with no end in sight. The more vulnerable, more impoverished, and more burdened are especially affected. There is no perfect decision. However, this Court can make the *best* decision for the District of Columbia's new attorneys and, more importantly, for the District's citizens who need those attorneys now, more than ever.

We thank you for your time and deliberation.

Respectfully submitted,



Nancy A. Lopez
Executive Director
Washington Council of Lawyers



David Steib
President, Board of Directors
Washington Council of Lawyers

Additional Organizations In Support of Diploma Privilege for DC

ACLU of the District of Columbia
Advocates for Justice in Education
Amara Legal Center
Asian Pacific American Legal Resource Center
Ayuda
Children's Law Center
Columbus Community Legal Services, The Catholic University of America
DC Affordable Law Firm
DC Kincare Alliance
Greater Washington Area Chapter, Women Lawyers Division, National Bar Association
("GWAC")
Hispanic Bar Association of DC
Jacob Burns Community Legal Clinics, George Washington University Law School
Legal Counsel for the Elderly
Neighborhood Legal Services Program
Tzedek DC
Washington Lawyers' Committee for Civil Rights & Urban Affairs
Women's Bar Association of the District of Columbia

Cc: Claudia Withers
Chair, District of Columbia Committee on Admissions