

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

In re: the Petition of LAW STUDENTS
FOR EQUITABLE RESPONSES TO
COVID-19 by Ryan Aloysius Smith and
Pretty Martinez, Trustees ad Litem;
ROBERT SUITE, MARY BETH KUZNIK,
BRANDON VANTINE, ROBERT GAVIN,
CHRISTIAN WOLGEMUTH, JESSICA
MCDERMOTT, RAVEN MOORE,
DEREK DEMERI, CATHERINE CUFF,
MICHELLE TABACH, KARLA
PISARCIK, CAROLINE ROBELEN, and
KARLI STUDY,

Petitioners.

No. **74 WM 2020**

**PETITION FOR REVIEW UNDER THE COURT'S EXCLUSIVE
JURISDICTION AND FOR EXTRAORDINARY RELIEF UNDER THE
COURT'S KING'S BENCH JURISDICTION**

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INTRODUCTION

Petitioners respectfully submit this petition for review under this Honorable Court's exclusive jurisdiction and move pursuant to Rule 3309 of the Pennsylvania Rules of Appellate Procedure for extraordinary relief in the form of waivers of the licensure requirement set forth in Pa. B.A.R. 203(b)(1). Petitioners and Trustees ad Litem are registered for the remote October 2020 Pennsylvania Bar Examination. They have suffered substantial, direct, and immediate harm because strict adherence to Pa. B.A.R. 203(b)(1) under the circumstances discussed herein violates the individual right to pursue one's chosen lawful occupation, which Article I, Section 1 of the Pennsylvania Constitution guarantees. This right exists even for those who seek a license. *Ladd v. Real Estate Comm'n*, No. MAP 2018, slip op. at 19 n.13 (Pa. May 19, 2020).

Petitioners implore this Court to consider on the merits whether, and determine that, strict adherence to Pa. B.A.R. 203(b)(1) in the instant case would violate an individual's right to pursue one's chosen lawful occupation. Petitioners request that this Court offer emergency licensure subject to conditions this Court deems sufficient, but no more than necessary, to protect the public from incompetent legal representation.

STATEMENT OF JURISDICTION

Under Article V, Section 2 of the Pennsylvania Constitution, this Honorable Court “shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth.” Pa. Const. art. V, § 2(a). The Supreme Court “shall have such jurisdiction as shall be provided by law.” Pa. Const. art. V, § 2(c). There are two independent grounds for the Court’s exercise of jurisdiction over the instant Petition. First, this Court’s exclusive jurisdiction under Article V, Section 10(c) “to prescribe general rules . . . for admission to the bar and to practice law” covers this Petition’s as-applied challenge to the administration of such authority. Second, this Petition also readily satisfies the standard for invoking the Court’s King’s Bench powers. *See Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015).

I. Exclusive Jurisdiction

Article V, Section 10(c) of the Pennsylvania Constitution vests in this Court the “power to prescribe general rules . . . for admission to the bar and to practice law.” This power is “inherent and exclusive.” Pa. B.A.R. 103. Accordingly, all constitutional challenges to the application of rules governing “practice, procedure and the conduct of all courts,” as well as admission to the bar, are exclusively in the province of this Court’s jurisdiction. Pa. Const. art. V, § 10(c); *cf. Snyder v. Judicial Inquiry & Review Bd.*, 471 A.2d 1287, 1289 (Pa. Commw. Ct. 1984) (transferring

an action involving the Judicial Code of Conduct to this Court where hearing and resolving the case would “invad[e] the exclusive province of the Supreme Court of Pennsylvania”); *McCann v. Commonwealth*, 455 A.2d 1272, 1273 (Pa. Commw. Ct. 1983) (transferring petitions for review to this Court where the petitions challenged the application of the Judicial Code of Conduct, over which the “Supreme Court has exclusive jurisdiction under Article V of the Constitution of Pennsylvania”).¹

Article V, Section 10(c) also provides that the bar admission rules must be “consistent with” other constitutional provisions. This Court therefore must decide on the merits whether the application of Rule 203(b)(1) of the Pennsylvania Bar Admission Rules to candidates registered for the 2020 October Pennsylvania Bar Exam (“October Candidates”) is inconsistent with Article I, Section 1 of the Pennsylvania Constitution.

II. King’s Bench Jurisdiction

Pursuant to its authority under Article V of the Pennsylvania Constitution, this Court may also exercise King’s Bench jurisdiction over the instant Petition. The Court’s broad power and jurisdiction are confirmed by statute,

The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court,

¹ The Commonwealth Court lacks original jurisdiction over such challenges because “[t]o conclude otherwise would be to ignore the constitutional limitation of [the Commonwealth] Court’s jurisdiction and, without warrant, usurp the power and authority of the Supreme Court of Pennsylvania.” *Snyder*, 471 A.2d at 1289; *see also Reed v. Sloan*, 360 A.2d 767, 770 n.2 (Pa. Commw. Ct. 1976).

as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise the following powers:

(1) All powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law.

(2) The powers vested in it by statute, including the provisions of this title.

42 Pa. Cons. Stat. § 502.10.

The King's Bench powers are broad. They comprise "every judicial power that the people of the Commonwealth can bestow," *Stander v. Kelly*, 250 A.2d 474, 484 (Pa. 1969) (Roberts, J., concurring), and are "a trust for the people of Pennsylvania[.]" *Chase v. Miller*, 41 Pa. 403, 411 (1862). The Court "would be remiss to interpret the Court's supervisory authority at King's Bench in narrow terms, contrary to precedent and the transcendent nature and purpose of the power." *Williams*, 129 A.3d at 1206.

The King's Bench powers inherently cover the regulation and supervision of the practice of law. *See In re Franciscus*, 369 A.2d 1190, 1192 (Pa. 1977). These powers include the authority to prescribe bar admission rules. Pa. Const. art. V, § 10(c). Moreover, the Court may exercise King's Bench jurisdiction over a matter even when no action is pending before any lower tribunal. *In re Bruno*, 101 A.3d 635, 669 (Pa. 2014). The Court invokes its King's Bench powers when "an issue of

public importance . . . requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law.” *Williams*, 129 A.3d at 1206 (citing *In re Bruno*, 101 A.3d at 670). This Petition readily satisfies this standard.

First, the Louisiana, Oregon, Utah, and Washington Supreme Courts have already recognized that the issues raised in this Petition are of immense public importance. *See* Exhibits A-1 to A-4. Their justifications mirror the concern raised in this Petition that the COVID-19 crisis creates the serious risk that the remote, reduced-question Pennsylvania Bar Exam (“October Exam”) will fail to fairly and reliably measure a candidate’s minimum competency to practice law. In fact, the National Conference of Bar Examiners (NCBE) indicated that the online reduced-question Multistate Bar Exam (MBE) is an unreliable and unfair measure of minimum competency, incommensurate with the traditional in-person bar examination.² The deans of all nine Pennsylvania law schools and Rutgers Law School have expressed this same concern. *See* Exhibit B. The public’s interest in competent legal representation demonstrates that this Petition involves matters of significant public importance.

² *See NCBE COVID-19 Updates*, NCBE (June 1, 2020), <http://www.ncbex.org/ncbe-covid-19-updates/> (“Without further research, scores from an abbreviated version of the MBE administered by remote testing cannot be considered comparable to the standard, paper-based, full-length MBE administration.”).

Second, timely intervention is necessary because this Court is the only tribunal with jurisdiction over this Petition, and the remote October Exam is only seven weeks away, as of this Petition's filing date. Further, the Pennsylvania Board of Law Examiners (the "Board") only recently announced the remote October Exam on July 8, 2020. *See* Exhibit C-1. Thus, this Court could avoid the costs of administering an unreliable bar exam by resolving this constitutional claim in a timely fashion.

Third, the deleterious effects of delaying review of the constitutional interests at stake here are profound. The multiple postponements of the July Exam and the rapid transition to a novel online testing format have imposed extraordinary costs and psychological distress on October Candidates, compounding their financial and personal hardships during the COVID-19 crisis. *See* Exhibits D-1, D-2. This has both magnified the inherent stress of bar exam preparation to an untenable level, *see infra* Part II.A.1.c, and "exacerbated differences in personal circumstances" wholly unrelated to whether an individual possesses the legal knowledge and skills necessary to practice law with minimum competency. Exhibit B.

The remote October Exam also raises serious privacy issues and cybersecurity risks. ExamSoft Worldwide, Inc., will supply the remote proctoring software for the

upcoming October Pennsylvania Bar Exam.³ ExamSoft’s online testing system uses ExamMonitor, an “AI-driven remote proctoring solution that continuously observes exam takers with video and audio monitoring throughout the entire exam.”⁴ Every single movement that October Candidates make during the exam will be subject to video and audio monitoring. This raises concerns for candidates’ legitimate expectations of privacy as many will take the exam in their homes, wherein the “right to privacy . . . should remain inviolate.” *Commonwealth v. Selby*, 688 A.2d 698, 699 (Pa. 1997). October Candidates will be forced to consent to such invasions, and they must do so only to exercise the constitutional right at stake here.

The present cybersecurity threats to online proctoring systems are indisputable. There has been a well-documented “massive spike in hackers taking advantage of the increased home network activity caused by the COVID-19 crisis to target Americans.”⁵ For instance, the American Board of Surgery (ABS) canceled its remote qualifying exam due to technological errors in the exam’s administration

³ *October 2020 Pennsylvania Bar Exam Frequently Asked Questions*, Pa. Bd. Law Exam’rs, https://www.pabarexam.org/bar_exam_information/CBTRemoteExamFAQ.htm (last updated August 14, 2020) [hereinafter *October Exam FAQs*, PABLE].

⁴ *Exam Integrity and Authentication Streamlined To Make Exam Day More Secure*, ExamSoft, https://examsoft.com/wp-content/uploads/2020/03/ES_onepager_ExamID_2.pdf (last visited Aug. 15, 2020).

⁵ Tom McMasters, *Feasibility of a Mass Online California Bar Exam: 1. Cybersecurity* 6 (2020) [hereinafter *McMasters, Cybersecurity*] (citing Maggie Miller, *FBI Sees Major Spike in Coronavirus-Related Cyber Threats*, Hill (June 24, 2020)), <https://docs.google.com/document/d/1wpo5Mz9iZr003FUpXNMezGO2NNpH-Bbf9T2x4l7qHyQ/edit>.

and is currently investigating “reports that examinees’ credit card information and personal data were compromised during the exam.”⁶ It is troubling that the ABS qualifying exam was administered to only “around 1,300 examinees nationwide, just about 10% of the 13,000 that ExamSoft will test in California and Pennsylvania alone on October 5–6.”⁷ Hackers will be attracted by the sheer number of remote bar examinees and will have ample time to plan for a nationwide cyberattack.⁸

ExamSoft will test at least 20,000 bar examinees in early October because, upon information and belief, at least twelve jurisdictions plan to use ExamSoft as their software vendor in order to administer a remote bar exam on October 5–6. *See* Exhibits E-1, E-2. This number will only increase if more states transition to an online testing format, considering at least thirty-one jurisdictions typically use ExamSoft’s services to administer their bar exams. *See* Exhibit E-3.⁹ As this number increases, so will the risk of a nationwide cyberattack.

In fact, ExamSoft already experienced a “sophisticated cyberattack”¹⁰ during the administration of the July Michigan Bar Exam, which was administered to only

⁶ Amanda Pescovitz, *Remote Bar Exams for Aspiring Attorneys Are a Terrible and Dangerous Idea*, boingboing (July 19, 2020), <https://boingboing.net/2020/07/19/remote-bar-exams-for-aspiring.html>.

⁷ McMasters, *Cybersecurity*, *supra* note 5, at 6–7 (footnote omitted).

⁸ *Id.* at 7.

⁹ This includes Maryland, which used ExamSoft for its July 2019 bar exam but has not announced which vendor will administer its remote bar exam on October 5–6, 2020. *See* Exhibit E-3.

¹⁰ ExamSoft (@ExamSoft), Twitter (July 28, 2020 5:12 P.M.), <https://twitter.com/ExamSoft/status/1288220881278382085> [hereinafter ExamSoft, July 28th Tweet].

733 people.¹¹ The cyberattack was so serious that ExamSoft requested the FBI and the Department of Homeland Security conduct an investigation into the attack.¹²

Further, online proctoring systems generally use facial detection and recognition technologies that invariably raise substantial risks of discrimination against persons of color and persons with physical and mental disabilities. These AI-technologies are designed to flag persons suspected of cheating during the remote exam; however, the “algorithmic biases”¹³ inherent in such technologies are more likely to flag persons of color and persons with disabilities, such as ADHD or OCD, than able-bodied white examinees.¹⁴ This is because the system “encodes what an ideal student body is and defines any deviation to that ideal as suspicious of academic misconduct.”¹⁵ The “ideal body” encoded within such algorithms is

¹¹ David Jesse, *Michigan Online Bar Exam Crashes in the Middle of Testing; Hacking Attempt Blamed*, Detroit Free Press (July 28, 2020), <https://www.freep.com/story/news/education/2020/07/28/michigan-online-bar-exam-crashes-test-examsoft/5526919002/>.

¹² ExamSoft (@ExamSoft), Twitter, (Aug. 5, 2020 9:26 A.M.), <https://twitter.com/ExamSoft/status/1291002698792341504> [hereinafter ExamSoft, August 5th Tweet].

¹³ See Symposium, *Platform Society: Copyright, Free Speech, Sharing on Social Media Platforms*, 30 Fordham Intell. Prop. Media & Ent. L.J. 1, 6–10 (2019).

¹⁴ See generally Shea Swauger, *Our Bodies Encoded: Algorithmic Proctoring in Higher Education*, Hybrid Pedagogy (April 2, 2020), <https://hybridpedagogy.org/our-bodies-encoded-algorithmic-test-proctoring-in-higher-education/>; Lee Skallerup Bessette, *Unfeeling AI and Assessment*, Inside Higher Ed (April 8, 2020), <https://www.insidehighered.com/blogs/university-venus/unfeeling-ai-and-assessment>.

¹⁵ Shea Swauger, *The Eugenic Gaze: The Algorithmic Test Proctoring in Higher Education*, Auraria Librar. Digital Collections, <http://digital.auraria.edu/content/IR/00/00/00/96/00001/The%20Eugenic%20Gaze.pdf> (last visited Aug. 15, 2020).

invariably that of a white able-bodied male.¹⁶ Any movement inconsistent with that predictive dataset may discriminatorily jeopardize the integrity of a candidate's performance on the October Exam.¹⁷ Pursuant to Pa. B.A.R. 221, exam scores are final once released and are not subject to judicial review; thus errors attributable to algorithmic bias would go uncorrected.¹⁸ That the Board would create impermissible risks of discrimination by administering a remote bar exam belies the Pennsylvania legal profession's recent efforts to combat discrimination in the practice of law.¹⁹

¹⁶ See, e.g., Natasha Singer, *Amazon Is Pushing Facial Technology that a Study Says Could Be Biased*, N.Y. Times (Jan. 25, 2019), <https://www.nytimes.com/2019/01/24/technology/amazon-facial-technology-study.html> (reporting that Amazon's facial recognition-technology does not function well with women and particularly women of color); Larry Hardesty, *Study Finds Gender and Skin-Type Bias in Commercial Artificial-Intelligence Systems*, MIT News (Feb. 11, 2018), <http://news.mit.edu/2018/study-finds-gender-skin-type-bias-artificial-intelligence-systems-0212> (“Examination of facial-analysis software shows error rate of 0.8 percent for light-skinned men, 34.7 percent for dark-skinned women.”).

¹⁷ See Letter re: ACLU Civil Rights Concerns with Potential Use of Facial Recognition in Proctoring the California Bar Examination (attached at Exhibit M).

¹⁸ See, e.g., Yoonji Han, *Some Young Lawyers Taking the Bar Exam Online Could See Their Scores Canceled if they Touch Their Face, Fidget, or Twirl Their Hair*, Bus. Insider (July 25, 2020), <https://www.businessinsider.com/tennessee-online-bar-exam-strict-rules-2020-7>.

¹⁹ Compare Pa. R.P.C. 8.4(g) (establishing that it is professional misconduct for a member of the Pennsylvania Bar to “knowingly manifest bias or prejudice, or engage in harassment or discrimination”), with Nila Bala, *The Danger of Facial Recognition in Our Children's Classrooms*, 18 Duke L. & Tech. Rev. 249, 263 (2020) (“[F]acial recognition is more likely to exaggerate existing issues of discrimination rather than resolve them. . . . [T]hese biases can be harder to address because technology is often seen as neutral and beyond human prejudice.”), and Ignacio N. Cofone, *Algorithmic Discrimination Is an Information Problem*, 70 Hastings L.J. 1389, 1392 (2019) (“Researchers continue to find that algorithms disproportionately disadvantage members of vulnerable communities.”).

This Court must never forget the history of racial discrimination in the treatment of Pennsylvania Bar examinees. See generally *The Report of the Philadelphia Bar Association Special Committee on Pennsylvania Bar Admission Procedures—Racial Discrimination in the Administration of the Pennsylvania Bar Examination*, 44 Temp. L. Q. 141 (1971) (finding that the State Board of Law Examiners engaged in discrimination against Black candidates).

After this report was issued, the bar passage rates for Black candidates “dramatically increased” following Pennsylvania's adoption of the MBE; however, these rates dramatically fell

Persons with physical or mental disabilities face even greater risks of discrimination because it is not possible to provide reasonable testing accommodations in compliance with the Americans with Disabilities Act on such short notice.²⁰ *See* 42 U.S.C. § 12189. Persons with disabilities who did not need accommodations for the in-person, paper-based exam may now need them for the remote October Exam. Likewise, persons with disabilities who requested accommodations for the in-person, paper-based exam may now need different accommodations for the remote exam. However, the Board has not yet offered any information as to how—or whether—it will be able to provide them. In fact, the Board’s website indicates that the application deadline for accommodations has already expired, *see* Exhibit F, effectively denying reasonable accommodations to candidates whose needs for accommodations arose after the radical transition from the traditional in-person bar exam to an unorthodox online testing format.

Accordingly, this Petition presents profound issues of public importance requiring timely intervention by the Court and readily satisfies this Court’s standard for invoking King’s Bench jurisdiction.

after the State Board of Law Examiners increased the passing score in response to growing concerns “about the large supply of ‘young and competitive lawyers.’” Jane E. Cross, *The Bar Examination in Black and White: The Black-White Bar Passage Gap and the Implications for Minority Admissions to the Legal Profession*, 18 Nat’l Black Law. 63, 84 (2004) (quoting Peter J. Liacouras, *Factors Contributing to Bar Examination Failure*, 5 Black L.J. 152, 153 (1977)).

²⁰ *See* Stephanie Francis Ward, *California Announces Online Bar Exam, but How Will It Work?*, A.B.A. J. (May 5, 2020), <https://www.abajournal.com/web/article/after-california-announces-online-bar-exam-some-testing-experts-wonder-if-it-will-work>.

STATEMENT OF FACTS

I. Legal Profession’s Solutions to the COVID-19 Crisis

In December 2019, a novel coronavirus (“COVID-19”) emerged in China and began spreading across the globe. *See Friends of Devito v. Wolf*, 227 A.3d 872, 877 (Pa. 2020). As of this filing, the United States has reported more than 5.3 million COVID-19 cases and almost 170,000 deaths.²¹ As the virus ravages the country and the economy falters in historic ways, federal, state, and local governments are implementing unprecedented solutions to previously unimaginable problems.

With nearly 125,000 cases, nearly 7,500 COVID-19-related deaths,²² and a statewide unemployment rate that has yet to drop below 13.0%,²³ the Commonwealth of Pennsylvania is no exception. Pennsylvania closed all K–12 schools.²⁴ Nonessential business employees were ordered to stay home.²⁵ Hundreds

²¹ *Coronavirus Disease 2019 (COVID-19) Cases in the United States*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last updated August 16, 2020).

²² *Id.*

²³ *Monthly Economic Update July 2020*, Pa. IFO, at 2 (July 23, 2020), http://www.ifo.state.pa.us/download.cfm?file=Resources/Documents/Monthly_Economic_Update_July_2020.pdf.

²⁴ Press Release, Governor Wolf Extends School Closure for Remainder of Academic Year (Apr. 9, 2020), <https://www.governor.pa.gov/newsroom/governor-wolf-extends-school-closure-for-remainder-of-academic-year/>.

²⁵ Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses that are Not Life Sustaining (Mar. 19, 2020).

of state prisoners were released to prevent community transmission within correctional facilities.²⁶ Nearly every aspect of daily life has changed.

Recognizing COVID-19's disproportionate impact on the country's most vulnerable populations and the unfeasibility of the traditional bar exam requirement amidst a global pandemic, a growing number of states are implementing creative solutions that enable qualifying 2020 law school graduates to provide assistance during a national emergency. On April 21, 2020, the Supreme Court of Utah instituted a permanent emergency licensure option for first-time bar candidates who recently graduated from an ABA-accredited law school with an overall first-time bar passage rate in 2019 of 86% or greater. Exhibit A-3. To ensure their competency, qualifying Utah candidates must complete 360 hours of legal work (paid, unpaid, or pro bono) under the supervision of an experienced member of the state bar. *Id.*

On June 12, 2020, the Washington Supreme Court instituted unconditional emergency licensure for graduates of ABA-accredited law schools who already registered to sit for its July or September bar exams. Exhibit A-4. The court made the option available to first-time test takers and repeat test takers. *Id.*

On June 30, 2020, the Supreme Court of Oregon issued an order offering the option of emergency licensure to persons registered for the July 2020 Oregon bar

²⁶ *Temporary Program To Reprieve Sentences of Incarceration*, Pa. Dep't Corrections (June 4, 2020), <https://www.cor.pa.gov/Documents/Temporary-Program-to-Reprieve-List.xlsx>.

exam who graduated from either an in-state law school or any out-of-state ABA-accredited law school with “an overall institutional bar examination passage rate, for persons taking a bar examination for the first time in 2019, of 86 percent (rounded to the nearest whole number) or greater.” Exhibit A-2. The Oregon Supreme Court also lowered its minimum bar passing score from 274 to 266 for those who either did not qualify for emergency licensure or declined to take the option. *Id.*

On July 22, 2020, the Louisiana Supreme Court issued an order offering emergency licensure to any candidate registered for the July or October 2020 Louisiana bar exam who (1) graduated in December 2019 or later from an ABA-accredited law school, (2) never previously sat for a bar exam in another state or territorial jurisdiction in the United States, (3) will not sit for a bar exam in any other state or U.S. territory in 2020, and (4) satisfies all other state bar admission requirements. Exhibit A-1. Any candidate admitted under Louisiana’s emergency order must complete twenty-five hours of continuing legal education and the state bar association’s “Transition Into Practice” program by December 31, 2021. *Id.*

II. First Postponement of the July 2020 Bar Exam

Since at least 1968, Pennsylvania has administered a July Bar Exam.²⁷ On April 28, 2020, the Board postponed the July Exam until September 9 and 10, 2020,

²⁷ Compare Barry J. London et al., Comment, *Admission to the Pennsylvania Bar: The Need for Sweeping Change*, 118 U. Pa. L. Rev. 945, 947 (1970) (“The bar examination . . . is given twice a year (January and July) in Pittsburgh and Philadelphia.”), with *Bar Exam Dates*, Pa. Bd. Law

(“September Exam”) due to “the health and safety issues raised by the COVID-19 pandemic.” Exhibit C-2. The Board acknowledged that administering the exam on those dates may not be possible, noting “the viability of those dates depends on factors that cannot now fully be assessed.” *Id.* On that same date, this Court issued an order making persons registered to sit for the July 2020 Exam eligible for a limited license to engage in supervised practice. Exhibit H.

III. Second Postponement of the July 2020 Bar Exam

On July 8, 2020, the Board canceled the September Bar Exam and announced that it will administer a remote, reduced-question bar exam on October 5–7. Exhibit C-1. The Board’s announcement provided the following information:

- The essay sections will be administered on October 5 and 7, and the multistate bar exam (the “MBE”) will be administered on October 6. We will have a third testing day because the security measures attendant to a remote exam will require that we test in 45- or 90-minute segments with more breaks than in a usual, in-person exam. The dates of the exam are dictated in part by when the National Conference of Bar Examiners will offer the MBE.
- The MBE [Multistate Bar Exam] will include only 100 questions.
- All those who registered for the July/September exam will be automatically registered for the October exam.
- Success on the October exam will be treated the same as if the exam were in person for purposes of admission (i.e., assuming satisfaction

Exam’rs, https://www.pabarexam.org/bar_exam_information/bedates.htm (last visited Aug. 15, 2020) (“As a rule, the bar exam is always held on the last Tuesday and Wednesday of every February and July.”).

of other requirements, successful applicants will be fully admitted to the bar of the Pennsylvania Supreme Court).

Id.

Any October Candidate who previously elected to handwrite their answers for the July/September Pennsylvania Exam must now pay a \$115.00 computer-based testing fee or delay their seat until it is safe to hold an in-person exam. Exhibit F.

The Board signaled that it will use the reduced-question MBE developed by the NCBE. Earlier, on June 1, 2020, the NCBE had announced that it would provide reduced-question exams “to jurisdictions for an emergency remote testing option for local admission during the COVID-19 crisis.”²⁸ However, unlike years past, the NCBE will neither equate nor scale scores on the October Pennsylvania Bar Exam because “[w]ithout further research, scores from an abbreviated version of the MBE administered by remote testing cannot be considered comparable to the standard, paper-based, full-length MBE administration.”²⁹

As a result, the Board “has hired a psychometrician who will assist [it] in scaling the essays and performance test answers to the 100 MBE questions.”³⁰ The minimum passing score is still 272, though the Board has adopted a “re-read process” wherein any October Candidate who “receive[s] a combined score of 262-

²⁸ *NCBE COVID-19 Updates*, *supra* note 2.

²⁹ *Id.*

³⁰ *October Exam FAQs*, PABLE, *supra* note 3.

271 will . . . have their PT and six essay answers re-read and re-graded by a different grader.”³¹ Once the re-read process is complete, a candidate’s exam score will be final and unreviewable.³²

The Board announced that to take the October Exam candidates “must use a computer that is running the Windows 10 or MacOS operating systems and has a working webcam and microphone.”³³ Candidates will “need a quiet room with internet access where they can be alone and uninterrupted during the exam.”³⁴ No other people or pets can be in the same room as the candidate during the exam.³⁵ For candidates without “access to a quiet space with internet” the Pennsylvania Bar Association (PBA) intends to help match bar candidates with “[f]irms and other member-organizations” to provide such access.³⁶ It is unclear whether these organizations will actually have the capacity to provide spaces for all candidates who need them. Exhibit B-2.

IV. Technological Failures and Cyberattacks in Administration of Remote Bar Exams

Technological failures abounded in each jurisdiction that attempted to administer a remote bar exam for the first time this summer. On July 24, 2020, both

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

the Indiana Supreme Court and the State Bar of Nevada postponed their online bar exams, with just four days' notice, because of technological issues with the testing platform supplied by their software vendor, ILG Technologies, Inc.³⁷ Nevada later administered an open-book exam using a different version of ILG software, while Indiana scrapped its plan to use ILG software entirely and instead administered a timed, unproctored, open-book bar exam via email on August 4, 2020.³⁸

On July 28, 2020, several hundred examinees were taking the remote one-day Michigan Bar Exam when ExamSoft's proctoring platform crashed.³⁹ After completing each exam module, examinees were unable to access ExamSoft's "secure website to get the password for the next module" due to technological errors.⁴⁰ ExamSoft eventually emailed the passwords to examinees, and the exam continued as planned.⁴¹ ExamSoft announced later that it "experienced a distributed denial of service (DDOS) cyber-attack" during the exam and that this "sophisticated attack was specifically aimed at the login process for the ExamSoft Portal which

³⁷ See Karen Sloan, *Indiana and Nevada Postpone Bar Exams, Raising Questions About Feasibility of Online Tests*, Legal Intelligencer (July 27, 2020), <https://www.law.com/thelegalintelligencer/2020/07/27/indiana-and-nevada-postpone-bar-exams-raising-questions-about-feasibility-of-online-tests/> [Sloan, *Indiana and Nevada*].

³⁸ See Joe Patrice, *Florida Cancels Test of Online Bar Exam Because, You Know, "Issues,"* Above the Law (Aug. 10, 2020), <https://abovethelaw.com/2020/08/florida-cancels-test-of-online-bar-exam-because-you-know-issues/>.

³⁹ Jesse, *supra* note 11.

⁴⁰ *Id.*

⁴¹ *Id.*

corresponded with an exam session for the Michigan Bar.”⁴² In response, ExamSoft “requested the FBI and the Department of Homeland Security open an official investigation into the incident.”⁴³ The investigation is still pending.

On August 10, 2020, Florida canceled a test of its online bar exam due to issues with ILG’s proctoring platform.⁴⁴ That same day, Florida bar applicants submitted a letter to their state Supreme Court “express[ing] several highly concerning instances of software failure and data breaches connected to ILG Technologies, Inc.” Exhibit H.

The issues range from the ability to access websites and applications while logged into the exam interface, files that have disappeared, mouses and track pads that no longer function, and examination answers that have completely changed during the submission process from what the examinee had submitted. . . .

[T]here are now accounts emerging of examinees receiving emails from websites claiming that their information was used to log in or that a login attempt was detected from another country. Examinees have reported that their bank accounts have been compromised. Some have experienced a sudden influx of messages from foreign telephone numbers seeking Bitcoin, and many cannot access email accounts after their passwords were changed without their permission. Some users have also lost access to their accounts with the National Conference of Bar Examiners (“NCBE”) after their passwords were somehow changed. That such suspicious activity with NCBE accounts occurred immediately after the ILG download appears to be more than a mere coincidence.

Id.

⁴² ExamSoft, July 28th Tweet, *supra* note 10.

⁴³ ExamSoft, August 5th Tweet, *supra* note 12.

⁴⁴ *See* Patrice, *supra* note 38.

On August 16, with just three days' notice, Florida canceled the exam “because administering a secure and reliable remote bar examination in August [is] not technically feasible.”⁴⁵ Four days earlier, Louisiana abandoned its plans to use ILG’s bar exam software to administer its remote exam and announced it will instead administer an unproctored, open-book bar exam via email.⁴⁶

This summer is not the first time that testing software caused serious issues during a bar exam. In July 2014, tens of thousands of bar examinees “using ExamSoft experienced delays and failures when trying to upload completed exams” during a technological disaster now commonly referred to as “Barmageddon.”⁴⁷ Technological software errors caused these delays and failures. ExamSoft paid “\$2.1 million to settle a class action in five consolidated lawsuits.”⁴⁸ ExamSoft will provide the remote testing software for the administration of the October

⁴⁵ Florida Bd. of Bar Examiners, <https://www.floridabarexam.org/> (last updated Aug. 17, 2020).

⁴⁶ Andrea Gallo, *Louisiana Bar Exam To Become Open-Book Email Test for Those Still Required To Take It*, NOLA (Aug. 12, 2020), https://www.nola.com/news/courts/article_eaac884c-dcc1-11ea-a64e-038b92723d17.html.

⁴⁷ Marsha Griggs, *Building a Better Bar Exam*, 7 Tex. A&M L. Rev. 1, 6 n.16 (2019); Derek T. Muller, *Did ExamSoft Cause the Bar Passage Rate Decline?*, Excess of Democracy (Oct. 27, 2014), <https://excessofdemocracy.com/blog/2014/10/did-examsoft-cause-the-bar-passage-rate-decline>. The settlement administrator in the case “received . . . a list of 31,175 names and email addresses of all possible class members in this matter.” Amended Declaration of Kathleen Wyatt re: Notice to Class, at 1, *West v. ExamSoft Worldwide Inc.*, No. 14-cv-22950-UU (S.D. Fla. Oct. 6, 2015). The administrator received at least 7,763 timely claims from class members. *Id.* at 3.

⁴⁸ Griggs, *supra* note 47, at 6 n.16; Karen Sloan, *Software Maker Settles ‘Barmageddon’ Class Action for \$2.1M*, Law.com (May 15, 2015), <https://www.law.com/nationallawjournal/almID/1202726589832/Software-Maker-Settles-Barmageddon-Class-Action-for-21M/> [hereinafter Sloan, *Barmageddon*].

Pennsylvania Bar Exam on October 5–7 as well as, upon information and belief, the bar exams of at least eleven other jurisdictions on October 5–6. Exhibits E-1, E-2.

Likewise, on July 21, 2020, Edwin J. Prado, a licensed attorney who has practiced law for twenty-eight years in Puerto Rico, New York, and Florida, sued ExamSoft, after it falsely accused him of cheating on the 2017 Florida Bar Exam.⁴⁹ ExamSoft’s records had indicated that Mr. Prado exceeded the three-hour “time limit by 1 minute and 4 seconds.”⁵⁰ Mr. Prado later won his appeal to the Ethics Committee of the Florida Bar after his cybersecurity expert “determined that it was ‘highly probable’ that either ExamSoft’s algorithms, its use of system resources, or both were flawed or misconfigured, leading the computer to go into ‘suspend mode’ on two separate occasions and coinciding with the program’s crash.”⁵¹

V. Pennsylvania Stakeholders’ Support for Emergency Licensure

On July 17, 2020, the deans of all nine Pennsylvania law schools and Rutgers Law School asked the Board to implement “a one-time admission to practice through diploma privilege.” Exhibit B. The deans identified four key concerns:

First, a remote examination exacerbates differences in personal circumstances such as physical surroundings and internet connectivity,

.....

⁴⁹ See Complaint, *Prado Galarza v. ExamSoft Worldwide Inc.*, No. 6:20-cv-01294-CEM-EJK (M.D. Fla. July 21, 2020).

⁵⁰ Christina Tabacco, *Bar Exam Software Provider Faces Lawsuit over False Cheating Allegations*, Law Street (July 27, 2020), <https://lawstreetmedia.com/tech/bar-exam-administration-software-sued/>.

⁵¹ *Id.*

Second, there are a host of logistical questions that need to be addressed, such as how students can effectively analyze many pages of legal material without being able to take notes and how computer and software issues will be handled, including the privacy issues attendant to remote proctoring.

Third, . . . the shortage of experienced online proctors in the fall exam season nationally might raise issues with uneven or problematic variance in the proctoring of exam takers.

Fourth, there are concerns, expressed by the NCBE and others, about the psychometric reliability of the reduced-question MBE being offered by NCBE in October.

Id. (emphasis added) (paragraphing altered).

On July 22, 2020, the Board responded to the deans' request saying only that "after deliberation we believe the better course is to focus on preparing for the remote exam in October." Exhibit I. The Board responded to only one of the deans' stated concerns, saying, "we have been discussing with the Pennsylvania Bar Association a project by which the PBA would solicit law firms to offer empty conference rooms and offices for bar applicants to use to take the exam." *Id.*

On July 29, 2020, the PBA Board of Governors requested that this Court and the Board offer permanent emergency licensure (or "diploma privilege") to applicants registered for the October Bar Exam who satisfy the following requirements:

- Graduation from an ABA-accredited U.S. law school between April 1, 2020 and June 30, 2020 and registered to take the Pennsylvania Bar Examination on or before June 30, 2020;

- Meet the current standards related to passing the MPRE. If the applicant has not already taken and passed the MPRE, the applicant must pass the MPRE by December 31, 2020, unless unable to take the MPRE in the remainder of 2020. If unable, the applicant may request an extension to submit proof of passing the MPRE until 30 days after the scores are published following the first MPRE administered in 2021;
- Meet the current standards regarding Character and Fitness qualifications; Not be sitting for a bar examination to be given in any other jurisdiction that uses the MBE on or before the end of October 2020;
- May not apply if they have previously failed any bar exam in any state; and
- Completion of a Pennsylvania Bridge the Gap course – virtually or in-person – prior to being granted a diploma privilege rather than at the conclusion of the first continuing legal education compliance period.

Exhibit B-2.

On August 4, 2020, the American Bar Association (ABA) encouraged jurisdictions to consider emergency licensing measures, such as diploma privilege and supervised-practice programs, in light of the technological problems with the remote testing software and the “serious disparate impact concerns” attendant to “[t]he administration of a remote bar examination.” Exhibit B-3. The ABA also expressed concern that “[t]he lack of scaling, combined with differences in exam administration, will make each state’s existing cut score unreliable.” *Id.*

Several Pennsylvania and national legal organizations have expressed their support for a one-time exception to the bar exam in response to the COVID-19 crisis.

Some of these entities include: Amistad Law Project, Asian American Legal Defense and Education Fund, Center for Constitutional Rights, Community Legal Services of Philadelphia, Disability Rights Education & Defense Fund, Dominican Bar Association, Equal Justice Society, Gideon’s Promise, Hispanic National Bar Association, Immigrant Legal Resource Center, Justice in Aging, Lycoming Law Association,⁵² NAACP Legal Defense and Education Fund, National Employment Law Project, National Lawyers Guild, National Organization for Women, and Skadden Fellowship Program.⁵³

VI. Declarations in Support of Diploma Privilege

October Candidates, law school faculty members, and members of the Pennsylvania Bar have submitted declarations to LSERC in support of the relief requested in this Petition. Exhibit J. Thus far, 286 October Candidates submitted declarations (“Candidate Declarants”), representing all nine Pennsylvania law schools and nineteen out-of-state law schools. *Id.* This includes:

- 27 graduates of Drexel University Thomas R. Kline School of Law;
- 29 graduates of Duquesne University School of Law;
- 16 graduates of Penn State Dickinson Law;
- 8 graduates of Penn State Law;

⁵² Exhibit B-4.

⁵³ Public Rights Project, *An Open Letter from Public Interest Organizations Supporting Diploma Privilege*, Medium (Aug. 11, 2020), <https://medium.com/@publicrightsproject/an-open-letter-from-public-interest-legal-organizations-supporting-diploma-privilege-20390dd50a8e>.

- 10 graduates of Rutgers Law School;
- 81 graduates of Temple University James E. Beasley School of Law;
- 13 graduates of the University of Pennsylvania Carey Law School;
- 29 graduates of the University of Pittsburgh School of Law;
- 29 graduates of Villanova University Charles Widger School of Law; and
- 15 graduates of Widener University Commonwealth Law School.

Id.

Approximately 500 October Candidates, including the Petitioners, Candidate-Declarants, respondents to LSERC's two hardship surveys, and the signees of a letter submitted to the Board on April 18, 2020, have expressed support for some form of diploma privilege.

Eighty-one faculty members of Pennsylvania law schools and twenty-seven faculty members of out-of-state law schools with at least one graduate registered for the October Pennsylvania Exam signed declarations in support of the relief requested in this Petition. *Id.* Fifty-three members of the Pennsylvania Bar also signed declarations in support.

A survey of Candidate-Declarants revealed that because of the postponements of the July Exam:

- 158 had their employment start dates delayed;

- 13 had their job offers rescinded;
- 26.2% have been unable to obtain full-time legal employment;
- 42.7% either experienced or anticipated experiencing a gap in healthcare coverage;
- 65.4% have student-loan payments due starting in October or November 2020;
- 35.7% left another career to attend law school;
- 93.3% entered law school expecting to sit for the July 2020 Pennsylvania Bar Exam;
- 24.1% have increased caretaking responsibilities for their loved ones during the COVID-19 pandemic;
- 24.8% live with an essential worker who is at increased risk of contracting COVID-19;
- 21.3% are themselves at higher risk of becoming seriously ill if they contract COVID-19;
- 11 have contracted COVID-19;
- 50.3% have a loved one with whom they come into regular contact at risk of becoming seriously ill if they contract COVID-19;
- 10 had a loved one contract COVID-19; and
- 14 had a loved one pass away from COVID-19.

Exhibit D-2.

Candidate-Declarants also responded that they face the following hardships attendant to the administration of a remote bar examination:

- 61.9% do not have a suitable place to take the remote bar exam in their home;
- 65.3% do not have suitable/stable internet access to take the remote bar exam;
- 29 did not apply for reasonable accommodations for the in-person, paper-based exam but now need them for the remote exam; and
- 6 did obtain accommodations for the July/September Exam but now need different accommodations for the remote exam.

Id.

An earlier survey of October Candidates, which included many but not all of Candidate-Declarants, also showed that:

- Of 293 responding October Candidates, 81.5% reported that they suffered economic harm due to the postponement of the July Exam;
- Of 300 respondents, 74% suffered financial harm due to the postponement of the September Exam, and another 19% reported they were unsure whether they will suffer such harm because of that exam's postponement;
- Only 39.1% of 299 respondents reported that they are financially able to study through the October Exam;
- Over 30% of 234 respondents anticipated needing to apply for a bar loan due to the September Exam's postponement;

- Of 264 respondents, over 25% either missed (or anticipate that they will miss) a rent payment because the bar exam has been postponed twice;
- Of 277 respondents, 32.9% provide essential financial support to loved ones or family members; and
- Of 221 respondents, around 15% had interviewed for a position but lost the opportunity due to the postponement of the July Exam.

Exhibit D-1.

Furthermore, attached at Exhibit K-1 to K-15, are specific declarations from the Petitioners and Trustees ad Litem, each of whom is a graduate of an ABA-accredited law school and is registered to sit for the October Pennsylvania Bar Exam. These declarations set forth their personal struggles, financial hardships, and lost opportunities resultant from the multiple postponements of the July 2020 Bar Exam.

ARGUMENT

I. This Court has the exclusive authority to waive Pa. B.A.R. 203(b)(1).

The Pennsylvania Constitution vests in this Court the exclusive “power to prescribe rules . . . for admission to the bar and to practice law.” Pa. Const. art. V, § 10(c). Law licensure requirements must not offend other provisions of the Pennsylvania Constitution. *Id.* This Court retains the discretion to waive requirements provided in the Pennsylvania Bar Admission Rules. *See, e.g., Murphy*

v. Egan, 498 F. Supp. 240 (E.D. Pa. 1980) (discussing this Court’s waiver of the ABA-accreditation requirement).

The plain text of Pa. B.A.R. 203(b)(1) contemplates this Court’s discretion to waive the bar examination. The rule sets forth that the bar examination is a “*general* requirement[] for admission to the bar of this Commonwealth.” Pa. B.A.R. 203(b)(1) (emphasis added). Because the Bar Admission Rules do not define the term “general requirement,” *see* Pa. B.A.R. 102, the phrase should be construed in light of its “common and approved usage.” *Commonwealth v. Hart*, 28 A.3d 898, 909 (Pa. 2011). The dictionary definitions of “general” and “requirement,” taken together, indicate there are “possible exceptions” to Pa. B.A.R. 203(b)(1).⁵⁴

The “purpose and context” of the Bar Admission Rules affirm the common meaning of “general requirement.” *See Commonwealth v. Fant*, 146 A.3d 1254, 1262 (Pa. 2016) (quoting *Dolan v. United States Postal Serv.*, 546 U.S. 481, 495 (2006)). This Court prescribed the Bar Admission Rules only “in furtherance” of its “inherent and exclusive power to regulate the admission to the bar,” Pa. B.A.R. 103, not as a full delegation of that authority to the Board. This Court made this clear in

⁵⁴ The word “requirement” commonly refers to “a thing demanded or obligatory.” *Requirement*, Dictionary.com, <https://www.dictionary.com/browse/requirement?s=t> (last visited Aug. 15, 2020). The modifier “general” commonly means “of, relating to, or true of such persons or things in the main, with possible exceptions.” *General*, Dictionary.com, <https://www.dictionary.com/browse/general?s=t>; *see also Webster’s Third International Dictionary* 944 (1986) (defining “general” as “applicable or pertinent to the majority of individuals involved”).

declaring the Board may only prescribe licensure requirements that are “not inconsistent with these rules.” Pa. B.A.R. 104(c)(2). Thus, in light of the purpose and context of the Bar Admission Rules, the plain text of Pa. B.A.R. 203(b)(1) confirms this Court retains the ultimate discretion to grant waivers of the bar examination in exceptional cases.

Precedent underscores this Court’s power and willingness to waive the bar exam during exceptional times like the 2020 coronavirus pandemic. This Court issued “war measure orders” and waived the bar exam for around 500 candidates following the Second World War.⁵⁵ Thirteen other states adopted similar measures, acknowledging that applicants had “families to support, and [were] anxious to get started, and started right, in their chosen profession.”⁵⁶ The Philadelphia Bar Association commended these emergency licensees, stating that they “have contributed greatly and include some of our most respected lawyers.”⁵⁷

Accordingly, this Court has the exclusive power to waive the bar examination requirement by virtue of its inherent authority to prescribe licensure requirements “for admission to the bar and to practice law,” Pa. Const. art. V, § 10(c), and exercising that power in this trying and unprecedented moment would neither offend

⁵⁵ See *Report on Pennsylvania Bar Admission Procedures*, *supra* note 19, at 153.

⁵⁶ Eugene C. Gerhart, *Admission to the Bar: Survey of Present Requirements in the States*, 33 A.B.A. J. 995, 995 (1947).

⁵⁷ *Id.*

the plain meaning of Pa. B.A.R. 203(b)(1) nor constitute an unprecedented judicial act.

II. As applied to October Candidates, the licensure requirement set forth in Pa. B.A.R. 203(b)(1) violates the individual right to pursue one's chosen lawful occupation, which Article I, Section 1 of the Pennsylvania Constitution guarantees, and therefore this Court must grant emergency licensure.

Every October Candidate has incurred substantial financial and opportunity costs solely because the Board postponed the July 2020 Exam—not once, but twice. The financial and opportunity costs that October Candidates have suffered—and will continue to suffer as they prepare for an unorthodox remote bar exam—are incommensurate with those ordinarily attendant to the pursuit of one's chosen occupation as a lawyer. October Candidates have lost income through rescinded job offers, deferred start dates, and prolonged bar-prep courses. Exhibits D-1, D-2. Candidates lost job opportunities with employers who are only seeking fully licensed lawyers. Exhibits D-1, D-2. Candidates have lost access to their school healthcare benefits, and because most cannot begin full-time employment until after the bar exam, they now face coverage gaps for themselves and their dependents in the middle of the unprecedented COVID-19 pandemic. Exhibits D-1, D-2.

Further, the NCBE, the writer and grader of the traditional MBE, indicated that a remote, reduced-question bar exam is an unreliable measure of minimum

competency.⁵⁸ Additionally, the COVID-19 crisis has imposed such immeasurable psychological stresses on October Candidates that for many their scores will fail to accurately reflect their legal knowledge and skills.⁵⁹ While stress is a natural part of every bar candidate’s exam experience, this level of anxiety is untenable when combined with the well-documented stressors associated with the unprecedented pandemic and international economic recession.⁶⁰ Accordingly, the October Exam will inevitably fail to reliably measure minimum competency across October Candidates and will jeopardize this Court’s legitimate interest in protecting the public from incompetent legal representation.

Under these circumstances, strict adherence to Pa. B.A.R. 203(b)(1) is “unduly oppressive” and patently unnecessary because a “less drastic and intrusive alternative” that this Court has the power to implement will protect the public’s interest in competent legal representation: emergency licensure. *See Ladd*, slip op. at 21, 32 (first quoting *Shoul v. DOT, Bureau of Driver Licensing*, 173 A.3d 669, 677 (Pa. 2017); then quoting *Mahony v. Twp. of Hampton*, 651 A.2d 525, 528 (Pa. 1994)). This Court need only look to its sister courts in Louisiana, Oregon, Utah,

⁵⁸ See *NCBE COVID-19 Updates*, *supra* note 2. This likely explains why scores on the remote October Exam will not be transferable to other jurisdictions. *Id.*

⁵⁹ See Denise Riebe, *A Bar Review for Law Schools: Getting Students on Board To Pass Their Bar Exams*, 45 *Brandeis L.J.* 269, 338–39 (2007) (“[S]tudents who experience a crisis during their bar preparation period have a decreased likelihood of passing their bar exams.”).

⁶⁰ See William C. Sanderson et al., *The Nature and Treatment of Pandemic-Related Psychological Distress*, *J. Contemp. Psychotherapy*, June 27, 2020.

and Washington, which have each determined that a well-regulated scheme offering emergency licensure is a sufficient and far superior alternative to an in-person or remote bar exam during the COVID-19 crisis. In short, emergency licensure is an adequate alternative to Pa. B.A.R. 203(b)(1) that will preserve the rights of qualifying October Candidates to pursue their chosen occupation as lawyers while protecting the public's interest in competent legal representation.

Further, this case weighs even *more heavily* in favor of granting Petitioners' request for relief because the instant claim does not raise any issues of legislative deference. This Court alone has the exclusive authority to license attorneys, Pa. Const. art. V, § 10(c); *In re Splane*, 16 A. 481 (Pa. 1889), which means there is simply no deference for the Court to show. Therefore, this Court should scrutinize the licensure requirement as applied here more closely than it would in an ordinary case challenging a licensing statute.

A. Strict adherence to Pa. B.A.R. 203(b)(1) in this case is unduly oppressive and patently unnecessary because emergency licensure is a less drastic and intrusive alternative that will protect the public's interest in competent legal representation.

The right to pursue one's chosen lawful occupation is derived from the right to possess property and pursue happiness under Article I, Section 1 of the Pennsylvania Constitution. *Ladd*, slip op. at 19; *see also Dent v. West Virginia*, 129 U.S. 114, 121 (1889) ("It is undoubtedly the right of every citizen of the

United States to follow any lawful calling, business, or profession he may choose”). Although the right to pursue one’s chosen occupation is not a fundamental right, it is so “undeniably important” that it enjoys the protections of substantive due process under the Pennsylvania Constitution. *Ladd*, slip op. at 19 (quoting *Nixon v. Dep’t of Public Welfare*, 839 A.2d 277, 287 (Pa. 2003)).

Critically, this right is not dependent upon already being licensed, as the right to pursue a lawful occupation exists even for those who seek a license. *Id.* at 19 & n.13 (citing *Nixon*, 839 A.2d at 288). Therefore, though this Court may prescribe law licensure requirements “to protect and secure the public’s interest in competent legal representation,”⁶¹ such requirements cannot preclude otherwise qualified individuals from pursuing their chosen occupations as attorneys. *Id.* at 19 (citing *Gambone v. Commonwealth*, 101 A.2d 634, 636 (Pa. 1954)).

Licensure requirements are subject to the heightened rational basis test, and this Court permits as-applied due process challenges to requirements that violate the right to pursue one’s chosen lawful occupation. *Id.* at 22, 25. When addressing an as-applied challenge, this Court must determine (1) whether the requirement is “unreasonable, unduly oppressive, or patently beyond the necessities of the case,”

⁶¹ Compare *Dauphin Cty. Bar Ass’n v. Mazzacaro*, 351 A.2d 229, 232–33 (1976) (explaining that law licensure “requirements are intended to protect and secure the public’s interest in competent legal representation”), with *Ladd*, slip op. at 19 (explaining that licensure requirements must be tailored “to preserve public health, safety, and welfare” (quoting *Gambone v. Commonwealth*, 101 A.2d 634, 636 (Pa. 1954))).

and (2) whether the requirement “bear[s] a ‘real and substantial relation’ to the public interest [it] seek[s] to advance when applied to [the aggrieved party] under the circumstances.” *Ladd*, slip op. at 22 (quoting *Nixon*, 839 A.2d at 287). This Court must first identify the “legitimate policy objective” sought through the requirement. *Id.* at 24–25. This Court must then determine whether that requirement, as applied to the aggrieved party’s circumstances, is “unreasonable, unduly oppressive, or patently beyond the necessities of the case.” *Id.* (citation omitted).

The primary purpose behind Pa. B.A.R. 203(b)(1), as with any law licensure requirement, is “to protect and secure the public’s interest in competent legal representation.” *See Dauphin Cty. Bar Ass’n v. Mazzacaro*, 351 A.2d 229, 232–33 (Pa. 1976). In the words of Justice Horace Stern, later Chief Justice of this Honorable Court:

“While, in order to acquire the education necessary to gain admission to the bar and thereby become eligible to practice law, one is obliged to ‘scorn delights, and live laborious days,’ the object of the legislation forbidding practice to laymen is not to secure to lawyers a monopoly, however deserved, but, by preventing the intrusion of inexperienced and unlearned persons in the practice of law, to assure to the public adequate protection in the pursuit of justice, than which society knows no loftier aim.”

Id. at 233 (quoting *Shortz v. Farrell*, 193 A. 20, 24 (Pa. 1937)).

In the case of October Candidates, strict adherence to Pa. B.A.R. 203(b)(1) will fail to adequately protect the public’s interest in competent legal representation because the reduced-question, remote October Exam will yield unreliable measures

of minimum competency. Further, the requirement has imposed unduly burdensome financial and opportunity costs on October Candidates. Under these circumstances, strict adherence to Pa. B.A.R. 203(b)(1) is “unduly oppressive” and patently unnecessary because a well-regulated scheme offering emergency licensure is a “less drastic and intrusive alternative” sufficient to protect the public’s interest in competent legal representation. *See Ladd*, slip op. at 22 (first quoting *Nixon*, 839 A.2d at 287; then quoting *Mahony*, 651 A.2d at 528). Thus, to avoid violating the individual rights of October Candidates to pursue their chosen lawful occupations as lawyers, this Court must waive Pa. B.A.R. 203(b)(1) and offer emergency licensure to qualifying candidates.

1. The remote October Exam will fail to reliably measure minimum competency and will therefore fail to protect the public’s interest in competent legal representation.

In past years, the bar exam has been sufficient to protect the public’s interest in competent legal representation because its administration ensured a reliable measure of any given candidate’s minimum competency to practice law.⁶² Reliability depends on “the extent to which a given version of the exam produces an accurate and representative result, i.e., that the rank order of examinees would

⁶² *See Erica Moeser, President’s Page*, 83 B. Examiner, June 2014, at 3, 4.

remain largely stable over replications of the exam with different questions.”⁶³ The more questions asked by an exam, the more reliable it is.⁶⁴ The bar exam cannot protect the public’s interest in competent legal representation if it fails to reliably measure minimum competency.⁶⁵

Though Pa. B.A.R. 203(b)(1) was rationally and sufficiently tailored to protect the public from incompetent legal representation in times past, the remote October Bar Exam will not yield reliable measures of minimum competency across all candidates. First, the NCBE already stated that the reduced-question, remote bar exam is incommensurate with the traditional in-person bar exam.⁶⁶ The substantial risk of random technological errors attendant to rapidly transitioning to an online exam format will only decrease the October Exam’s reliability.⁶⁷ Second, the COVID-19 crisis compounds the level of stress inherent in bar exam preparation to an untenable level, decreasing the likelihood that scores on the October Exam will accurately reflect whether any given candidate possesses the minimum competency to practice law.

⁶³ Ben Bratman, *Improving the performance of the Performance Test: The Key to Meaningful Bar Exam Reform*, 83 UMKC L. Rev. 565, 573 (2015) (citing Susan M. Case, *The Testing Column: What Everyone Needs To Know About Testing, Whether They Like It or Not*, 81 B. Examiner, June 2012, at 29, 29–31); Michael T. Kane, *Reflections on Bar Examining*, 78 B. Examiner, Nov. 2009, at 6, 9–10.

⁶⁴ Bratman, *supra* note 63, at 573 (citing Case, *supra* note 63, at 29–31).

⁶⁵ See Erica Moeser, *Rethinking Assessments and Alternatives to Assessments from the Perspective of a Bar Examiner*, 20 Ga. St. U. L. Rev. 1051, 1051–52 (2004).

⁶⁶ NCBE COVID-19 Updates, *supra* note 2.

⁶⁷ See Karen Sloan, *Indiana and Nevada*, *supra* note 37.

In the words of former NCBE President Erica Moeser: “[T]here is no heresy in questioning [the bar exam’s] content and efficacy. Any risks associated with imagining innovative approaches are worth taking.”⁶⁸ In fact, the NCBE-appointed Testing Task Force (TTF) is now in the third and final phase of its study into whether “the bar examination continues to test the knowledge, skills, and abilities needed for competent entry-level legal practice in a changing profession.”⁶⁹ Any questions surrounding the traditional bar exam’s reliability as a measure of minimum competency must also extend to the remote, reduced-question October Exam.

There is a wide consensus within the legal profession that the bar exam is an imperfect, albeit valid, measurement of an applicant’s minimum competency to practice law.⁷⁰ The most common criticisms of the bar exam are that it:

- (1) overemphasizes memorization;
- (2) tests an applicant’s legal knowledge in “artificial ways;”
- (3) tests law that is not applicable in the jurisdiction administering the test;
- (4) ignores the fact that lawyers today specialize in specific areas of law; and

⁶⁸ *Id.* at 1051.

⁶⁹ Testing Task Force, Phase 2 Report: 2019 Practice Analysis 34 (2020); *see also* Testing Task Force, Your Voice: Stakeholder Thoughts About the Bar Exam: Phase 1 Report of the Testing Task Force 6–33 (2019) [TTF, Phase 1 Report].

⁷⁰ *See* Linda Jellum & Emmeline Paulette Reeves, *Cool Data on a Hot Issue: Empirical Evidence that a Law School Bar Support Program Enhances Bar Performance*, 5 Nev. L.J. 646, 652 (2005). *See generally* TTF, Phase 1 Report, *supra* note 69, 6–33; Society of American Law Teachers, *Statement on the Bar Exam*, 52 J. Legal Educ. 446, 447 (2002) [hereinafter SALT].

- (5) requires applicants to spend thousands of dollars on preparation courses to cram doctrine into their heads and to learn “tricks” that help them answer the questions.⁷¹

The bar exam may accurately measure minimum competency in the aggregate, but each administration carries the risks that some examinees will fail even though they would be terrific lawyers and that some will pass despite being unfit for the practice of law. Administering a remote, reduced-question bar exam during the COVID-19 crisis will drastically increase these risks.

- a. **The new October Exam model has already been deemed incommensurate with the traditional in-person bar exam, particularly due to the lack of research into how to properly scale and equate a reduced-question, remote exam.**

The NCBE has made clear that a reduced-question, remote bar exam cannot reliably measure minimum competency due to the lack of psychometric research: “Without further research, scores from an abbreviated version of the MBE administered by remote testing cannot be considered comparable to the standard, paper-based, full-length MBE administration, such comparability being an essential requirement for equating and scaling.”⁷²

⁷¹ Jellum & Reeves, *supra* note 70, at 652–53 (footnotes omitted) (altered paragraphing) (quoting SALT, *supra* note 70, at 447).

⁷² NCBE COVID-19 Updates, *supra* note 2.

The October Pennsylvania Bar Exam is “an abbreviated version of the MBE administered by remote testing.” *See id.* While the October Exam will still consist of six essays, it will only include 100 MBE questions—*half* of the total MBE questions usually tested. Exhibit C-1. Any bar exam that asks fewer MBE questions is invariably less reliable than the traditional 200-question exam.⁷³

Further, the bar exam cannot possibly yield reliable measures of competency without properly “equated” and “scaled” exam scores.⁷⁴ “Scaling” refers to the “statistical procedure that puts essay or performance test scores on the same score scale as the Multistate Bar Examination.”⁷⁵ The scaling process must account for random error and may do so across repeated administrations of an exam; however, classical test theory maintains that “in any single test administration, we can never know whether random error has led to an obtained score that is higher or lower than the true score.”⁷⁶ As a result, without extensive psychometric research and field testing, it is impossible to ensure the reliability of an exam that has never been administered before.⁷⁷

⁷³ Case, *supra* note 63, at 29 (“If more questions provide greater reliability, it follows that reliability is reduced when fewer questions are used.”); *id.* at 30 (“[L]uck doesn’t play much of a role when each examinee has questions covering 200 cases to answer.”).

⁷⁴ *Id.* at 30–31.

⁷⁵ Susan M. Case, *The Testing Column: Frequently Asked Questions About Scaling Written Test Scores to the MBE*, 75 B. Examiner, Nov. 2006, at 42, 42.

⁷⁶ Leslie A. Miller, *What is Test Reliability/Precision?*, in *Foundations of Psychological Testing: A Practical Approach* 127, 131 (Sandra A. McIntire & Leslie A. Miller eds., 2011).

⁷⁷ *See* Hoi K. Suen & Qiong Wu, *Psychometric Paradox of Very High-Stakes Assessment and Solutions*, 3 KJEP 113, 124 (2006) (explaining that “the only available methods to evaluate the

Scaling is essential to “equating,” wherein “scores are equated over time to ensure that equivalent levels of performance are required to achieve a passing score.”⁷⁸ However, as the NCBE indicated, “the level of performance required to achieve a passing score” on a reduced-question, remote exam is not equivalent to the level required to achieve a passing score on the traditional in-person exam.⁷⁹ Indeed, the NCBE will neither equate nor scale scores on the October Exam because the standard equating model used for the MBE depends on “the scaled scores on *prior* MBE forms.”⁸⁰ Again, without extensive psychometric research and field testing, it is impossible to ensure the reliability of an exam never before administered.

The Board plans for Pennsylvania to become the first jurisdiction in the United States to ever administer a three-day reduced-question, remote bar examination.⁸¹ Since the NCBE is neither scaling nor equating scores from remote bar exams, the Board has retained its own psychometrician to scale and equate scores from the October Exam.⁸² However, because the reliability of any system of online testing is

reliability of scores from any assessment” invariably “require gathering pilot data from a moderate to a large sample of examinees in field tests”); *id.* at 114 (“The timing is important so that the results of psychometric analyses can inform test construction and revision to maximize the reliability, validity, and fairness of the information obtained and decisions made on the basis of the test.”).

⁷⁸ Case, *supra* note 63, at 30.

⁷⁹ Compare *id.* (explaining that equating is essential to ensure the MBE’s reliability), with *NCBE COVID-19 Updates*, *supra* note 2 (explaining that equating remote, reduced-question MBE is not possible at this time).

⁸⁰ See Michael T. Kane & Andrew Mroch, *Equating the MBE*, 74 B. Examiner, Aug. 2005, at 22, 26 (emphasis added).

⁸¹ See *NCBE COVID-19 Updates*, *supra* note 2.

⁸² *October Exam FAQs*, PABLE, *supra* note 3.

verifiable only after extensive and exhaustive rounds of clinical trials, it is simply impossible for a psychometrician to complete the necessary research by October. *Cf. Rawdin v. Am. Bd. of Pediatrics*, 985 F. Supp. 2d 636, 647 (E.D. Pa. 2013) (“Given the lengthy and ongoing process required to develop questions and the need for reliability and objectivity, . . . [it] is not possible for [the American Board of Pediatrics] to develop an exam with a different format in a short period of time and still meet the relevant standards of reliability.”).

b. Cyberattacks and technological errors threaten the October Exam’s reliability and place bar candidates at risk of having their personal information and confidential work-product compromised.

To take the remote bar exam, October Candidates must use an exam monitoring software (ExamMonitor) that likely skipped the third and final stage of the software testing process,⁸³ which “focuses on software security and functionality.”⁸⁴ Major software companies typically skip the final stage, known as “gamma testing,”⁸⁵ particularly “when there are tight deadlines, increased pressure,

⁸³ See Tom McMasters, Feasibility of a Mass Online California Bar Exam, Part 2: Technical Feasibility 21 (2020) [hereinafter McMasters, Technical Feasibility], <https://docs.google.com/document/d/1xfNmDsP0fnHqk6se2vUF54T9ZSf9bNr8oisR9aDjVwg/edit#> (expressing concern that the California State Bar “signed up to use this brand-new, just-out-of-beta software”).

⁸⁴ *Difference Between Alpha, Beta, and Gamma Testing*, QATestLab (Aug. 21, 2018), <https://qatestlab.com/resources/knowledge-center/alpha-beta-gamma/>.

⁸⁵ *Id.*; Anna Khrupa, *Alpha Vs Beta Software Testing: What is the Difference?*, TestFort (Aug. 15, 2019), <https://testfort.com/blog/alpha-vs-beta-software-testing-what-is-the-difference>.

and shorter development cycles.”⁸⁶ ExamSoft, in response to an urgent need for testing solutions following the COVID-19 outbreak, rapidly scaled up its production of ExamMonitor after it completed the second stage in March 2020.⁸⁷

ExamSoft experienced a cyberattack—now the subject of an FBI and DHS investigation⁸⁸—during the administration of the July Michigan Bar Exam.⁸⁹ The cyberattack caused the remote exam software to crash, disrupting the testing process and causing undue stress for the 733 test-takers.⁹⁰ The risk of a widescale cyberattack only increases as the number of simultaneous exam administrations increases.⁹¹ ExamSoft experienced a cyberattack when administering a remote bar exam *on one day in one jurisdiction to only 733 people*; on October 5–6, 2020, ExamSoft will administer the October Pennsylvania Bar Exam as well as, upon information and belief, the bar exams of *eleven jurisdictions and more than 20,000 examinees*. See E-1, E-2.

ExamSoft’s software leaves users particularly susceptible because the company “advises that in order to prevent errors during the exam, the user should

⁸⁶ *What Is Gamma Testing? The Final Testing Stage*, Software Testing Help, <https://www.softwaretestinghelp.com/gamma-testing-2/> (last updated Aug. 2, 2020).

⁸⁷ Riley Farrell, *ExamSoft, a Provider of Anti-Cheating Tech, Experiences Growth in an Age of Online Education*, Dallas Innovates (June 18, 2020), <https://dallasinnovates.com/examsoft-a-provider-of-anti-cheating-tech-experiences-major-growth-in-an-age-of-online-education/>.

⁸⁸ ExamSoft, August 5th Tweet, *supra* note 12.

⁸⁹ Jesse, *supra* note 11.

⁹⁰ *Id.*

⁹¹ McMasters, *Cybersecurity*, *supra* note 5, at 8.

disable all antivirus applications.”⁹² Further, the remote monitoring software carries “the further risk of the compromise of data compromising video of the user taking the test, even if the examinee uses a laptop containing no other personal information.”⁹³ Worse yet, there is a serious risk that hackers may gain unauthorized access to confidential work-product,⁹⁴ especially if a bar examinee takes the exam using a computer or network belonging to a law firm or other legal organization.⁹⁵ As a result, the remote bar exam exposes October Candidates to a serious risk that their personal information and confidential work-product will be compromised by hackers. Exhibit H.

In addition, administering the bar exam using remote testing software always carries the risk that random technological errors will alter an examinee’s results. *Rapidly transitioning* to an online testing format substantially increases this risk, and these errors can be fatal to a candidate’s performance.⁹⁶ This occurred in May of 2020 after the College Board rapidly transitioned its in-person Advanced Placement examinations to online testing in a period of just two months. A class action lawsuit filed by aggrieved students is now pending after nearly 20,000 students could not

⁹² *Id.* at 9.

⁹³ *Id.* at 7.

⁹⁴ *Id.* at 8.

⁹⁵ Ryan Blanch, *It’s Time Law Firms Quit Taking Cybersecurity for Granted*, Security Boulevard (June 6, 2020), <https://securityboulevard.com/2020/06/revils-lessons-its-time-law-firms-quit-taking-cybersecurity-for-granted/#>.

⁹⁶ *See id.* at 11–12; Sloan, *Indiana and Nevada*, *supra* note 37.

upload their exam.⁹⁷ The College Board has since scrapped its plan to administer the SAT college entrance exam remotely this fall.⁹⁸

More recently, the American Board of Surgery (ABS) canceled its qualifying exam after “the remote-proctoring service collapsed, causing delays, interruptions, and ultimately, a break down of the entire exam.”⁹⁹ Despite “ongoing extensive testing of the revised model of the exam with remote proctoring,” the ABS “found that the delivery of exam items continued to be both inconsistent and unreliable.”¹⁰⁰ The ABS said that it will not be possible to administer a new qualifying exam for at least two months.¹⁰¹

Recall that ExamSoft caused “Barmageddon” in July 2014 when, during the administration of an *in-person exam*, tens of thousands of bar examinees experienced delays and failures in uploading their completed exams.¹⁰² Because ExamSoft’s remote testing platform will likely involve “continuous buffering, compression, and encryption of [an] examinee’s video/audio feed . . . , the resulting processing needs

⁹⁷ Adelle Engmann, *College Board is Sued for \$500 Million over Online AP Exam*, Puyallup Post (June 19, 2020), <http://www.puyalluppost.com/college-board-is-sued-for-500-million-over-online-ap-exam.html/>; Collin Binkley, *SAT Drops Plans for Home Exam Amid Internet Access Concerns*, AP News (June 2, 2020), <https://apnews.com/2f1a4b63b1309a2ba7910027208e5ccf>.

⁹⁸ Binkley, *supra* note 97.

⁹⁹ *FAQs–2020 Virtual General Surgery Qualifying Exam*, ABS, http://absurgery.org/default.jsp?faq_virtualgsqe2020 (last visited Aug. 15, 2020).

¹⁰⁰ *ABS Update Regarding the July 16–17 General Surgery Qualifying Exam*, ABS, http://absurgery.org/default.jsp?news_virtualgsqe07.16 (last updated July 17, 2020).

¹⁰¹ *FAQs*, *supra* note 99.

¹⁰² See Sloan, *Barmageddon*, *supra* note 48.

[are] likely to overwhelm more applicant machines than the ExamSoft local software” used for in-person exams.¹⁰³ As a result, there is a serious technological risk that examinees with “less powerful computers and lower socioeconomic means” will experience a “computer crash potentially result[ing] in examination failure.”¹⁰⁴

Instead of learning from “Barmageddon” and the ABS’s and College Board’s failed attempts to develop and administer reliable online exams with little notice, the Pennsylvania Board of Law Examiners will transition the bar exam to an error-prone online platform susceptible to sophisticated cyberattacks in less than two months. This unreasonably places October Candidates at risk and undermines the reliability of the remote exam software. As one of the three primary exam software vendors recently announced, “[I]t is plain that remote proctoring was not envisioned for use on large-scale, simultaneous-start ‘event’ exams.”¹⁰⁵

c. The COVID-19 crisis compounds October Candidate stress, further undermining the efficacy of a remote bar exam as a measure of competency.

The COVID-19 crisis has imposed levels of stress and psychological distress incommensurate with those ordinarily attendant to bar exam preparation. Candidates ordinarily struggle with stress, lack of motivation, and distractions: “Most attorneys,

¹⁰³ McMasters, Technical Feasibility, *supra* note 83, at 21.

¹⁰⁴ *Id.* at 22.

¹⁰⁵ Bar Exam Tracker (@BarExamTracker), Twitter (Aug. 7, 2020 4:59 P.M.).

no matter how long ago they took a bar exam, can still remember how stressful the process was.”¹⁰⁶ However, October Candidates have endured greater levels of stress and psychological distress throughout their exam preparation:

The pandemic has disrupted the ability to satisfy core human needs in almost all areas to an alarming extent. Most of the population is worried about meeting their most basic needs (e.g., paying rent, buying food) as a result of economic hardship (e.g., unemployment) as well as an increasing scarcity of resources (e.g., food, cleaning products, personal protective equipment such as masks). People are living in a chronic state of fear of contracting the virus.¹⁰⁷

October Candidates have been studying for the exam while in a state of constant uncertainty, confusion, and fear:

In addition to protecting the public health, we need to preserve the mental health of the candidates hoping to join our profession this year. Those candidates are already suffering educational, family, and financial disruptions. Some have lost part-time jobs needed to support themselves and their families. Others are struggling to care for children or older relatives. All are panicked about whether they will be able to take the bar exam this summer and, if not, how they will cope. Will they be able to find jobs without a law license? Will they study intensely for the bar only to discover that the exam has been cancelled or postponed? This emotional stress is building by the day¹⁰⁸

¹⁰⁶ See Riebe, *supra* note 59, at 318–19.

¹⁰⁷ Sanderson et al., *supra* note 60 (citation omitted).

¹⁰⁸ Claudia Angelos et al., The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action, Scholarly Works (2020) (manuscript at 7), <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=2309&context=facpub>.

Simply put, the COVID-19 crisis has magnified the stress inherent in bar exam preparation to such an untenable level that most October Candidates now “have a decreased likelihood of passing their bar exams.”¹⁰⁹

2. The postponements of the July and September Exams and the transition to remote testing for the October Exam have imposed extraordinary financial and opportunity costs on October Candidates.

In the licensure context, the heightened rational basis test requires that this Court consider “the opportunity and financial costs imposed” by the licensure requirement. *See Ladd*, slip op. at 29 n.18. In terms of financial costs, October Candidates have suffered discrete financial harms due to the postponements of the July Exam (81.5%) and the September Exam (at least 74%). Exhibit D-1. The harm is so burdensome that only 39.1% of 299 respondents reported that they are financially able to study through the October Exam. *Id.* In fact, over 30% of 234 respondents anticipated needing to apply for a bar loan because of the second postponement of the July Exam. *Id.* In fact, the decision to transition to the remote October Exam will impose *additional* financial costs on October Candidates due to logistical issues:

Could test-takers access the exam from home computers? If so, will all of them have necessary internet access and quiet locations for test-taking? If test-takers need to visit testing centers, will those centers

¹⁰⁹ *See Riebe, supra* note 59, at 338–39.

offer enough capacity to accommodate the large number of test-takers?
Will the testing centers offer sufficient health precautions?¹¹⁰

Nearly two-thirds of all Candidate-Declarants expressed some level of concern that their internet access is not suitable for a three-day online exam. Exhibit D-2. Further, 61.6% reported that they do not have a suitable place in their home to take the remote bar exam.¹¹¹ *Id.* As a group of law professors have noted,

Even in normal circumstances, some prospective test-takers would not have easy access to an adequate space to prepare for or take a multi-day high stakes exam. As a result of stay at home orders, many prospective bar exam takers are living in cramped quarters with extra people, have young children needing their supervision, and are contending with noisy distractions. Some arrangements would, therefore, have to be made for quiet, secure remote locations where the exam could be administered to test takers in small numbers.¹¹²

However, administering the remote October Exam in person to candidates would contravene the purpose behind postponing the September Exam and transitioning it to online in the first place—namely, “to reduce stress on applicants who would otherwise be confronted with taking an exam in person, with masks, in the midst of a pandemic; and to avoid unnecessary risk to the health of applicants, proctors and Board staff who would attend an in-person exam.” Exhibit C-2.

¹¹⁰ Angelos et al., *supra* note 108, at 4.

¹¹¹ A suitable remote testing space is “a quiet room with internet access where [an examinee] can be alone and uninterrupted during the exam” without any other people or pets present during testing. *October Exam FAQs*, PABLE, *supra* note 3.

¹¹² *Id.*

Many October Candidates will incur additional costs because they may need to pay for a suitable place to take the remote bar exam. Others may need to pay for childcare or care services for loved ones and/or for workspaces for family members in order to take the exam in their own homes. *See* Exhibits D-1, at 8, 12, 14; D-2. Some candidates will also need to purchase or otherwise obtain a computer with a built-in video camera and microphone.¹¹³ Certainly, those candidates who previously registered to handwrite their exam answers will now need to pay the \$115.00 computer-based testing fee; they may even need to purchase a computer with the minimum requirements for the remote testing software. Exhibit G. However, many of them may have registered as hand-writers simply because they could not afford a computer with the minimum requirements in the first place. During the COVID-19 crisis *any* additional financial costs will impose even greater hardships on the majority of October Candidates, particularly for candidates of color,¹¹⁴ candidates with little or no income, candidates whose loved ones depend on them for financial support (32.9%), and candidates who have experienced gaps in healthcare coverage (42.7%). *See* Exhibit D-1.

¹¹³ *October Exam FAQs*, PABLE, *supra* note 3.

¹¹⁴ *See* Press Release, Fed President Patrick Harker Says COVID-19 Crisis Has Heightened Income and Racial Disparities, Fed. Res. Bank of Phila. (May 28, 2020), <https://www.philadelphiafed.org/newsroom/press-releases/2020/052820>.

The vast majority of October Candidates have been unable to offset these additional financial costs—let alone cover the costs of rent—considering 72.4% responded that they lost income due to the July Exam’s first postponement. *Id.* The second postponement caused further harm, as 81.8% responded that they either lost or expected to lose income now that they cannot take the exam until October. *Id.* These losses of income are unduly burdensome, particularly considering 65.4% of Candidate-Declarants must make student-loan payments starting this October/November. Exhibit D-2.

These burdensome financial costs resulted from the oppressive opportunity costs imposed on October Candidates due to the postponements of the July Exam. Of Candidate-Declarants, 158 had their employment start dates delayed, while another thirteen had their job offers rescinded outright. Exhibit D-2. Over 25% have not been able to secure full-time legal employment because employers are seeking to hire fully licensed attorneys. *Id.* Of all Candidate-Declarants, 35.7% forewent income and opportunities in their prior careers when they decided to attend law school, and the rest forewent opportunities to pursue other careers because they chose to pursue occupations as lawyers. *Id.*

Given that Pennsylvania has administered a bar exam in July since at least 1968,¹¹⁵ 93.3% of Candidate-Declarants reasonably expected to sit for the July 2020

¹¹⁵ See London et al., *supra* note 27, at 947.

Bar Exam. Exhibit D-2. Considering that over the last ten years 81.6% of Pennsylvania bar examinees passed on their first attempt, Exhibit L, October Candidates also anticipated that they would most likely begin their careers within months after their law school graduations. In short, the decisions to postpone the July and September Exams and strictly adhere to Pa. B.A.R. 203(b)(1) impose opportunity and financial costs on October Candidates unlike those ever before imposed on Pennsylvania Bar examinees.

B. Emergency licensure is an adequate, less costly and more reliable alternative to the bar exam during the COVID-19 crisis.

Strict adherence to Pa. B.A.R 203(b)(1) is “unduly oppressive” and patently unnecessary in this case because a well-regulated emergency licensure scheme is a “less drastic and intrusive alternative” that would adequately protect the public from incompetent legal representation. *Ladd*, slip op. at 21, 32 (first quoting *Shoul*, 173 A.3d at 677; then quoting *Mahony*, 651 A.2d at 528). The decisions of the Louisiana, Oregon, Utah, and Washington Supreme Courts clearly evince that emergency licensure is a sufficient alternative to the traditional bar exam during the COVID-19 crisis. *See* Exhibits A-1 to A-4. Further, the Pennsylvania Bar Association’s and the Pennsylvania law deans’ recommendations in favor of diploma privilege support that, if properly regulated, emergency licensure will protect Pennsylvanians from incompetent legal representation.

Louisiana, Oregon, Utah, and Washington each limited eligibility for emergency licensure to graduates of ABA-accredited law schools. *See* Exhibit A-1 to A-4. The ABA-accreditation requirement is relevant because a law school would lose its accreditation unless at least 75% of its graduates who sit for a bar exam pass within two years. *See* ABA Standard 316. Utah further limited eligibility to ABA-accredited law schools with an overall first-time examinee bar passage rate in 2019 of 86 percent or greater, which encompassed its in-state law schools. Exhibit A-3. Oregon adopted a similar limitation but also offered emergency licensure to its in-state law schools, which would not have met the 86-percent threshold.¹¹⁶

Louisiana and Washington declined to prescribe a minimum first-time bar-passage rate, Exhibit A-1, A-4, because many of those who do not pass the bar exam on their first attempt successfully pass the exam during a subsequent attempt. Exhibit B-2. Indeed, “data shows that, in the aggregate, 89.5% of 2017 law graduates who sat for a bar exam passed it within two years of graduation.”¹¹⁷ This may explain why Washington did not limit emergency licensure to only first-time examinees. Exhibit A-4.

¹¹⁶ Derek T. Muller, *Three Curiosities of Oregon’s Diploma Privilege Rule for the 2020 Bar Exam*, Excess of Democracy (June 30, 2020), <https://excessofdemocracy.com/blog/2020/6/three-curiosities-of-oregons-diploma-privilege-rule-for-the-2020-bar-exam>.

¹¹⁷ *ABA Section of Legal Education Releases Comprehensive Report on Bar Passage Data*, A.B.A. (Feb. 18, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/02/aba-section-of-legal-education-releases-comprehensive-report-on-/>.

Washington and Utah offered emergency licensure to qualifying candidates regardless of when they graduated. Exhibits A-3, A-4. Louisiana and Oregon limited eligibility to 2020 law school graduates, Exhibits A-1, A-2, but emergency licensure should not be so limited in the instant case because that would exclude first-time Pennsylvania bar examinees who are otherwise similarly situated to 2020 graduates. Some of them have never taken the bar exam of any jurisdiction and therefore, like 2020 graduates, have not yet had their minimum competency measured. In fact, others have taken *and passed* another jurisdiction's bar exam, evincing that they almost certainly possess the legal knowledge and skills to practice under Pennsylvania law with minimum competency. Thus, this Court should consider offering emergency licensure to any first-time Pennsylvania Bar examinee who graduated from an ABA-accredited law school and who has never failed the bar exam of any jurisdiction.

Washington and Oregon did not prescribe any additional requirements for those eligible for emergency licensure, Exhibits A-2, A-4, though this Court may do so if necessary to protect the public against incompetent legal representation. Louisiana, for instance, is requiring that eligible candidates complete additional hours of CLE and its mentoring program for newly admitted lawyers. Exhibit A-1. Candidates who fail to comply with these requirements would become ineligible to practice law in Louisiana until they complete the requirements. *Id.*

Utah is the only state that has conditioned emergency licensure upon completion of a supervised-practice requirement. Exhibit A-3. The purpose behind this requirement is to provide eligible candidates “with supervised training in the practice of law and to assist the [Utah] Bar and the judiciary in discharging their responsibilities to help create a just legal system that is accessible to all.” *Id.* Utah is requiring that candidates perform 360 hours of supervised practice, *id.*; however, the PBA COVID-19 Task Force previously indicated that 250 hours would be sufficient, but no more than necessary, to protect the public against incompetent legal representation. Exhibit B-5. However, the PBA has since suggested that a supervised-practice requirement is *not* necessary to protect the public’s interest, so long as eligible candidates complete “a Pennsylvania Bridge the Gap course – virtually or in person – prior to being granted a diploma privilege rather than at the conclusion of the first continuing legal education compliance period.” Exhibit B-2.

This Court, as the ultimate authority over the bar admissions process, would have discretion over the development of an emergency licensure scheme. In fact, the possibilities are endless,¹¹⁸ and, of course, candidates would still be required to satisfy the standard character-and-fitness requirements and pass the Multistate Professional Responsibility Exam. In order to protect the rights of October Candidates, this Court should condition this one-time exception to Pa. B.A.R.

¹¹⁸ See, e.g., Angelos et al., *supra* note 108, at 5–6.

203(b)(1) upon what it deems sufficient, but no more than necessary, to protect the public against incompetent legal representation.¹¹⁹

In light of the deficiencies in the administration of a reduced-question, remote bar exam and the immeasurable financial and opportunity costs imposed on October Candidates by the postponements of the July and September Bar Exams, strict adherence to Pa. B.A.R. 203(b)(1) in this case is “unduly oppressive” and “patently beyond the necessities” because emergency licensure is an adequate alternative that would secure and protect the public from incompetent legal representation. *See Ladd*, slip op. at 22 (quoting *Nixon*, 839 A.2d at 287). Thus, in the case of October Candidates, the costs of strict adherence to the exam requirement outweigh this Court’s legitimate objective of protecting the public’s interest. *See id.* at 22, 25. Accordingly, in this case Pa. B.A.R. 203(b)(1) impermissibly infringes on the individual right to pursue one’s chosen lawful occupation, in violation of Article I, Section 1 of the Pennsylvania Constitution.

¹¹⁹ This Court should, however, consider offering specially tailored hardship waivers to certain groups within the October Exam cohort whose unique circumstances would prevent them from completing certain requirements. For instance, candidates of the Judge Advocate General (JAG) Corps, pursuant to their military obligations, (1) may need to relocate to another jurisdiction, (2) must complete a rigorous civil and military legal education program, and (3) may need to practice under supervision for at least eighteen months upon completing the legal education program. *See, e.g.*, Exhibit K-11 (Navy JAG); Exhibit K-10 (Army JAG). Thus, this Court should consider granting automatic diploma privilege to October Candidates who are JAG candidates.

For these reasons, this Court must offer the option of emergency licensure to qualifying October Candidates to avoid violating their constitutional rights while preserving the public's interest in competent legal representation.

C. This Court should protect the constitutional interests at stake here because, unlike in ordinary cases challenging a licensing statute, there is simply no legislative deference for the Court to show.

While the above analysis is sufficient to show that a legislative determination would not survive a challenge under Article I, Section 1, the case here weighs even *more heavily* in favor of Petitioners request for relief. Here, there is no legislative role; there is no legislation, and there simply is no deference for the Court to show since it alone has exclusive authority to license attorneys. Pa. Const. art. V, § 10(c); *In re Splane*, 16 A. at 482–83.

From *Nixon* to *Ladd*, this Court has repeatedly explained that the heightened rational basis test—while broader than its federal analogue—is fundamentally still deferential to the legislature, as “the exercise of the police power, is one for the judgement, in the first instance, of the law-making branch of the government.” *Ladd*, slip op. at 20 (quoting *Shoul*, 173 A.3d at 677). Here, however, is the rare instance where Petitioners are asking the Court to set aside its own professional regulation in response to an unprecedented global crisis. Viewed through this lens, this Court should be more inclined to protect the constitutional interests at stake here than it would in an ordinary case challenging a licensure statute.

REQUEST FOR RELIEF

For all of the above reasons, Petitioners request that the Court provide the following relief:

- A. That the Court offer emergency licensure to October Candidates who graduated from an ABA-accredited law school and who have never failed the bar exam of any jurisdiction, subject to conditions this Court deems sufficient but not more than necessary to protect the public's interest in competent legal representation; and
- B. Such further relief as the Court deems appropriate.

CONCLUSION

For all of the reasons set forth more fully herein above, Petitioners respectfully request that this Honorable Court grant the relief requested.

Respectfully submitted:



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CERTIFICATION OF SERVICE

I, Michael J. Engle , hereby certify that I caused a copy of the foregoing to be filed and served upon the following person by overnight mail:

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Harrisburg, PA 17106-2535
(717) 231-3350




/s/ Michael J. Engle
Michael J. Engle, Esquire

8/17/2020

CERTIFICATION OF COMPLIANCE WITH RULE 2135

I certify on this seventeenth day of August, 2020, that the Petition for Extraordinary Relief Under King's Bench Jurisdiction filed in the above captioned matter does not exceed 14,000 words. Per the word processor used to prepare this document, the word count is 13,887 as counted by Microsoft Word.


/s/ Michael J. Engle
Michael J. Engle, Esquire

CERTIFICATION OF COMPLIANCE WITH PA.R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Cases Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.



/s/ Michael J. Engle _____
Michael J. Engle, Esquire

8/17/2020

LIST OF EXHIBITS

- Exhibit A-1:** Supreme Court of Louisiana, Emergency Bar Admission Order
- Exhibit A-2:** Supreme Court of Oregon, Order Approving 2020 Attorney Admissions Process
- Exhibit A-3:** Supreme Court of Washington, Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules
- Exhibit A-4:** Supreme Court of Utah, Order for Temporary Amendments to Bar Admissions Procedures During COVID-19 Outbreak
- Exhibit B-1:** Letter from the Deans of Duquesne University School of Law, Drexel University Thomas R. Kline School of Law, Penn State Dickinson Law, Penn State Law, Rutgers Law School, Temple University Beasley School of Law, University of Pennsylvania Carey Law School, University of Pittsburgh School of Law, Villanova University Charles Widger School of Law, and Widener Commonwealth Law School, to David R. Fine, Chair, Pennsylvania Board of Law Examiners (July 17, 2020).
- Exhibit B-2:** Pennsylvania Bar Association Board of Governors Recommendation in Support of Diploma Privilege
- Exhibit B-3:** American Bar Association Resolution Regarding the Administration of In-Person and Remote Bar Examinations (Aug. 4, 2020)
- Exhibit B-4:** Letter from Angela Campana Lovecchio, President, Lycoming Law Association, to the Pennsylvania Board of Law Examiners (Aug. 4, 2020)
- Exhibit B-5:** Pennsylvania Bar Association COVID_19 Task Force Initial Recommendation and Report (April 7, 2020)
- Exhibit C-1:** Pennsylvania Board of Law Examiners, Announcement of Postponement of the September 2020 Pennsylvania Bar Exam

- Exhibit C-2:** Pennsylvania Board of Law Examiners, Announcement of Postponement of the July 2020 Pennsylvania Bar Exam
- Exhibit D-1:** Law Students for Equitable Responses to COVID-19, October Pennsylvania Bar Candidate Hardship Survey
- Exhibit D-2:** Candidate-Declarant Hardships—Statistics
- Exhibit E-1:** List of Jurisdictions Administering October 2020 Remote Bar Exams Using ExamSoft as Software Vendor
- Exhibit E-2:** ExamSoft, Inc., Webpages for Jurisdictions Administering October 2020 Remote Bar Exams (preserved on July 25, 2020)
- Exhibit E-3:** List of Jurisdictions Categorized By Likely Bar Exam Software Vendor
- Exhibit F:** Pennsylvania Board of Law Examiners, Nonstandard Testing Accommodations Information (NTA)
- Exhibit G:** Supreme Court of Pennsylvania, Order Permitting Limited Practice by Persons Unable To Sit for July 2020 Pennsylvania Bar Examination Because of COVID-19
- Exhibit H:** Letter from August 2020 Florida Bar Examinees to Charles T. Canady, Chief Justice of the Florida Supreme Court (August 10, 2020)
- Exhibit I:** Letter from David R. Fine, Chair, Pennsylvania Board of Law Examiners, to the Deans of Pennsylvania Law Schools and Rutgers Law School (July 22, 2020)
- Exhibit J:** Total Numbers for Declarations in Support Submitted by October Pennsylvania Bar Candidates, Law School Faculty Members, and Members of the Pennsylvania Bars
- Exhibit K-1** Declaration of Robert Suite
- Exhibit K-2** Declaration of Mary Beth Kuznik

- Exhibit K-3** Declaration of Brandon VanTine
- Exhibit K-4** Declaration of Robert Gavin
- Exhibit K-5** Declaration of Christian Wolgemuth
- Exhibit K-6** Declaration of Jessica McDermott
- Exhibit K-7** Declaration of Raven Moore
- Exhibit K-8** Declaration of Derek Demeri
- Exhibit K-9** Declaration of Catherine Cuff
- Exhibit K-10** Declaration of Michelle Tabach
- Exhibit K-11** Declaration of Karla Pisarcik
- Exhibit K-12** Declaration of Caroline Robelen
- Exhibit K-13** Declaration of Karli Study
- Exhibit K-14** Declaration of Pretty Martinez
- Exhibit K-15** Declaration of Ryan Aloysius Smith
- Exhibit L** Pennsylvania Bar Examination, Passage Rates on First Attempt, July Exams 2010–2019
- Exhibit M** Letter from Nicole A. Ozer, Technology & Civil Liberties Director, ACLU Foundation of Northern California, Melissa Goodman, Director of Advocacy/Legal Director, ACLU Foundation of Southern Pennsylvania, David Loy, Legal Director, ACLU Foundation of San Diego & Imperial Counties, to the Justices of the California Supreme Court (July 16, 2020)

Exhibit

A-1

SUPREME COURT OF LOUISIANA

O R D E R

Acting under the authority of Article V, Section 1 of Constitution of 1974, and the inherent power of this Court, and considering continuing need to modify the administration of the Louisiana bar examination in light of the spread of Coronavirus Disease 2019 (COVID-19),

WHEREAS, the Court previously issued an Order dated May 13, 2020 amending Part I of the written examination required by Section 7 of Supreme Court Rule XVII;

WHEREAS, the Court acknowledges that the COVID-19 pandemic has placed an unprecedented and extraordinary burden on applicants registered for the July and October 2020 Louisiana bar examinations;

WHEREAS, on July 11, 2020, Governor John Bel Edwards announced additional Phase 2 mitigation measures in Proclamation Number 89 JBE 2020;

WHEREAS, on July 15, 2020, the Court announced the cancellation of the July 2020 in-person and remote bar examination due to the rising coronavirus infection rate;

WHEREAS, the Court considered input from the Louisiana Supreme Court Committee on Bar Admissions and the deans of the four Louisiana law schools relating to the bar examination and the impact the COVID-19 virus is having on its administration;

IT IS HEREBY ORDERED THAT:

- I. Prior Order. This Order shall supplement the Order of this Court dated May 13, 2020.

II. Emergency Admission of Qualified Candidates.

1. Part I of the multi-part written examination required by Section 7 of Supreme Court Rule XVII, as modified by this Court's May 13, 2020 Order, is hereby waived for "Qualified Candidates."
2. A person shall be considered a Qualified Candidate if the person has:
 - a. Already completed registration for either the July or October 2020 Louisiana bar examination in accordance with the instructions issued by the Louisiana Supreme Court Committee on Bar Admissions;
 - b. Graduated in December, 2019 or later from an ABA-accredited law school; and
 - c. Not previously sat for any bar examination in any state or territory in the United States and will not be taking the bar examination in any state or territory in the United States in 2020.
3. Qualified Candidates must satisfy all other requirements for admission outlined in Supreme Court Rule XVII, including demonstrating requisite character and fitness and passing the Multi-State Professional Responsibility Examination. Upon completion of all requirements, the admission will be effected as soon as practically possible by the Louisiana Supreme Court Committee on Bar Admissions and the Clerk of the Louisiana Supreme Court.
4. In addition, Qualified Candidates who are admitted upon emergency waiver of the written examination pursuant to Section II.1 above must fulfill the additional requirements set forth below no later than December 31, 2021. Failure to complete these requirements shall result in a Qualified Candidate being certified ineligible to practice law in Louisiana until such requirements are fulfilled:

a. Complete 25 hours of CLE. 12.5 of the credits shall be obtained in accordance with the requirements set forth in Supreme Court Rule XXX(3)(b), and the remaining 12.5 hours may be in any other approved subject matter.

b. Complete all requirements of the Louisiana State Bar Association's "Transition Into Practice" program.

III. Remote Bar Examination.

1. No in-person bar examination shall be administered in Louisiana in 2020.

2. There shall be two remote administrations of the previously announced 1-day bar examination: August 24, 2020 and October 10, 2020.

3. The content and scoring details of the 1-day remote bar examination shall be the same as previously announced in this Court's May 13, 2020 Order. Applicants shall be permitted to use "scratch paper" during the remote examination.

4. Applicants who were currently scheduled to sit for either the July or October 2020 bar examination who are not Qualified Candidates may elect one of the following options for proceeding with their applications:

a. Withdraw the application for a full and complete refund of all application fees paid;

b. Transfer the application and fees, without further charge, to the (i) August 24, 2020 1-day remote bar examination; (ii) October 10, 2020 1-day remote bar examination; (iii) February, 2021 bar examination, or (iv) July 2021 bar examination.

c. Maintain a pending application for the October 10, 2020 1-day remote bar examination.

IV. Nothing in this Order shall prohibit a Qualified Candidate from sitting for any administration of the Louisiana bar examination; however, if such Qualified Candidate does not receive a passing score on the examination, he or she shall no longer be eligible for the Emergency Admission set forth in Section II above.

Given under our hands and seal this 22nd day of July A.
D., 2020, New Orleans, Louisiana.

FOR THE COURT:


Chief Justice Bernette J. Johnson

SUPREME COURT OF LOUISIANA

O R D E R

HUGHES, J., dissents.

I must disagree with the majority's decision to award what is commonly referred to as the "diploma privilege" to recent law school graduates. It is an overreaction, to the earlier overreaction to the virus, whereby the scheduled July bar examination was canceled.

We have entrusted the Committee on Bar Admissions to administer the bar examination, yet have ignored their objective recommendations, while expecting the Committee to oversee the window dressing for automatic admission, a thankless task.

I respectfully dissent.

SUPREME COURT OF LOUISIANA

O R D E R

GENOVESE, J., dissents and assigns the following reasons:

I vehemently disagree with and dissent from the Order of this Court dispensing with the taking of the July 2020 written examination (bar exam) by granting a “diploma privilege” solely on the basis of the seriousness and uncertainty of the Coronavirus affecting our nation, as there are alternatives.

Initially, I would like to point out that our Louisiana Supreme Court Rules require the taking and satisfactory completion of a written examination. There is no provision for a dispensation or waiver of said written examination. A significant number of states have opted for an online/remote bar exam which will insure the health and safety of any and all of its bar applicants; yet, this Court, by virtue of granting this “diploma privilege,” has improvidently chosen to waive and forego any testing at all of any and all bar applicants. This means that the class of 2020 gets a free pass and a law license with no bar exam, not even an online/remote one-day bar exam, and is virtually given a license to practice law with no testing at all. This privilege was not afforded the class of 2019 and undoubtedly will not be afforded the class of 2021, or any other class.

This Order labels this free pass as an “emergency admission.” And I ask, “Just what is the emergency?” There are over 22,000 lawyers licensed to practice law in Louisiana, all of which have taken a bar exam and are available for use by the public in general; but now, a majority of this Court will simply allow over 500 bar applicants to be given a license to practice law without any testing under the auspices of an “emergency.” Certainly, there is no shortage of attorneys nor is there any

emergency. The emergency, if any, is not allowing over 500 applicants into the practice of law without testing and a proof of competency. It should also be noted that the statistics show that approximately 25% of bar exam applicants fail the bar exam. That system of checks and balances will not be had. All bar applicants are let in, and over 100 bar applicants will be given a license to practice law when they should not have been. What other professions are allowing a professional license without testing?

Bar exam testing is sacrosanct and should be adhered to in order to insure competency in the practice law and for the protection of the public in general. As stated herein, there is presently available competent online/remote testing presently being used by several other states which, at the very least, should be required before giving out law licenses under the guise of a deemed emergency. I would require, at the very least, a test of some sort, and not a “give-away” license to practice law.

SUPREME COURT OF LOUISIANA

O R D E R

CRAIN, J., dissents with reasons.

Today we follow. We follow a small group of students who organized to advocate that they not be tested for minimal competency. We follow conflicted interests. We follow “the deans of the four Louisiana Law Schools” whose students, for the first time, would have been tested by someone other than their respective law schools. And today we follow three other states, Washington, Oregon and Utah, who prefer to gift a law license rather than test competency. Make no mistake about it, today we follow.

Without testing for minimal competency, the majority today grants “emergency” admission, or licenses to practice law, to over 500 new lawyers holding law degrees from both in-state and out-of-state law schools. As noted by my colleague, Justice Genovese, where is the “emergency” to admit over 500 new lawyers to practice law without testing minimal competency? If anything, removing the sole competency filter for admission to the practice of law will *create* an emergency, not eliminate one. The bar examination acts to protect the public from basic incompetency. Are our counterparts in the medical and accounting professions handing out licenses to practice medicine and certificates of public accounting without testing competency? We owe a responsibility to the public that an individual certified as a legal professional be actually qualified for the certification.

This court explained the origin and the importance of requiring passage of the bar exam in *Bester v. Louisiana Supreme Court Comm. on Bar Admissions*, 2000-1360 (La. 2/21/01), 779 So. 2d 715, 718:

The Louisiana Legislature has specifically recognized this Court's authority to regulate bar admissions. Some 77 years ago, the Legislature, in an effort to “promote legal education by requiring better qualifications of candidates for admission to the Bar ...” called upon this Court to establish procedures for examining the competence of persons to practice law. 1924 La. Acts 113. In that Act, the Legislature provided:

Be it enacted by the Legislature of Louisiana, That every applicant for admission to the Bar of this State, whether holding a diploma from a Law School or not, before being licensed to practice law shall be required to pass a satisfactory examination before the Committee of Bar Examiners of the Supreme Court, on such subjects and under such rules and regulations as are now, or may hereafter be, prescribed by the Supreme Court ...

In 1999, the provisions concerning bar admission were moved from the Articles of Incorporation of the Louisiana State Bar Association to the Supreme Court Rules. Nonetheless the requirement to take and satisfactorily pass the bar examination remains. *See* La. S. Ct. Rule XVII Sect. 3(F).

Based upon historical performance, at least twenty percent, and likely more, would not have passed our bar examination. The excuse for gifting licenses to applicants who have not proven their competency is the COVID-19 pandemic. Will we allow that as an excuse against the victims of incompetence? Further, the decision to forego the bar examination was not because we are incapable of administering the test safely. The Committee on Bar Admissions has taken monumental steps, partnering with medical and other interests throughout the state to construct a safe environment in compliance with Centers for Disease Control (“CDC”) guidelines for in-person testing. The majority rejected their efforts and advice, the very committee entrusted to “regulate the admission of qualified applicants to the Bar of this state.” *See* Sup. Ct. Rule XVII.

On the other hand, we recently lifted the ban on jury trials and are now ordering Louisiana citizens to courthouses throughout the state to perform their civic duty. Our citizens are doing their critical part to keep our justice system functioning.

They should be applauded. In contrast, these applicants are being gifted a license to practice law because the majority concluded they cannot safely show up for the test. However, once practicing they will be required to go to court like everyone else.

It is not my intent to minimize either the pandemic or the challenges these students have faced and overcome to get to this point. The pandemic is a challenge and its risks are real. But, the virus is not going away. We must adapt to living with it, and we can. The majority ignored the practical solutions to confront the health concerns. The examination, which is typically given over a three-day period, was to be administered in one day, giving the applicants the option of testing in July or October and in person or remotely. While skeptical of the necessary rigor of a one-day exam, I voted to give the one-day test, seeing it as a reasonable alternative to a “diploma privilege.”

After our court approved that plan in April, the Committee on Bar Admissions began implementation. Locations were obtained across the state. Medical screening was arranged. Directives and guidelines from the CDC were complied with, including requiring masks and social distancing. The applicants began preparing for the test. They could test remotely if at risk or symptomatic on the date of the test. But, despite these sensible solutions, the majority has now chosen to gift a license to practice law to untested applicants. Membership in the profession of law has always been characterized as a privilege, not an entitlement. Today that appears to have changed, and I fear we may unintentionally be joining a broader effort to eliminate such high-stakes testing.

The inequities and inconsistencies spawned by this decision are too many to number. Why is taking the bar examination not safe for those “qualified candidates,” but safe enough for those who are not “qualified candidates”? The latter will be tested in August and October. Are they not affected by the pandemic? Why should a person who took the bar previously, but failed due to unfortunate events that

undermined their preparation, now be denied a “diploma privilege” when we know at least twenty percent of these 2020 applicants would have also failed? As applied, the order rendered by the majority is unfair and results in disparate and random treatment— the type of injustice the judicial system should seek to prevent and remedy. Equity does not demand that a select few applicants be admitted, but that *all* be tested.

Today our court stands nearly alone. Unfortunately, I do not believe we have distinguished ourselves in a positive way. Given the opportunity to be an example for overcoming challenges, we lost our will to persevere. When Hurricane Katrina hit, this state became well-known for its fight and grit during those near hopeless times. Numerous test results from the bar examination administered in the summer prior to Hurricane Katrina’s landfall were destroyed. Still, we did not forego the requirement of a bar examination. The affected applicants had the opportunity to *retake* portions of the exam. Not even in the face of flood-induced homelessness, near complete displacement, and death did we eliminate this prerequisite. Those students took the examination, or at least parts of it, *twice*. Those applicants rose to the occasion and proved themselves worthy of a law license and the public’s trust. I have no doubt the current applicants could do the same.

We have the constitutional authority to define and regulate all facets of the practice of law. Draped with this authority, and at a time when our leadership is most needed, we followed. As stewards of our third branch of government, we have done an incalculable disservice to the public, our profession, and these otherwise deserving students. Gifting a license to practice law is wrong. Consequently, I dissent.

Exhibit A-2

In the Matter of 2020 Attorney
Admissions Process

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SUPREME COURT ORDER
No. 20-012

ORDER APPROVING 2020 ATTORNEY
ADMISSIONS PROCESS

At a public meeting on June 29, 2020, the Oregon Supreme Court considered requests from the deans of the three Oregon law schools, and considered input from the Oregon Board of Bar Examiners (Board), relating to the upcoming July 2020 Oregon Bar examination and the spread of the COVID-19 virus.

WHEREAS, the Chief Justice previously issued Chief Justice Order 2020-09 (Order Amending Oregon State Bar Rules for Admission and Bar Rules of Procedure During COVID-19 Outbreak), to allow the Oregon State Bar and Board additional flexibility in administering the July 2020 Oregon Bar examination;

WHEREAS, the court acknowledges that the spread of the COVID-19 virus represents an extraordinary burden to applicants registered for the July 2020 Oregon Bar examination and that that burden has had a significantly unequal impact on applicants;

WHEREAS, the Board understands that the rules governing the practice of law permit recent law school graduates to work under the supervision of a member of the Oregon State Bar; and

WHEREAS, this court has inherent authority to regulate the practice of law in Oregon, including regulating admissions to the Oregon State Bar (Bar), under Article VII (Amended), section 1, of the Oregon Constitution, and ORS 9.006, has authority to direct the manner of examination for applicants for admission to the Oregon State Bar, under ORS 9.210 and ORS 9.220;

THE COURT HEREBY ORDERS:

1. Addition of Remote October 2020 Bar Examination
 - a. Under this court's Rules for Admission of Attorneys (RFA) 5.05, the Board shall offer a special bar examination, to be remotely administered on October 5 to 6, 2020, using examination materials provided by the National Conference of Bar Examiners.
 - b. Any person who obtains a passing score on the October 2020 Oregon Bar examination, and who otherwise is eligible for admission under the Rules for Admission of Attorneys, shall be admitted to practice law in Oregon. However, the October 2020 Oregon Bar examination will not be a Uniform Bar Examination (UBE).
 - c. The October 2020 Bar examination may be administered to:

- (1) Any person who submitted a complete application, postmarked by May 30, 2020, for the July 2020 Oregon Bar examination; and
 - (2) Any person who took, but failed to pass, the February Oregon 2020 Bar examination and who did not submit a complete application, postmarked by May 30, 2020, for the July 2020 Oregon Bar examination.
 - d. Except as provided in subparagraph 1.c., the Chair of the Board of Bar Examiners (Chair) shall have discretion to expand enrollment for the October 2020 Bar examination to individuals not identified in subparagraph 1.c., but who otherwise qualify to sit for a bar exam under the Rules for Admission. The Chair also shall have discretion to impose a limit on the total number of applicants enrolled under this subparagraph.
 - e. A person who takes any bar examination in the United States in 2020 after the issuance of this order is not eligible to sit for the October 2020 Oregon Bar examination.
 - f. The Board shall have discretion to impose deadlines for submitting complete applications, including the payment of fees, for the October 2020 Oregon Bar examination.
 - g. For individuals registered for the July 2020 examination who elect to take the October 2020 examination, any monies paid by the individual toward the fees for the July 2020 exam will be applied as a credit toward the October 2020 exam.
2. 2020 Oregon Emergency Diploma Privilege
- a. Notwithstanding ORS 9.210(2), ORS 9.220(3), or the Rules for Admission of Attorneys, a person may be admitted to the Oregon State Bar without taking an Oregon Bar examination required by RFA 5.05 and RFA 5.15 if the person:
 - (1) Submitted a complete application, postmarked by May 30, 2020, for the July 2020 Oregon Bar examination, regardless of whether the person received an examination number; and
 - (2) Graduated in 2020 from either
 - (A) Lewis and Clark Law School, University of Oregon School of Law, or Willamette University College of Law; or
 - (B) Any other law school accredited by the American Bar Association that had an overall institutional bar examination passage rate, for persons taking a bar examination for the first time in 2019, of 86 percent (rounded to the nearest whole number) or greater.
 - b. A person who requests admission without taking a bar examination under subparagraph 2.a. must satisfy all other requirements for admission to be

admitted to the Bar, as outlined in the Bar Act, ORS chapter 9, and the Rules for Admission of Attorneys, including that the person demonstrates requisite good moral character and fitness.

- c. A person admitted to the Bar under this section will be a fully licensed member of the Bar with the same rights and responsibilities as other Bar members.
- d. The Board and Bar have discretion to develop any process necessary to implement this paragraph, including establishing a list of law schools qualifying under subparagraph 2.a.(2).(B).

3. Adjustment to Minimum Passing Score

Supreme Court Order 17-019, which set the pass score for the Oregon Bar examination at 274, is temporarily modified to allow for a minimum passing score of 266 for:

- a. The July 2020 Oregon Bar examination; and
- b. Any other Uniform Bar Examination taken between the date of this order and September 30, 2020, for purposes of admission to the Oregon Bar under RFA 19.05.

4. Additional Provisions

a. Applicant Election and Timeline

- (1) Any person currently registered for the July 2020 Oregon Bar examination may:
 - (A) Sit for the July 2020 Oregon Bar examination;
 - (B) Opt out of the July 2020 examination and elect instead to take the remote October 2020 Oregon Bar examination; or
 - (C) Opt out of all 2020 examinations and elect to request the diploma privilege if qualified to do so under this order.
- (2) Any person who is not currently registered for the July 2020 Oregon Bar examination, but who otherwise qualifies for diploma privilege under this order, may
 - (A) Elect to request the diploma privilege; or
 - (B) Elect to sit for the October Oregon Bar examination.
- (3) The Board has discretion to set a deadline for applicants to submit an application to sit for the October 2020 Bar examination.

- (4) The Board shall immediately develop a procedure for making the elections described in subparagraphs 4.a.(1) and (2), and announce that procedure on its website and through any other means that the Board deems necessary.
- (5) Any person who elects to request the diploma privilege must notify the Board of the election, in writing, on or before July 6, 2020, in the manner directed by the Board. No person may elect the diploma privilege after July 6, 2020.
- (6) Any person currently registered for the July 2020 Oregon Bar examination who opts out of the July 2020 examination and elects instead to take the remote October 2020 Oregon Bar examination must notify the Board of the election, in writing, on or before July 6, 2020, in the manner directed by the Board.
- (7) If the Board does not receive a timely election pursuant to subparagraph 4.a.(5)-(6) from an applicant currently registered for the July 2020 Oregon Bar examination, the applicant will remain registered for that examination.

b. Fees

The court delegates to the Board the discretion to determine whether, or to what extent, any fees may be refunded or additional fees may be required and the deadline for paying any required fees..

c. Waiver of Rules

Any Rule for Admission of Attorneys that is inconsistent with this order is waived.

d. Effective Date

This order becomes effective immediately.

Dated this 30th day of June, 2020.



Honorable Martha L. Walters
Chief Justice

Exhibit A-3

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Matter of Emergency Modifications to
Utah Supreme Court Rules of Professional Practice,
Rules Governing Admission to the Utah State Bar

**ORDER FOR TEMPORARY AMENDMENTS
TO BAR ADMISSION PROCEDURES
DURING COVID-19 OUTBREAK**

Based upon the Utah Supreme Court's constitutionally granted authority to regulate the practice of law in Utah, and in consideration of the public health threat currently posed by the novel infectious coronavirus (COVID-19), the Utah Supreme Court orders that the Bar Examination passage requirement be modified on an emergency basis for certain eligible Qualified Candidates as defined herein.

I. Definitions

- a. Unless otherwise defined in this Order, all terms defined in Rule 14-701 of the Supreme Court Rules of Professional Practice are hereby incorporated into this Order.
- b. "Qualified Candidate" means a person who:
 1. Is either:
 - A. A law school graduate who:
 - i. Has graduated by June 30, 2020 with a First Professional Degree in law from an ABA-approved law school that had an overall first-time taker bar examination passage rate in 2019 of 86% (rounded to the nearest whole number) or greater; and
 - ii. Has not, as of the date of this Order, previously sat for any bar examination

in any state or territory in the United States and will not be taking the bar examination in any state or territory in the United States in July 2020; or

- B. An attorney admitted by bar examination to another jurisdiction and meets all requirements of Rule 14-704(a) except for passing the Utah Bar Examination; and
2. Submitted an application for the Utah Bar Examination on or before April 1, 2020, in accordance with the information and instructions on the admissions website, including all fees and necessary application forms, along with any required supporting documentation, character references, and a photo. Late or incomplete applications will not be accepted.
- c. “Supervised Practice” means the 360 hours of supervised legal practice that a Qualified Candidate must complete under the supervision of a Supervising Attorney in accordance with and under section III of this Order.
 - d. “Supervising Attorney” means a person (or persons) who supervises the Qualified Candidate in accordance with and under section III of this Order and is either:
 - 1. An attorney who has:
 - A. An active Utah Bar license,
 - B. A minimum of 5 years as a licensed attorney in any U.S. state or territory,
 - C. A minimum of 2 years as a licensed attorney in the State of Utah, and
 - D. No record of public discipline in any jurisdiction in the United States; or
 - 2. A state court or federal court judge.

II. Emergency Admission of Qualified Candidates

- a. Qualified Candidates who meet all the requirements of subsection II(b) by no later than December 31, 2020, shall be admitted to the Utah Bar without passing the Utah Bar Examination. This admission will be effected as soon as practically possible.
- b. The burden of proof is on the Qualified Candidate to establish by clear and convincing evidence that she or he:
 1. Is a Qualified Candidate as defined in subsection I(b);
 2. Meets all requirements of Rule 14-703 (if applied to take the Bar Examination as a Student Applicant) or Rule 14-704(a) (if applied to take the Bar Examination as an Attorney Applicant), except for passing the Utah Bar Examination;
 3. Has passed or does pass the Multistate Professional Responsibility Examination by no later than December 31, 2020 unless no MPRE is offered in 2020 after the publication of this Order, in which case Qualified Candidates who have not yet passed the MPRE but have fulfilled all other requirements for admission under this Order will be given an extension to pass the MPRE until after scores are published following the first MPRE administered in 2021;
 4. Has provided a completed criminal background check by no later than December 31, 2020;
 5. Has submitted proof of law school graduation by June 30, 2020; and
 6. Has completed 360 hours of Supervised Practice by no later than December 31, 2020.
- c. Nothing herein shall prevent a law school graduate who does not meet the definition of a Qualified Candidate from performing legal services under Rule 14-807 of the Supreme Court Rules of Professional Practice.

III. Supervised Practice Requirement

- a. The purpose of the Supervised Practice requirement is to provide eligible Qualified Candidates with supervised training in the practice of law and to assist the Bar and the judiciary in discharging their responsibilities to help create a just legal system that is accessible to all.
- b. Subject to the inherent power of each judge to have direct control of the proceedings in court and the conduct of attorneys and others who appear before the judge, the courts of Utah are authorized to allow eligible Qualified Candidates to participate in matters pending before the courts consistent with this Order.
- c. All time spent in any activity related to developing the Qualified Candidate's legal competence (whether paid, unpaid, pro bono, or low bono) shall be counted toward the 360-hour requirement including, but not limited to, representing clients, providing direct assistance and counsel to judges, advising businesses and their employees, developing or implementing policies and practices for nonprofit organizations or government agencies, and meeting with the Supervising Attorney or attorneys for whom the Supervising Attorney has delegated direct supervision under subsection III(e). CLE courses and other professional trainings or workshops as would be typical of an attorney in that area of practice may be counted toward the 360-hour requirement but shall not exceed more than 10% of the Qualified Candidate's total hours. The determination of whether a specific position or activity qualifies for the purpose of this provision shall be at the Supervising Attorney's discretion.
- d. Subject to all applicable rules, regulations, and statutes, a Qualified Candidate may engage in the following activities during the 360 hours of Supervised Practice, so long as the client and Supervising Attorney consent in writing to each activity, and the Supervising Attorney remains fully responsible for the manner in which the activities are conducted:
 1. Negotiate for and on behalf of the client, subject to the Supervising Attorney's final approval, or give legal

advice to the client, provided that the Qualified Candidate:

- A. obtains the Supervising Attorney's approval regarding the legal advice to be given or plan of negotiation to be undertaken by the Qualified Candidate; and
 - B. performs the activities under the general supervision of the Supervising Attorney.
2. Appear on behalf of the client in depositions, provided that the Qualified Candidate has passed a course in evidence and performs the activity under the direct supervision and in the personal presence of the Supervising Attorney.
3. Appear in any court or before any administrative tribunal in this state. In order to participate in any evidentiary hearing, the Qualified Candidate must have passed a course in evidence, and in the case of a criminal evidentiary hearing, must have also passed a course in criminal procedure. The Supervising Attorney's and the client's written consent and approval, along with a law school certification regarding the required coursework, must be filed in the record of the case and must be brought to the attention of the judge of the court or the presiding office of the administrative tribunal. In addition, the Qualified Candidate must orally advise the court at the initial appearance in a case that he or she is certified to appear pursuant to this rule. A Qualified Candidate may appear in the following matters:
- A. *Civil Matters.* In civil cases in any court, the Supervising Attorney is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the Supervising Attorney's absence.
 - B. *Felony or Class A Misdemeanor Criminal Matters on Behalf of the Prosecuting Attorney.* In any felony or Class A misdemeanor prosecution

matter in any court, the Supervising Attorney must be personally present throughout the proceedings.

- C. *Infraction of Class B or Class C Misdemeanor Criminal Matters on Behalf of the Prosecuting Authority.* In any infraction or Class B or Class C misdemeanor matter in any court with the Supervising Attorney's written approval, the Supervising Attorney is not required to be personally present in court; however, the Supervising Attorney must be personally present during any Class B or Class C misdemeanor trial.
- D. *Felony or Class A Misdemeanor Criminal Defense Matters.* In any felony or Class A misdemeanor criminal defense matter in any court, the Supervising Attorney must be personally present throughout the proceedings.
- E. *Infraction or Class B or Class C Misdemeanor Criminal Defense Matters.* In any infraction or Class B or Class C misdemeanor criminal defense matter in any court, the Supervising Attorney is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the Supervising Attorney's absence; however, the Supervising Attorney must be personally present during any Class B or Class C misdemeanor trial.
- F. *Appellate Oral Argument.* In any appellate oral argument, the Supervising Attorney must be personally present and the court must give specific approval for the Qualified Candidate's participation in that case.
- G. *Indigent defense.* Provide assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except

when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court; if there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the court on behalf of such a client must be reviewed and signed by the attorney of record and the Supervising Attorney.

4. Perform other appropriate legal services, but only after prior consultation with the Supervising Attorney.
 5. Notwithstanding the terms above, the court may at any time and in any proceeding require the supervising attorney to be personally present for such period and under such circumstances as the court may direct.
- e. The Supervising Attorney is responsible for ensuring that the Supervised Practice of the eligible Qualified Candidate complies with this Order. The Supervised Practice requirement provides an opportunity for the Supervising Attorney to demonstrate professionalism and impart principles of ethics, civility, and service that should characterize all members of the Utah Bar. This training can be accomplished only if the Supervising Attorney is actively involved in the process. The Supervising Attorney may delegate direct supervision of a Qualified Candidate to another attorney who, in the professional judgment of the Supervising Attorney, would effectively promote these goals. If the Supervising Attorney delegates direct supervision to another attorney, communication between and among the two attorneys and the Qualified Candidate should be regular and substantive. Pro bono programs preapproved by the Utah State Bar's Access to Justice program effectively promote the goals of the Supervised Practice requirement, and Supervising Attorneys shall count hours served by the Qualified Candidate in such programs without the need of express delegation or regular and substantive communication with any attorneys directly supervising the Qualified Candidate in those programs.

- f. A Qualified Candidate's eligibility to provide services under this Order will terminate immediately upon the Bar's determination that the Qualified Candidate lacks the requisite character and fitness to practice law in Utah.
- g. Prior to beginning the 360 hours of Supervised Practice, the Qualified Candidate must:
 - 1. Obtain the consent of a Supervising Attorney,
 - 2. Provide the Bar Admissions' office with the Supervising Attorney's name, and
 - 3. Provide the Bar Admissions' office with a signed and dated letter from the Supervising Attorney stating that she or he is qualified and willing to serve as a Supervising Attorney and has read this Order and agrees to comply with its conditions.
- h. A Qualified Candidate's 360 hours shall be recorded in one-tenth hour increments and submitted pursuant to the requirements set forth by the Bar Admissions' office.
- i. Upon completing 360 hours of Supervised Practice, the Qualified Candidate must provide the Bar Admissions' office with a statement from the Supervising Attorney attesting to the veracity of the Qualified Candidate's submitted record. If the Qualified Candidate has more than one Supervising Attorney, each Supervising Attorney shall sign the portion of the record that he or she supervised.
- j. Completion of the 360 hours of Supervised Practice required for admission under this Order does not excuse the Qualified Candidate from completing the requirements currently imposed upon newly admitted attorneys, including the requirements of the New Lawyer Training Program (if applicable), and the 360 hours shall not be counted toward any post-admission requirements.

IV. The July 2020 Bar Examination

- a. No Bar Examination shall be administered in Utah in July 2020.

- b. The Utah Supreme Court intends that the Bar Examination be scheduled at the earliest possible date in 2020 after the public health crisis abates and the Bar Examination can be administered safely.
- c. Persons who are currently scheduled to sit for the July 2020 Bar Examination in Utah who do not qualify for admission under the emergency modifications outlined in Section I or are unwilling to do so may elect one of the following options for proceeding with their application:
 - 1. Withdraw the application for a full and complete refund of all application fees paid;
 - 2. Transfer the application and fees, without further charge, to the February 2021 Bar Examination or the July 2021 Bar Examination; or
 - 3. Maintain a pending application to remain registered for the Bar Examination in the event a Bar Examination is scheduled to take place at some later point in 2020. If such a Bar Examination does not take place, the individual will be able to select from option (1) or (2) above.
- d. Nothing herein shall prevent a Qualified Candidate admitted pursuant to this Order from applying to take a future Bar Examination, but the applicant will be required to submit a new application and fees.

DATED this 21st day of April, 2020.


Matthew B. Durrant
Chief Justice

Exhibit

A-4

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 B-1

July 17, 2020

David R. Fine, Esq., Chair
Pennsylvania Board of Law Examiners
601 Commonwealth Ave., Suite 3600
Harrisburg, PA 17106-2535

Dear Mr. Fine,

The past five months have been trying ones for all those in Pennsylvania, as well as around the country and the world. As law deans, we are responding in real time to a complex and uncertain public health and economic situation that shifts from week to week, often in unpredictable ways that have caused us to modify our institutional practices. We know that you and your colleagues have likewise been working hard and creatively to meet the unprecedented challenges of admitting new lawyers in Pennsylvania in this unusual year. Throughout the spring and summer, we have greatly appreciated the opportunities you have provided us to share ideas with you as we collaborate toward our mutual goals of providing access to high quality legal services for people in the Commonwealth and enabling the current generation of new attorneys to begin their careers safely and without undue delay.

As you are well aware, the frustrating persistence and increased severity of the COVID pandemic over the past month has led many states to revisit the plans they announced for 2020 bar administrations even as recently as last month. Your announcement last week to shift from an in-person bar examination in September to a new remote plan in early October is part of this trend, and we stand ready to assist you and support our recent graduates should a remote exam go forward later this fall.

While we think a secure, even-handed remote examination is a goal that Pennsylvania should strive to achieve in the coming year, we have recently heard from a large number of our graduates and other attorneys in the Commonwealth who have serious concerns – which we share – about the administration of a remote test this October. First, a remote examination exacerbates differences in personal circumstances such as physical surroundings and internet connectivity, something we are well aware of from our experiences with remote teaching this year. All of our 2020 graduates have experienced substantial disruption and uncertainty in their living, learning and bar study situations since March, and some feel those burdens even more heavily than others. We will attempt to ameliorate those inequities to the extent we can by providing space on our campuses for exam takers, but the stringency of COVID-19 building occupancy restrictions makes that challenging. Second, there are a host of logistical questions that need to be addressed, such as how students can effectively analyze many pages of legal material without being able to take notes and how computer and software issues will be handled, including the privacy issues attendant to remote proctoring. Third, we understand that the shortage of experienced online proctors in the fall exam season nationally might raise issues with uneven or problematic variance in the proctoring of exam takers. Fourth, there are concerns, expressed by the NCBE and others, about the psychometric reliability of the reduced-question MBE being offered by NCBE in October. We are committed to working individually and

collectively in partnership with you to do our best to address these issues and others that arise if the October exam moves forward.

However, given the intractable nature of the public health situation and the rapidly approaching fall dates, we are persuaded by our students and by discussions with some members of the Pennsylvania Bar Association's COVID-19 task force, that Pennsylvania should, like several other states, grant a one-time admission to practice through diploma privilege. Although there are no ideal approaches to bar admission during this pandemic, we believe that one-time diploma privilege is a better alternative than the October remote administration given all of the concerns. One option would be that the privilege be limited to ABA-accredited law school graduates already registered to take the 2020 fall exam and taking it for the first time, thus obviating concerns about an inducement for others not already registered to seek the diploma privilege. We would expect that diploma privilege would involve additional requirements, including a successful character and fitness determination, satisfactory completion of the MPRE, and potentially specific CLE requirements. Such a diploma privilege policy would be an unusual step, but a limited one that we feel is warranted by the extraordinary circumstances in which we are living.

We understand that you and your colleagues may have questions and uncertainties about making such a decision, and we would welcome the opportunity to discuss these issues with you and others whenever convenient. Once again, we appreciate the challenging circumstances you are operating under and your willingness to consider our view.

With best regards,

Mark C. Alexander, Villanova University Charles Widger School of Law

April M. Barton, Duquesne University School of Law

Danielle M. Conway, Penn State Dickinson Law

Daniel M. Filler, Drexel University Thomas R. Kline School of Law

Michael J. Hussey, Widener University Commonwealth Law School

Gregory N. Mandel, Temple University Beasley School of Law

Kimberly M. Mutcherson, Rutgers Law School

Theodore W. Ruger, University of Pennsylvania Carey Law School

Hari M. Osofsky, Penn State Law

Amy J. Wildermuth, University of Pittsburgh School of Law

Exhibit B-2

**PENNSYLVANIA BAR ASSOCIATION
COVID-19 TASK FORCE**

Recommendation

Based on additional developments throughout the Commonwealth and further study, the PBA COVID-19 Task Force recommends that the PBA Board of Governors act *in lieu* of the House of Delegates and request that the Pennsylvania Supreme Court and Pennsylvania Board of Law Examiners (“Bar Examiners”) offer a diploma privilege to students who have (1) graduated from law school between April 1, 2020 and June 30, 2020; (2) registered to take the 2020 Pennsylvania Bar Examination on or before June 30, 2020; and (3) satisfied all requirements set by the Pennsylvania Supreme Court and Bar Examiners for admission to the bar of Pennsylvania except for passing the Pennsylvania Bar Examination. Specifically, the PBA recommends that the Supreme Court and Bar Examiners consider imposing the following requirements for a recent graduate to obtain a license under the diploma privilege:

- Graduation from an ABA-accredited U.S. law school between April 1, 2020 and June 30, 2020 and registered to take the Pennsylvania Bar Examination on or before June 30, 2020;
- Meet the current standards related to passing the MPRE . If the applicant has not already taken and passed the MPRE, the applicant must pass the MPRE by December 31, 2020, unless unable to take the MPRE in the remainder of 2020. If unable, the applicant may request an extension to submit proof of passing the MPRE until 30 days after the scores are published following the first MPRE administered in 2021;
- Meet the current standards regarding Character and Fitness qualifications;
- Not be sitting for a bar examination to be given in any other jurisdiction that uses the MBE on or before the end of October 2020;
- May not apply if they have previously failed any bar exam in any state; and
- Completion of a Pennsylvania Bridge the Gap course – virtually or in-person – prior to being granted a diploma privilege rather than at the conclusion of the first continuing legal education compliance period.

Report

In March 2020, then PBA President Anne John convened a task force of PBA members (“COVID-19 Task Force”) focused on addressing issues facing the practice of law during the COVID-19 pandemic. One such function of the COVID-19 Task Force was to review the effect COVID-19 had on recent law school graduates – specifically those scheduled to take the July 2020 Pennsylvania Bar Examination (“Bar Exam”).

As a result of the COVID-19 pandemic, in April 2020, the Bar Examiners delayed the Bar Exam until September 2020. At the same time, in conjunction with the recommendation of the COVID-19 Task Force, the Bar Examiners created a limited license for 2020 graduates while

they waited for the September examination. This limited license allows those graduates to work, as if barred, as long as they do so under the supervision of a barred attorney.

In July 2020, the Bar Examiners cancelled the September 2020 bar examination, moved the examination to October 2020, and made the bar exam an entirely virtual, on-line examination. Additionally, the Bar Examiners extended the bar exam, normally a two-day examination, to a three-day examination.

The COVID-19 pandemic rages on, with surges occurring throughout the country. By all indications, these surges will continue to occur throughout the Fall of 2020. In Pennsylvania, recent surges have resulted in Governor Wolf issuing a new Executive Order, effective July 16, 2020, once again restricting the number of people who may gather indoors to a maximum of 25 and requiring teleworking if possible. Additionally, the City of Philadelphia has restricted gatherings of more than 25 until Spring 2021 (although the restriction does not apply to private property). As a result, Pennsylvania law schools and other entities that may have planned to host students for the online exam can no longer do so in a feasible manner. Not all applicants have reliable internet in their homes and not all applicants have a home situation that allows them to take a three-day exam with adequate uninterrupted concentration. Not having the ability to seek alternative locations – such as at a local law school – disadvantages students who otherwise do not have the means to take the examination at home in optimal conditions.

Moreover, even those with ideal home conditions will be at the whim of a storm, accident, or equipment failure that causes a loss of power during the exam. Neither public health officials nor the medical community at large can give any reliable prediction of where Pennsylvania or the country will be in October 2020 as it relates to the pandemic. A diploma privilege would provide some certainty to the recent law school graduates who are trying to enter the profession at the most uncertain time in the history of the bar exam. While a diploma privilege does sacrifice the testing of graduates, the majority of people who take the Pennsylvania Bar Exam for the first time in July pass the test. (The first-time pass rate for the July exam for each of the past three years was approximately 80%). Many of those who do not pass the bar exam the first time do successfully pass the bar exam during a subsequent test – often on the second try.

It cannot be denied that these are extraordinary times. As recently as February 2020, third year law students believed they were going to graduate and enter one of the strongest job markets in a decade. Instead, through no fault of their own, they now face perilous conditions. Those unable or unwilling to meet the standards for diploma privilege may still take the October 2020 online exam (or wait for a later exam, whether in person or on-line).

The COVID-19 Task Force does not make this recommendation lightly. The PBA remains committed to the integrity of the profession and ensuring that the public receives the type of representation to which it is entitled. Nothing in this recommendation should be considered an assault on the bar exam itself, its future administration, or the administration of the online exam for those who have previously failed the exam¹. Notwithstanding this, an alternative path to licensure needs to balance those needs with the needs and realities faced by

¹ The COVID-19 Task Force believes that offering the October Bar Exam virtually for those who do not meet the criteria for a diploma privilege, who elect to take the examination, or who are taking the examination for a subsequent time allows the Bar Examiners to provide the exam in a virtual manner with a smaller universe of test takers in the event that it will have to administer a virtual bar examination for subsequent administrations of the bar exam.

this year's law school graduates. With all these concerns in mind, a diploma privilege balances those concerns under the current conditions.

Also, a diploma privilege is not unique to Pennsylvania. States including Utah, Washington, and Oregon have already undertaken similar steps because of COVID-19. Likewise, diploma privileges have existed in the State of Wisconsin since 1870 and, albeit in an extraordinarily limited program, in New Hampshire since 2005. It must be noted that the programs that exist in Wisconsin and New Hampshire do include requirements not contained in this proposal – such as specific courses of study and law school performance. However, nothing prevents an attorney barred in Wisconsin or New Hampshire from entering Pennsylvania to practice law through reciprocity – even if their licensure was through diploma privilege rather than examination.

Requirements in the Wisconsin and New Hampshire programs, as well as those requirements in Pennsylvania's recent limited license order requiring graduates to work under a supervising attorney until taking the bar exam, are laudable. However, once licensed, these applicants will be bound by the Pennsylvania Rules of Professional Conduct. Rule 1.1 requires competence, which can be satisfied through necessary study or association of a lawyer with established competence. By requiring the diploma privilege applicants to attend Pennsylvania's Bridge the Gap program prior to admission rather than before the completion of the first compliance period ends, those receiving a diploma privilege should fully understand and be educated in compliance with Rule 1.1. The Bridge the Gap program, and the education already provided by accredited law schools, strikes a balance between protecting the public and the absence of a lawyer passing the bar exam in the current environment. By offering a diploma privilege, the Supreme Court and the Bar Examiners help reduce the potential that 2020 law graduates suffer prolonged economic hardship as a result of the pandemic, which will have a ripple effect on the community at large via unemployment, delayed employment, and/or fewer attorneys available to assist the public at a time of unprecedented unemployment, illness and death.

Based on the foregoing and the current on-line test date of October 2020, the COVID-19 Task Force recommends that the Board of Governors act *in lieu* of the House of Delegates and request that the Pennsylvania Supreme Court and Bar Examiners provide for a diploma privilege admission to the bar of Pennsylvania, allowing 2020 law graduates to enter the practice of law without taking and passing a bar exam, under and subject to the specific and limited conditions articulated herein.

Respectfully Submitted,

Michael Jones, Esq.
Co-Chair
PBA COVID-19 Task Force

Jonathan D. Koltash, Esq.
Chair, Subcommittee on Law Schools
PBA COVID-19 Task Force

July 24, 2020

****Approved by the Board of Governors, acting in lieu of the House of Delegates, July 29, 2020.***

Exhibit B-3

**AMERICAN BAR ASSOCIATION
VIRGIN ISLANDS BAR ASSOCIATION
LAW STUDENT DIVISION
SECTION OF STATE AND LOCAL GOVERNMENT LAW
CRIMINAL JUSTICE SECTION
SECTION OF DISPUTE RESOLUTION
YOUNG LAWYERS DIVISION**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges the highest court or bar admission
2 authority of each jurisdiction to cancel and to not administer any in-person bar
3 examination during the COVID-19 pandemic until and unless public health authorities
4 determine that the examination can be administered in a manner that ensures the health
5 and safety of bar applicants, proctors, other staff, and local communities;

6 FURTHER RESOLVED, That the American Bar Association urges the highest court or
7 bar admission authority of each jurisdiction to: (1) establish temporary emergency
8 measures to expeditiously license recent law school graduates and other bar applicants
9 when public health and safety concerns preclude safe administration of an in-person bar
10 examination, including but not limited to administration of a remote bar examination,
11 creation or expansion of certified legal intern programs, supervised practice programs
12 leading directly to licensure, a form of diploma privilege, or provisional admission subject
13 to passing an in-person bar examination when public health and safety concerns permit
14 such an examination; and (2) collect and report demographic data on applicants for
15 licensure via such emergency measures; and

16 FURTHER RESOLVED, That the American Bar Association urges the highest court or
17 bar admissions authority of a jurisdiction electing to administer a remote bar examination
18 to do the following sufficiently in advance of the examination date:

19 (1) complete all testing of the reliability and security of the online platform;

20 (2) provide reasonable accommodations, consistent with public health and safety
21 guidelines, to applicants for whom taking a remote examination would create a substantial
22 hardship—including but not limited to applicants with disabilities, applicants who serve as
23 caregivers to children or other family members, applicants who lack access to an
24 appropriate computer or reliable internet access, and applicants who lack a quiet place
25 to take a remote bar examination—and, if such accommodations are not possible,
26 establish alternate methods to ensure the expeditious licensing of such applicants;

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27 (3) disclose what data will be collected as part of the remote proctoring process,
28 who will have access to such data, how long such data will be preserved, and what
29 measures will be implemented to prevent the abuse or unauthorized disclosure of such
30 data;

31 (4) disclose the protocols for remote proctored exams to applicants, as opposed
32 to non-proctored exams, taking into account methods for not penalizing applicants for
33 human eye and body movements (e.g., looking up or down as a natural movement), lip
34 movement while reading, and other natural movements that applicants might normally
35 make while taking in-person exams; and

36 (5) disclose to applicants and the profession information about exam coverage,
37 scoring or grading of the exam, measures adopted to ensure reliability of the cut score,
38 and potential portability or not of the exam.

REPORT

The novel coronavirus, COVID-19, has created unprecedented challenges across all sectors within the United States and the world. The legal profession has been no exception. Although federal, state, territorial, tribal, and local courts have done the best they can to continue operations while complying with social distancing and other public health guidelines, nearly every aspect of how the courts conduct business has been disrupted.

This includes the system for licensing new attorneys. While the fifty states, the five territories, the District of Columbia, and Native American tribes exercise independent authority to control admission to the practice of law within their respective jurisdictions, with relatively few exceptions, most individuals first become admitted to the practice of law by sitting for, and successfully passing, the bar examination. Although bar admissions remain a decentralized process in most respects, jurisdictions have largely come to a consensus to administer a bar examination prepared by the National Conference of Bar Examiners (“NCBE”) during the same two-day period in both July and February.

The COVID-19 pandemic, however, has turned what is normally an orderly process into chaos. While the July 2020 bar examination had originally been scheduled to be administered in all jurisdictions from July 28-29, 2020, as of this writing there are at least seven different date permutations for this exam, including as late as October 5-6, 2020.¹ Although a growing number of jurisdictions have announced the cancellation of the in-person bar examination in favor of a remote bar examination administered online, as of this writing a majority of jurisdictions are still holding in-person bar examinations.² And while some jurisdictions have created or expanded certified legal intern programs or enacted a diploma privilege rule in order to permit some or all bar applicants to practice notwithstanding any delays in the bar examination date, others have delayed the bar examination without providing such accommodations. Nevertheless, as of this writing, only nine jurisdictions have proceeded with an exclusively in-person bar examination on July 28-29, 2020, without adopting or expanding some sort of provisional practice rule.³

During the early stages of the COVID-19 pandemic, the ABA Board of Governors exercised its authority to establish policy between meetings of the ABA House of Delegates to enact Resolution No. 77, which urged the highest court or bar admissions authority of each jurisdiction to immediately adopt emergency rules to permit certain 2019 and 2020 law graduates, as well as certain judicial law clerks, to engage in the limited practice of law if the July 2020 bar examination in their jurisdiction was cancelled or postponed due to COVID-19. When the Board adopted the resolution on April 7, 2020, only four jurisdictions had announced the cancellation or postponement of the July 2020 bar examination, and none had announced that the bar examination would be

¹ *July 2020 Bar Exam Status by Jurisdiction*, NAT'L CONF. OF BAR EXAM'RS, <http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/> (last visited July 27, 2020).

² *Id.*

³ *Id.*

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administered remotely.

This Resolution builds on the foundation laid by Resolution No. 77 to address the new developments in the bar admissions landscape over the last four months. First, it urges that the highest court or bar admissions authority in each jurisdiction cancel the in-person bar examinations currently scheduled for September 9-10, 2020, and September 30-October 1, 2020, and not administer any other in-person bar examination until and unless public health authorities determine that the examination can be administered in a manner that ensures the health and safety of bar applicants, proctors, other staff, and local communities. The Resolution further urges the highest court or bar admission authority of each jurisdiction to establish temporary emergency measures to expeditiously license recent law school graduates and other bar applicants when public health and safety concerns preclude safe administration of an in-person bar examination. Finally, the resolution urges that jurisdictions electing to administer a remote bar examination implement appropriate safeguards with respect to the reliability and security of the online software; provide reasonable accommodations to all applicants; and disclose plans related to data collection, security protocols, exam coverage, scoring or grading, and portability.

At the beginning of the COVID-19 pandemic, there was some optimism that the public health emergency would be behind us by the summer and that administration of the July 2020 bar examination would not be affected. Unfortunately, that has not been the case. On the contrary, 18 states set single-day records of COVID-19 cases the week before the July 2020 bar examination was set to be administered,⁴ with cases declining in only two states.⁵ There is no indication that circumstances will meaningfully change prior to the administration of the in-person bar examinations currently scheduled for September 9-10, 2020, and September 30-October 1, 2020.

No one should have to choose between their long-term health—or life—and a licensing examination. However, bar applicants in jurisdictions scheduled to administer an in-person bar examination are being required to do so. And given the state of the legal employment market combined with the need to repay student loans and otherwise earn a living, many bar applicants feel they truly have no choice at all. As one bar applicant stated in an impact statement filed with the Supreme Court of Missouri in support of a petition to postpone the in-person bar examination scheduled for July 28-29, 2020:

I'm immunocompromised. I don't mean I get a lot of colds. I mean it takes me four complete sets of oral antibiotics and 10 months to get over a minor toenail infection. If I get coronavirus, I will die. But I financially cannot wait till the later date to take the bar, and nobody will hire me without the bar or diploma privilege because I'm under qualified for everything related to law and overqualified for everything not related to law. Facing student

⁴ Phillip Cheung, *U.S. Coronavirus Cases Soar as 18 States Set Single-Day Record*, N.Y. TIMES, <https://www.nytimes.com/2020/07/25/world/coronavirus-covid-19.html> (last visited July 27, 2020).

⁵ Univ. of Minnesota, Center for Infectious Disease Research, *US COVID-19 Case Counts Rise in 39 States, Decline in Only 2*, <https://www.cidrap.umn.edu/news-perspective/2020/07/us-covid-19-case-counts-rise-39-states-decline-only-2> (July 16, 2020).

loan payments and medical bills, I don't have a choice. **I am planning to sit for the July bar and, to be frank, if I die I die.** That's the position I am in right now.⁶

In apparent recognition of the health and safety risks, several jurisdictions administering an in-person bar examination required applicants to sign COVID-19 liability waivers as a condition for sitting for the examination.⁷ Moreover, there are numerous accounts that several of in-person bar examinations administered on July 28-20, 2020, did not follow guidance from public health authorities with respect to temperature checks, social distancing, and the wearing of face masks.⁸ It has also been confirmed that an applicant actually sat for the Colorado bar examination while unknowingly infected with COVID-19 as an asymptomatic carrier.⁹

The cancellation or postponement of in-person bar examinations, however, is not sufficient. Rather, courts and bar admissions authorities must provide alternate and expeditious methods to ensure that the licensing of new attorneys continues despite the COVID-19 pandemic. Such methods include, but are not necessarily limited to, administration of remote bar examinations, creation or expansion of certified legal intern or supervised practice programs, or the diploma privilege. As previously recognized in the report accompanying Resolution No. 77:

Yet there also can be no doubt that canceling or postponing a bar exam will significantly affect the lives, careers, and immediate personal plans of law graduates, their families, and the lawyers or other organizations with whom they might otherwise practice. Every law graduate in this country has planned and worked for years toward the goal not only of graduation from law school, but admission to the bar and licensure. The inability of a law graduate to take the bar examination in July 2020 would mean a delay, at the very least, of months in their ability to begin the practice of law. This delay may lead not only to tangible financial and family hardship, but disruption in the plans and operations of the organization and clients for whom these law graduates may already be planning to work.

Cancelling or postponing a bar examination for public health and safety reasons is not without consequence. The livelihoods, families, and careers of 2019 and 2020 law graduates may be uprooted, and financial security immediately threatened, with even a delayed exam. Upon graduation, the average 2020 law graduate will bear a debt load of

⁶ Copies of the 31 impact statements filed with the Supreme Court of Missouri can be found at https://docs.google.com/document/d/1_cWlJxiFEgdiOQfflLIIVm0rRifV2DRTWk8tWI2GHdQ/edit (last visited July 27, 2020).

⁷ See Andrea Boyack, *Abuse of Contract and the July 2020 Bar Exam*, N.U. L. REV. OF NOTE, <https://blog.northwesternlaw.review/?p=1506> (July 15, 2020).

⁸ See Joe Patrice, *Bar Exams in the Time of COVID; Crashes, Hacks, and (A Few) Masks*, ABOVE THE LAW, <https://abovethelaw.com/2020/07/bar-exams-in-the-time-of-covid-crashes-hacks-and-a-few-masks/> (July 29, 2020).

⁹ Staci Zaretsky, *Law Grad Who Tested Positive for COVID-19 After Sitting For Bar Exam Speaks Out*, ABOVE THE LAW, <https://abovethelaw.com/2020/07/law-grad-who-tested-positive-for-covid-19-after-sitting-for-bar-exam-speaks-out/> (July 31, 2020).

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\$142,870.4 That debt load remains unchanged while their job prospects disappear or diminish in part were their jurisdiction to deny them the opportunity to take the exam in July 2020 and begin to practice law. Public health and safety and the professional and financial security of law graduates need not be mutually exclusive.

The temporary measures encouraged by Resolution No. 77 were an excellent initial response to the pandemic but, as the pandemic has worsened, those measures are no longer sufficient. Small law firms, legal aid offices, other nonprofits, public defenders, and other government agencies do not have sufficient staff to supervise temporarily licensed lawyers until an in-person bar exam is possible. These organizations rely upon new lawyers, usually licensed by November, to serve clients directly. Nor can these organizations and their clients afford to release—or pay—temporarily licensed lawyers for six or more weeks to study for a bar exam offered sometime in the future.¹⁰ Maintaining temporary licensure as our profession's only response to the pandemic will worsen access to justice—at the same time that the pandemic is increasing legal needs among the vulnerable.

The current Resolution does not recommend a “one-size-fits-all” approach to licensing attorneys during the COVID-19 crisis. Every jurisdiction has its own unique legal system and has been affected by and responded to COVID-19 in a different way. It goes without saying that what may be appropriate for Utah may not be appropriate for New York, and what works in the U.S. Virgin Islands might not work in Kansas. Which particular methods should be utilized to license attorneys on an emergency basis is, and should remain, vested in the sound discretion of the highest court or bar admissions authority in each jurisdiction, exercised after due consideration of all relevant factors. However, given the substantial and unprecedented effect on not just law graduates and the organizations that employ them, but on individuals and businesses both large and small, no court or bar admissions authority should exercise its discretion to simply do nothing and/or hold back licensure until an in-person exam is possible which could be more than a year down the road.

Jurisdictions who elect to proceed with a remote bar examination should administer such an examination with appropriate safeguards in place sufficiently in advance of the examination date. Shortly after the first two states announced the transition to a remote bar examination in April 2020, one law professor expressed skepticism that what would ordinarily be “a years-long project” could be successfully implemented in just four months.¹¹ Such skepticism proved prescient: Indiana and Nevada, which had scheduled remote bar examinations to occur, respectively, on July 28, 2020, and July 28-29, 2020, both cancelled those examinations four days before they were set to occur, due to substantial technology problems with the software utilized by

¹⁰ For example, there is concern that bar applicants in Delaware may be “in limbo” for an extended period of time due to the cancellation of the July 2020 in-person bar examination and an announcement that a remote bar examination would not be administered in October 2020. See Bar Exam Tracker, <https://twitter.com/BarExamTracker/status/1289682319121448961> (Aug. 1, 2020).

¹¹ Derek Muller, *Blockchain and the Bar Exam*, <https://excessofdemocracy.com/blog/2020/4/blockchain-and-the-bar-exam> (Apr. 28, 2020).

their vendor, ILG Technologies.¹² The cancellation of the Indiana and Nevada remote bar examinations occurred days after the online General Surgery Qualifying Exam administered by the American Board of Surgery was cancelled on the day of the exam due to technical and security failures.¹³ Moreover, the Michigan remote bar examination crashed in the middle of testing on July 28, 2020, when the software utilized by its vendor, ExamSoft, locked applicants out of the exam after completing the first module.¹⁴ According to ExamSoft, these crashes were the result of a sophisticated cyberattack.¹⁵ Recently, the Law School Admission Council reported that it lost the answers for approximately 140 applicants who sat for the online administration of the LSAT in July 2020 due to “a technical issue” that prevented the answers from “transmitting into its system.”¹⁶

The administration of a remote bar examination also raises serious disparate impact concerns. To sit for a remote bar examination, an applicant must have access to an appropriate computer¹⁷ with reliable internet access, as well as the ability to take the exam uninterrupted for several hours in a quiet place. One recent survey has shown that a majority of bar applicants do not believe they have reliable internet access, and that white applicants are about 71 percent more likely to have such access when compared to black applicants.¹⁸ The same survey found that a majority of applicants do not have access to a quiet space to take a remote bar examination, with white applicants again being substantially more likely to have access to a quiet place than an applicant of color.¹⁹ And with schools and daycares closed in many parts of the United States, parents—and particularly mothers—cannot guarantee that they will not have to leave the room to attend to their young children.²⁰

The remote bar examination necessarily requires the collection of substantial

¹² Debra Cassens Weiss, *Online bar exams delayed in 2 states because of issues with testing software*, ABA JOURNAL, <https://www.abajournal.com/news/article/online-bar-exams-delayed-in-two-states-due-to-issues-with-testing-software> (July 27, 2020).

¹³ American Board of Surgery, *ABS Issuing Refunds, Launching Security Investigation for Virtual 2020 General Surgery QE*, http://www.absurgery.org/default.jsp?news_virtualgsqe07.17 (July 17, 2020).

¹⁴ David Jesse, *Michigan Online Bar Exam Crashes in Middle of Test*, DETROIT FREE PRESS, <https://www.freep.com/story/news/education/2020/07/28/michigan-online-bar-exam-crashes-test-examsoft/5526919002/> (July 28, 2020).

¹⁵ Allie Reed, *Cyber Attack Said to Disrupt Michigan’s Online Bar*, BLOOMBERG LAW, <https://news.bloomberglaw.com/business-and-practice/cyber-attack-locks-michigan-bar-exam-takers-out-of-online-test> (July 28, 2020).

¹⁶ Caroline Spiezio, *LSAT maker says it lost about 140 online test takers’ scores*, REUTERS, <https://www.reuters.com/article/lawyer-lsat-scores/lsat-maker-says-it-lost-about-140-online-test-takers-scores-idUSL2N2F12WE> (July 30, 2020).

¹⁷ For example, Indiana requires those sitting for its remote bar examination to use external webcams rather than the webcams built-in to their laptop, in order to “give the proctors a better view than the camera that comes standard on many laptop computers.” Marilyn Odendahl, *External webcams, quiet rooms among details for first-ever remote bar exam in July*, THE INDIANA LAWYER, <https://www.theindianalawyer.com/articles/external-webcams-quiet-rooms-needed-for-first-ever-remote-bar-exam-in-july> (May 29, 2020).

¹⁸ Claire Newsome & Catherine Perrone, *The Inequity and Technology Behind an Online Bar Exam*, JURIST, <https://www.jurist.org/commentary/2020/07/newsome-perrone-online-bar-exams/> (July 18, 2020).

¹⁹ *Id.*

²⁰ *Id.*

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amounts of data, including video footage of the applicant's home obtained through the remote proctoring process.²¹ Although as of this writing no jurisdiction has yet administered a remote bar examination, there are numerous reports of vendors retained to provide remote proctoring services for colleges and universities during the COVID-19 pandemic requiring test-takers to provide biometric data, or granting the proctor actual remote control of the computer.²² Some of these vendors assert the right to retain this information, and even share it with third parties.²³ Courts and bar admissions authorities should ensure that applicants know how their information will be used and that vendors use and retain applicant data only to the extent necessary.

Last, but not least, the online bar exam offered by certain jurisdictions on October 5-6 differs significantly from the paper exams offered on July 28-29, September 9-10, and September 30-October 1. The online exam will be half the length of the paper exams and, for the essay and performance test portions of the exam, candidates will not be able to compose answers while referring directly to exam materials; they will have to flip between screens. Perhaps for these reasons, NCBE has announced that it will not be able to scale raw scores from this exam. The lack of scaling, combined with the differences in exam administration, will make each state's existing cut score unreliable. States should make and announce plans, well before the exam date, about how they intend to handle scoring, cut scores, and portability of the exam.

In acknowledgment of the many problems possible with a remote exam – technical and access-related, as described above – and also knowing that the stress upon 2020 graduates who have been studying for the bar exam under incredibly difficult circumstances, a small number of states have opted for a diploma privilege, some with and some without a supervised practice component,²⁴ thus giving law school graduates a practice license without the necessity of a bar exam.²⁵ This privilege has existed in Wisconsin for over a hundred years, albeit limited to graduates of the two in-state law schools and conditioned on completing specified coursework in Wisconsin law.

²¹ Maggie Miller, Law school graduates worried about security, privacy of online bar exam, *The Hill*, <https://thehill.com/policy/technology/507381-law-school-graduates-worried-about-security-privacy-of-online-bar-exam> (July 14, 2020).

²² See Monica Chin, *Exam Anxiety: How Remote Test-Proctoring is Creeping Students Out*, *THE VERGE*, <https://thehill.com/policy/technology/507381-law-school-graduates-worried-about-security-privacy-of-online-bar-exam> (Apr. 29, 2020).

²³ *Id.*

²⁴ The jurisdictions that have enacted an emergency diploma privilege have not done so under the same terms. For example, Utah—the first jurisdiction to adopt an emergency diploma privilege—has limited it only to applicants who had already applied for the Utah bar exam prior to April 1, who graduated from ABA-accredited law schools with an average first-time taker bar examination passage rate in 2019 of 86%, and who first perform 360 hours of supervised practice. *In re Matter of Emergency Modifications to Utah Supreme Court Rules of Professional Practice* (Utah Apr. 21, 2020). Oregon, in contrast, adopted similar eligibility requirements, but declined to adopt a supervised-practice requirement. *In re Order Approving 2020 Attorney Admissions Process* (Or. June 30, 2020).

²⁵ In response to the COVID-19 pandemic, numerous jurisdictions have created, or expanded existing, certified legal intern programs, which permit law students and law graduates to practice under the supervision of a licensed attorney. A certified legal intern program differs from admission by supervised practice, however, in that a certified legal intern license is temporary and full admission to the Bar of the jurisdiction cannot be obtained without passing the bar exam.

The issues with respect to a diploma privilege, supervised practice programs leading to licensure, and other alternate methods of licensing attorneys without a bar examination are complex. While there has been much discussion over the years, accelerated in the last few months, about the advantages of a permanent diploma privilege or supervised practice admission over the current bar exam scheme in the states, the matter at hand here is more narrow and, of course, more urgent. Granting a diploma privilege or admission through supervised practice to 2020 graduates of ABA-accredited law schools will provide an immediate and permanent pathway to this cadre of young people and enable them to pursue their careers without the serious impediments that come from a bar exam administered either in-person (soon or at an uncertain later date) or remotely. This solution has been endorsed by a large and growing number of deans and other legal educators. And, importantly, this idea has been pushed forward by a very active and passionate group of students and graduates, all of whom have organized in the midst of this pandemic to advocate for the most straightforward, and compassionate, approach.

This resolution does not recommend specifically the diploma privilege over supervised practice, certified legal intern programs, or other alternatives, nor does it suggest a uniform approach to this privilege, if a jurisdiction granted it. But we note the advantages of this approach over the remote exam option – which, frankly, has already encountered obstacles, even as recently as July 28, 2020, in Michigan – in providing a mechanism for licensing these new graduates.

In important part, it is the mission of the American Bar Association “[t]o serve equally our members, our profession and the public by defending liberty and defending justice as the national representative of the legal profession.”²⁶ As one commenter succinctly stated, “We owe the newest members of our profession the most protection, not the least.”²⁷ Tens of thousands of law school graduates have worked their entire lives towards the goal of becoming licensed attorneys but have had the misfortune to graduate during the worst pandemic in a century. Simply put, a once-in-a-century pandemic warrants a once-in-a-century solution. We urge the highest courts or bar admissions authorities of each jurisdiction to take these modest but necessary steps to safeguard public health and safety without closing the doors to our shared profession.

Respectfully submitted,

Nesha R. Christian-Hendrickson, Esq.
President, Virgin Islands Bar Association

August 2020.

²⁶ Am. Bar Ass’n, Mission Statement, https://www.americanbar.org/about_the_aba/aba-mission-goals/ (last visited July 27, 2020).

²⁷ @ProfAMLondon Twitter (June 16, 2020, 6:46 PM), <https://publish.twitter.com/?query=https%3A%2F%2Ftwitter.com%2FProfAMLondon1%2Fstatus%2F1273039225890443264&widget=Tweet>

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GENERAL INFORMATION FORM

1. **Summary of Resolution**

This Resolution urges that the highest court or bar admissions authority in each jurisdiction cancel the in-person bar examinations currently scheduled for September 9-10, 2020, and September 30-October 1, 2020, and not administer any other in-person bar examination until and unless public health authorities determine that the examination can be administered in a manner that ensures the health and safety of bar applicants, proctors, and other staff. The Resolution further urges the highest court or bar admission authority of each jurisdiction to establish temporary emergency measures to expeditiously license recent law school graduates and other bar applicants when public health and safety concerns preclude safe administration of an in-person bar examination. Finally, the resolution urges that jurisdictions electing to administer a remote bar examination implement appropriate safeguards with respect to the reliability and security of the online software, provide reasonable accommodations to all applicants, and take appropriate measures with respect to data collection, usage, and action.

2. **Approval by Submitting Body**

Approved by the Virgin Islands Bar Association on July 28, 2020.

Approved by the Law Student Division on July 31, 2020.

Approved by the Section of State and Local Government Law on July 31, 2020.

Approved by the Criminal Justice Section on August 1, 2020.

Approved by the Section of Dispute Resolution on August 1, 2020.

Approved by the Young Lawyers Division on August 1, 2020.

3. **Has this or a similar Resolution been submitted to the House or Board previously?**

On April 7, 2020, the ABA Board of Governors approved Resolution No. 77, which urged jurisdictions to adopt emergency rules to authorize 2019 and 2020 law graduates who cannot take a bar exam because of the COVID-19 pandemic to engage in a limited practice of law under certain circumstances.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

As noted above, the ABA Board of Governors approved Resolution No. 77 on April 7, 2020, to urge jurisdictions to adopt emergency rules to authorize 2019 and 2020 law graduates who cannot take a bar exam because of the COVID-19 pandemic to engage in a limited practice of law under certain circumstances. This Resolution does not supersede that policy but would adopt additional policies to address new concerns that have arisen because of the continued emergency conditions caused by COVID-19.

At the 2006 Annual Meeting, the ABA House of Delegates approved Resolution No. 113, which urged the National Conference of Bar Examiners to collaborate with state and territorial bar associations and bar examiners to ensure that the bar examination does not result in a disparate impact on bar passage rates of minority candidates. This Resolution urges jurisdictions administering a remote bar examination to provide accommodations to those who lack access to an appropriate computer, reliable internet access, or a quiet space, which are disproportionately minority candidates.

At the 2012 Midyear Meeting, the ABA House of Delegates approved Resolution No. 111, which among other things urged all entities administering a law school admission test to provide reasonable accommodations for test takers with disabilities, and to make all policies, guidelines, and administrative procedures readily accessible. This Resolution urges that similar accommodations and notice be provided with respect to any remote bar examination administered during the COVID-19 pandemic.

At the 2015 Midyear Meeting, the ABA House of Delegates approved Resolution No. 110, which among other things urged jurisdictions to identify and address the special needs of vulnerable populations, including but not limited to those with disabilities, when planning for and responding to disasters. This Resolution is consistent with that policy by urging jurisdictions to provide reasonable accommodations to the disabled and others with respect to any remote bar examination administered during the COVID-19 pandemic.

At the 2019 Annual Meeting, the ABA House of Delegates adopted Resolution No. 102, which urges jurisdictions to adopt “Pro Bono Scholar”-style programs to allow law students, in their final semester of law school, to provide full-time supervised pro bono services under the supervision of a non-profit legal organization. This Resolution identifies supervised practice and the expansion of certified legal intern programs as potential methods of providing temporary emergency licensure to recent law graduates.

5. If this is a late Report, what urgency exists which requires action at this meeting of the House?

N/A.

6. Status of Legislation (if applicable).

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The recommendations would be disseminated to the highest courts and bar

10G

admissions authorities of each jurisdiction.

8. Cost to the Association (both indirect and direct costs).

None.

9. Disclosure of Interest.

None.

10. Referrals

ABA Law Student Division
ABA State and Local Government Law Section
ABA Criminal Justice Section
ABA Section on Civil Rights and Social Justice
ABA Section on Legal Education and Admissions to the Bar
ABA Young Lawyers Division
ABA Business Law Section
ABA Judicial Division
ABA Solo and Small Firm Section
ABA Center for Innovation
ABA Section of Dispute Resolution

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address.)

Anthony M. Ciolli
Past President, Virgin Islands Bar
PO Box 590
St. Thomas, VI 00804
340-774-2237
aciolli@gmail.com

12. Contact Name and Address Information. (Who will present the Resolution with Report to the House?)

Patricia E. Salkin
Provost
Graduate and Professional Divisions
Touro College
500 7th Avenue, 4th Floor
New York, New York 10018
646-565-6522
psalkin@tourolaw.edu

EXECUTIVE SUMMARY

1. **Summary of Resolution.**

This Resolution urges that the highest court or bar admissions authority in each jurisdiction cancel the in-person bar examinations currently scheduled for September 9-10, 2020, and September 30-October 1, 2020, and not administer any other in-person bar examination until and unless public health authorities determine that the examination can be administered in a manner that ensures the health and safety of bar applicants, proctors, and other staff. The Resolution further urges the highest court or bar admission authority of each jurisdiction to establish temporary emergency measures to expeditiously license recent law school graduates and other bar applicants when public health and safety concerns preclude safe administration of an in-person bar examination. Finally, the resolution urges that jurisdictions electing to administer a remote bar examination implement appropriate safeguards with respect to the reliability and security of the online software, provide reasonable accommodations to all applicants, and take appropriate measures with respect to data collection, usage, and action.

2. **Summary of the Issue which the Resolution addresses.**

This Resolution urges the highest court or bar admissions authorities of each jurisdiction to take certain actions with respect to the COVID-19 crisis.

3. **An explanation of how the proposed policy position will address the issue.**

The Resolution addresses these issues by urging for the cancellation of in-person bar examinations, establishment of temporary measures to expeditiously license recent law school graduates and other bar applicants, and enactment of certain practices with respect to the administration of remote bar examinations.

4. **A summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

No minority or opposing views have been identified.

Exhibit B-4

Angela Lovecchio, President
Donald F. Martino, President.-Elect
Corey Mowrey, Treasurer
Elizabeth A. White, Secretary
Christian D. Frey, Past President
Gary L. Weber, Editor



Michele S. Frey, Executive Director
Jessica L. Harlow
Warren "Rick" Baldys
Joy Reynolds McCoy
Ryan C. Gardner

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August 4, 2020

PA Board of Law Examiners
601 Commonwealth Avenue, Suite 300
Harrisburg, PA 17106-2535

RE: PA Bar Exam

Dear Board of Law Examiners:

The past several months have been difficult for everyone across the nation and in Pennsylvania. Indeed, these trying times have required significant adaptation from normal practices for our courts, the attorneys of Pennsylvania and law students.


Valid concerns regarding the administration of a remote bar exam exist. The recent law school graduates have experienced much uncertainty and many continue to experience disruptions to their lives. Given the absence of answers to numerous logistical questions and concerns regarding equity among exam takers, combined with a date for an online exam quickly approaching, it seems prudent for this year's exam to be waived on a limited, one-time basis.

In light of the current circumstances, I support recommendations that PABLE and the Pennsylvania Supreme Court grant emergency licensure to recent law school graduates.

In making a final decision about this matter, kindly consider that the Commonwealth would not be alone in offering "diploma privileges" to recent law school graduates. Other states, including Louisiana, Utah, Oregon and Washington, have already implemented "diploma privileges."

Thank you for your consideration.

Sincerely,
LYCOMING LAW ASSOCIATION


Angela Campana Lovecchio, Esquire
President

ACL/mf

Exhibit B-5

PENNSYLVANIA BAR ASSOCIATION COVID-19 TASK FORCE

Recommendation

The PBA COVID-19 Task Force recommends that the PBA request the Board of Law Examiners to adopt measures to assist students on schedule to graduate from law school in May 2020. Specifically, the COVID-19 Task Force recommends that students who graduate in May 2020 be issued a provisional license with specific additional requirements (such as those outlined below) and that, if those graduates complete additional requirements established by the Board of Law Examiners, they be issued a full license without the need to take the bar examination.

Report

In March of this year, Pennsylvania Bar Association (PBA) President Anne John convened a task force of PBA members (COVID-19 Task Force), focused on addressing issues facing the practice of law during the COVID-19 pandemic. The COVID-19 Task Force believes that the following position should be taken by the PBA related to the Pennsylvania Bar Examination, set to be administered in July 2020. Because the Board of Law Examiners is set to meet in the week beginning April 13, 2020, the COVID-19 Task Force asks the Board of Governors to act in lieu of the House of Delegates, which will not meet until sometime after the Board of Law Examiners' scheduled meeting, and adopt the following Report and Recommendation.

These are extraordinary times. As recently as one month ago, students believed they were going to graduate and enter one of the strongest job markets in a decade. Instead, they now face perilous conditions. The uncertainty of this situation is compounded by the fact that these students do not know when they will be able to sit for the next bar examination, be it in July, the fall, or February 2021. While the Board of Law Examiners should take all necessary steps, in accordance with federal and state health guidelines, to give the bar exam—in some format—at the end of July, it may be impossible to predict when this crisis might end. Planning should begin now on how to address the reality that a July exam in any format may not be feasible.

Although simply postponing the bar exam seems like a logical solution, this solution delays graduated students, facing enormous educational debt, from earning a living. These graduates will be prohibited from taking vital positions in our profession and penalized for conditions beyond their control. There is no way to guarantee that if the bar exam were postponed, that it could be rescheduled. Even if this crisis ends by mid-to-late summer, numerous events will need to be rescheduled. New York, one of the first states to postpone its bar exam, has recently acknowledged this reality.

The COVID-19 Task Force does not make this recommendation lightly. The PBA must remain committed to the integrity of the profession and ensuring that the public receives the type of representation to which it is entitled. Any alternative path to licensure needs to balance those needs with the needs and realities faced by this year's law school graduates. With all of these

concerns in mind, however, a provisional license with the following conditions could accomplish those objectives.

One such option would be allowing May 2020 graduates to obtain a provisional license and be required to temporarily (*e.g.*, four months) provide legal services to the indigent in a community legal aid program or law school clinic.¹ Such a program would have logistical challenges and would need to be a partnership between the Board of Law Examiners, the law schools, legal aid programs, and the judiciary. Notwithstanding those challenges, however, graduates who participate in such a program would be afforded an opportunity to deal with clients in real-world situations, completing—albeit a different manner—an educational exercise aimed at ensuring they have specific skills necessary to practice law.

Alternatively, those graduates issued emergency provisional licenses could be allowed to enter the practice of law immediately but be required to perform 250 hours of *pro bono* work through legal services, clinics, and other approved programs during the calendar year. Additionally, those graduates would be required to successfully complete other requirements designed to ensure competency (*e.g.*, completion of bridge-the-gap and passage of character and fitness requirements). Those that complete the required 250 hours with appropriate certification and any other requirements deemed necessary would then become permanent members of the bar without needing to take the bar exam. Those that fail to do so would be required to take the July 2021 (or subsequent) bar exam. Notably, under this approach, those graduates provided provisional licensure would be required to work under the supervision of an attorney until completing the requirements to obtain full licensure.

Provisional licensure shares characteristics with diploma privileges, the latter having been adopted by the State of Wisconsin in 1870 and in New Hampshire, in a limited fashion, in 2005. The State of Wisconsin already provides this course of action to students graduating from Wisconsin law schools who meet certain requirements. By adopting this course of action, the Board of Law Examiners would allow graduates to get practical, real world experience assisting

¹ New Jersey, which has postponed its bar exam, will allow students to temporarily practice under the supervision of a licensed attorney while waiting for the examination to be rescheduled. While this solution has merit, it will mean that an entire graduating class of lawyers will be required to study for a subsequent bar exam while attempting to earn an income. This has been noted to make the exam itself statistically more difficult. Notwithstanding that, this approach, while presenting a host of challenges for May 2020 graduates (*e.g.* delaying their full admission to the bar based on conditions beyond their control), it is arguably better than making students wait for the rescheduled bar exam. See <https://www.nj.com/coronavirus/2020/04/nj-law-graduates-can-temporarily-practice-without-license-amid-coronavirus-crisis-court-says.html>. Likewise, the deans of the New York law school have sent a letter to the New York Chief Justice asking that New York adopt New Jersey's approach while creating an alternative path to licensure that does not require passage of the New York bar exam. The New York Dean's request is similar to this proposal, but it only requires practice under the supervision of an attorney for a period of time, not a required *pro bono* element. <https://news.law.fordham.edu/blog/2020/04/02/deans-letter-to-ny-court-of-appeals-on-the-bar-exam/>

clients, while earning the right to practice law. The crisis caused by COVID-19 is going to impact indigent members of our society at a time when legal services are already stressed beyond capacity. Looming in the future are soaring unemployment, the potential for bankruptcies and evictions, and countless other issues. By providing graduates with the option of an emergency provisional license and requiring that they provide *pro bono* service in some manner, rather than taking the bar exam, citizens of the Commonwealth with a critical need will receive legal representation while we prepare these graduates for the real world. This proactive approach will put Pennsylvania in a position to be ready to confront these issues in ways it currently is not.

For these reasons, the COVID-19 Task Force requests that the Board of Governors adopt the recommendation that, to the extent it is not possible to safely administer the bar exam in July 2020, that the Supreme Court grant a provisional license as outlined above to those May 2020 law school graduates who have submitted an application to take the Pennsylvania Bar Examination and submit this recommendation to the Supreme Court of Pennsylvania and the Board of Law Examiners for consideration.

Respectfully Submitted,

Michael Jones, Esq.
Co-Chair
PBA COVID-19 Task Force

Jonathan D. Koltash, Esq.
Chair, Subcommittee on the Bar Exam
PBA COVID-19 Task Force

April 7, 2020

Exhibit C-2



July 8, 2020

Dear Pennsylvania Bar Exam Stakeholders:

I hope you, your families and your friends are well. I write on behalf of the Pennsylvania Board of Law Examiners with an update on plans for the next administration of the Pennsylvania bar exam.

As you know, we moved the in-person bar exam from the end of this month to the beginning of September with hopes that the course of the COVID-19 pandemic would allow us to administer an in-person exam safely at that later time. The best information from health authorities now compels us to conclude that it is unlikely we could do so.

Accordingly, there will be no second in-person Pennsylvania bar exam in 2020. Instead, the Board will administer a remote bar exam on October 5-7, 2020. We know there will be many questions and, in the coming weeks, the Board will post on its website (www.pabarexam.org) details about how the exam will be administered. We can share now certain general information:

- The essay sections will be administered on October 5 and 7, and the multistate bar exam (the “MBE”) will be administered on October 6. We will have a third testing day because the security measures attendant to a remote exam will require that we test in 45- or 90-minute segments with more breaks than in a usual, in-person exam. The dates of the exam are dictated in part by when the National Conference of Bar Examiners will offer the MBE.
- The MBE will include only 100 questions.
- All those who registered for the July/September exam will be automatically registered for the October exam.
- Success on the October exam will be treated the same as if the exam were in person for purposes of admission (*i.e.*, assuming satisfaction of other requirements, successful applicants will be fully admitted to the bar of the Pennsylvania Supreme Court).

We know that some will welcome this decision and others will not. Please know that we gathered significant information, considered the interests of all stakeholders and reviewed a number of options before choosing to offer the next bar



Page 2 of 2
July 8, 2020

exam remotely. Ultimately, we concluded that this is the best option to meet our mission of protecting the public; to allow us to offer another 2020 bar exam to as many applicants as possible; to provide certainty that most applicants will be able to take the exam this year; to reduce stress on applicants who would otherwise be confronted with taking an exam in person, with masks, in the midst of a pandemic; and to avoid unnecessary risk to the health of applicants, proctors and Board staff who would attend an in-person exam.

We know this has been a stressful time for 2020 bar applicants. We hope today's announcement will provide some greater certainty that there will be a safe and prompt opportunity for those people to take the bar exam and, we hope, gain admission. And, as always, we wish you all good health.

Very truly yours,



David R. Fine
Chair

Exhibit C-2

Pennsylvania Board of Law Examiners
601 Commonwealth Ave., Suite 3600
P.O. Box 62535
Harrisburg, PA 17106-2535



Phone (717) 231-3350
Fax (717) 231-3351
www.pabarexam.org

April 28, 2020

FOR IMMEDIATE RELEASE

Contact: Stacey Witalec, (717-877-2997)

Pennsylvania Board of Law Examiners Announces Rescheduling of July 2020 Bar Exam and Supervised-Practice Order

The Pennsylvania Board of Law Examiners has announced that, with the approval of the Pennsylvania Supreme Court, it has rescheduled the July 2020 bar exam to September 9 and 10, 2020, in light of the health and safety issues raised by the COVID-19 pandemic. The Board recognizes that the viability of those dates depends on factors that cannot now fully be assessed, and it will continue to work with those studying COVID-19 and proper safety measures.

At the same time, the Board announced that the Court has approved a limited license that will allow qualifying applicants to practice under the supervision of experienced lawyers. The requirements and scope of the supervised-practice program are detailed in an order the Court has entered on April 28, 2020.

“The Board believes this order represents an appropriate balance between the need to ensure that the public is represented competently, the particular need for additional lawyers to assist the public in matters related to or arising from the pandemic, and the need for graduating law students to start the careers for which they have worked and invested so much,” said board chair David R. Fine.

In studying and dealing with a situation unlike any in the Board’s history, the Board was grateful to receive and review thoughtful comments and suggestions from many stakeholders with a number of perspectives.

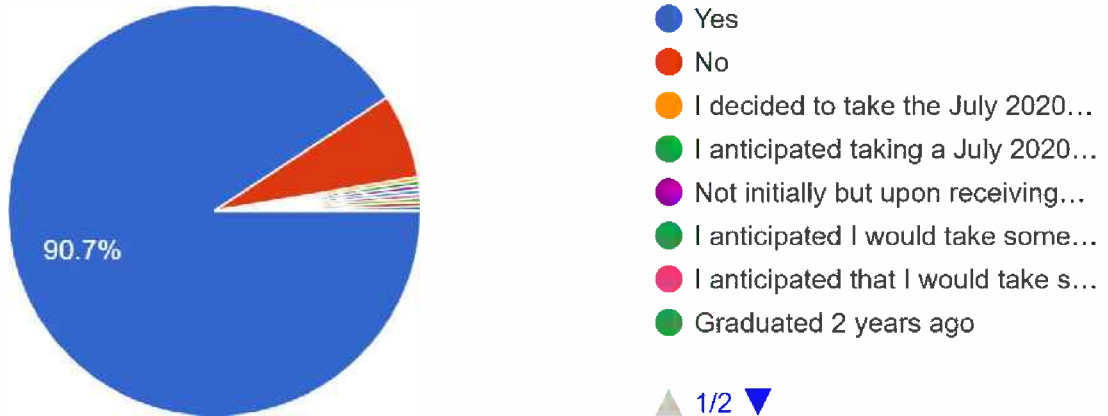
Exhibit D-1

LSERC October Candidate Hardship Survey

*Results as of July 24, 2020 at 10:40 a.m.¹
Survey Commenced on July 10, 2020 at 9:50 a.m.*

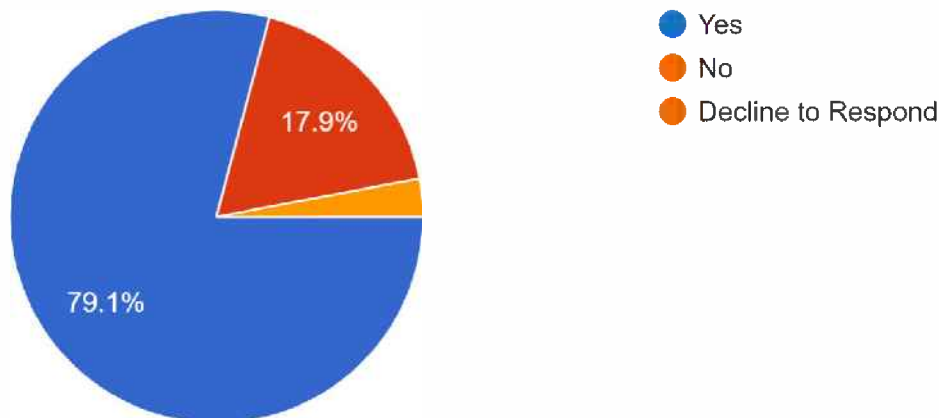
When you enrolled in law school, did you anticipate that you would take the July 2020 Pennsylvania Bar Exam?

302 responses



Have you suffered economic harm due to the delay and postponement of the July Exam?

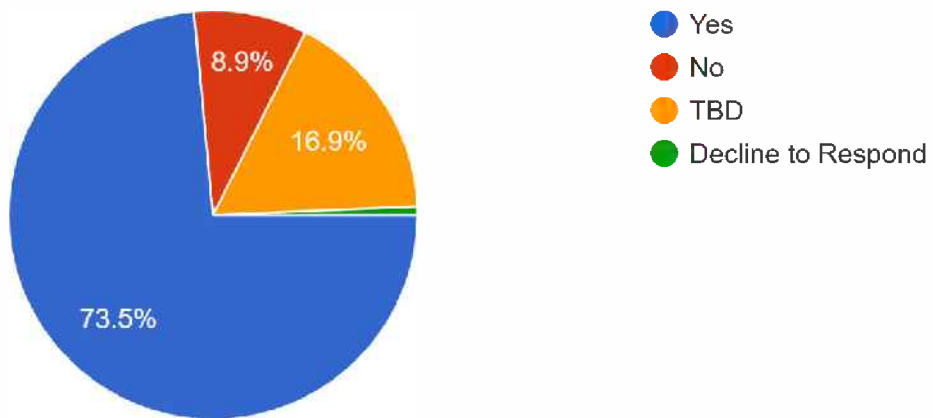
302 responses



¹ For the purposes of statistical analysis in this Petition, the percentages corresponding to questions to which respondents could “Decline to Respond” were calculated using the differences between the total number of respondents and the number of respondents who selected “Decline to Respond.”

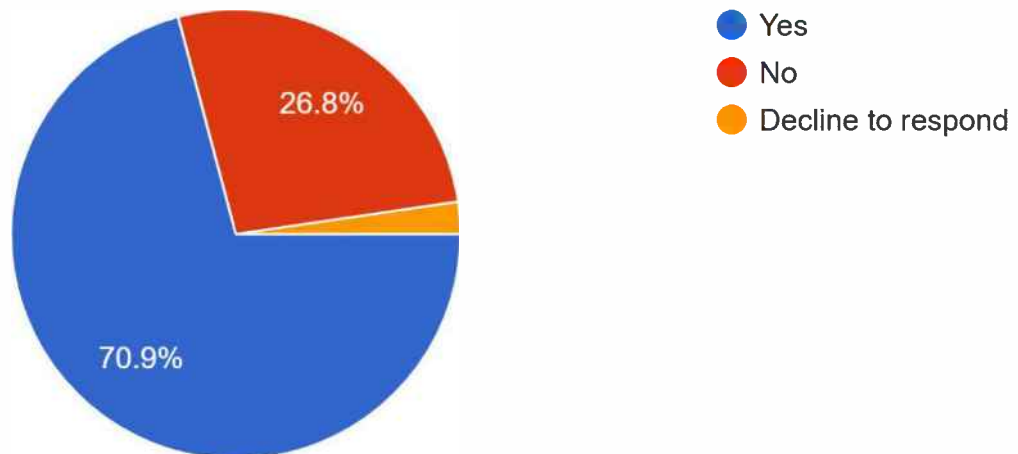
Have you suffered economic harm due to the delay and postponement of the September Exam?

302 responses



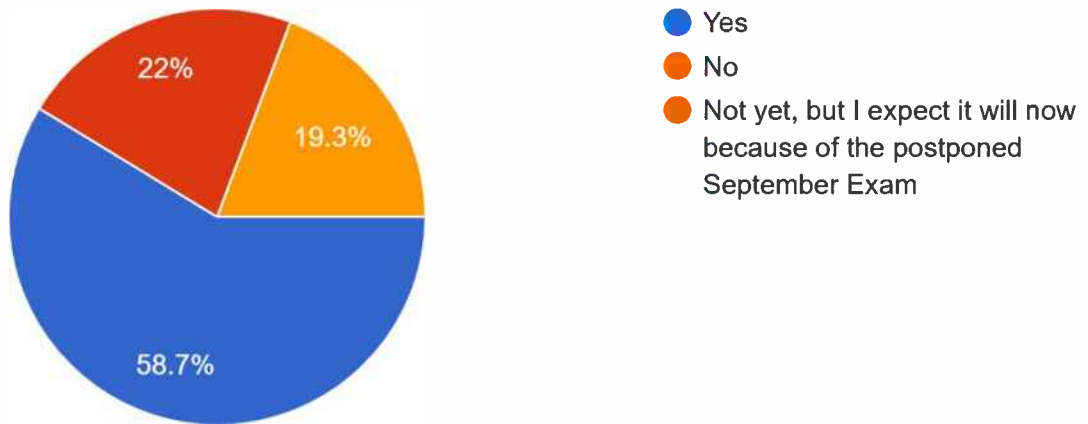
Have you obtained employment in the legal field?

302 responses



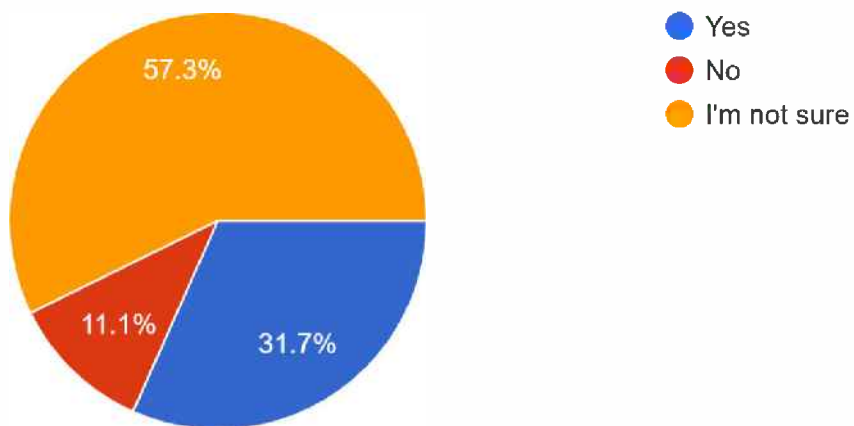
If you obtained employment in the legal field, has your start date been deferred?

218 responses



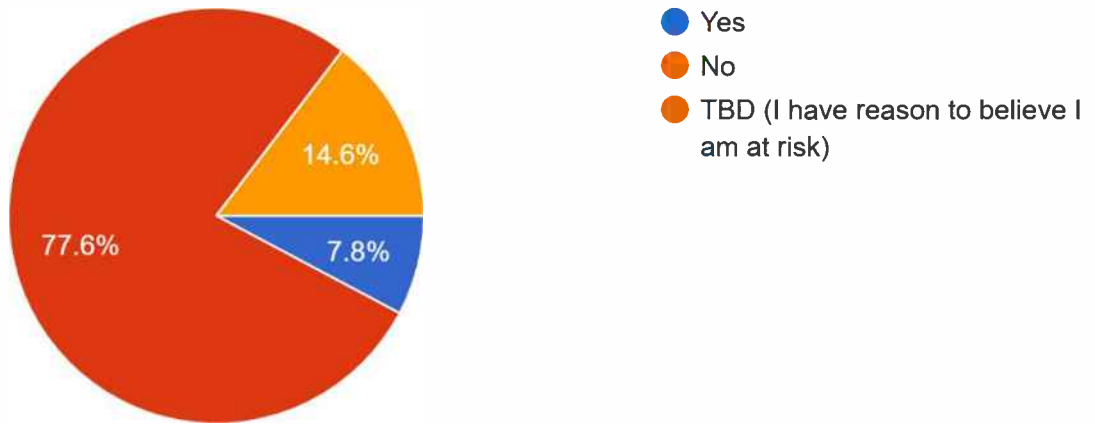
If you have obtained employment in the legal field, is your employer amenable to pushing back your start date for another month?

199 responses



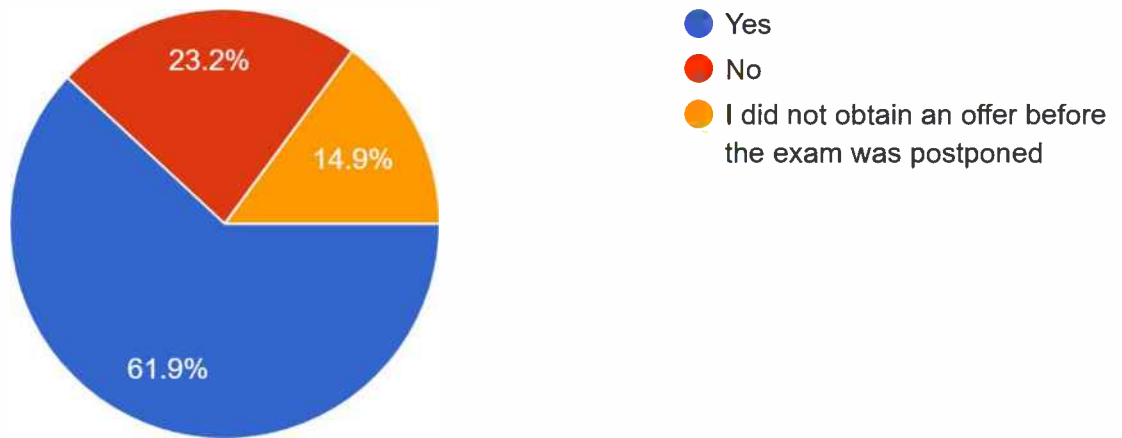
If you obtained employment in the legal field, was your offer rescinded?

219 responses



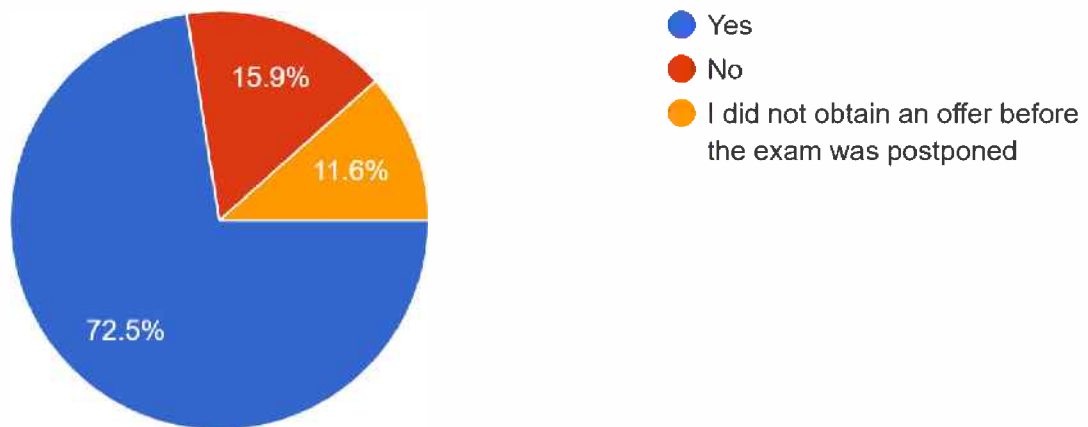
Did you lose income due to the postponement of the July Bar Exam?

302 responses



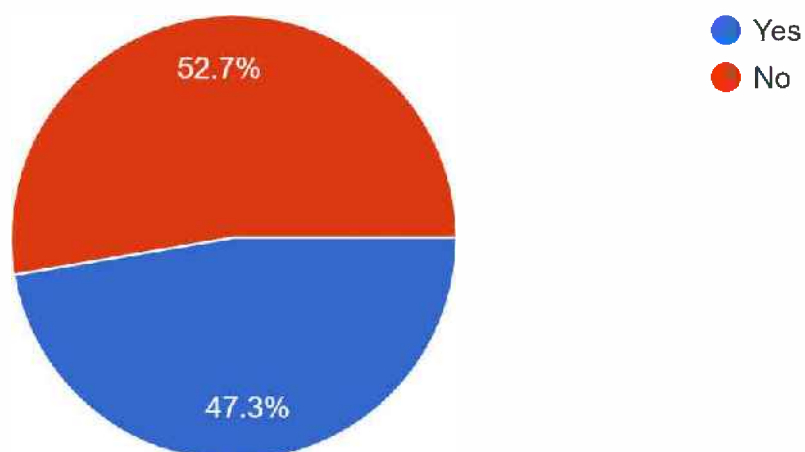
Did you or do you expect to lose income due to the postponement of the September Bar Exam?

302 responses



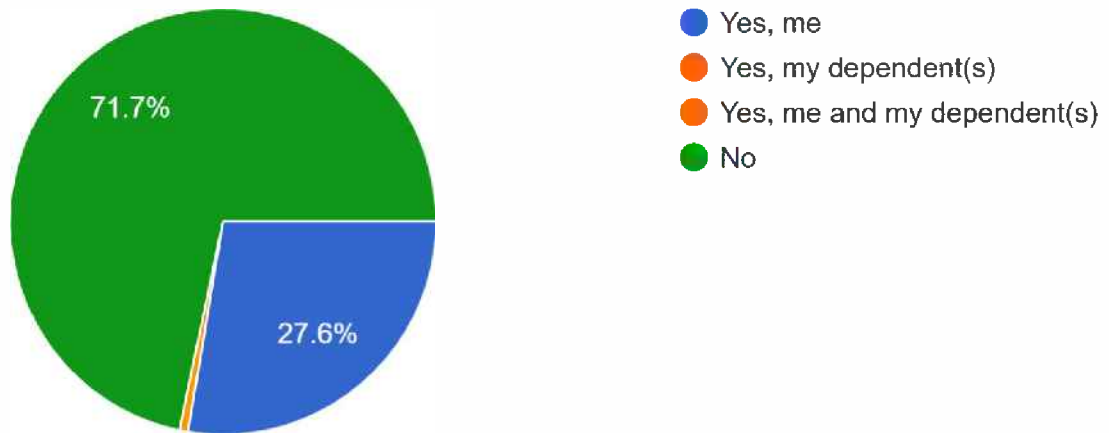
If your offer was rescinded or start date deferred, did this delay your access to healthcare, creating a gap in coverage?

188 responses



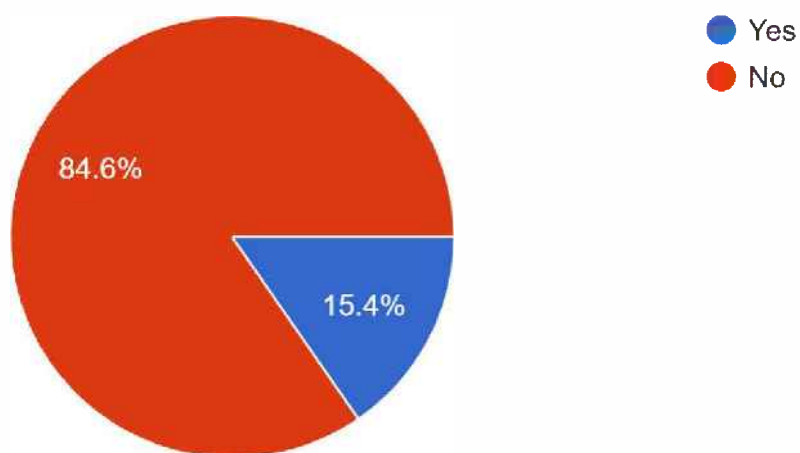
If you lost access to health care, did you or any of your dependents experience any harm as a result?

152 responses



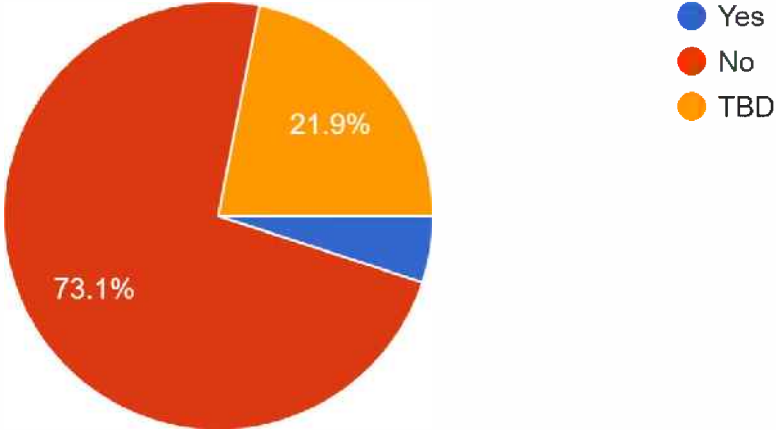
Did you interview for a job position but lose the opportunity because the July Exam was postponed?

221 responses



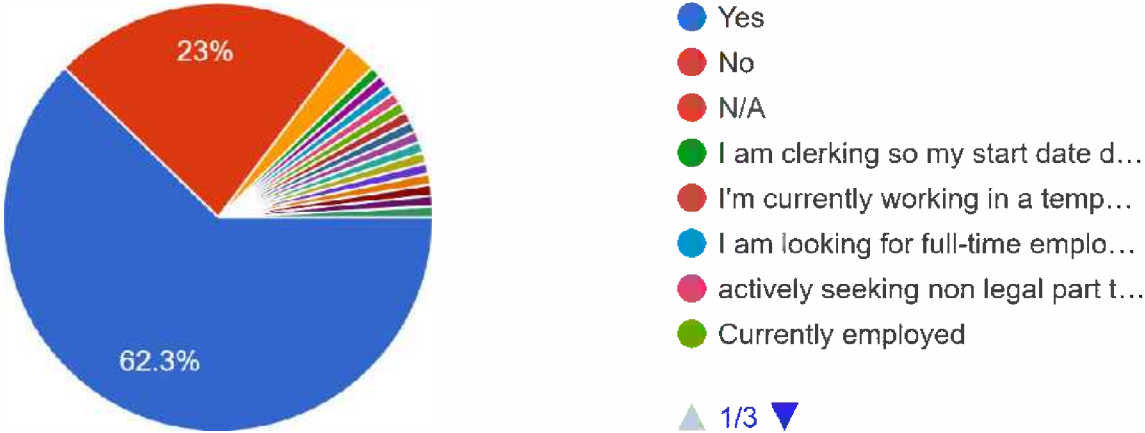
Did you interview for a job position but lose the opportunity because the September Exam was postponed?

219 responses



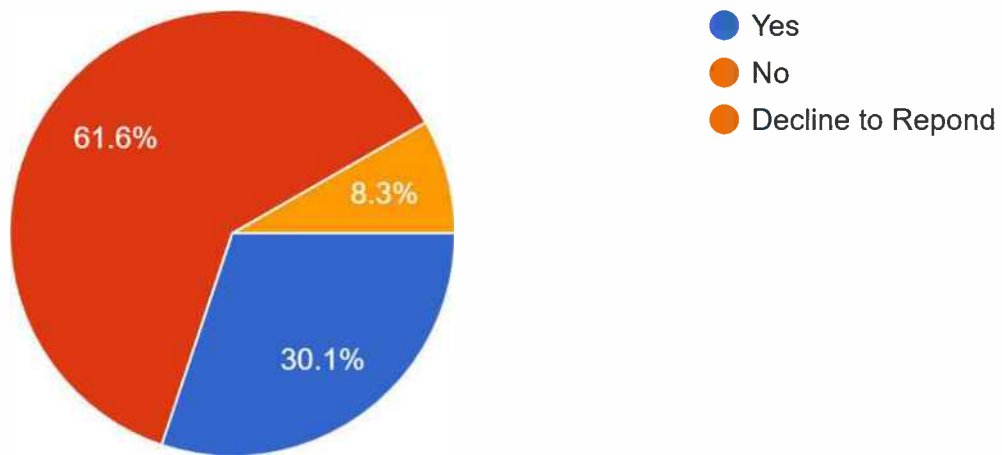
If you are unemployed, are you actively searching for full-time employment in the legal sector?

122 responses



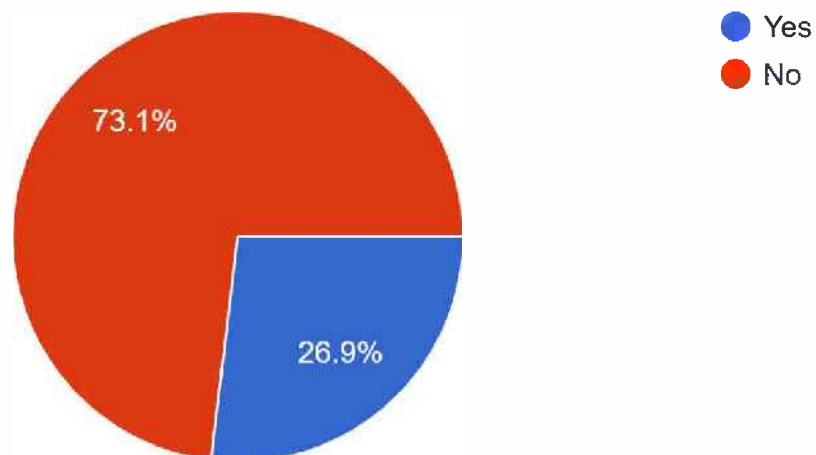
Do any loved ones or family members rely on your for financial support?

302 responses



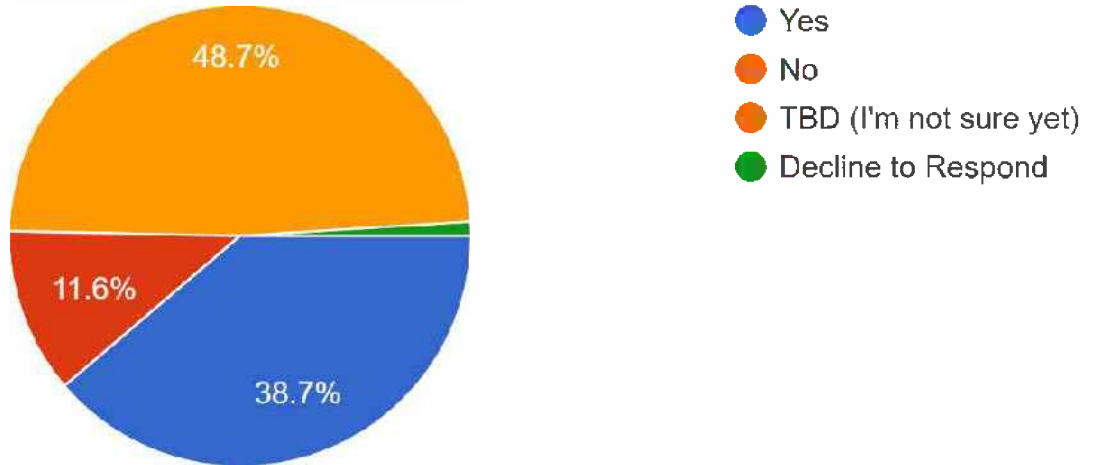
Have you (or do you anticipate) that you'll miss a rent payment because of the postponed exam?

264 responses



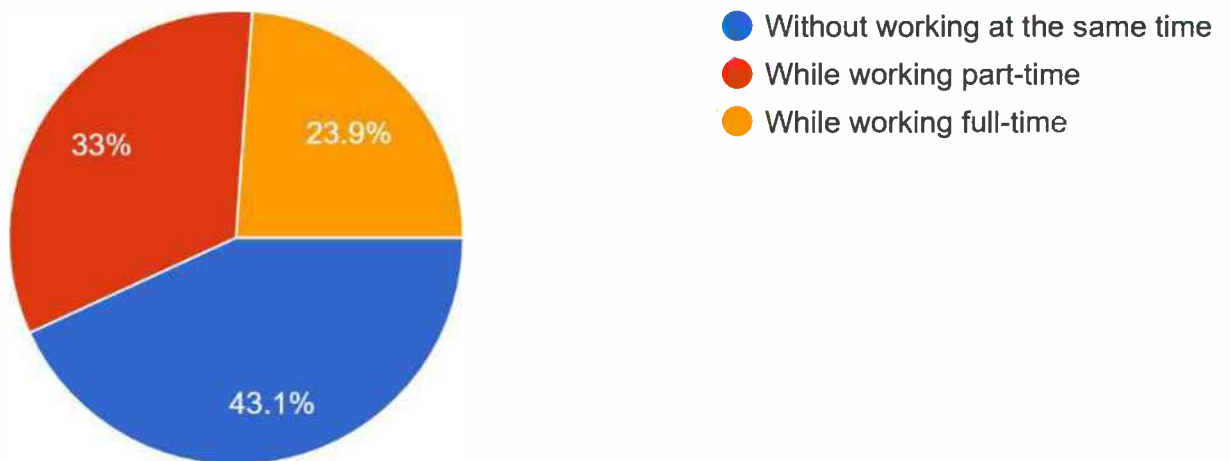
Are you financially able to study until the October exam?

302 responses



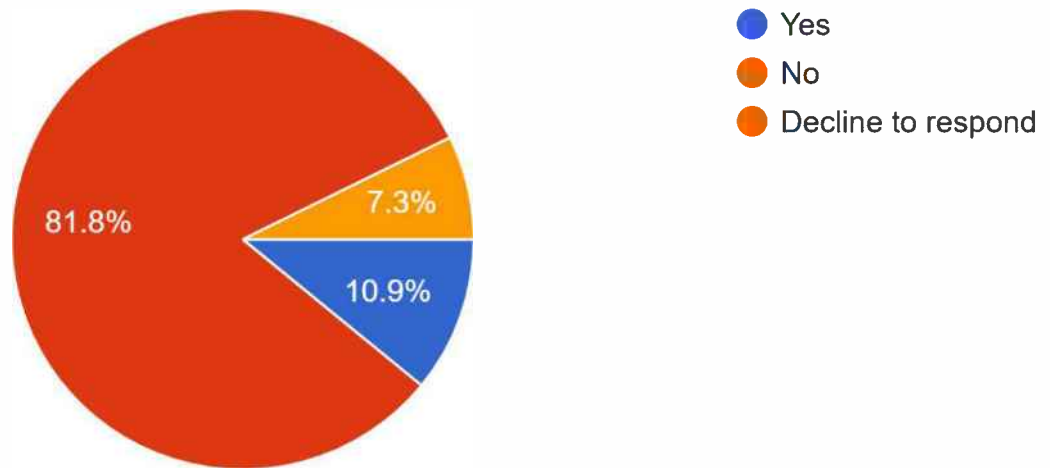
If you are financially able to study until the October Exam, is this---

218 responses



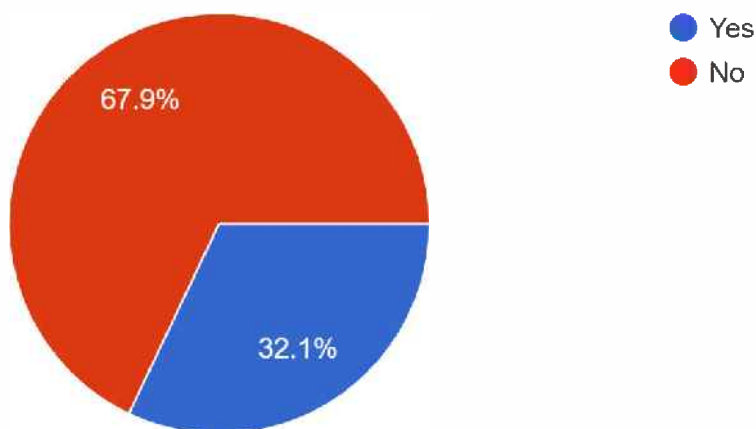
Did you apply for a bar loan?

302 responses



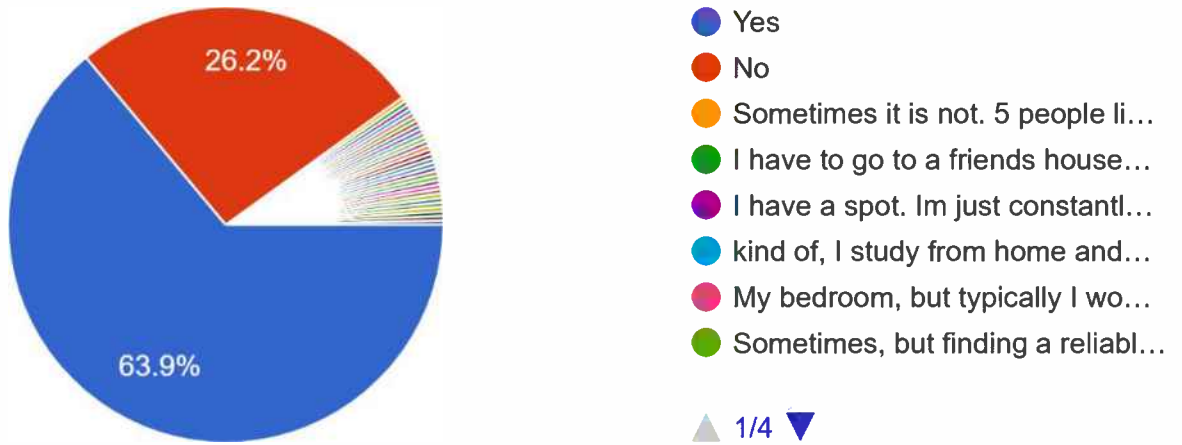
Do you anticipate needing to apply for a bar loan now that the September Exam was postponed?

234 responses



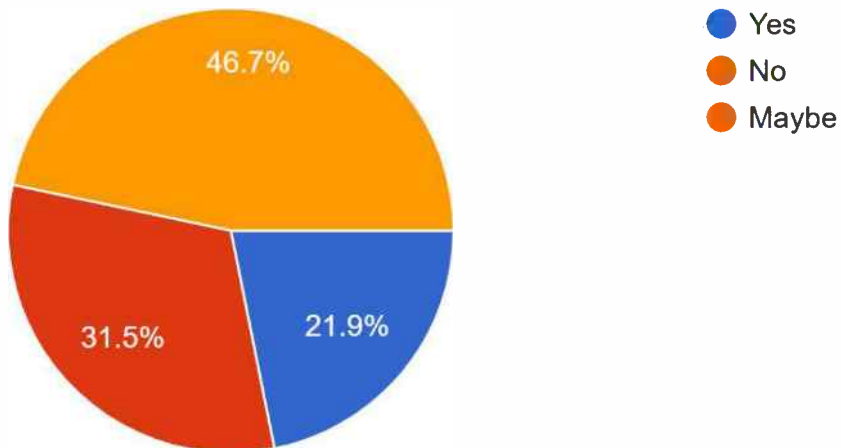
Do you have a suitable place to STUDY for the bar exam?

302 responses



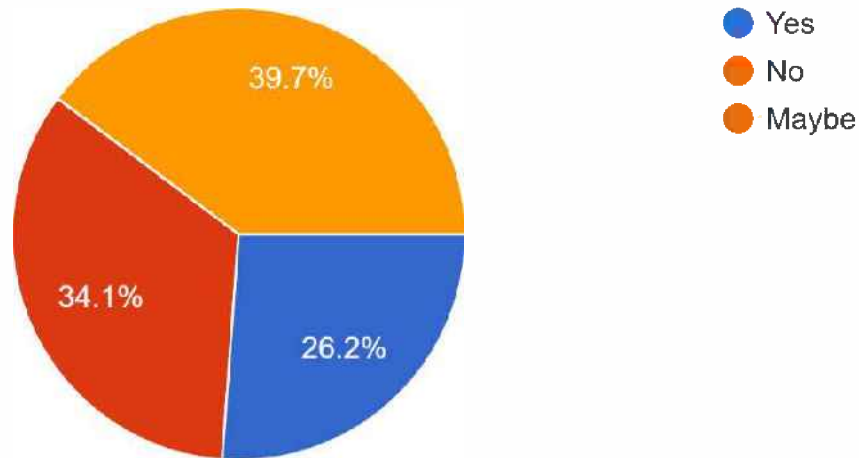
Do you have a suitable place to TAKE the remote October Exam for all three days?

302 responses



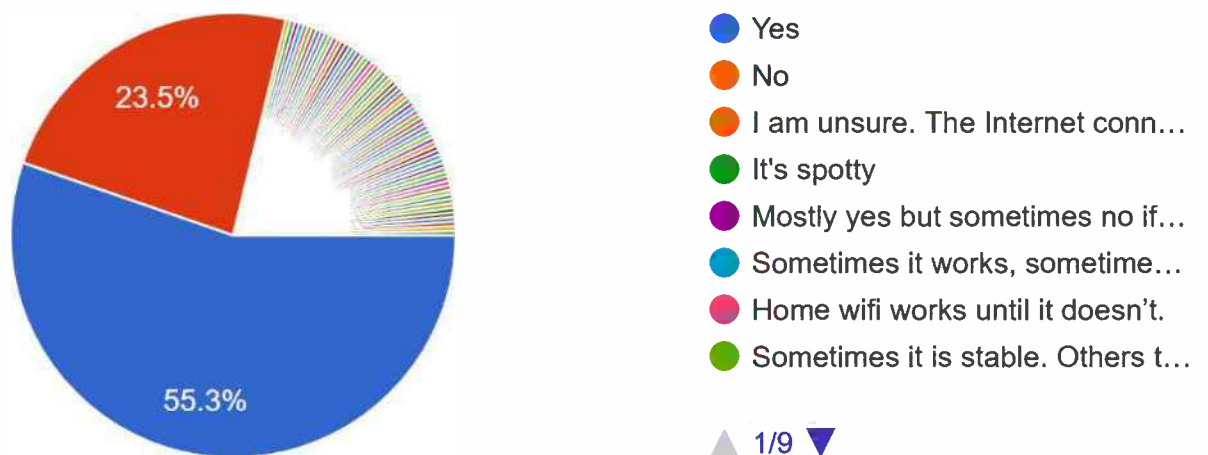
Do you anticipate that you would need to pay for a suitable space to take the remote October Exam?

302 responses

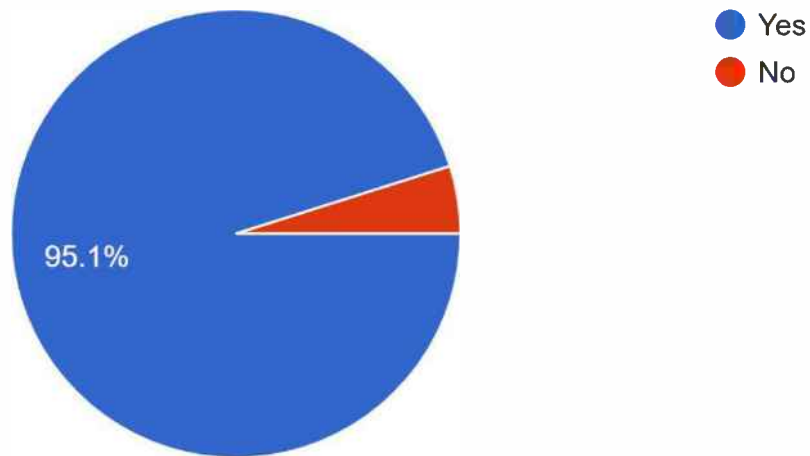


Do you have suitable/stable wifi access to take the remote exam?

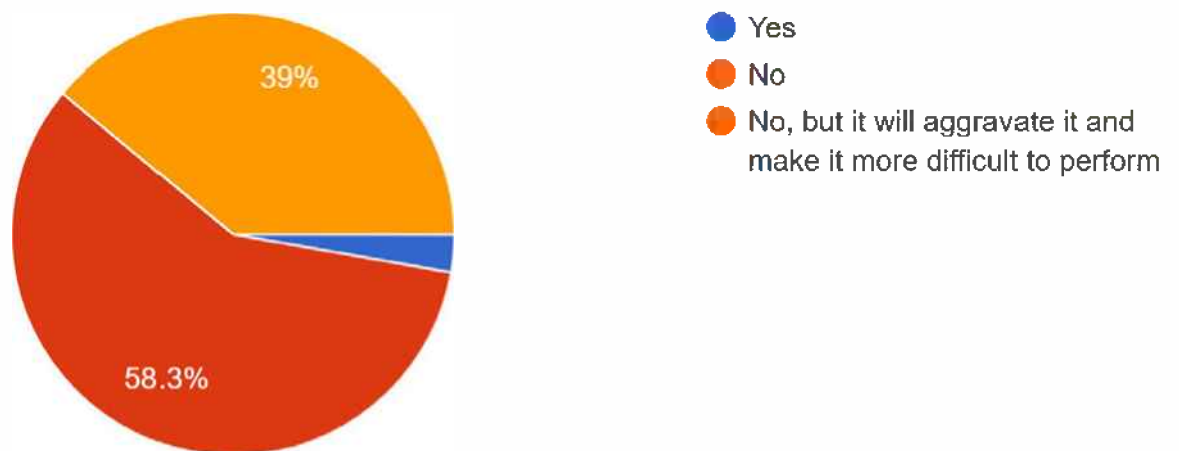
302 responses



Do you have a suitable/stable power supply for your space to take the exam?
287 responses

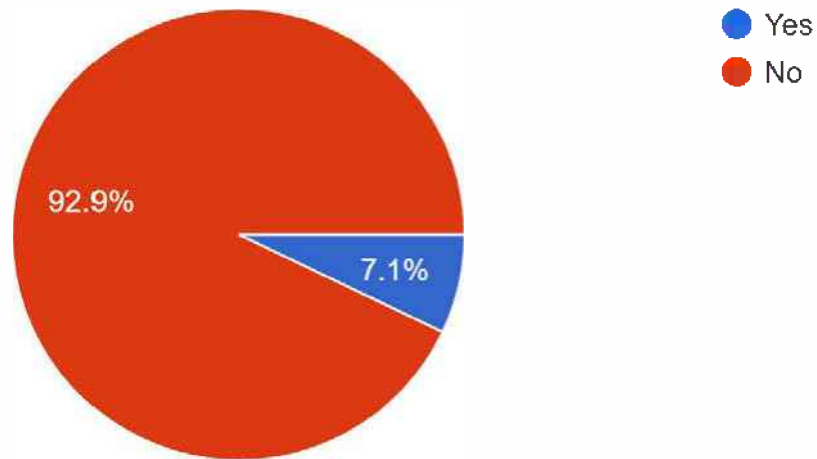


Do you have any physical or mental condition which prevents you from taking the bar exam at home?
290 responses



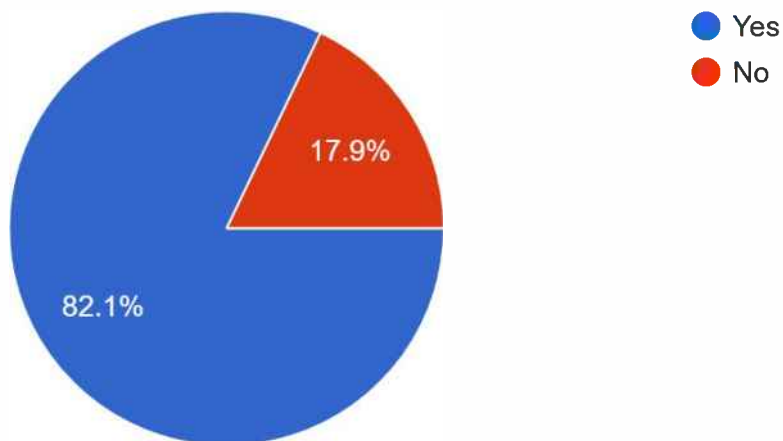
Will you need to pay for childcare or care services for a loved one to take the remote October Exam?

282 responses



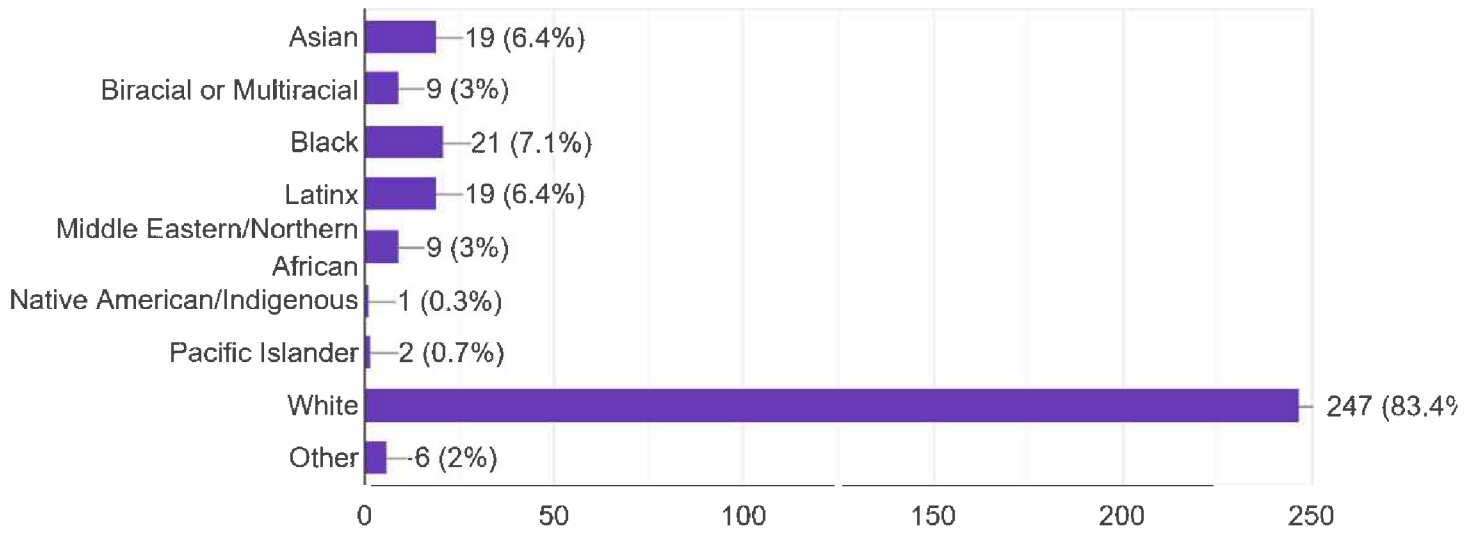
Are you a first generation J.D.?

302 responses

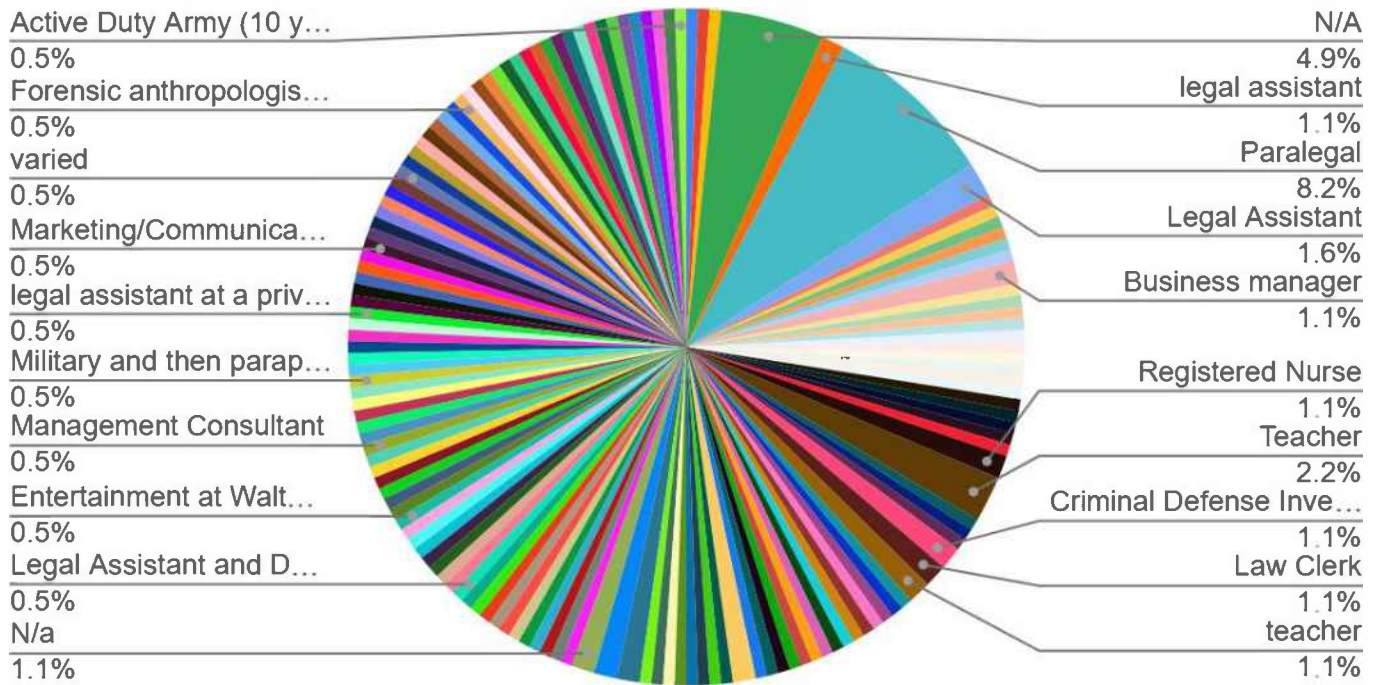


With which race(s) do you identify?

296 responses



Count of If you did not enter law school straight from college, what was your prior full-time occupation?



Total Respondents: 172

Exhibit D-2

Hardship Survey of October Candidate-Declarants¹

FINANCIAL & PERSONAL HARDSHIPS		
Identified Hardships	Responses	%
The start date of my legal employment has been delayed.	158	55.6%
My job offer was rescinded.	13	5.0%
I have been unable to obtain full-time legal employment.	73	25.7%
I have experienced (or anticipate experiencing) a gap in healthcare coverage.	121	42.6%
I have student loan payments due starting in October/November 2020.	185	65.0%
I left another career to attend law school.	102	35.9%
I entered law school expecting to sit for the July 2020 Pennsylvania Bar Examination.	265	93.3%
I have increased caretaking responsibilities for my loved ones during the COVID-19 pandemic.	68	23.9%
I live with an essential worker who is at increased risk of contracting COVID-19.	71	25.0%
I am at higher risk of becoming seriously ill if I contract COVID-19.	61	21.5%
I have a loved one(s) with whom I come into regular contact at risk of becoming seriously ill if they contract COVID-19.	144	50.7%
I have contracted COVID-19 at some time during the pandemic.	11	3.9%

¹ All but one October Candidate who submitted a declaration in support responded that they are suffering at least one hardship.

I have had to take care of a family member(s) who contracted COVID-19.	10	3.5%
I have a loved one pass away from COVID-19.	14	4.9%
HARDSHIPS SPECIFICALLY RELATED TO ADMINISTRATION OF REMOTE BAR EXAMINATION		
Identified Hardships	Responses	% of Total Submissions
I do not have a suitable place to take the remote bar exam in my home.	175	61.6%
I do not have suitable/stable internet access to take the remote bar exam.	127	65.1%
I did not apply for reasonable accommodations for the in-person, paper-based bar exam, but I now need them for the remote exam.	29	10.2%
I did obtain reasonable accommodations for the in-person, paper-based bar exam, but I now need different accommodations for the remote exam.	6	2.1%

Exhibit

E-1

October 2020 Bar Exams—ExamSoft as Likely Vendor

October 2020 Bar Exams		
Jurisdiction	Dates¹	Total # of July 2019 Examinees²
California	October 5–6	7,764
Connecticut	October 5–6	303
Georgia	October 5–6	1,178
Idaho	October 5–6	142
Massachusetts	October 5–6	1,377
New Hampshire	October 5–6	105
New York	October 5–6	10,071
Ohio	October 5–6	885
Pennsylvania	October 5–7	1,270
Tennessee	October 5–6	700
Vermont	October 5–6	76
Virgin Islands	October 5–6	10
Total		23,881

¹ *July 2020 Bar Exam: Jurisdiction Information*, NCBE, <http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/> (last updated July 24, 2020 4:54 P.M.).

² *See Persons Taking and Passing the 2019 Bar Examination*, Bar Examiner, <https://thebarexaminer.org/wp-content/uploads/Persons-Taking-and-Passing-the-2019-Bar-Examination.pdf> (last visited July 25, 2020).

Exhibit E-2



State Bar of California

Exam Takers

File Number: ?

Password:

Login

 Remember Me

[Lost File Number or Password?](#)


Videos



Support



Info

WARNING: You must install Exemplify on the computer you will use on exam day. There is a \$50 administrative fee if you wish to re-download.

Administrators / Faculty

Email:

Password:

Login

 Remember Me

[Lost Password?](#)

Minimum System Requirements:

PC Users

Mac Users

Exam Taker Information

The password to open a Mock Exam is: **mock123**

Mac Book Pro with Touch Bar computers can be used for the upcoming examination. Surface devices including Surface Laptops, Surface Pro and Surface Books are permitted.

All applicants should check with their institution to determine if the detachable keyboard is allowed. All Bluetooth keyboards or mice must be connected prior to starting a secure exam as it will not allow an applicant to access any settings to pair a device during the exam.

There has been a change to the Certification process. You will be required to put in an Institution ID when registering Exemplify. After you download Exemplify, run the installer and enter the Institution ID followed by

your File Number and password. The Institution ID for the California Bar Examination is calbar.

ExamSoft Support

Phone: 1-(866)-429-8889

Email: support@examssoft.com

Hours: 24/7 Support

Note 1: You can complete the laptop certification process only ONCE. Please make sure that the laptop you are using to complete this process is the one you will be using for the examination. **There is a \$50 administrative fee if you wish to re-download.**

Note 2: Applicants for the California Bar Examination may initiate and complete the certification process with ExamSoft once they print their admittance tickets from their Admission Status Screen. Beginning approximately eight weeks prior to the examination, admittance tickets will be available for printing from the Admission Status Screen after the State Bar's Office of Admissions has determined eligibility for the examination. You will not receive a ticket in the mail.

Note 3: Even if you have downloaded Exemplify for a previous Bar Examination, you must log in, download and register Exemplify again. Under the 'Exam Takers' section log in with your Applicant ID and Password. Please use your File Number as your Applicant ID and your date of birth (mmddyyyy) for the Password. If your File Number is less than 6 digits, please add a leading zero.

Note 4: Installing Exemplify and successfully certifying your computer means that you are ELIGIBLE to use your laptop for the

California Bar Examination under the guidelines set forth by the State Bar's Office of Admissions.

Applicants planning to use their laptop for the examination must be certified no later than the published deadline. If your laptop or the software is not operational on the day of the examination, you will have to handwrite the examination.

Information on uploading your response, taking your Mock Exam, ExamSoft, and Exemplify can be found here: <https://bar.examssoft.com/>

Exemplify Minimum System Requirement can be found here: <https://bar.examssoft.com/systemrequirements>

ExamSoft Bar Exam Taker



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Exam Day | Be
Prepared

After the Exam
| Uploading
Bar Exam
(<https://bar.examssoft.com/upload/>)

Get more information on the Bar in your state!

For COVID-19 updates, click on the link below or contact your jurisdiction directly.

[NCBE COVID-19 UPDATES – JULY 2020 BAR EXAM: JURISDICTION INFORMATION](http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information) (<http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information>)

Where are you taking the Bar Exam?

Connecticut Bar Applicants



Mock Exam:

Phone Support

- **Required:** YES
- **Upload Deadline:** 01/31/2020 4:00 PM (Eastern Time)
- The password to open a Mock Exam is '**mock123**'.

Chat Support

(<https://examssoft.force.com/etcommunity/s/>)

Exam Information:

- **Spell Check Enabled:** NO
- **Character Count Limit:** NO

Upload Deadline: 02/27/2020 10:00 AM (Eastern Time)

Important: Follow [these instructions](#)

(<https://examssoft.force.com/emcommunity/s/article/Registration-Instruction-For-Returning-Users>) to register if you have previously used Exemplify.

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[NCBE COVID-19 UPDATES – JULY 2020 BAR EXAM: JURISDICTION INFORMATION](http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information) (<http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information>)

Exam Day | Be Prepared

Where are you taking the Bar Exam?

After the Exam | Uploading Bar Exam

(<https://bar.examssoft.com/upload/>)

Georgia Bar Applicants

Visit www.examssoft.com/gabar



Mock Exam:

Phone Support

- **Required:** YES

Chat Support

(<https://examssoft.force.com/etcommunity/s/>)

- **Upload Deadline:** 07/06/2020 4:00 PM (Eastern Time)
- The password to open a Mock Exam is 'mock123'.

Exam Information:

- **Spell Check Enabled:** YES
- **Character Count Limit:** YES (Each typed **MPT** answer has a 12,000 character limit. Each typed **Essay** answer has a 9,000 character limit. **Once you reach the specific character limit for each MPT and Essay answer, you will not be able to type any more text. The character limits include spaces, all punctuation, returns, etc.)**

Upload Deadline: 09/09/2020 11:59 PM (Eastern Time)

Important: Follow [these instructions](#)

(<https://examssoft.force.com/emcommunity/s/article/Registration-Instruction-For-Returning-Users>) to register if you have previously used Examplify.



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[NCBE COVID-19 UPDATES – JULY 2020 BAR EXAM: JURISDICTION INFORMATION](http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information) (<http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information>)

Exam Day | Be Prepared

Where are you taking the Bar Exam?

After the Exam | Uploading Bar Exam

(<https://bar.examssoft.com/upload/>)

Idaho Bar Applicants

Visit www.examssoft.com/idbar



Phone Support

Mock Exam:

Chat Support

(<https://examssoft.force.com/etcommunity/s/>)

- Required: Yes
- Upload Deadline: 07/24/2020 11:59 PM (Mountain Time)
- The password to open a Mock Exam is 'mock123'.

Exam Information:

- Spell Check Enabled: NO
- Character Count Limit: NO

Upload Deadline: 07/28/2020 11:59 PM (Mountain Time)

Important: Follow [these instructions](#)

(<https://examssoft.force.com/emcommunity/s/article/Registration-Instruction-For-Returning-Users>) to register if you have previously used Exemplify.



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[Home](https://isb.idaho.gov/) (https://isb.idaho.gov/) / Idaho State Bar Admissions Application

Idaho State Bar Admissions Application

The Idaho State Bar uses an online application form that enables you to apply to take the Idaho Bar Exam, for transfer of your Uniform Bar Examination (“UBE”) score to Idaho, for reciprocal admission in Idaho, or for an Idaho House Counsel license.

We recommend that you draft and save your responses to the online application questions in another program, such as Microsoft Word, then copy and paste that information into the online application form. This process will ensure that your work has been saved in the event of a problem with the submission of your online application.

Application Instructions

(<https://isb.idaho.gov/wp-content/uploads/Common-Admissions-Application-Instructions.pdf>)

Includes information for completing the Application. Please review these instructions before completing the Application.

Online Admissions Application

(<https://laserfiche.isb.idaho.gov/Forms/ISB-Application>)

Please review the entire Application before proceeding to enter your information.

Fingerprint Card

(<https://isb.idaho.gov/admissions/fingerprint-card/>)

Request a Fingerprint Card, complete all information, and return the card to the Idaho State Bar

Authorization and Release Form

(<https://isb.idaho.gov/wp-content/uploads/Authorization-and-Release-Form.pdf>)

Complete form and upload in online Application.

Consent to Release Student Records

(<https://isb.idaho.gov/wp-content/uploads/Consent-to-Release-Student-Records.pdf>)

Complete form(s) and upload in online Application.

Verified Statement

(<https://isb.idaho.gov/wp-content/uploads/Verified-Statement.pdf>)

Complete form and upload in online Application.

Attorney’s Oath

(<https://isb.idaho.gov/wp-content/uploads/Attorneys-Oath.pdf>)

Complete form and upload in online Application.


Computer Registration Form

(<https://laserfiche.isb.idaho.gov/Forms/Computer-Registration>)

Bar Exam Applicants Only. Complete the online form.**

Deferral Request Form

(<https://laserfiche.isb.idaho.gov/Forms/Request-for-Deferral>)

Bar Exam Applicants Only. Complete the online form. See the Idaho Supreme Court’s  **Order** (<https://isb.idaho.gov/wp-content/uploads/FINAL-Order-In-Re-Waiver-of-Provisions-of-ISB-Rule-219.pdf>) amending the deferral rule through the February 2021 bar exam.

**Idaho authorizes applicants to use a laptop computer for the essay portion of the Bar Exam. The fee to do so is \$125 to cover software licensing and administrative costs. For more information about Examplify, including minimum system requirements, go to <https://www.examsoft.com/IDbar> (<https://www.examsoft.com/IDbar>).



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NCBE COVID-19 UPDATES – JULY 2020 BAR EXAM: JURISDICTION INFORMATION (<http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information>)

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Where are you taking the Bar Exam?

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(<https://bar.examssoft.com/upload/>)

New Hampshire Bar Applicants

FAQs**(<https://bar.examssoft.com/faq/>)**Visit www.examssoft.com/nhbar(<http://www.examssoft.com/nhbar>) to access your account and download and register Exemplify.**Support****(<https://examssoft.force.com/etcommunity/s/>)****Exam Date:****Knowledge Base****(<https://examssoft.force.com/etcommunity/s/>)****Bar Administrators****(<https://bar.examssoft.com/admin/>)****Registration Information:**

- **Registration Open Date:** 07/27/2020 08:00 AM (Eastern Time)

- **Registration Closing Date:** 08/7/2020 4:30 PM (Eastern Time)

Phone Support**Chat Support****(<https://examssoft.force.com/etcommunity/s/>)****Mock Exam:**

- **Required:** YES
- **Upload Deadline:** TBD
- The password to open a Mock Exam is 'mock123'.

Exam Information:

- **Spell Check Enabled:** NO
- **Character Count Limit:** NO

Upload Deadline: TBD**Important:** Follow [these instructions](#)**(<https://examssoft.force.com/emcommunity/s/article/Registration-Instruction-For-Returning-Users>)** to register if you have previously used Exemplify.



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Exam Day | Be Prepared

Where are you taking the Bar Exam?

After the Exam | Uploading Bar Exam

(<https://bar.examssoft.com/upload/>)

New York Bar Applicants

Visit www.examssoft.com/nyube

FAQs**(<https://bar.examssoft.com/faq/>)****(<http://www.examssoft.com/nyube>), to access your account and download and register Exemplify.****Support****(<https://examssoft.force.com/etcommunity/s/>)****Exam Dates :**

- October 5, 2020

Knowledge Base**(<https://examssoft.force.com/etcommunity/s/>)****Registration Information****Bar Administrators****(<https://bar.examssoft.com/admin/>)**

- **Registration Open Date:** 06/29/2020 09:00 AM (Eastern Time)
- **Registration Closing Date:** 06/29/2020 04:30 PM (Eastern Time)

Phone Support**Mock Exam:****Chat Support****(<https://examssoft.force.com/etcommunity/s/>)**

- **Required:** YES
- **Upload Deadline:** 08/03/2020 05:00 PM (Eastern Time)
- The password to open a Mock Exam is **'mock123'**.

Exam Information:

- **Spell Check Enabled:** NO
- **Character Count Limit:** NO

Upload Deadline: 09/10/2020 11:59 PM (Eastern Time)**Important:** Follow [these instructions](#)<https://examssoft.force.com/emcommunity/s/article/Registration-Instruction-For-Returning-Users>, to register if you have previously used Exemplify.



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[NCBE COVID-19 UPDATES – JULY 2020 BAR EXAM: JURISDICTION INFORMATION](http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information) (<http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information>)

Exam Day | Be Prepared

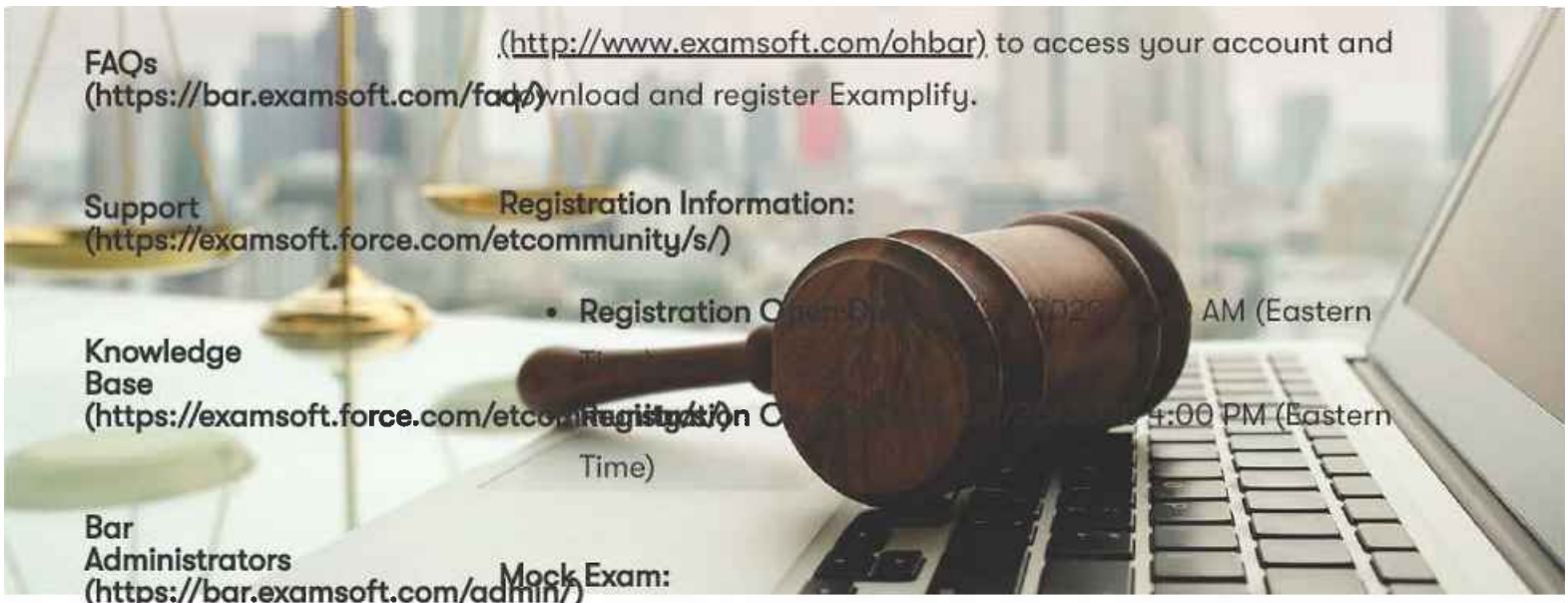
Where are you taking the Bar Exam?

After the Exam | Uploading Bar Exam

(<https://bar.examssoft.com/upload/>)

Ohio Bar Applicants

Visit www.examssoft.com/ohbar



Phone Support

- **Required:** YES
- **Upload Deadline:** 08/20/2020 4:00 PM (Eastern Time)
- The password to open a Mock Exam is **'mock123'**.

Chat Support

(<https://examssoft.force.com/etcommunity/s/>)

Exam Information:

- **Spell Check Enabled:** NO
- **Character Count Limit:** NO

Upload Deadline: Wednesday session: 09/09/2020 10:00 PM (Eastern Time)

Important: Follow [these instructions](#)

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[NCBE COVID-19 UPDATES – JULY 2020 BAR EXAM: JURISDICTION INFORMATION](http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information) (<http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information>)

Exam Day | Be Prepared

Where are you taking the Bar Exam?

After the Exam | Uploading Bar Exam

(<https://bar.examssoft.com/upload/>)

Pennsylvania Bar Applicants

FAQs**(<https://bar.examssoft.com/faq/>)**Visit www.examssoft.com/pabar(<http://www.examssoft.com/pabar>) to access your account and download and register Exemplify.**Support****(<https://examssoft.force.com/etcommunity/s/>)****Exam Dates:****Knowledge Base****(<https://examssoft.force.com/etcommunity/s/>)****Bar Administrators****(<https://bar.examssoft.com/admin/>)****Registration Information:**• **Registration Open Date:** TBD 10:00 AM (Eastern Time)• **Registration Closing Date:** TBD 11:59 PM (Eastern Time)• **Late Closing Date:** TBD 5:00 PM (Eastern Time) – (approval needed from the PA Bar) Fee of \$50**Phone Support****Chat Support****(<https://examssoft.force.com/etcommunity/s/>)****Mock Exam:**

- **Required:** YES
- **Upload Deadline:** TBD 05:00 PM (Eastern Time)
- The password to open a Mock Exam is 'mock123'.

Exam Information:

- **Spell Check Enabled:** Yes
- **Character Count Limit:** NO

Upload Deadline: TBD 11:00 PM (Eastern Time)**Important:** Follow [these instructions](#)[\(<https://examssoft.force.com/emcommunity/s/article/Registration-Instruction-For-Returning-Users>\)](https://examssoft.force.com/emcommunity/s/article/Registration-Instruction-For-Returning-Users) to register if you have previously used Exemplify.



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ExamSoft Bar Exam Taker



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[NCBE COVID-19 UPDATES – JULY 2020 BAR EXAM: JURISDICTION INFORMATION](http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information) (<http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information>)

Exam Day | Be Prepared

Where are you taking the Bar Exam?

After the Exam | Uploading Bar Exam

(<https://bar.examssoft.com/upload/>)

Tennessee Bar Applicants

Visit www.examssoft.com/tnbar



Phone Support

Chat Support
(<https://examssoft.force.com/etcommunity/s/>)

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Exam Day | Be
Prepared

Where are you taking the Bar Exam?

After the Exam
| Uploading
Bar Exam
(<https://bar.examssoft.com/upload/>)

Virgin Islands Bar Applicants



- **Required:** YES
- **Upload Deadline:** 09/16/2020 4:00 PM (Local Time)
- The password to open a Mock Exam is 'mock123'.

Phone Support

Chat Support
(<https://examssoft.force.com/etcommunity/s/>)

Exam Information:

- **Spell Check Enabled:** NO
- **Character Count Limit:** NO

Upload Deadline: 10/01/2020 10:00 AM (Local Time)

Important: Follow [these instructions](https://examssoft.force.com/emcommunity/s/article/Registration-Instruction-For-Returning-Users)
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[NCBE COVID-19 UPDATES – JULY 2020 BAR EXAM: JURISDICTION INFORMATION](http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information) (<http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information>)

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Where are you taking the Bar Exam?

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Bar Exam

(<https://bar.examssoft.com/upload/>)

Vermont Bar Applicants

Visit www.examssoft.com/vtbar

FAQs**(<https://bar.examssoft.com/faq/>)****(<http://www.examssoft.com/vtbar>) to access your account and download and register Examplify.****Support****(<https://examssoft.force.com/etcommunity/s/>)****Exam Dates:**

- September 9, 2020

Knowledge Base**(<https://examssoft.force.com/etcommunity/s/>)****Registration Information****Bar Administrators****(<https://bar.examssoft.com/admin/>)**

- **Registration Open:** 09/02/2020 05:00 AM (Eastern Time)

- **Registration Closing Date:** 09/02/2020 05:00 PM (Eastern Time)

Phone Support**Mock Exam:****Chat Support****(<https://examssoft.force.com/etcommunity/s/>)**

- **Required:** YES
- **Upload Deadline:** 09/02/2020 05:00 PM (Eastern Time)
- The password to open a Mock Exam is **'mock123'**.

Exam Information:

- **Spell Check Enabled:** YES
- **Character Count Limit:** NO

Upload Deadline: 09/9/2020 7:00 PM (Eastern Time)**Important:** Follow [these instructions](#)<https://examssoft.force.com/emcommunity/s/article/Registration-Instruction-For-Returning-Users> to register if you have previously used Examplify.



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Exhibit

E-3

July 2020 Bar Examinations by Likely Software Vendor¹

ILG Exam360	
Remote	
Jurisdiction	Date(s)
Florida	August 19
Illinois	October 5–6
Indiana ²	August 4
Louisiana	August 24 and October 10
Nevada ³	August 11–12
New Jersey	October 5–6
Oregon	October 5–6
Texas	October 5–6
In Person	
Jurisdiction	Dates
Colorado	July 28–29
Iowa	July 28–29
Kansas	July 28–29 and September 9–10
Minnesota	September 9–10
Missouri	July 28–29
Nebraska	July 28–29 and September 9–10
Oregon	July 28–29
Texas	September 9–10
West Virginia	July 28–29

¹ Categorized on July 25, 2020. Categorization based on information provided on the software vendors’ websites unless otherwise indicated by footnote. Petitioner can, upon request, verify specific information with PDFs capturing webpage information. All dates are provided by the NCBE’s website. *July 2020 Bar Exam: Jurisdiction Information*, NCBE, <http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/> (last updated July 24, 2020 4:54 P.M.).

² The Indiana Bar Exam was originally scheduled to be held on July 28, 2020, but it was postponed due to technical errors caused by the exam software. Marilyn Odendahl, *Technological Problems Delay Indiana Remote Bar Exam One Week*, Indiana Law. (July 24, 2020), <https://www.theindianalawyer.com/articles/technological-problems-delay-indiana-remote-bar-exam-one-week>

³ The Nevada Bar Exam was originally scheduled to be held on July 28–29, 2020, but it was postponed due to technical errors caused by the exam software. Press Release, Nevada Judiciary, Order Postponing the July 2020 Bar Exam (July 2, 2020, 8:35 PM), https://www.einnews.com/pr_news/522508117/order-postponing-the-july-2020-bar-exam

ExamSoft	
Remote	
Jurisdiction	Date(s)
California	October 5–6
Connecticut	October 5–6
Georgia	October 5–6
Idaho	October 5–6
Massachusetts	October 5–6
Michigan	July 28
New Hampshire	October 5–6
New York	October 5–6
Ohio	October 5–6
Pennsylvania	October 5–7
Tennessee	October 5–6
Vermont	October 5–6
Virgin Islands	October 5–6
In Person	
Jurisdiction	Dates
Alabama	July 28–29 and September 30–October 1
Alaska	September 9–10
Arkansas	July 28–29
Hawaii	September 9–10
Idaho	July 28–29
Montana	July 28–29
Mississippi	July 28–29
New Mexico	September 9–10
North Carolina	July 28–29
North Dakota	July 28–29
Oklahoma	July 28–29
Rhode Island	September 30–October 1
South Carolina	July 28–29
South Dakota	July 28–29
Utah	September 30–October 1
Washington	July 28–29 and September 9–10
Wyoming	July 28–29 and September 30–October 1
TBD	
Jurisdiction	Most Recent Update (as of 7/25/20)
Delaware	Canceled in-person September Exam

Extegrity	
Remote	
Jurisdiction	Date(s)
Arizona	October 5–6
Kentucky	October 5–6
In Person	
Jurisdiction	Dates
Arizona	July 28–29
Maine ⁴	September 30–October 1
Virginia	July 28–29 and September 9–10
Wisconsin	July 28–29

TBD		
Jurisdiction	Dates	Most Recent Vendor
Maryland ⁵	October 5–6 (Remote)	ExamSoft ⁶

⁴ *Laptop Testing*, Maine Bd. of Bar Examiners, <https://mainebarexaminers.org/exam/laptop-testing/> (last visited July 25, 2020) (identifying Extegrity as vendor for February 2020 Exam).

⁵ Maryland Courts, <https://www.mdcourts.gov/ble> (last updated July 17, 2020) (announcing that the software vendor for the remote October Exam is TBD).

⁶ *Pre-Exam Information for the July 2019 Uniform Bar Exam in Maryland*, Maryland Courts (July 11, 2019), <https://mdcourts.gov/sites/default/files/import/ble/pdfs/gbinformationpacket.pdf>

Exhibit

F



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Pennsylvania

Board of Law Examiners



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- [Bar Examination Info](#)
- [Non-Bar Exam Applications](#)
- [Character & Fitness](#)
- [Post Admissions](#)
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Nonstandard Testing Accommodations Information (NTA)

Applicants who have a disability, as defined by the [Americans with Disabilities Act \(ADA\)](#), may request NTA to take the bar examination. The [filing deadlines](#) for NTA documentation are the same as the Application to Sit for the Bar Examination, and are subject to the same late filing fee penalties. Incomplete NTA documentation is subject to return. Request Forms and Documentation received after the final filing deadline will not be considered for any reason.

The NTA Form and Documentation packet **REQUIRES** the use of the free [Adobe Acrobat Reader](#) software or Microsoft Word to complete the packet.



[View Form Packet](#)



[View Form Packet](#)

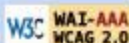


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Application for Permission to Sit for the Pennsylvania Bar Examination and for Character and Fitness Determination under Pa.B.A.R. [203/205](#)

Application deadlines and filing fees for the bar exam. The following deadlines are POSTMARK deadlines.

<u>Filing Deadline</u>	<u>February Exam</u>	<u>July Exam</u>	<u>Applicant Fee</u>
Timely	October 30	April 15	\$650.00
First Late	November 15	April 30	\$800.00
Second Late	November 30	May 15	\$1,100.00
Final	December 15	May 30	\$1,500.00

October 2020 Exam

<u>Filing Deadline</u>	<u>Applicant Fee</u>
July 21, 2020 (75 application limit)	\$650.00

Exhibit G

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE:ORDER PERMITTING LIMITED : NO. 837
PRACTICE BY PERSONS UNABLE TO :
SIT FOR JULY 2020 PENNSYLVANIA : SUPREME COURT
BAR EXAMINATION BECAUSE OF :
COVID-19 : DOCKET

ORDER¹

PER CURIAM

AND NOW, this 28th day of April, 2020, upon the recommendation of the Pennsylvania Board of Law Examiners,

IT IS ORDERED pursuant to Article V, Section 10 of the Constitution of Pennsylvania, and Rule 1952(A) of the Rules of Judicial Administration, that persons unable to sit for the July 2020 Pennsylvania bar examination because of COVID-19 shall be permitted to temporarily engage in the limited practice of law as follows:

(a) Limited practice permitted. The requirements for the limited practice of law by a person who is unable to sit for the July 2020 Pennsylvania Bar Examination because the administration of the bar examination has been postponed or cancelled because of the COVID-19 pandemic (a “2020 limited licensee”) include the following:

- (1) The 2020 limited licensee is a graduate from a law school that was ABA accredited at the time the 2020 limited licensee matriculated or graduated who (i) received without exception a *juris doctor* degree and (ii) has never failed the Pennsylvania bar examination.

¹ This Order, as certified on April 28, 2020, replaces a previous version that was sent to the Prothonotary on April 27, 2020 and docketed, but was withdrawn prior to publication.

(2) The Pennsylvania Board of Law Examiners (the “Board”) has not determined that the 2020 limited licensee lacks the current character and fitness required to be a member of the bar of this Court.

(3) The 2020 limited licensee has filed an application to sit for the July 2020 Pennsylvania bar examination.

(4) The 2020 limited licensee shall be supervised by a member of the bar of this Court as described in this order and as certified as prescribed in Subdivision (c) of this order.

(5) The 2020 limited licensee shall agree to adhere to the Pennsylvania Rules of Professional Conduct and to submit to any applicable disciplinary authorities to the same extent as a generally licensed attorney.

(6) The 2020 limited licensee shall have submitted to the Board a declaration executed subject to a charge of perjury for false statements confirming that all of the foregoing requirements have been met and asking for certification as a 2020 limited licensee. The Board shall offer a form on which such a declaration may be submitted.

(b) Bar Examination Application. In order to be eligible for the benefits of this order, an applicant must have filed an application to sit for the Pennsylvania bar examination, and the Board must have received an affirmative certification from the law school from which the applicant was graduated certifying that (1) the applicant has been awarded without exception a *juris doctor* degree from that law school and (2) to the best of the law school’s knowledge, the applicant has the character and fitness required to be a member of the bar of this Court.

(c) Supervising Attorney. The attorney under whose supervision a 2020 limited licensee engages in the limited practice permitted by this order—

(1) Shall have been an actively practicing member of the bar of the Supreme Court of Pennsylvania for at least five years.

(2) Shall assume personal professional responsibility for ensuring that the 2020 limited licensee’s legal work is competent and compliant with the Pennsylvania Rules of Professional Conduct.

(3) Shall submit a certification to the Board naming the 2020 limited licensee and confirming that the supervising attorney agrees to comply with his or her obligations pursuant to this order with respect to the designated 2020 limited licensee.

(4) Shall not supervise more than two 2020 limited licensees under the provisions of this order.

(d) Limited Practice Permitted. Subject to the restrictions of this subdivision, a 2020 limited licensee may engage in the following activities:

(1) Under the direct and ongoing supervision of the supervising attorney, a 2020 limited licensee may counsel a client with respect to legal issues.

(2) Under the direct and ongoing supervision of the supervising attorney, a 2020 limited licensee may prepare documents on behalf of a client, including documents that will be filed in a court, administrative tribunal or agency of the Commonwealth. The supervising attorney's signature must appear on any documents that will be filed in a court, administrative tribunal or agency of the Commonwealth.

(3) Under the direct and ongoing supervision of the supervising attorney, a 2020 limited licensee may appear for any activity subsumed within the practice of law. The supervising attorney or another attorney who meets the qualifications of Subdivisions (c)(1) and (2) of this order must be present for any such proceeding.

A 2020 limited licensee shall disclose in any legally related communications that he or she is a "2020 Limited Licensee," and the 2020 limited licensee may not hold himself or herself out as an attorney generally admitted to the bar of this Court.

(e) Duration. Permission to engage in the limited practice of law pursuant to this order shall commence upon receipt by the applicant of a written certification from the Board that the Board has received (1) the applicant's declaration described in (a)(6) confirming satisfaction of the requirements of this order; (2) the supervising attorney's certification described in (c)(3); and (3) the law school's confirmation described in (b) that it has conferred a law degree on the applicant and that, to the best of the law school's knowledge, the applicant has the character and fitness required to be a member of the bar of this Court.

Permission to engage in the limited practice of law pursuant to this order shall terminate no later than (1) the date of the next Pennsylvania bar examination to be administered after the effective date of this order if the 2020 limited licensee does not sit for that examination or (2) the date on which the Board announces the results of the next Pennsylvania bar examination to be administered after the effective date of this order if the limited licensee does sit for that examination.

However, a person permitted to engage in the limited practice of law under this order who passes that next administration of the bar examination may continue to practice under this order until that person is formally admitted to the general practice of law.

In no event may any person engage in the limited practice of law under this order after the date that is six months after release of the results of the next Pennsylvania bar examination to be administered after the effective date of this order.

(f) Additional limitation. Time spent in the limited practice of law permitted by this order may not be counted for purposes of any Bar Admission Rule that permits general admission to the bar of the Supreme Court of Pennsylvania without examination, including but not limited to Rule 204.

A True Copy Patricia Nicola
As Of 04/28/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

Exhibit H

August 10, 2020

Chief Justice Charles T. Canady
Florida Supreme Court
500 S. Duval Street
Tallahassee, FL 32399-1925

CC:
Florida Board of Bar Examiners
1891 Eider Court
Tallahassee, FL 32399-1750

Dear Justices of the Florida Supreme Court:

We write to you as a collective body of examinees who are registered for the upcoming Florida bar examination that is scheduled to be administered on August 19, 2020. We write to the Court to express several highly concerning instances of software failure and data breaches connected to ILG Technologies, Inc. (hereinafter “ILG”), the remote software platform chosen by the Florida Board of Bar Examiners (hereinafter “FBBE”) to administer this particular examination during the ongoing COVID-19 global pandemic.

On its official website, ILG states that it is a software suite available to jurisdictions “that allows applicants to complete the written portion of the bar exam on a laptop,” that will then allow examinees to, “upload the answers all in a secure environment.”¹ However, ILG’s platform is apparently so invasive that the instructions require the user to disarm their device prior to installation, forcing end users to give ILG unfettered access to all sensitive information stored on the device as well as web camera access, therefore potentially violating examinees’ rights to privacy. Our fear is that the well-founded haste to migrate to a remote format in the midst of this unprecedented crisis will expose examinees’ private information, including attorney work product from employers, client information, banking account information, and social security numbers in violation of privacy rights guaranteed by the Florida and Federal Constitutions. We write to call attention to these issues and urge the FBBE to reconsider its relationship with ILG, to heed the concerns of examinees regarding our privacy and safety, and to address the unsettling and unsolicited communications to examinees directly from ILG.

The injuries that examinees fear are not merely speculative. We have attached a log of complaints and issues related to ILG software to this letter as Exhibit 1. The issues range from

¹ ILG Technologies, <https://www.ilgexam360.com/home.action>.

the ability to access websites and applications while logged into the exam interface, files that have disappeared, mice and track pads that no longer function, and examination answers that have completely changed during the submission process from what the examinee had submitted. Furthermore, the latest version of ILG that we were instructed to install has unfortunately led to a total loss of property in some instances. There are examinees who now have to purchase a new laptop device immediately in order to meet the laptop registration deadline. This is further complicated by the financial peril we now face due to the delay in licensure serving as a barrier to employment. The unanticipated loss of laptop devices is not a feasible expense when there are examinees who are now using their credit cards to pay for housing, as the remainder of their student loans have dwindled.

If the aforementioned concerns are not alarming enough, there are now accounts emerging of examinees receiving emails from websites claiming that their information was used to log in or that a login attempt was detected from another country. Examinees have reported that their bank accounts have been compromised. Some have experienced a sudden influx of messages from foreign telephone numbers seeking Bitcoin, and many cannot access email accounts after their passwords were changed without their permission. Some users have also lost access to their accounts with the National Conference of Bar Examiners (“NCBE”) after their passwords were somehow changed. That such suspicious activity with NCBE accounts occurred immediately after the ILG download appears to be more than a mere coincidence. Examinees understand that their information could have been accessed from anywhere, but the co-occurrence of the ILG software download and these login attempts is disturbing when coupled with the lack of accountability from ILG. In their End User License Agreement (hereinafter, “EULA”), they expressly disclaim responsibility for any data loss or leakage and infection of user computers by viruses and malware. A copy of the EULA has been attached to this letter as Exhibit 2 with all relevant portions highlighted.

We are extremely concerned about these policies as they violate the rights of examinees, often without their knowledge and understanding, and who have no recourse due to the extensive waivers that require signature. This is particularly troubling for examinees who have been victims of stalking, harassment, and sexual assault and violence. Moreover, we do not have a choice but to submit to these violations. After remote proctoring software provider Extegrity bowed out² of being one of the three vendors the NCBE allowed jurisdictions to choose from³, the FBBE had the opportunity to consider Examsoft as their vendor in light of the issues with ILG. Yet still, the FBBE chose to move forward with ILG for the upcoming examination, despite the numerous and unending reports of technical issues directly related to the software, some of which have rendered

² Twitter post. Aug. 6, 2020, 4:59 P.M., <https://twitter.com/BarExamTracker> (Official statement from Extegrity, exclusively released to BarExamTracker).

³ Thomas DeLorenzo, Bar Exam Proctoring Company Pulls Out of Remote Bar Exam Administrations Scheduled for October, *Jurist*, (Aug. 7, 2020), <https://www.jurist.org/news/2020/08/bar-exam-proctoring-company-pulls-out-of-remote-bar-exam-administrations-scheduled-for-october/>.

some examinee's computers useless. To characterize the task of compiling a list of each error or total system failure reported as a Sisyphean one is no exaggeration. To purchase a replacement computer device is simply not feasible while we continue to wait for licensure, but it is also unjust that we continue to suffer financial losses due to the ongoing mismanagement of the administration of the examination.

Last week, the American Bar Association (hereinafter "ABA) recognized the gravity of our concerns when the House of Delegates adopted Resolution 10G⁴, which the President of the ABA has since submitted to the Conference of Chief Justices for consideration⁵. We recognize that the race to adapt to a remote administration has been a novel challenge for the FBBE as well as jurisdictions across the nation who have decided to put public health and safety at the forefront. Even where good faith efforts to preserve the integrity of the bar examination are put forward, we acknowledge that the transition to a remote administration brings with it some drawbacks and compromises that we must acquiesce to. However, the right to privacy is not one of them. The legal profession should not require its newest members to relinquish their rights, those that the Florida Constitution expressly deems so sacred. That is a price too high and unfairly borne by examinees.

As such, we respectfully urge the Court to raise our concerns with the FBBE and intervene in the ongoing relationship with ILG that is jeopardizing both our privacy rights and digital rights. We implore the Court to consider options that other jurisdictions have sanctioned, such as what the Indiana Board of Law Examiners chose. This collective group seeks to gain licensure to the practice of law in the state of Florida. We honor and respect the integrity and weighty ethical duty that licensure demands of us. At a minimum, it is both reasonable and proper that we seek a similar degree of integrity and ethical practices from the entities who will be administering the examination that our futures rest upon.

Respectfully,

August 2020 Florida Bar Examinees

⁴ Resolution 10G, <https://www.americanbar.org/content/dam/aba/administrative/news/2020/08/2020-am-resolutions/10g.pdf>

⁵ ABA for Law Students, <https://abaforlawstudents.com/2020/08/07/aba-letter-to-ccj-develop-a-national-strategy-for-the-bar-exam-and-licensing-during-the-pandemic/> (Aug. 7, 2020).

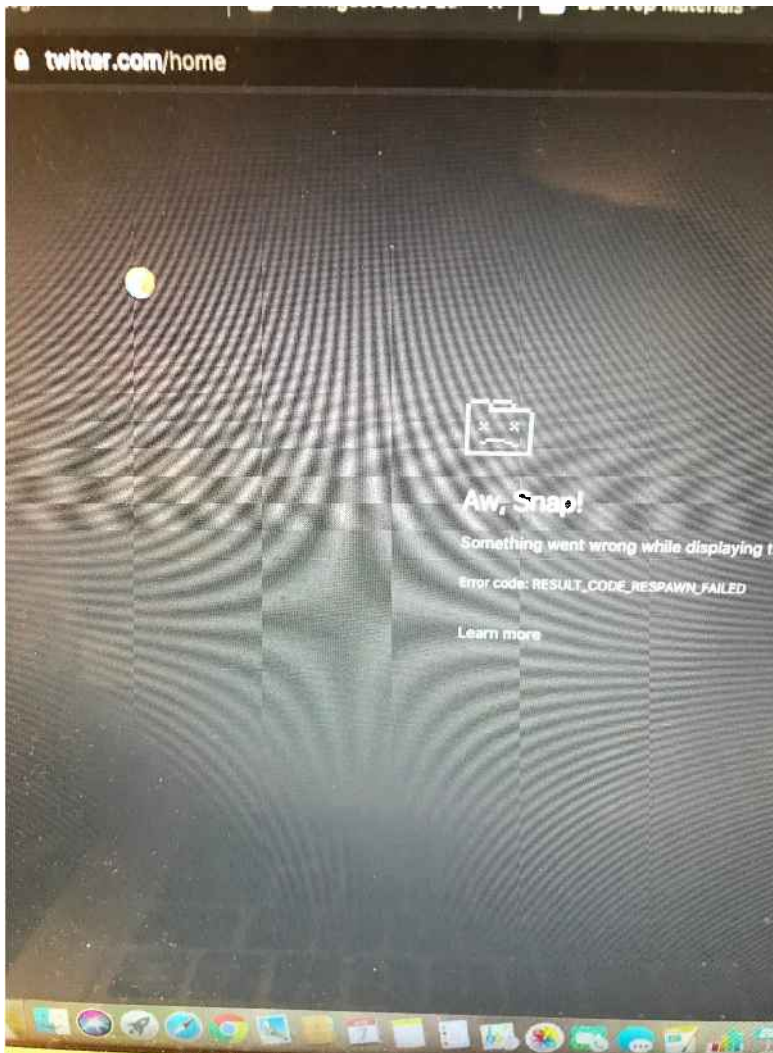
EXHIBIT 1

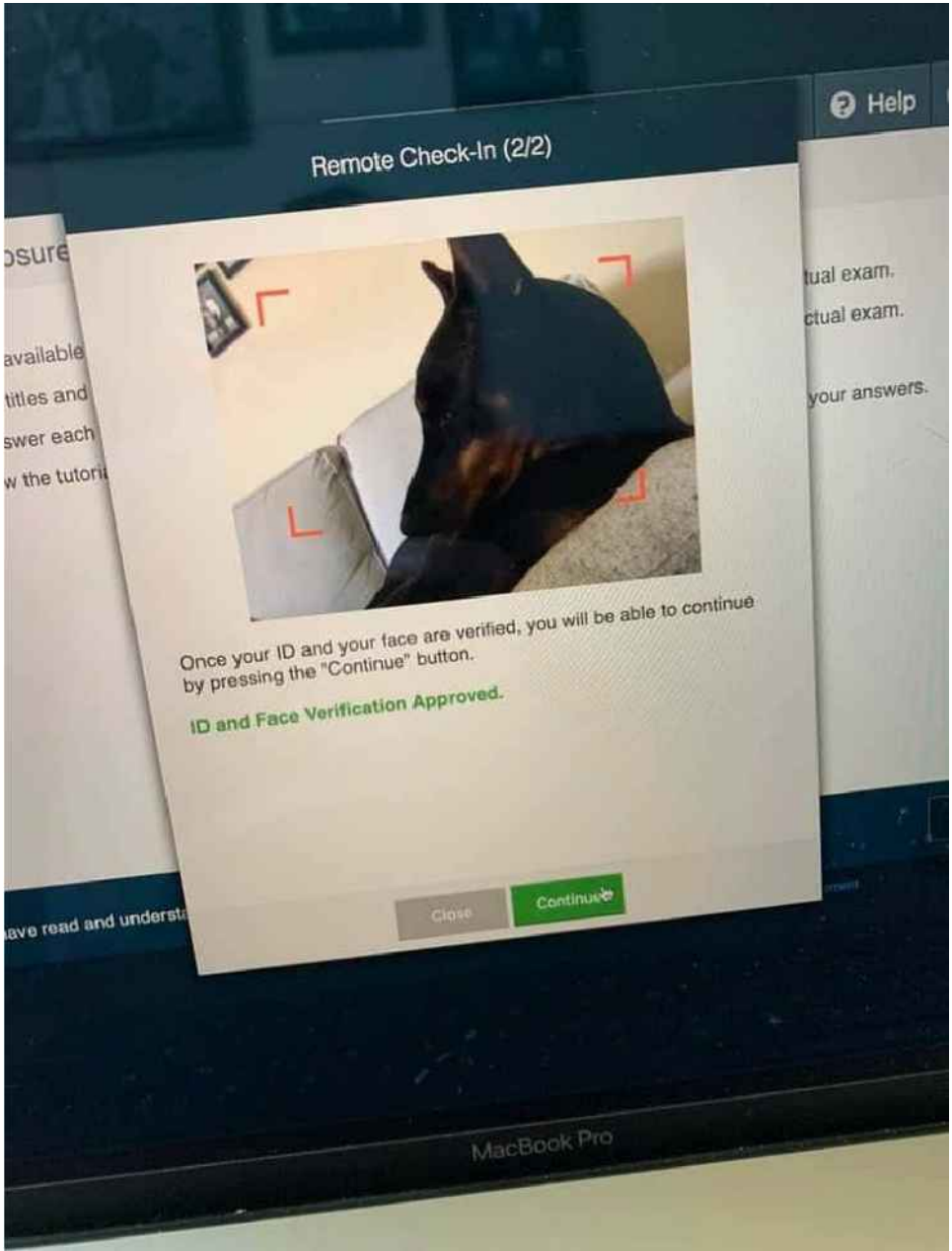
EXAMINEE REPORTED COMPUTER ISSUES AND DATA BREACHES

Timestamp	Please enter your email address	Have you experienced any unusual activity on any of your online accounts?	Which platform or service did the unusual activity occur on?	Please offer a short description of the activity below	Has any outside party gained unauthorized access to any of your online accounts?	If you answered yes to the question listed above, please describe this incident, including how you found out and what steps you've needed to take afterwards	Please provide screenshots in case unusual activity or communications you have experienced. Please make sure that you redact any personal information contained in the screenshot. This step will require you to
8/ 0/2020 2 03 3		Yes	Google	A pop up message of a potential breach and request to change the password. Also some strange phishing emails	Maybe		
8/ 0/2020 2 04 53		Yes	Robinhood	Received a message of a log in attempt at midnight after downloading ILG	Maybe		https://drive.google.com/plan?d=2WUJ4kAm9V8JfCEI_32Oaf0Ha AqNKA7D
8/ 0/2020 2 05 04		Yes	Robinhood	here was a code texted to me based off of a suspicious login that Robinhood blocked, thankf ully	Maybe		https://drive.google.com/plan?d=Ccb9sE3Kb2JqMqaEBofgnfX_64M
8/ 0/2020 2 06 35		Yes	Instagram, Gmail	Instagram I received an email saying there was an attempted login from Russia. 2 Gmail I received a critical security risk saying a login to my email account had been blocked	No		https://drive.google.com/plan?d=Dq5h5Z9kshn7CEI0Udz_I47 ScOQ7zH https://drive.google.com/plan?d=EP5vZvxh8arSozd4UW0VvYrd2P G m
8/ 0/2020 2 0 2		Yes		I received three text messages purporting to be from Lending tree asking me to review my offers. I have never requested a loan from Lending tree before. The phone and email used are the ones linked to my ILG account	Maybe		
8/ 0/2020 2 7 03		Yes	Microsoft Account	I received an email on August that there was a sign in attempt on my Microsoft account which uses the same email linked to ILG	Maybe		
8/ 0/2020 2 7		I'm not sure if it was unusual or just a coincidence	NCBE	Got an alert that my password to NCBE had been compromised. Went to log in and the usual password no longer worked (Using a Mac). My Microsoft remote Desktop application which I use for work to access my computer remotely in my office at a courthouse, has randomly turned on while I am using my Mac. Example, I will be checking my email on the Mail app, and then the Microsoft Remote	Maybe		https://drive.google.com/plan?d=P_P4FDFJ3kRfcQh8K2 bVjcrWBR https://drive.google.com/plan?d=eu17v3CAeH5ZACx69g_jB h9fcAqnlvt
8/ 0/2020 2 9 06		Yes	Microsoft Remote Desktop application		No	Not sure. The notification from gmail stated that my current password was being used in Russia to access my gmail account, so I assume there is a possibility. I followed gmail's instructions to change my password and secure my account again. I am not sure if any of my other accounts	
8/ 0/2020 2 9 46		Yes	Gmail	Log in attempt to my gmail account coming from Russia using my password	Maybe		
8/ 0/2020 2 9 50		Yes	text message/Chase bank/Whattapp	Received Phishing text saying there was a breach to chase bank account. Someone reached out to me on Whatsapp and asked if I wanted Bitcoin this morning and afternoon. I have received numerous (approximately 9) phishing emails to the account I have linked to ILG. I have never once received these type of messages to this account and only did so after installing the ILG software	No		https://drive.google.com/plan?d=JDuUPhPD8dBjgaCh_Frdmqo wJY9CkM https://drive.google.com/plan?d=N8CyqSyc8Hka2xR8Sextn5whi 0rQv8V9
8/ 0/2020 2 22 42		Yes	Microsoft Outlook	An attempt to log into my Microsoft email. The information received from Microsoft was the following. The incident occurred the afternoon of August 7, 2020, after installing the ILG Exam software. The log in attempt was made from India	Maybe		
8/ 0/2020 2 23 05		Yes	Attempt to log into my Microsoft email		Maybe		https://drive.google.com/plan?d=kSpvrcbV6VWqkAm9QsV_mLhte Vsp_rZ
8/ 0/2020 2 25 39		Yes	Email, text	Spam texts for approved loans up to \$5000, spam email offering me representation for my "deserved" compensation payment	Maybe		https://drive.google.com/plan?d=22HhpGvV754U20rRqzo7hdRr mt77LBIK https://drive.google.com/plan?d=XcdSPhw8FfQ0vHtuxD_yfNUJ CBQqXeG
8/ 0/2020 2 37		Yes			Maybe		
8/ 0/2020 2 4 37		No	ext	An old twitter account that I haven't used in years had suspicious log in attempts on Friday after downloading the software	No		https://drive.google.com/plan?d=J_EkKqQRWLMhvienv_YJCq SaSBIdG
8/ 0/2020 2 4 4		Yes	twitter, Paypal	2. A separate twitter account also had suspicious log in attempts on Friday after downloading the software	Maybe		
8/ 0/2020 2 42 23		Yes	Cox Email (Email I used to login to ILG)	I have gotten around 6-7 email messages that are clearly spam (might be harmful) back to back the past several days after downloading the latest ILG software	Maybe		https://drive.google.com/plan?d=MAZepUW_3duKrgLDoorfXKf_CqgMw MAZepU https://drive.google.com/plan?d=MB3NzR0c045c7qeRUJohvhtc BWwj7dO https://drive.google.com/plan?d=YDmFWVvbo8mJzKR_0jOrKwI iS83Yc0b
8/ 0/2020 2 49 0		Yes	Aol email account	Received emails from hackers containing one of my passwords and attempting to extort payment (in bitcoin) from me	Maybe	Hackers obtained one of my passwords and attempted to extort payment from me. I deleted the emails from the hackers and changed my account password. While the hackers may have accessed my personal data (e.g., name, address, contact information, etc.), which is unfortunate, I	
8/ 0/2020 2 57 35		Yes	Amazon and Fuel Rewards	I was notified that there were unauthorized attempted log ins to my accounts	No		https://drive.google.com/plan?d=CKxoEKcJ_uLmLsyb_XLJgBo EyJLPaIM https://drive.google.com/plan?d=E9NFZ0VAcVDQJ6VzmZC8uRH io9_JN https://drive.google.com/plan?d=926ZQsFD0cMP8nkYVsg_eaMA P_ydOnFU
8/ 0/2020 2 57 45		Yes	My university email	One strange email supposedly from I that led to spam of over 100 emails. I was signed out of my gmail accounts, Simplicity account, and outlook account for my law school. When I've tried to access certain websites (such as Simplicity), an unfamiliar pop up has come up that says that there may be third parties accessing private information and the site is	Maybe		
8/ 0/2020 2 59 5		Yes	account (job database)		Maybe		
8/ 0/2020 3 4 8		I'm not sure if it was unusual or just a coincidence	Bank Account	Multiple log in attempts with an invalid password	Maybe		

8/ 0/2020	3 29 36	Yes	Gmail, Venmo	On 8/28, two days after submitting my first trial exam on ILG, I received this message in my Gmail inbox: "Someone just used your password to try to sign in to your account from a non Google app. Google blocked them, but you should check what happened. Review your	Maybe		https://drive.google.com/open?id=u8chYGAFjU0N5V60Q2HhBvmy9v0D9s , https://drive.google.com/open?id=86x4XeQnhzbd_xAD0aH8dqYW , https://drive.google.com/open?id=u_cUwGCw_wRN75aY3i_rp4
8/ 0/2020	3 37 32	Yes	Facebook, Chase Bank	Received email notifying of attempted logins on unrecognized device. Facebook was logged in on an unauthorized Samsung device	Yes	Email from Facebook. Logged in on unauthorized Samsung device	
8/ 0/2020	3 42 8	Yes	Snapchat, SMS messaging	Multiple attempts to log into Snapchat from two different locations in the US, multiple spam messaging on my phone. The spam text messaging started after I downloaded the ILG software and has continued since	Yes	I received an alert via email that my Snapchat account was accessed twice by a new login device. I changed my password and set two factor authentication as a precaution	https://drive.google.com/open?id=DZOfxHY_o_nWKAIZLEw8UDUv7 , https://drive.google.com/open?id=https://drive.google.com/open?id=C4w8DyHqQXu5r_eIMR , https://drive.google.com/open?id=https://drive.google.com/open?id=99Q_vYOJx0_nYvALH2E_SJ3
8/ 0/2020	3 52 28	I'm not sure if it was unusual or just a coincidence	Received an unsolicited potential spam/virus text	I just received a text that is clearly spam/virus from a random number, which included a link to claim my prize	No		https://drive.google.com/open?id=Nrl_3ww4c_YrCQ_Hn5s8PwAPx2E1_vmS , https://drive.google.com/open?id=yWaxZUoPh_cE3BkCb5a6RI , https://drive.google.com/open?id=AgUJFaZEZ0wAkerminNhdGr , https://drive.google.com/open?id=RkGL5Xcm6hIAjpef_Vh
8/ 0/2020	3 59 03	Yes	General laptop issue	Error message when getting on laptop saying "Another device in your network is using your computer's IP address. Now nothing on my laptop is working. I can't even get on the internet. I don't know what to do"	Maybe	Got suspicious phone calls and texts from a weird number before the IP address hack	
8/ 0/2020	4 7 5	Yes	laptop google email	Received notification that my gmail was being attempted to be logged into and needed to verify my passwords and security	Maybe		
8/ 0/2020	4 33 53	Yes	Microsoft Account	I received an email from my Microsoft account that someone was attempting to login and that unusual activity was taking place	Maybe	I received an email from my Microsoft account that someone was attempting to login and that unusual activity was taking place. I changed my password	
8/ 0/2020	4 45 7	Yes	American Express	I received a pending charge on my American Express card for \$4.48 from a company I have never heard of (Dasen) in Winchester, Massachusetts (where I have never been)	No	I called Suncoast to let them know that I had not authorized the password change, they made me change it again and will now be on the lookout for any suspicious activity in my checking and savings account. Luckily, I received the email as soon as it was changed and nothing was taken	https://drive.google.com/open?id=6P3Mra70aK6Uayfxu6tO_b
8/ 0/2020	4 50 2	Yes	Suncoast Credit Union App	I received a verification email that my online password had been changed to my bank account	Yes		https://drive.google.com/open?id=8E6kox7Lub7eH9noO2dZo
8/ 0/2020	4 50 55	I'm not sure if it was unusual or just a coincidence	Phone calls	I have been receiving numerous spam calls since the update	Maybe		https://drive.google.com/open?id=SiH9ZXB_A_uDUW42_CHEZvg70G0pzR0
8/ 0/2020	4 57 0	Yes	Robinhood	Attempt to reset my password the day after downloading ILG. No issues before downloading this software	No		https://drive.google.com/open?id=ACqrV5n9_kECP_86H_GF433VhMCp9ZCb
8/ 0/2020	5 07 52	Yes	Cellphone	Receiving calls from spam numbers	Maybe		
8/ 0/2020	5 0 33	Yes	Chase Bank	My bank account shows a suspicious login at 4:44 AM last night that was not me. This is after I downloaded ILG	Maybe		https://drive.google.com/open?id=L6Xscpt_BvT7d60Y1_2QV5cIb
8/ 0/2020	5 45 28	Yes	Google Gmail and Chase Credit	my email account was completely compromised and so was my credit card information via Chase	Maybe		
8/ 0/2020	5 53 06	Yes	Etsy, Shutterfly, Zillow	Data breach and needed to change passwords. Credit cards linked and saved to Etsy and Shutterfly	Maybe		https://drive.google.com/open?id=q3Bx203M4Y_lwYdnr_xylVW
8/ 0/2020	6 0 4	Yes	Microsoft	I just am amending my prior response to this survey because I just had an attempted security breach on my Microsoft account	No	Microsoft detected and blocked the attempt	https://drive.google.com/open?id=Pc60dxmr_QFdt_R5ASXpUjgH

ILG Issue Screenshots





Remote Check-In (2/2)



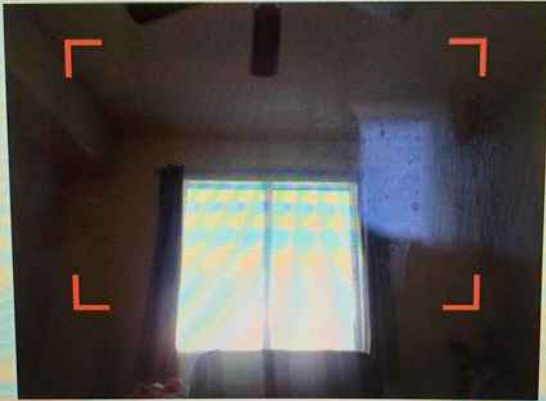
Once your ID and your face are verified, you will be able to continue by pressing the "Continue" button.

ID and Face Verification Approved.

Close

Continue

Remote Check-In (2/2)

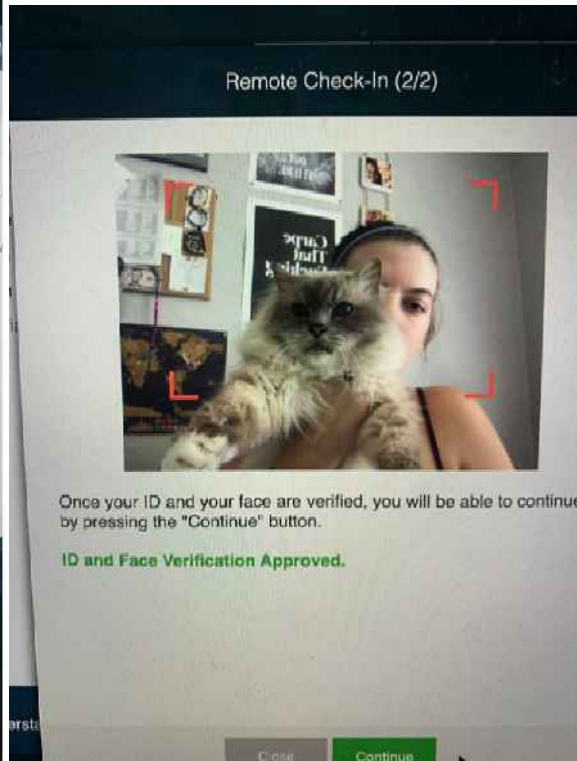
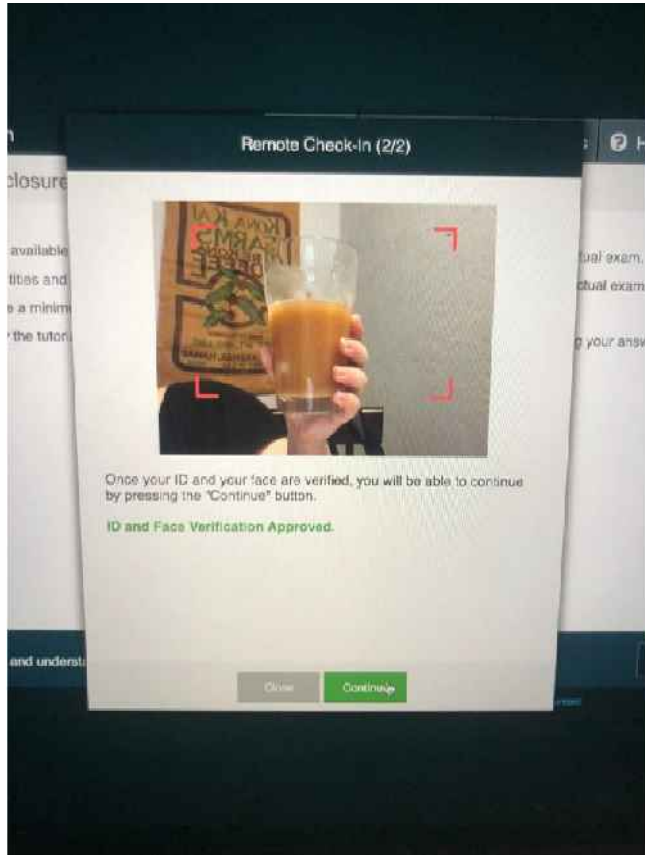


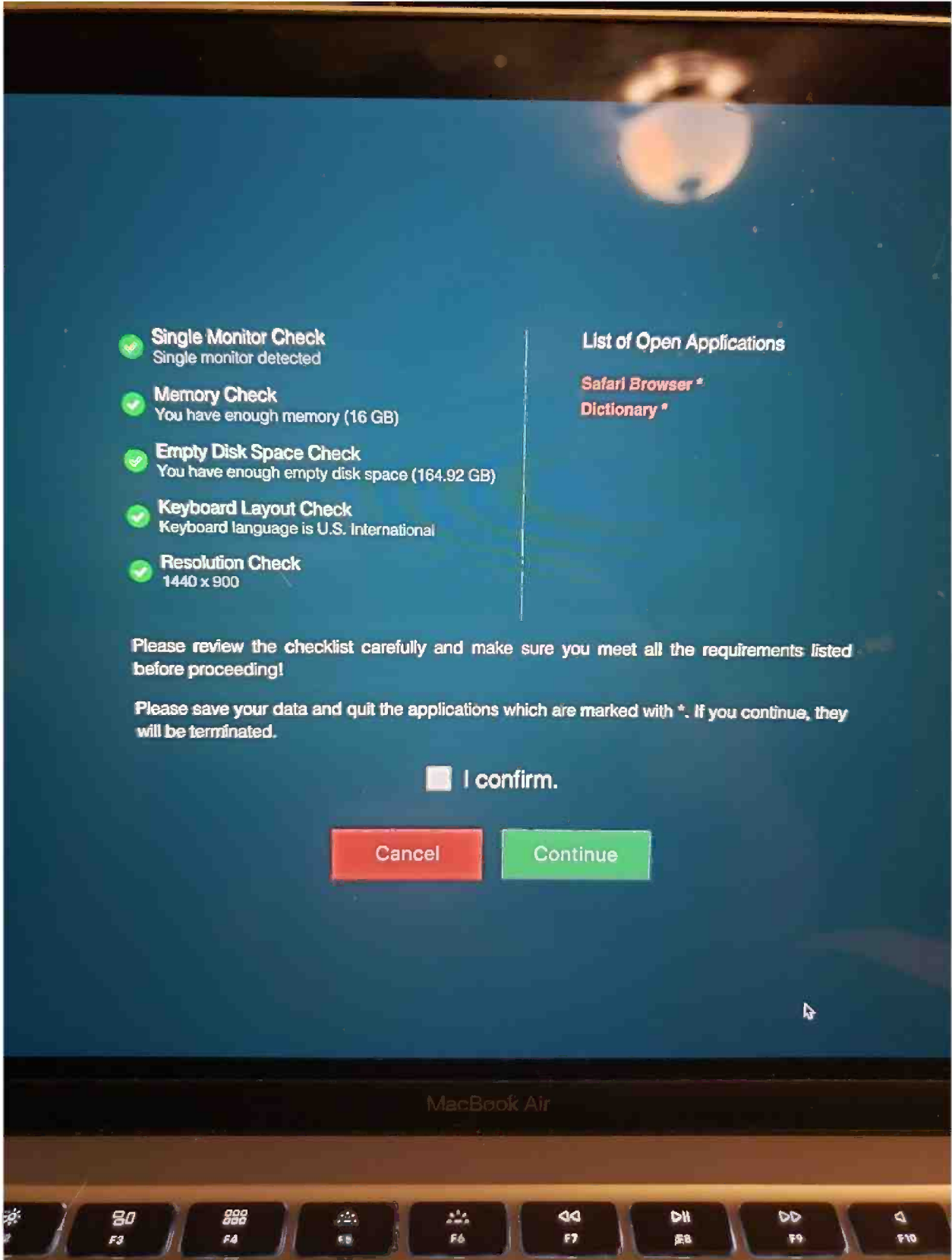
Once your ID and your face are verified, you will be able to continue by pressing the "Continue" button.

ID and Face Verification Approved.

Close

Continue





- ✓ **Single Monitor Check**
Single monitor detected
- ✓ **Memory Check**
You have enough memory (16 GB)
- ✓ **Empty Disk Space Check**
You have enough empty disk space (164.92 GB)
- ✓ **Keyboard Layout Check**
Keyboard language is U.S. International
- ✓ **Resolution Check**
1440 x 900

List of Open Applications

- Safari Browser *
- Dictionary *

Please review the checklist carefully and make sure you meet all the requirements listed before proceeding!

Please save your data and quit the applications which are marked with *. If you continue, they will be terminated.

I confirm.

Cancel Continue

0

Answer 1

Word Count : 66

Time Spent : 0:04:23

hello, does this thing work? hello, does this thing work? hello, does this thing work? hello, does this thing work?
 hello, does this thing work? hello, does this thing work? hello, does this thing work? hello, does this thing work?
 hello, does this thing work?

copy and paste only works from keyboard functions lol.

BOOOOOO YAAAA

will this thing work??? WHO KNOWS!!!!

Testing Headings

testing headings.

hello, does this thing work?

- All previous ILG download files were removed, yet when downloading the new ILG update, the ILG cover screen stated that I was registered and already downloaded (on a laptop) my previous registration was on a desktop and should not have shown up.
- Intense MacBook overheating (Thirded) (fourthed doesn't seem like a word, but yes, I had the same issue even with a cooling pad)(x5)
- My uploaded answer from the ILG website includes the text from my notepad as well as text that I wrote into the answer field and then deleted entirely. Having deleted rules/analysis remain in our essays will leave them... incomprehensible at best, and graded as wrong at worst? (x2)
- Program allowed system notifications to still appear on screen during the exam
- On sign in, ILG was showing that programs were open on my computer that had already been shut down or hadn't been opened for months. If they send a report of programs that were open during the exam to the FBBE, is it going to include programs that it claims are open but were not open in actuality? (x4) (e.g. Dictionary - Mac)
- Able to access notes during the trial exam.
- 4 second delay when typing on the essay portion of the exam. (x13)

- Notes should be auto-placed to NOT be in front of the questions. Perhaps placed on the side of the screen.
- Should be able to change the size of the note box so it doesn't block a third of the screen
- No way to use the note box without blocking the hypo text, rendering it useless for taking notes while reading the hypo.
- Unable to read Multiple Choice questions while having the note taking box open x4
- Multiple choice text is too small to read, and the zoom function that was on the last version has been removed (x3)
- Unable to get past verification screen on first attempt
- Font on multiple choice is impossibly tiny, even for someone with zero vision issues (no accommodations for visually impaired test-takers?) (x6)
- As soon as the program was closed, post upload, the mouse showed the rainbow circle (Macbook air) and I was unable to click on anything. Had to hard reset the computer and it took me 40 minutes to return to the home screen. One of my recommendation letters from a prior employee is destroyed. Document is now all black. (Second to the reset; rainbow circle)
- Mac overheated; the keyboard is physically hot. (x7)
- Macbook Air (2012 with the minimum requirements to run ILG): Keyboard got extremely hot less than 10 minutes into running the software and trial exam, and my fan did NOT turn on to cool-down my computer as it would do in the past. The computer was plugged into a power source, and into running on battery. My computer did not overheat when I previously took the bar exam and ran the ILG software in Tampa.
- PC keyboard keys got very hot (and remained hot after I closed out of the software)
- Allowed me to use my cat as verification. Multiple applications are now not working
- When copy and pasting into the notepad feature the spacing came out odd, had to take time to correct it to use it efficiently. x3 (extreme formatting issues with text being more than a tab-width apart).
- MacBook Pro (2017) running extremely hot during trial exam; computer has not cooled down in the 20 minutes since completing the trial
- ID verification screen does not require you to show an ID. Will accept literally anything in the frame. (x2)
- No overall timer (x9)
- My computer shut down immediately after I uploaded my trial exam and exited the ILG Software. This had happened twice before with the earlier version of the software as well. It is a brand new computer (Macbook Pro) that I have only ever used for bar prep purposes. I have submitted my problems to both ILG as well as the FBBE.
- Computer VERY hot (Macbook pro)
- My computer got very hot and the fan began running as soon as I opened ILG. My macbook pro was still VERY hot with the fan running, 10 minutes after I closed ILG.
- Downloaded the new software, submitted steps three and four and then exited the software - had the rainbow spinning wheel for several minutes until I did a manual (hard) restart. It's a 2017 MacBook Pro and has never had any issues.

- Also noticed that the MC font is very small. I do have vision issues, but nothing so severe that I've ever needed an accommodation - on a computer, I'd usually just zoom in. (Seconded, and the zoom feature was apparently removed from the software. There used to be an option). (x3)
- Computer overheating after only 20 mins of use (Mac 2012)
- 2017 MacBook Pro hot to the touch and making noises. Lag in typing. Copy and paste feature did not work. Ever since I downloaded the first version of the software, my internet connection has been noticeably slower and I still have that problem with this software.
- New Surface Laptop got very hot after about 10 mins even with an external fan. At some points, there was a lag between typing and the letters appearing. (reported to both ILG and FBBE) [ILG has informed me that this issue is completely related to the performance of my laptop and I should try restarting it or finding a different computer to use]
- 2016 Macbook Pro w/ Touchbar overheated and started making a loud fan noise. Battery dropped from 96% to 85% within 10 minutes of using the program. Verification was inaccurate. It approved my identity without my license or me fully in the photos.
- Cannot use the cut and paste symbols to cut and paste from the essay prompt to the notepad or the essay writing portions. You can only cut and paste using keyboard shortcuts. x5
- When I opened the ILG program it stated I had other programs opened that were not opened and I haven't used in a while. I triple checked they were not opened and kept getting the same message when I would log back in to ILG. (x5)
- External monitor not working anymore (outside of the program). Was working perfectly fine before I downloaded the software and now it will not connect.
- None of my settings from my computer are appearing. For instance: my passwords are all "forgotten" and favorite settings for the internet are non-apparent. (x5)
- Drained my computer battery for a new 2020 Macbook Air. (Went from 100% to 98% in under 2 seconds).
- Mac computer lag with typing every since downloading ILG (and even after deleting first round). (x3)
- Have not received any e-mails from ILG at all, including the email to download the software
- My actual exam answers included my notes from the notepad at the bottom. Seconded, and also included words that I had deleted. (x2)
- No countdown clock (x2).
- Received 2 emails confirming submission. (x5)
- No rules as to the proctor monitoring. (what constitutes a red flag for cheating, can the proctor speak to us, do they have Access to our computers)
- My webcam light would not turn off even after submitting the trial exam AND exiting the software. I had to restart my computer to get it to turn off. (x2)
- ILG email says "Failure to complete these items by Friday, August 14... will result in you having to **handwrite** the exam."
- Overheating computer..going to buy insurance policy on computer, as it costs over 2k.

- Before entering the software it said that I had a “dictionary” application open..I don’t have a dictionary application on my computer nor have I ever used one. See above photo. (x2)
- My computer is lagging and pages keep freezing when scrolling now. I exited ILG over 20 minutes ago. (x3)
- Notepad would lag as I typed and skip tons of letters (x2). Notepad and answer both lag, but notepad is far worse.
- Both times when opening the questions my screen froze and it took 1-2 minutes before the questions were actually loaded.
- My essay prompt loaded right away, but I had approx 30 second delay for MC to load
- Had to reset my computer after because everything was frozen
- ILG did not register that I had multiple Word documents still open on my computer when I started the software (when I exited the software, the Word documents were still open and unharmed) (x5)
- After exiting, despite closing out of Word prior to entering ILG’s program, Word showed as being on (did not have any Docs up).
- I was able to swipe on my trackpad to view other programs during the trial
- Extreme lag when typing essays and taking notes (x3).
- Copy paste functions within the program not working, same with the keyboard shortcuts on the first run (second time I tried shortcuts worked.)
- Downloaded the 2.3.2 version after completely uninstalling prior versions only to have it give an error that stated AE006-A Problem Occurred please uninstall the application. It wouldn’t connect to the FL server and so I had to completely uninstall and reinstall the software again.
- My essay answer submitted contained not only my response but also my notes as well. (x3)
- Exam claimed that Microsoft Edge was open, and that I had to close it, when I started -- but the program wasn’t open, and there was no way to get rid of this notification.
- Google Chrome settings were erased after completing trial and exiting ILG software.
- (Jonathan Levy) Below is a screen shot of the email I sent to ILG. Can provide the email chain if needed:

When I started the essay trial exam I began to type in the answer box and received a message on my computer that "google chrome quit unexpectedly". Upon receipt of this message, I noticed that the green indicator light on my computer went out which indicated that after the message appeared, my webcam turned off and stopped streaming/recording. I tried to click different functions on the screen in order to restart the webcam but I was unsuccessful. I did manage to complete and upload the trial exam, however I am concerned about this bug because it makes me worry that my proctor would perceive an appearance of impropriety should this occur on exam day.

-

- The trial exam answers to NOT register "bolded" text (x2). Additionally, the "notepad" notes appear at the bottom of our submitted answers. See above photo. x3
- I also had the same problem as Johnathan Levy above. Could access in and out of ILG software while the test was up
- Copy/paste function did not work via scissor/paper icons or using keyboard functions. Windows system

Ilg trial 8/7/20

Key stroke lagging after 30 minutes of typing

Not able to copy/paste using Notepad (keyboard shortcuts also not working; windows OS)

Battery draining faster than my bank account

Says I have MS Edge open and I don't

Multiple emails confirming upload of exam (x3)

2017 MacBook Pro-

- The entire face of my computer (after about 10 minutes into the "exam") was so hot it was uncomfortable to rest my wrists on the metal. Also the keyboard and keys themselves were hot. I could smell an overheating smell. (NEVER had this issue prior to downloading ILG)
 - Post trial exam (about 10 minutes) the computer is still very hot.
- My battery is losing life VERY fast. This computer generally lasts all day without being charged.
- ID verification took a long time and I am wondering if this counts against our time?? (x2) (great question)
 - Are we not required to do a 360 of the room?!
- Timer did not work

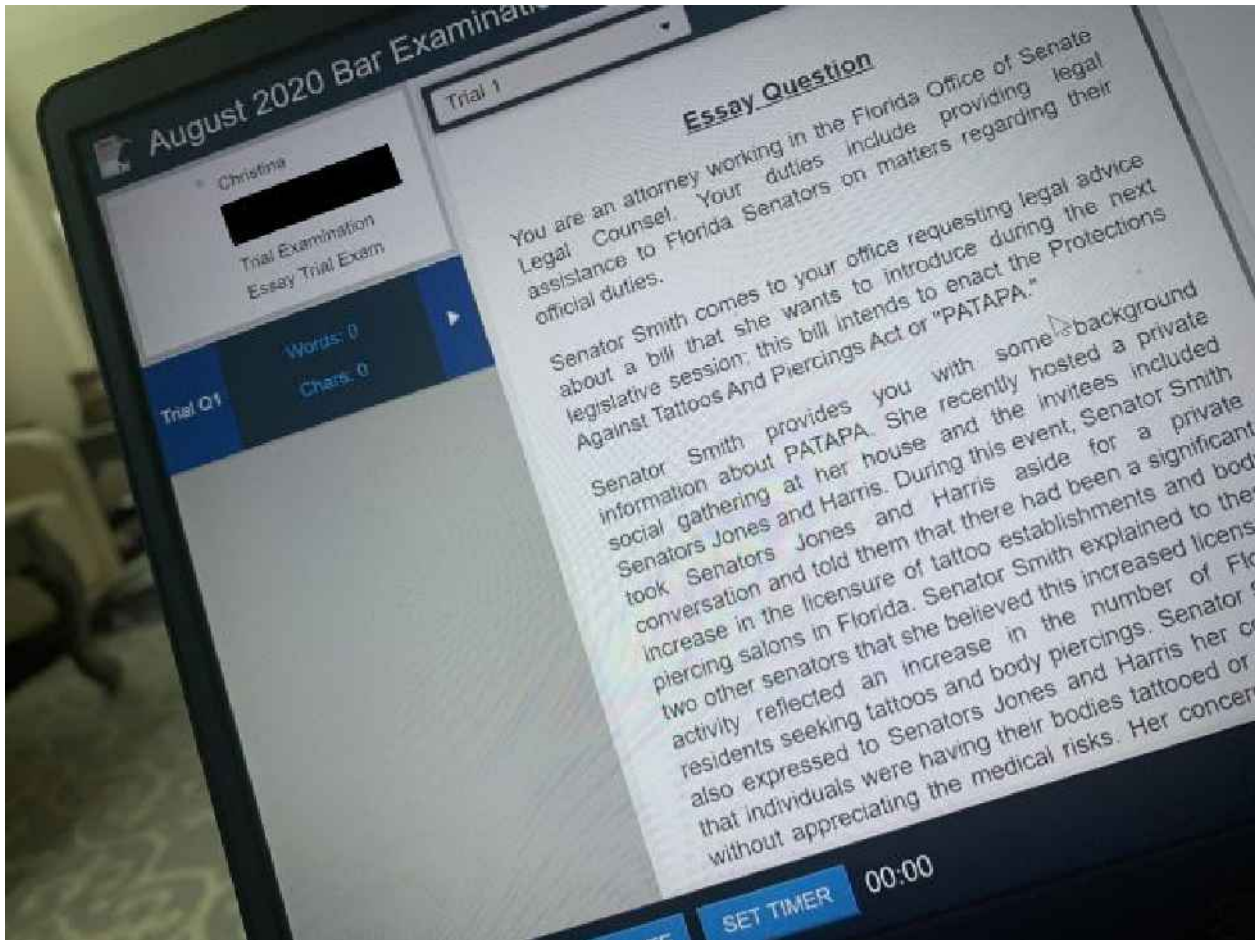
- The longer I spent in the essay, the slower it ran. Towards the end (I only spent 10 minutes in the essay) there was a brief lag on typing.
- Print size on MCQ was extremely small with no option to increase size (x2)
- Essay formatting issues. What appears on screen vs. what is submitted and also ability to organize into outline format skewed.
- Upon entry into the exam, I was told I had multiple applications open. However, none of the applications stated were open. It allowed me to continue...would this be grounds for cheating allegations?!

I selected to begin the trial exam and then selected the Essay portion. My laptop has been frozen on a screen that says "Preparing Disclosures" for at least 20 min.

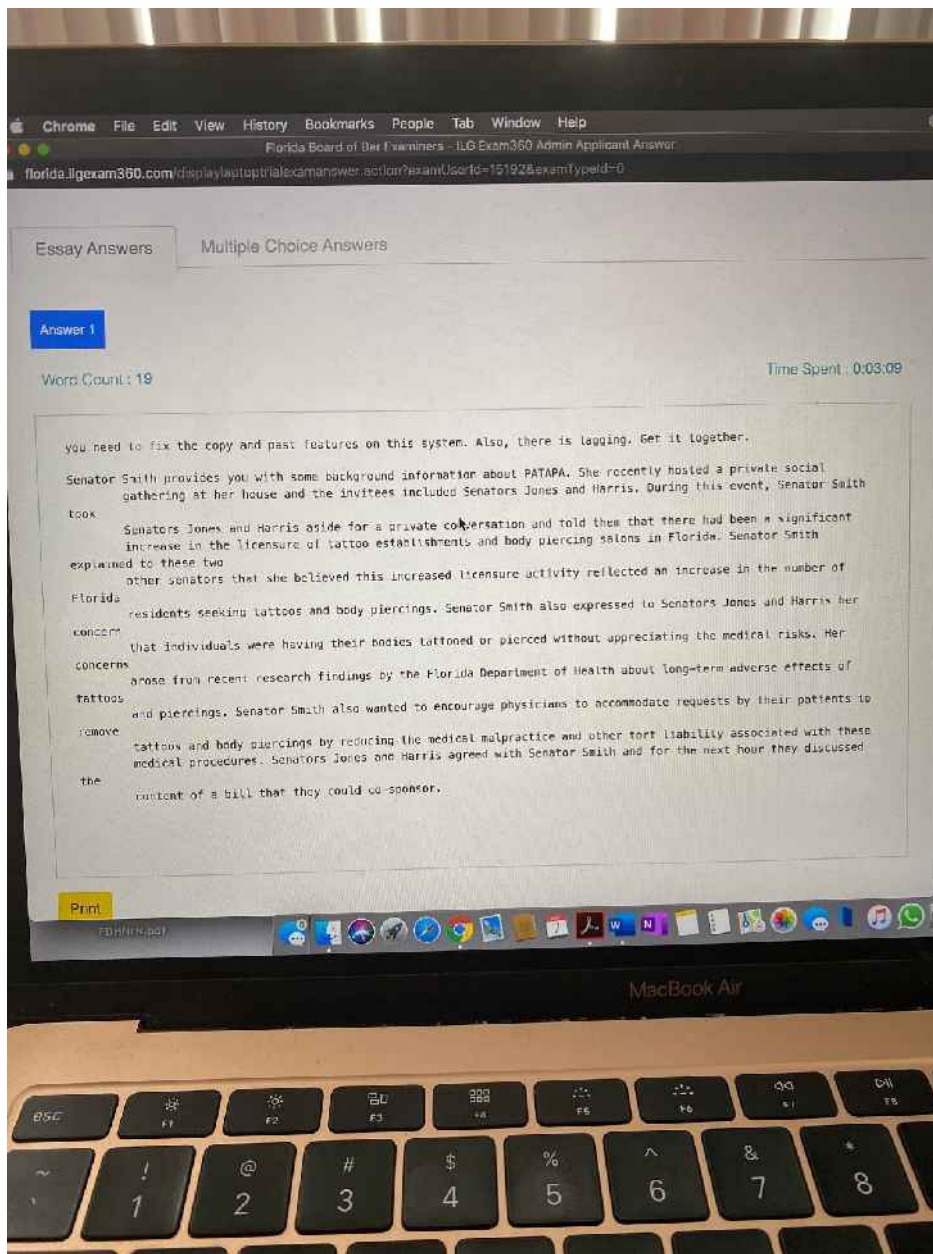
Formatting issues (essay in software looks completely different formatting-wise that the actual exam answers according to the ILG website):

- Bold - does not show up (x2)
- Indents - did not show up (these are the indents in the program, when I use tab on my keyboard that shows up fine)
- List - I was able to make a multi-tiered list on the essay (starting with 123 then going to abc then going to i,ii,iii) but that all changed to one long continuous numbered list
- Spacing - what appears as single spaced when I typed in the essay comes out as double spaced in the actual answer
- Basically, the formatting does not appear the way you intend and does not look as neat and organized as it does when you are typing. This is a problem because organization is a factor that goes to our essay score
- Seconded. Headers, numbered elements, and other formatting does not show up when I view my uploaded answer on the website. What's the point of organizing an answer if it is a waste of time? (x2)

MacBook Pro- Laptop and keyboard got extremely warm and the fan started spinning loudly. Battery life started to drain quicker than usual.



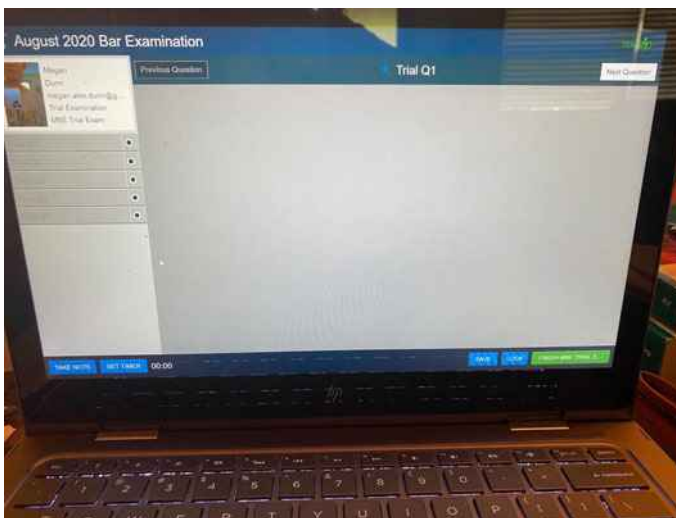
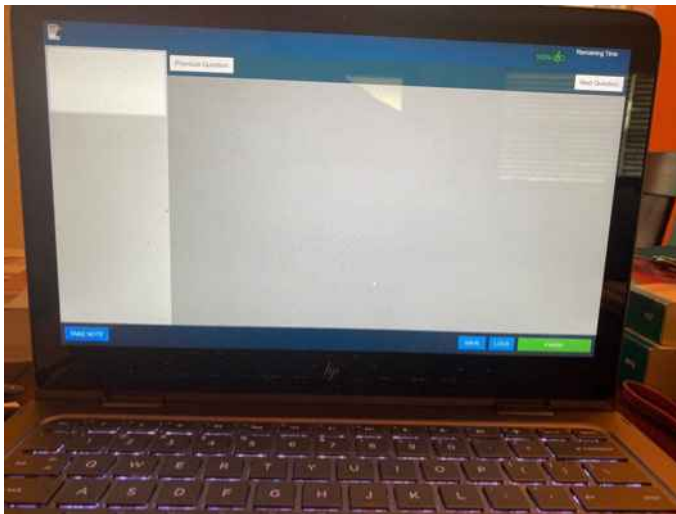
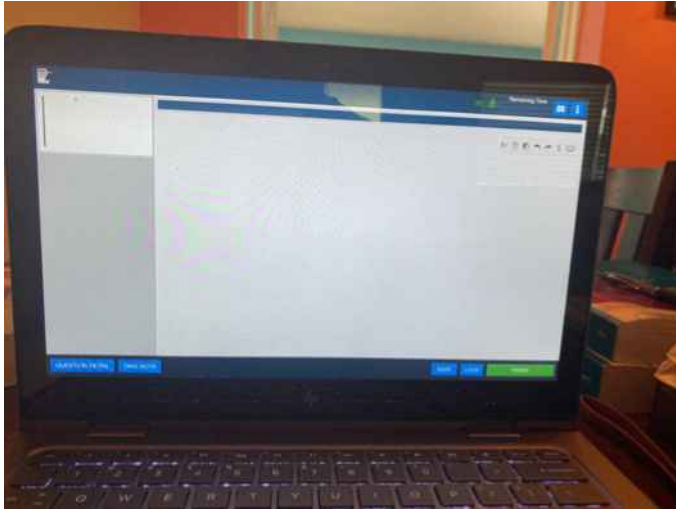
My video didn't work during the essay portion. I emailed ILG and they said my internet needed to be faster or antivirus software needed to be closed before running software. My internet is the highest Comcast offers as I increased it for the exam alone. And this is a new laptop for the exam with no antivirus software. It also said Skype was running which it was not. (Same issue with Skype)



I was testing the copy and paste features and it unfortunately makes this hot mess of a response, screwing up the alignment of the text. (x3)

I then deleted that passage and only wrote that top sentence and submitted it. According to my recorded answers, it still included what I had DELETED! x3

Super concerning. I don't want to be graded for something that I deleted and didn't intend to be submitted. x2



ILG Support told me the lag was because I was not plugged in. I redid the trial exam with my laptop plugged in and had the same result.

Trial Exam Answers

Essay Answers

Multiple Choice Answers

Answer 1

Typed answer to the question

Typed, copied, and pasted into virtual notepad, not answer

Word Count : 12

Time Spent : 0:02:26

The bar exam is not an adequate method of determining attorney competence.

grijefwlijfewijFEWijo

asonable

person would consider material to deciding whether to receive a tattoo and/or body piercing.
The customer acknowledges the risks (identified above) and has voluntarily decided to receive tatt
-ikjjoij

Everything I wrote on my notepad appeared mixed in with my exam answer. Additionally, word count was off - I typed 44 words; word count said 16 words. X3

Bold does not work - italics and underline do work, notepad is always added to the end of the document

Sentences that I deleted from my answer appear in my uploaded answer. Formatting disappears from the uploaded answer. Copy and paste screws up the spacing and justification. x2

The notepad function can't be used without obscuring the text of the hypo, and can't be resized to fit on the side—unclear what the purpose of a notepad is if we can't take notes as we read.

The MC font is too small to read, for those of us who are visually impaired at least. Prior versions had a zoom function which has now been removed.

1. Significant delay of essay appearing on screen
 2. Copy and paste from notepad not functioning x2
 3. No lapsed timer
 4. Deleted content appears on the uploaded essay x2
- Copied and pasted something from notepad to my answer, the copied portion showed up twice in the uploaded answer file on ILG's website

The font is super small ... I am 26 with no eye problems and have to be super close to my screen to see it. My notes portion showed up in my exam answer.

List of Issues with ILG

I had various issues with 2 trials I completed with ILG and I have reported these to ILG tech support as well:

I did two separate trials and in the first one things went a little better than the second trial.

In the first trial, face verification did not work properly. Also, I noticed that my battery life on my laptop was dying really quickly (I did not have my laptop plugged in for the first trial, but I had full battery life.) I noticed the software kept stating that Safari was open when I clearly force quit Safari prior to starting the session.

In the second trial, (with my laptop charger plugged in) I noticed the most issues. My laptop was heating very quickly and the laptop keys were getting hot. It still kept saying Safari was open when I ensured I had quit it. Also, my timer in this trial was not functioning at all. I tried to make it work multiple times. Again, face verification was not correctly verifying. Lastly, when I went back to review my answers for the essay portion, what I had typed on my notepad was included as part of my answer.

I restarted my laptop prior to both live trials.

Screenshot below for reference.

Essay
Answers

Multiple Choice
Answers

Answer 1

Word Count : 12

Time Spent : 0:03:09

one miss two miss

three

four

5 6 7 8 9

10.....

trying this out.

lets s

seeee



This screenshot from my phone shows the items typed from my notepad are included in my answer. Everything from "trying this out" and downwards are what I typed in my notepad.

Remote Check-In (2/2)



Once your ID and your face are verified, you will be able to continue by pressing the "Continue" button.

ID and Face Verification Approved.

Close

Continue

1. ID and Face Verification issues
2. Unable to highlight any portion of the MC questions
3. Notes from the electronic notepad are being reflected in the answer choices for MC
4. Battery drainage — new 2020 MacBook and battery went from 74 to 62 in seconds

EXHIBIT 2

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All matters relating to this Agreement and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction). You agree that any legal action or proceeding between ILG and you for any purpose concerning this Agreement or the parties' obligations hereunder shall be brought exclusively in a state court of competent jurisdiction sitting in Duval County, Florida. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) CONSENTS AND SUBMITS TO THE EXCLUSIVE VENUE OF DUVAL COUNTY, FLORIDA; AND (B) WAIVES ANY OBJECTION TO THAT CHOICE OF FORUM BASED ON VENUE OR TO THE EFFECT THAT THE FORUM IS NOT CONVENIENT.

Changes to Terms of This Agreement

ILG reserves the right, at its sole discretion, to change, modify, add, or remove portions of the terms of this Agreement and the Software Product at any time. Any such modifications shall be effective immediately. Your continued use of the Software Product following the posting of any changes to the terms of this Agreement will mean that you accept such changes with respect to your continued use.

Waiver and Severability

No waiver by ILG of any term or condition set forth in this Agreement shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of ILG to assert a right or provision under this Agreement shall not constitute a waiver of such right or provision.

If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of this Agreement will continue in full force and effect.

Exhibit I

Pennsylvania Board of Law Examiners
601 Commonwealth Ave., Suite 3600
P.O. Box 62535
Harrisburg, PA 17106-2535



Phone (717) 231-3350
Fax (717) 231-3351
www.pabarexam.org

July 22, 2020

Mark C. Alexander, Villanova University Charles Widger School of Law
April M. Barton, Duquesne University School of Law
Danielle M. Conway, Penn State Dickinson Law
Daniel M. Filler, Drexel University Thomas R. Kline School of Law
Michael J. Hussey, Widener University Commonwealth Law School
Gregory N. Mandel, Temple University Beasley School of Law
Kimberly M. Mutcherson, Rutgers Law School
Theodore W. Ruger, University of Pennsylvania Carey Law School
Hari M. Osofsky, Penn State Law
Amy J. Wildermuth, University of Pittsburgh School of Law

Dear Law School Deans:

I write on behalf of the Board of Law Examiners to thank you for your letter of July 17, 2020, and to respond to it.

We appreciate your offer of assistance as we plan for October's remote bar exam. We are grateful for the long-standing relationships the Board has with law schools, and our ongoing discussions will be particularly helpful in addressing issues related to the remote exam. Indeed, as you know, last week our Executive Director and I met by video with administrators and faculty members from your schools, and they provided helpful and collaborative insight.

In your letter, you raise a number of concerns about remote exam administration. We are aware of those issues and others that have been raised, and we are working to address them. You note the possibility that applicants may have unequal access to adequate testing space. To address that issue, we have been discussing with the Pennsylvania Bar Association a project by which the PBA would solicit law firms to offer empty conference rooms and offices for bar applicants to use to take the exam. We understand many of your schools may also be able to make suitable space available for applicants, and we will be glad to discuss with you the logistics for that proposal.

Your letter suggests that, in light of concerns with a remote bar exam, the Board should instead recommend to the Pennsylvania Supreme Court that it authorize a one-time "diploma privilege." We have considered your letter and the



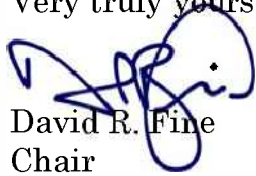
July 22, 2020

Page 2 of 2

considerable commentary others have offered in various fora and, while we take very seriously and respect those analyses, after deliberation we believe the better course is to focus on preparing for the remote exam in October.

Again, thank you for your offer of continued dialogue and collaboration to ensure a successful remote bar exam in October.

Very truly yours,

A handwritten signature in blue ink, appearing to read "D. Fine", is written over the typed name.

David R. Fine
Chair

Exhibit J

Declarations Submitted in Support of This Petition's Request for Relief

October Pennsylvania Bar Candidates	
Drexel University Thomas R. Kline School of Law	27
Duquesne University School of Law	29
Penn State Dickinson Law	16
Penn State Law	8
Rutgers Law School	10
Temple University Beasley School of Law	81
University of Pennsylvania Carey Law School	13
University of Pittsburgh School of Law	29
Villanova University Charles Widger School of Law	29
Widener University Commonwealth Law School	15
Other Out-of-State Law Schools	29
TOTAL	286

Law School Faculty Members	
Drexel University Thomas R. Kline School of Law	8
Duquesne University School of Law	1
Penn State Dickinson Law	7
Penn State Law	8
Rutgers Law School	18
Temple University Beasley School of Law	24
University of Pittsburgh School of Law	12
Villanova University Charles Widger School of Law	2
Widener University Commonwealth Law School	1
Other Out-of-State Law Schools	27
TOTAL	108

Members of the Pennsylvania Bar	
TOTAL	53

Exhibit

K-1

I, **Robert T Suite**, hereby declare as follows:

1. I am a May 2020 graduate of **Drexel's Kline School of Law** and make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.
2. I registered to take the July 2020 Pennsylvania Bar Exam. As a result of the first postponement of the exam until September, I have faced additional financial hardship. I have no source of income until my job begins in January 2021 and am hesitant to work due to the additional emotional/mental stresses surrounding the uncertainties of the Bar Exam. Consequently, this has caused increased financial burdens on my loved ones to support me through this time.
3. Now that the exam has been postponed a second time, until October, the financial hardships have increased on myself and my family. Additionally, I have incurred unanticipated medical expenses resulting from the changed circumstances (i.e., out-of-pocket eye doctor expenses) – trying to quickly fix my vision and update my prescription to be comfortable adjusting to a completely online bar exam. I'm concerned that the persistent strain on my eyes, while studying and during the three-day testing period, will negatively affect my performance on the exam.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the 16 day of August, 2020,
at Philadelphia County, Pennsylvania,
United States of America

Robert T. Suite



Exhibit K-2

I, Mary Beth Kuznik, hereby declare as follows:

1. I am a May 2020 Juris Doctor graduate of the Duquesne University School of Law. I make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge and stake in the matters set forth herein, and I can and will testify thereto if called upon to do so.

2. I am a nontraditional student in age, with prior careers in education and in the performing arts. In 2006 I left my work to serve as a family caregiver for my late disabled brother and my late mother who was the survivor of a severe stroke. For approximately the last three years of my mother's life I cared for her at home 24 hours a day, seven days a week using a hospital bed, wheelchair, Hoyer lift, and other assistive devices.

3. From 2005 until the present time I also served as an issue advocate for voting rights and verified elections in Pennsylvania. I was the founder of the nonprofit organization VotePA and I currently volunteer as its President and Executive Director. Over the past 15 years I have extensively studied voting systems, voting machines, and election procedures.

4. In August of 2017, I enrolled as a first-year law student at the Duquesne University School of Law.

5. At the time of my enrollment I fully expected to take the July 2020 bar exam.

6. I entered law school with the goal of enhancing my employment possibilities in public service, especially in the field of election law. During law school I also developed an interest in criminal law and in pursuing a public interest career as a Public Defender or Assistant District Attorney.

7. In pursuit of the above goals, in addition to my election work during law school I experienced over 500 service hours in the form of an externship, a summer fellowship, and pro

bono work in the Armstrong County Public Defender's Office. I also worked for nearly 300 hours in the form of an externship and a summer fellowship in the Allegheny County District Attorney's Office.

8. My years of service as an unpaid family caregiver for my mother prior to law school, and my inability as a woman over the age of 40 to find paying work after my mother's death, caused me to deplete my own life savings for living expenses and has affected my credit.

9. Although I was fortunate to receive some scholarship assistance for part of my tuition at Duquesne, and I was able to secure employment as a Graduate Assistant there, nonetheless I had to borrow over \$90,000 in federal student loan money to cover the remainder of my tuition and for my living expenses while pursuing my Juris Doctor degree.

10. My plan throughout law school has been to graduate in May of 2020, then study hard and pass the July 2020 bar exam. I wanted to do this because of my goal of public service and so that I can support myself and cover my financial obligations.

11. In furtherance of my above plan, I applied to take the July 2020 bar exam under my full legal name Mary Elizabeth Kuznik.

12. The July 2020 bar exam has been delayed multiple times because of the COVID-19 emergency.

13. Without relief from this Honorable Court, the COVID-19 delay of the July 2020 bar exam makes it unlikely that I, or anyone from my graduating class, can hope to get an unrestricted law license before early 2021 at the soonest.

14. I am very concerned that without the ability to obtain a license and get hired as an attorney for such an extended period, I will potentially become unable to support myself. Due to

my financial limitations discussed above, I cannot borrow money from private sources to cover future expenses caused by a delayed bar exam.

15. The delay of the bar exam is also causing me health concerns. During law school I learned that I am in need of one and possibly two minor surgeries. At least one of these surgeries will likely require a biopsy, and it should be done as soon as possible. I was planning to have this surgery done immediately after the July 2020 bar exam but because the bar exam has been delayed several times, I have not been able to schedule it. My health is at risk because I have been unable to get the surgery and the biopsy scheduled. My health is also affected by stress related to the above-mentioned financial issues and the changes in the administration of the bar exam.

16. The delay of the bar exam will also potentially cause my home to fall into disrepair. I live in Westmoreland County on a Pennsylvania Century Farm that has been in my family since 1912. Repairs and farm upkeep are needed during the summer months. Because of my financial situation, I cannot afford to hire people to do this work. I had hoped to perform as much of the needed work as possible myself during the remaining weeks of summer weather following the July 2020 bar exam. With a delayed bar exam, I will be unable to complete most of this necessary work during the summer weather because I will now need to study full-time until October.

17. I support the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC) because I believe that Diploma Privilege would be in the public interest and would allow 2020 graduates such as myself to enter law practice without the threat of a COVID-delayed or disrupted bar exam hanging over our careers, allowing us to immediately begin developing the real-life practical experience we need as new attorneys.

I declare under the penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct. Executed on the 13th day of August, 2020, in the City of Pittsburgh, Pennsylvania, in the United States of America.



Mary Beth Kuznik

Exhibit K-3

I, **Brandon D. VanTine** hereby declare as follows:

1. I am a May 2020 graduate of **Duquesne University School of Law**, and make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.
2. I registered to take the July 2020 Pennsylvania Bar Exam. As a result of the first postponement of the exam until September, I have lost several promising job opportunities due to both the postponement and the resulting legal market the COVID-19 pandemic has caused. This lack of job opportunities continues to cause me significant financial difficulties.
3. Now that the exam has been postponed a second time, until October, I cannot afford to go without income. Therefore, I have had no choice but to start working part time since June while continuing to study for the Bar. I was not planning on working at all while I study, but now I will work while studying for almost the entirety of my bar preparation. I'm concerned that this will negatively affect my performance on the exam.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the 15th day of August, 2020,
at Pittsburgh, Pennsylvania,
United States of America

Brandon D. VanTine (*Name*)

Brandon D. VanTine

Exhibit

K-4

I, **Robert Gavin**, hereby declare as follows:

1. I am a May 2020 graduate of **Penn State – Dickinson School of Law**, Carlisle, PA, and make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 ("LSERC"). I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.
2. I registered to take the July 2020 Pennsylvania Bar Exam.
3. I am an individual with physical disability. I have Diabetes Type I, uncontrolled with hyperglycemia, and require an insulin pump and frequent monitoring of my blood glucose levels. My health insurance coverage which I acquired through my law school ends on August 12, 2020.
4. I had secured part-time employment in January 2020 to ensure I had enough income for necessary rent, food, and medication and medical supplies in Carlisle for the period between graduation on May 15, 2020 and the July Bar exam. However, this position was postponed until August, past the date when my lease was to terminate and I would be required to move to a new location. I have been unable to secure a replacement part-time position.
5. I am not eligible for state unemployment financial assistance due to attending law school.
6. In order to afford life-sustaining necessities, I liquidated my small retirement account from a previous career. If I forego medical insurance and any medical care during the period between August 12 and the unknown the date of my future health insurance coverage, I expect to have enough funds to survive. Due to the nature of my disability, this is a serious risk.

7. I will be employed with the District Attorney's Office of Philadelphia, PA starting in September 2020.
8. Now that the exam has been postponed a second time, until October, I must start working full time in September while continuing to study for the Bar. I am concerned that this will negatively affect my performance on the exam.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the 1st day of August, 2020,
at Philadelphia, Pennsylvania,
United States of America

/s/ Robert Gavin
Robert Gavin

Exhibit K-5

I, Christian M. Wolgemuth, hereby declare as follows:

1. I am a graduate of the Penn State Dickinson School of Law, Class of 2020. I am registered for the Fall administration of the Pennsylvania Bar Exam. I make this declaration in support of an emergency diploma privilege option as a reasonable way to overcome the unprecedented and unpredictable hardship caused by the COVID-19 pandemic.

2. I fully support the issuance of an emergency diploma privilege as sought in LSERC's King's Bench Petition, and believe that Pa. B.A.R. 203(b)(1) as applied to the current situation violates the right to pursue one's chosen lawful occupation. I believe that such relief would be the most equitable and common-sense approach to dealing with the issue of Bar admission during this health crisis, while continuing to maintain the utmost protection for the public and our future clients, and the entire legal profession in Pennsylvania.

3. In 2017 I left a full-time job in Cybersecurity to pursue a career as a lawyer, with the intention of helping individuals and businesses protect their privacy and personal information. As a former Cybersecurity consultant for the largest Cybersecurity firm in the United States, it is my professional opinion that online testing platforms and software cannot be trusted to provide a stable, secure, and fair method of administering a Bar exam. As a Cybersecurity professional, I am not alone in my concerns.¹ Furthermore, other states have already been plagued by the technical gremlins that will plague the Pennsylvania Bar exam as well.^{2, 3}

¹ Tom McMasters, *Feasibility of a Mass Online California Bar Exam: 1. Cybersecurity* (July 23, 2020), <https://docs.google.com/document/d/1wpo5Mz9iZr003FUpxNMzGO2NNpH-Bbf9T2x4l7qHyQ/edit>.

² Marilyn Odendahl, *Software headaches adding to bar exam worries* (July 24, 2020), <https://www.theindianalawyer.com/articles/software-headaches-adding-to-bar-exam-worries>.

³ Marilyn Odendahl, *Technological problems delay Indiana remote bar exam one week* (July 24, 2020), <https://www.theindianalawyer.com/articles/technological-problems-delay-indiana-remote-bar-exam-one-week>.

4. My wife and I saved and budgeted diligently to cover the costs of tuition and living expenses for three years. However, it was still necessary to borrow money to make ends meet for that extended period of time, even with my wife employed as a healthcare worker. Our household budgeting and financial planning was predicated upon the assumption that we, the Class of 2020, would take the Bar Exam in July and begin working full-time in August of this current year.

5. I have been fortunate enough to obtain an offer for full-time employment in private practice, with the expectation that I begin working soon after taking the Bar Exam.

6. The Bar Exam has now been delayed twice. My start date with my future employer has now been pushed back twice as a result of the Bar Exam being delayed. Currently, I do not have a known start date for full-time employment. At the earliest, I will not be able to begin working full-time until the middle of October. This is at least two and a half months later than what I had budgeted and planned for.

7. Attempting to find temporary employment between now and the planned October Bar Exam would cause further interruption to adequate preparation and study.

8. My wife Miranda is a healthcare worker at the Penn State Health Milton S. Hershey Medical Center. Her responsibilities include managing patients' airways, breathing tubes, and ventilator equipment. On any given day she may be put in harm's way and come within inches of COVID-19 patients' airways. This puts my wife at an extreme risk of contracting the disease while caring for patients, and places me at risk of infection secondarily.

9. If either my wife or I were to contract COVID-19, my ability to study for the Bar Exam will cease immediately. Furthermore, my ability to take the Bar Exam remotely in

October while either recovering from COVID-19 or caring for my wife will most certainly be eliminated.

10. Like my peers, I welcome the opportunity to begin serving clients and the public as soon as possible, with the opportunity to prove my competency on the job and under closely regulated circumstances.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the twenty-seventh day of July, 2020,
at Mount Joy, Pennsylvania,
United States of America

Christian M. Wolgemuth
/s/ Christian M. Wolgemuth

Exhibit K-6

I, Jessica McDermott, hereby declare as follows:

1. I am a December 2019 graduate of Penn State Law, and make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.
2. I registered to take the July 2020 Pennsylvania Bar Exam. The threat of the ongoing global health pandemic along with the multitudes of changes to the administration of the exam as well as the many unknowns that remain have caused me to experience difficulties finding a quiet space to study for the exam, additional mental and emotional stress associated with a constantly changing bar exam, and stress about granted disability accommodations and how they will translate to an online bar exam.
3. The uncertainty surrounding the bar exam is also one of the major factors causing delayed medical treatment for my disabilities and chronic health issues in an effort to not interrupt studying for the bar or interfere with the bar exam with the possibility of a major surgery and the associated recovery from that surgery. Because of the delay in medical treatment that could have been accomplished months ago, I am now mostly bedridden and require the use of a walker to walk more than a few feet.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the 14th day of August, 2020,
at Forty Fort/Luzerne County, Pennsylvania,
United States of America

Jessica McDermott




Exhibit K-7

I, Raven Moore, hereby declare as follows:

1. I am a May 2020 graduate of the University of Pittsburgh School of Law, and make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.
2. I registered to take the July 2020 Pennsylvania Bar Exam. As a result of the examination's September postponement, the start date for my job was postponed by more than a month, resulting in a significant loss of income that was not accounted for when I took out loans for the summer. The delay in my start date has also resulted in a gap in my health insurance, which ended a few weeks prior to the original July 2020 examination date. I live with an essential worker who has constant exposure with COVID-19 patients, and thus need healthcare to ensure my own health and safety.
3. Now that the exam has been postponed to October, I will not have a source of income for an even longer period of time than I anticipated. The delay in both the bar exam and my employment has caused a lot of mental stress which has negatively impacted my ability to adequately prepare for this exam.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the 14 day of August, 2020,
at Pittsburgh (*municipality/county*), Pennsylvania (*state*),
United States of America

Raven Moore (*Name*)


 (*Signature*)

Exhibit K-8

I, **DEREK J. DEMERI**, hereby declare as follows:

1. I am a May 2020 graduate of **RUTGERS LAW SCHOOL** and make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.
2. I registered to take the July 2020 Pennsylvania Bar Exam. As a result of the two postponements of the exam until September, and then October, my study schedule has been detrimentally altered. I will be working as a full-time New Jersey appellate law clerk starting August 25, 2020. If the exam was not moved, I would not have been working while studying. As a first-time test taker, I am unprepared to sit for a bar exam while simultaneously working in an exhaustive and demanding clerkship. The abrupt change to an October exam negatively impacted my mental health and I am deeply concerned this will negatively affect my performance on the exam.
3. Now that the exam has been moved to an online format, I am unsure of where I will be able to take the exam. My apartment is not conducive to sitting for long periods of time, uninterrupted. Additionally, my Wi-Fi occasionally does not work. In August, I lost partial power for four days due to Tropical Storm Isaias. I am concerned about how these factors will affect my performance on the exam, particularly during the hurricane season.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the 16th day of August 2020,
at West Long Branch, New Jersey,
United States of America

Derek J. Demeri
/s/ Derek J. Demeri

Exhibit K-9

I, Catherine Cuff, hereby declare as follows:

1. I am a May 2020 graduate of the Temple University James E. Beasley School of Law. I make this declaration in support of the Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I support LSERC's request for relief, specifically their request that this Court offer unconditional waivers of the bar exam requirement to bar candidates entering the Judicial Advocate General (JAG) Corps. I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.
2. I am registered to take the July 2020 (now October 2020) Pennsylvania Bar Exam. As a result of the postponement of the exam, my employment with the United States Army may be delayed by 5 months.
3. I was offered and have accepted a commission with the United States Army JAG Corps, a prestigious and life altering position I have worked immeasurably hard to attain. This position is contingent on passing stringent medical requirements and obtaining a license to practice law in a jurisdiction.
4. I was going to work in the Temple Law admissions office until December 15th and then begin training at Fort Benning with other JAG recruits at the beginning of January. I will be unable to start working with admissions at full capacity until after the bar exam in October. Based on PABOLE's timeline, I will likely not get bar exam results in time to join the January JAG class. With this delay in the bar exam there is a high likelihood I may have to start training in May rather than January, and will have to get through January–May with no income five months after my planned military start date.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct. Signed on the twelfth of August, 2020, at Philadelphia, Pennsylvania, United States of America.

Catherine Cuff



Exhibit K-10

I, Michelle Tabach, hereby declare as follows:

1. I am a May 2020 graduate of the Temple University James E. Beasley School of Law. I make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.

2. I registered to take the July 2020 Pennsylvania Bar Exam. I am an active duty officer in the United States Navy. I was selected for the Naval Law Education Program which allows me to transition from my current military community to the Judge Advocate General's Corps (JAG) upon graduating from an accredited law school and taking a bar examination. As a result of the postponements of the exam, the new exam dates overlap with my training at the Naval Justice School in Newport, Rhode Island, which begins on October 6, 2020. Thus, I will be required to pack up my entire home and move to Rhode Island the same week as the bar examination. Additionally, I will most likely have to take the examination at a Navy Lodge, which offers extremely limited and intermittent internet access.

3. I am currently the main support for my grandfather, grandmother and aunt who are all immune compromised. In order to support them and ensure they remain safe, I am responsible for their grocery shopping, pharmacy pick-ups, and other miscellaneous errands. This has significantly interfered with my ability to focus on adequately preparing for the bar examination.

4. I support the general proposition set forth in the constitutional claim and support the requested form of relief. The JAG Corps requires rigorous additional training and strict oversight for all incoming JAG's. This consists of (1) an eleven-week supplemental training program at the Naval Justice School (NJS) in Newport, Rhode Island, which focuses on learning UCMJ specificities and (2) a twenty-four month First Tour Judge Advocate Program (FTJA) that

promotes professional development as naval officers and prepares first tour officers for success in an increasingly complex and specialized legal operating environment by requiring all first tours complete additional training and receive significant oversight by licensed and experienced JAG attorneys.¹ Thus, the first two years of a JAG's career are mostly focused on additional training, mentorship, and careful oversight on all projects by senior officers.

I declare under the penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the fifteenth day of July, 2020,

at Philadelphia, Pennsylvania,

United States of America



Michelle Tabach

¹ See Naval Legal Service Command, COMNAVLEGSVCCOM INSTRUCTION 1300.1B (14 Aug. 2017) (https://www.jag.navy.mil/library/instructions/CNLSCINST_1300.1B_CH-1_Jan18.pdf).

Exhibit

K-11

I, Karla Pisarcik, hereby declare as follows:

1. I am a May 2020 graduate of Villanova Law School, and make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge in the matters set forth herein and can and will testify thereto if called upon to do so.
2. I registered to take the July 2020 Pennsylvania Bar Exam. As a result of the first postponement of the exam until September, the start date of my job was delayed for over a month, depriving me of necessary income. This created physical and emotional stress which distracted from studying. Additionally, in order to make ends meet and pay August rent, I had to take up part-time non-legal freelance work which took away from my bar studying.
3. Now that the exam has been postponed a second time and scheduled for October, I cannot afford to go without income for another month. Because my new anticipated start date at my employer is late August or early September, I will be working full-time while preparing for the bar exam. I am concerned that this will negatively affect my performance on the exam.

I declare under penalty of perjury, under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the 17th day of August, 2020,
at Philadelphia, Pennsylvania,
United States of America

Karla Pisarcik

p.p. /s/ Ryan Aloysius Smith

Exhibit K-12

I, Caroline Robelen, hereby declare as follows:

1. I am a 2020 graduate of Widener Commonwealth Law School. I graduated magna cum laude and participated in the day division (3-year program). I make this declaration in support of (1) Plaintiff's Motion for a Proposed Emergency Licensure for summer/fall 2020 Pennsylvania Bar exam takers; and (2) the claim that strict adherence to Pa. B.A.R. 203(b)(1) in this case violates the individual right to pursue one's chosen lawful occupation. I have personal knowledge of the matters set forth herein and can and will testify thereto if called upon to do so.

2. I signed up in January 2020 to participate in the July 2020 administration of the Bar exam. I was initially scheduled to begin my job as an associate attorney at Van Allen, LLC on August 17, 2020. When the Bar exam was pushed to September, my start date at Van Allen, LLC got pushed to September 21. With the new exam date in October, I will not be starting work until October 13 or 19.

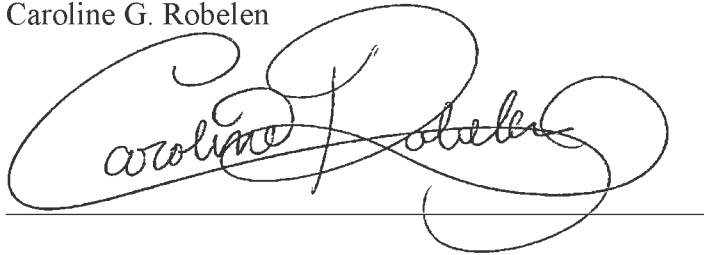
3. Because of the above stated facts, I will be foregoing 2 full months of salary and health benefits upon which I had been relying to carry me through the rest of the 2020 year. The change to an October exam causes me substantial financial harm because I will not be making income for 2 months and will have to renew my out-of-pocket health insurance. In total, I will be set back approximately \$19,000.

4. Finally, the administration of the Bar exam in October will most likely prevent me from registering for the February 2021 exam, if need be. The Bar exam results will allegedly be released in December 2020. Consequently, if I happen to fail the October exam, I will not be able to sign up for the February 2021 exam because the deadline to register will have already passed.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the twenty-sixth day of July, 2020,
at Camp Hill, Cumberland County, Pennsylvania,
United States of America

Caroline G. Robelen



A handwritten signature in cursive script, reading "Caroline G. Robelen", is written over a horizontal line. The signature is highly stylized with large loops and flourishes.

Exhibit K-13

I, KARLI J. STUDY, hereby declare as follows:

1. I am a May 2020 graduate of Widener Commonwealth School of Law and I make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.

2. I registered to take the July 2020 Pennsylvania Bar Exam. As a result of the first postponement of the exam until September, I postponed my start date at my job by over a month, foregoing much-needed income. This will likely cost me \$1,600 to \$2,000.00.

3. Now that the exam has been postponed a second time, until October, I cannot afford to go without income or pay for another month due to bills, medication necessities, and everyday living necessities. Therefore, I have no choice but to return to work and begin a part-time schedule and gradually increase to working full-time which shall sharply decrease my ability to study for the bar exam. I was not planning to work at all while studying for the bar, however, I will be forced to do so to survive.

4. I am concerned that my returning back to work will negatively affect my performance on the exam.

5. My employers are disgruntled about the second postponement and the further delay to my joining the firm. I am concerned that my position is in jeopardy.

6. I have suffered undue hardship in regard to financial strain and loss, stress and anxiety, and illness due to the effects from the continuing stress and anxiety surrounding the circumstances of the bar exam.

7. I do not have an adequate space to take the exam.

8. I can not afford to find/rent a place to take the exam.

9. I do not have reliable internet service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 14, 2020, in the Commonwealth of Pennsylvania.

Signed on the 14th day of August, 2020,
at Dauphin County, PA, U.S.

Karli J. Study (Name)

/s/ Karli J. Study (Signature)

Exhibit

K-14

I, Pretty Martinez, hereby declare as follows:


1. I am a May 2020 graduate of the Temple University James E. Beasley School of Law. I make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 ("LSERC"). I have personal knowledge and stake in the matters set forth herein and can and will testify thereto if called upon to do so.
2. I support the general proposition that strict adherence to Pa. B.A.R. 203(b)(1) in the case of October Candidates violates the individual right to pursue one's chosen lawful occupation.
3. I registered to take the July 2020 Pennsylvania Bar Exam. As a result of the postponements of the exam, my full-time employment has been delayed. I am currently working part-time while I study for the bar exam in order to financially support myself and my mother. I have been deprived of necessary, anticipated compensation due to the postponements.
4. Around March 2020, when the COVID-19 pandemic began to be acknowledged in the United States, I was working a part-time job as a server over 20 hours a week to save up for bar-related expenses and to provide financial support to my mother. Due to the pandemic, the restaurant where I worked closed indefinitely, and I lost my source of income. The savings I had worked hard to gather were then diverted to pay for basic living expenses and to provide financial support to my mother.
5. My mother is 61 years old and works two jobs which expose her to COVID-19. Due to her financial circumstances and employment situation, she has not been able to take time off work. Her daily exposure to job environments which put her health at risk have caused both of us stress, which increases daily. This has significantly interfered with my ability to focus on preparing for the bar exam.
6. I am a survivor of sexual violence and live with PTSD, depression, and anxiety. Maintaining a routine, structure, stability, and regular contact with my support system is crucial to managing my responses to deep trauma. The pandemic has rendered these coping mechanisms largely inaccessible. I have worked hard to develop and maintain tools, resources, and systems of support for myself. The postponement of the bar exam has exacerbated this hardship by imposing ten unanticipated, additional weeks of preparation and further isolation from these resources. The severe hardship I am facing has also triggered my emotional and psychological conditions.
7. I am unable to take time off work to study for the bar exam due to my financial situation. My income from part-time work barely covers my basic living expenses and those expenses which I cover for my mother. Given my mother's tenuous employment and health circumstances, I have no choice but to continue working throughout this pandemic, while studying for the bar. My mother relies on me. The COVID-19 pandemic has exacerbated the financial hardship I have experienced my entire life. It has exacerbated the financial hardship my mother was already facing.

8. Needless to say, this financial hardship has deep, lasting effects on both my and my mother's mental health and well-beings. I had carefully crafted a plan months ahead of the bar exam to ensure I had money saved to support myself and my mother during the bar prep and bar examination periods. The bar examination has now been postponed twice, and I am deeply concerned about whether I will make ends meet through October. Without the ability to practice law and earn full-time compensation as anticipated, my financial hardship has escalated with each postponement of the bar exam.
9. Financial hardship is one of the many barriers to entry I face as an "unconventional" bar applicant seeking to join the legal profession. I am a Latina woman from a low-income background, the daughter of an immigrant and single mother, and the first in my family to graduate from high school and college and pursue a professional degree. Being raised by the immigrant community is what drove me to pursue a career in the law. There are few Latinx, first-generation attorneys in the legal profession.
10. I faced financial challenge after financial challenge when navigating the higher education system. I worked throughout college and law school, sometimes working several jobs at once, just to support myself and my mother. I do not benefit from the same generational wealth and cultural capital that many of my peers can rely on.
11. I have pursued my dream of becoming an immigration attorney, with the odds stacked against me and without a financial safety net to catch me as the pandemic and resulting postponements of my employment render my ability to support myself more and more tenuous. I am responsible for my own financial stability and that of my mother.
12. After years of facing challenges head on and overcoming them, I am close to fulfilling my dream of serving my community in a legal capacity. However, in the context of this global pandemic, I face financial hardships directly caused by the postponements of the July 2020 bar exam that may ultimately prevent me from becoming an attorney, not due to my unwillingness to work hard, but because of circumstances beyond my control.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the sixteenth day of August, 2020,
at Philadelphia, Pennsylvania,
United States of America

Pretty Martinez



Exhibit

K-15

I, Ryan Aloysius Smith, hereby declare as follows:

1. I am a May 2020 graduate of Temple University Beasley School of Law and make this declaration in support of the King's Bench Petition submitted by Law Students for Equitable Responses to COVID-19 (LSERC). I have personal knowledge and stake in the matters set forth herein and will testify thereto if called upon to do so.
2. I registered to take the July 2020 Pennsylvania Bar Examination and am now registered to sit for the remote October 2020 Pennsylvania Bar Examination.
3. I have served as a member of the Board of LSERC since the unincorporated association's formation in March 2020.
4. I served as a Teaching Assistant in a for-credit bar preparation course offered at Temple Law during my final semester.
5. While at Temple Law, I was a recipient of the Beasley Scholarship, a Staff Editor and subsequent Research Editor of *Temple Law Review*, the Editor-in-Chief of the Political and Civil Rights Society's online publication, and the Chairperson of the Temple National Lawyers Guild's Student Week Against Mass Incarceration.
6. I am a member of the Order of the Coif and received three graduation prizes for my research and writing: the first-place Arthur G. Raynes Award, the Louis M. Natali Prize for Criminal Defense Advocacy, and the J. Howard Reber Memorial Award. I also received the Jerry Zaslow Award for my contributions to the Temple Law community.
7. I wrote an award-winning comment on the Fourth Amendment and critical legal theory, which was published in *Temple Law Review*. I also wrote an award-winning research paper on textualism and the canons of statutory construction, which I intend to submit for publication in a law journal during the next academic year.
8. While at Temple, I completed a practicum with the Appeals Unit of the Montgomery County Public Defender's Office; a judicial practicum with the Criminal Division of the Philadelphia Court of Common Pleas; and a clinic with the Defender Association of Philadelphia, for whom I served as a certified legal intern.
9. I interned with the Federal Community Defenders for the Eastern District of Pennsylvania during the summer of 2019, and with the Conviction Integrity Unit of the Philadelphia District Attorney's Office during the summer of 2018.
10. I have been unable to obtain full-time employment in the legal sector due to the postponements of the July and September Exams. In June 2020, I wrote several blog articles as a freelance writer for LawRank. However, I was let go because I could not commit to an increased workload due to my need to prepare for the bar exam.

11. On July 22, 2020, I obtained part-time employment as a legal assistant for a solo practitioner licensed in Pennsylvania. In light of the practitioner's needs and my own need to prepare for the bar exam, I have only worked around twelve hours total thus far.
12. I submitted an application for a temporary license pursuant to this Court's supervised-practice order on July 23, 2020. As of August 15, 2020, I have not received confirmation as to whether the Board will issue me a license.
13. Given the substantial threat of a cyberattack during the administration of the October Exam, I am concerned that hackers will gain access to the work-product I produce for my employer because it contains confidential attorney-client information.
14. My current residence is not suitable to take the remote October Exam. I live in a one-bedroom apartment with my girlfriend in Center City, Philadelphia. The central air system in our apartment is cacophonous and would inevitably disrupt my performance on the October Exam. It is so loud that, no matter where I physically sit to take the exam, the proctoring software would likely flag my performance each time the system turns on.
15. My internet connectivity is too unreliable for me to use it to take the remote October Exam. My access is disrupted at random points at least once a day.
16. My levels of stress and anxiety are untenable, and the drastic fluctuations in my weight and appetite since the COVID-19 outbreak reflect this. I lost nearly twenty pounds between the last week of March and the first week of May. I regained fifteen pounds by the end of June, but then I lost all fifteen pounds by the end of July. I have slowly regained weight since then, but I anticipate this cycle will continue until I take the October Exam.
17. Before the Board announced the transition from an in-person bar exam to a remote bar exam, I was not concerned about whether I would pass the Pennsylvania Bar Exam. Now, given the serious questions surrounding the cybersecurity, technical feasibility, and psychometric reliability of the October Exam, I deeply concerned that I will be denied admission to the Pennsylvania Bar for reasons unrelated to whether I possess the knowledge and skills to practice law with minimum competency.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the seventeenth day of August, 2020,
at Philadelphia, Pennsylvania,
United States of America

Ryan Aloysius Smith

/s/ Ryan Aloysius Smith

Exhibit L

Pennsylvania Bar Examination
July Statistics, 2010–2019

First Attempt Passage Rates

Year¹	Successful	Unsuccessful	Total	Pass Rate
2019	881	212	1093	80.60%
2018	863	229	1092	79.03%
2017	873	202	1075	81.21%
2016	1033	338	1371	75.35%
2015	1217	338	1555	78.26%
2014	1439	304	1743	82.56%
2013	1577	324	1901	82.96%
2012	1554	318	1872	83.01%
2011	1635	287	1922	85.07%
2010 ²	1525	267	1801	84.68%
TOTAL	12,597	2828	15,425	81.6%

¹ Statistics from July 2011–2019 are available at https://www.pabarexam.org/bar_exam_information/bestats.htm

² Statistics for July 2010 exam are available at <https://www.pabarexam.org/pdf/statistics/july/j2010.pdf>

Exhibit

M



July 16, 2020

Chief Justice Tani Gorre Cantil-Sakauye
The Honorable Ming W. Chin, Associate Justice
The Honorable Carol A. Corrigan, Associate Justice
The Honorable Mariano-Florentino Cuéllar, Associate Justice
The Honorable Joshua P. Groban, Associate Justice
The Honorable Leondra R. Kruger, Associate Justice
The Honorable Goodwin H. Liu, Associate Justice

Attn: Mr. Sunil Gupta
The Supreme Court of California
350 McAllister Street
San Francisco, CA 94102
Sunil.Gupta@jud.ca.gov

Sent via electronic mail

Re: ACLU civil rights concerns with potential use of facial recognition in proctoring the California Bar Examination

Dear Chief Justice Cantil-Sakauye and Justices of the Supreme Court of California:

We write to express our strong opposition to the potential utilization of software integrated with facial recognition technology for proctoring the California Bar Examination.

This letter focuses specifically on our serious concerns with the use of facial recognition technology in any online Bar Exam administration. However, we must note that this does not mean we endorse the goal of administering an online Bar Exam during the pandemic, particularly given the racial and economic digital divide and disparities it will cause and exacerbate.ⁱ Nor does our focus on the facial recognition issue in this letter indicate support for requiring law school graduates to take the Bar Exam for admission to practice this year or beyond.

The State Bar has indicated it plans to use ExamID and/or ExamMonitor, products of ExamSoft that collect biometric data for identification purposes, to verify test-takers' identities when they sit for the virtual administration of the Bar Examination currently scheduled for September.ⁱⁱ Given the invasive and discriminatory nature of facial recognition technology, the proposed use of software that collects biometric data for the administration of the Bar Examination would be antithetical to the State Bar's mission of protecting the public and increasing access and inclusion in the legal system. In an unprecedented moment that requires innovative, equitable pathways to

attorney licensure due to the myriad challenges posed by COVID-19 and the ongoing movement for racial justice, the deployment of facial recognition threatens to further entrench racial and economic inequities that have long created barriers to the legal profession.

Facial recognition technology disproportionately harms marginalized communities.

The ACLU of California has long advocated against the use of facial recognition technology due to the significant threats it poses to civil rights and civil liberties, particularly for people of color. Facial recognition has been repeatedly demonstrated to be less accurate when used to identify Black people, people of Asian descent, and women.ⁱⁱⁱ In a 2019 ACLU study, 1 in 5 California legislators were erroneously matched to a mugshot of persons who have been arrested, with facial recognition disproportionately misidentifying lawmakers of color.^{iv} Many face recognition algorithms also misgender transgender and gender nonconforming people, while others purport to identify a person's sexual orientation by relying on and perpetuating harmful stereotypes about physical appearance.^v

The consequences of misidentification can be life-changing. Late last month, for example, the *New York Times* published the tragic story of Robert Julian-Borchak Williams, a Black man who was falsely identified by facial recognition, leading to his wrongful arrest and detention for a crime he did not commit.^{vi} Black and transgender Uber drivers have been denied the ability to work because the company's facial recognition feature failed to recognize them.^{vii} Advocates have warned that the increasing use of facial recognition algorithms by prominent employers to vet job applicants during the hiring process replicate job disparities for adults with disabilities in addition to race and gender disparities.^{viii}

Even when the technology accurately identifies people, it is still harmful. Over the past several years, face recognition systems have been used to target immigrants for deportation, criminalize poverty, facilitate mass incarceration, and surveil demonstrators exercising their First Amendment rights at protests.^{ix} For these reasons and more, 82% of likely 2020 California voters agree that government entities should not be able to monitor and track them using their faces and other biological features.^x Amidst a national reckoning with racism, prominent face recognition developers are finally acknowledging its potential for abuse- IBM, Amazon, and Microsoft have all recently committed to stop selling facial recognition technology to law enforcement agencies.^{xi} Vendors may promise theoretical benefits but given the risks, government agencies should be taking measures to abolish facial recognition technology outright - not encourage its use.

The use of facial recognition technology to proctor the Bar Examination will exacerbate racial and socioeconomic inequities in the legal profession and beyond.

As advocates working closely with people most acutely impacted by the COVID-19 pandemic and state sanctioned violence— people of color, individuals who are incarcerated or in ICE custody, people experiencing homelessness, and workers, among others – we are witnessing firsthand how the disproportionate harms marginalized communities face every day are exacerbated

during moments of crisis. Many aspiring lawyers who are registered for the upcoming California Bar Examination come from and are deeply connected to these communities. Others are committed to filling the justice gap that hinders access to available and affordable legal representation for these groups.

Race, gender, disability, and other biases built into facial recognition algorithms all but guarantee test-takers from marginalized groups will also be disproportionately impacted by erroneous identifications during the exam and the ongoing surveillance risks that stem from having their biometric information enrolled in a facial recognition database. Test-takers of color may be more likely to experience technical difficulties during the examination if facial recognition algorithms are unable to verify their identity. Others may be wrongfully accused of cheating or other suspicious behavior based on an algorithm's misreading of facial movements or mannerisms. For undocumented bar applicants and applicants of color, the risks of having their biometric data stored in a vendor's database increases the possibility of surveillance and criminalization they are already unduly subjected to.

These harms extend far beyond the hours of the Bar Exam and will very likely exacerbate the shortage of attorneys of color in California. California's most underserved communities face record unemployment, mass evictions, and educational inequities related to COVID-19. Increased access to the legal system - and additional public interest lawyers, particularly public interest attorneys of color, to facilitate that access - will be more critical than ever. The State Bar must find a solution to the administration of the Bar Exam that will meaningfully address inequities, not perpetuate them.

Facial recognition risks contributing to the historical exclusion of people of color from the State Bar of California.

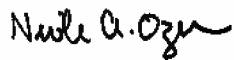
The ACLU of California has also advocated for measures to reduce racial disparities in Bar Examination pass rates. As we've previously communicated to this Court, the State Bar first identified racial disparities in bar passage rates more than three decades ago, when a study found that Asian, Latinx, and Black exam takers passed the 1985 and 1986 exam administrations at rates 10 to 33 percentage points below white test-takers.^{xii} Thirty five years later, racial disparities in bar passage rates persist. In July 2018, only 19.76% of Black test-takers, 35.85% of Latinx test takers, 35.49% of Asian test takers and 29.75% of other minoritized test takers passed, compared to 49% of white test takers.^{xiii}

These disparities are a vestige of historical racism and xenophobia in the legal profession. Until 1878, admission to the California State Bar was restricted to white males, with the first Black attorney being admitted in 1915.^{xiv} Hong Yen Chang, the first Chinese-American lawyer in the United States, was denied admission to the State Bar in 1890, consistent with federal and state laws sanctioning anti-Chinese racism.^{xv} In 1931, the California State Legislature limited bar membership to U.S. citizens, a restriction that remained in place for more than four decades.^{xvi}

We appreciate ongoing efforts by the California State Bar and Supreme Court of California to redress these wrongs and build a more just and inclusive legal profession. The use of facial recognition technology to proctor any State Bar exams will, however, impede rather than promote this progress.

As the nation looks to California's leadership in protecting public health and advancing justice, we hope you will take the individual and collective risks of deploying facial recognition for the California Bar Examination seriously. Because facial recognition technology poses enormous risks to civil rights and equity, we must oppose its use by the State Bar of California.

Sincerely,



Nicole A. Ozer
Technology & Civil Liberties Director
ACLU Foundation of Northern California



Melissa Goodman
Director of Advocacy / Legal Director
ACLU Foundation of Southern California

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David Loy
Legal Director
ACLU Foundation of San Diego & Imperial Counties



Jennifer Jones
Technology & Civil Liberties Fellow
ACLU Foundation of Northern California

CC: Mr. Jorge E. Navarrete
Clerk and Executive Officer
The Supreme Court of California

Donna Hershkowitz
Interim Executive Director
The State Bar of California

Committee of Bar Examiners
The State Bar of California

ⁱ See Joanna Nelius, *The Pandemic Exposed a Massive Digital Divide in Our Schools They Can't Fix on Their Own*, GIZMODO, <https://gizmodo.com/the-pandemic-exposed-a-massive-digital-divide-in-our-sc-1844323273> (Jul. 14, 2020); Tawnell D. Hobbs, *'Are They Setting My Children Up for Failure?' Remote Learning Widens Education Gap*, THE WALL STREET JOURNAL, https://www.wsj.com/articles/remote-learning-pushes-americas-most-vulnerable-students-further-behind-11594826905?mod=hp_lead_pos5 (Jul. 15, 2020).

ⁱⁱ See ExamSoft Worldwide, Inc., *ExamSoft Announces New Education Technology Products to Deliver Unparalleled Secure Assessment Solutions*, PR Newswire <https://www.prnewswire.com/news-releases/examsoft-announces-new-education-technology-products-to-deliver-unparalleled-secure-assessment-solutions-300809646> (Mar. 11, 2019).

ⁱⁱⁱ Black and Brown people, especially women and young people, are more likely to be misidentified by discriminatory algorithms like facial recognition systems that are built using biased data. See Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 PROCEEDINGS OF MACHINE LEARNING RESEARCH (2018). Last December, the National Institute of Standards and Technology released results for a comprehensive study of facial recognition systems finding that African American and Asian people were up to 100 more times likely to be misidentified than white men, depending on the algorithm and use case. See Drew Harwell, *Federal study confirms racial bias of many facial-recognition systems, casts doubt on their expanding use*, WASHINGTON POST, <https://www.washingtonpost.com/technology/2019/12/19/federal-study-confirms-racial-bias-many-facial-recognition-systems-casts-doubt-their-expanding-use/> (Dec. 19, 2019).

^{iv} ACLU of Northern California, *Facial Recognition Technology Falsely Identifies 26 California Legislators with Mugshots*, ACLU NORCAL, <https://www.aclunc.org/news/facial-recognition-technology-falsely-identifies-26-california-legislators-mugshots> (Aug. 13, 2019).

^v Vanessa Taylor, *Facial recognition misclassifies transgender and non-binary people, study finds*, MIC, <https://www.mic.com/p/facial-recognition-misclassifies-transgender-non-binary-people-study-finds-19281490> (Oct. 30, 2019).

^{vi} Kashmir Hill, *Wrongfully Accused by an Algorithm*, NEW YORK TIMES, <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html> (Jun. 24, 2020).

^{vii} Olivia Rudgard, *Uber faces racism claim over facial recognition software*, THE TELEGRAPH, <https://www.telegraph.co.uk/technology/2019/04/23/uber-faces-racism-claim-facial-recognition-software/> (Apr. 23, 2019); Steven Melendez, *Uber driver troubles raise concerns about transgender face recognition*, FAST COMPANY, <https://www.fastcompany.com/90216258/uber-face-recognition-tool-has-locked-out-some-transgender-drivers> (Aug. 9, 2018).

^{viii} Facial recognition software is often designed to make assumptions about candidates based on their facial movements, tone of voice, and mannerisms, replicating disparities for adults with disabilities and race and gender disparities. See Ifeoma Ajunwa, *Beware of Automated Hiring*, NEW YORK TIMES, <https://www.nytimes.com/2019/10/08/opinion/ai-hiring-discrimination.html> (Oct. 8, 2019). See also Drew Harwell, *A face-scanning algorithm increasingly decides whether you deserve the job*, WASHINGTON POST, <https://www.washingtonpost.com/technology/2019/10/22/ai-hiring-face-scanning-algorithm-increasingly-decides-whether-you-deserve-job/> (Nov. 6, 2019).

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- ^{ix} Catie Edmundson, *ICE Used Facial Recognition to Mine State Driver's License Databases*, NEW YORK TIMES, <https://www.nytimes.com/2019/07/07/us/politics/ice-drivers-licenses-facial-recognition.html> (Jul. 7, 2019); Russell Brandom, *Facebook, Twitter, and Instagram surveillance tool was used to arrest Baltimore protestors*, VERGE, <https://www.theverge.com/2016/10/11/13243890/facebook-twitter-instagram-police-surveillance-geofeedia-api> (Oct. 11, 2016); Paul Mozur, *One Month, 500,000 Face Scans: How China Is Using A.I. to Profile a Minority*, New York Times, <https://www.nytimes.com/2019/04/14/technology/china-surveillance-artificial-intelligence-racial-profiling.html> (Apr. 11, 2019).
- ^x *California Statewide Survey: Poll Results of Likely 2020 Presidential Voters*, DAVID BINDER RESEARCH, https://www.aclunc.org/docs/DBR_Polling_Data_On_Surveillance.pdf.
- ^{xi} Isobel Asher Hamilton, *Outrage over police brutality has finally convinced Amazon, Microsoft, and IBM to rule out selling facial recognition tech to law enforcement. Here's what's going on*, BUSINESS INSIDER, <https://www.businessinsider.com/amazon-microsoft-ibm-halt-selling-facial-recognition-to-police-2020-6#:~:text=IBM%2C%20Amazon%2C%20and%20Microsoft%20have%20all%20committed%20to,Matter%20movement%20appears%20to%20have%20tipped%20the%20scale> (Jun.13, 2020).
- ^{xii} See ACLU of California, California ChangeLawyers, & Impact Fund, *Re: Adverse Effects of the California Bar Exam Cut Score* (citing Klein & Bolus, *Comparisons of Eventual Passing Rates in the 1985 and 1986 Cohorts*, (Oct. 30, 1988) p. 3 http://www.seaphe.org/pdf/past-bar-research/Comparisons_of_Eventual_Passing_Rates_in_the_1985_and_1986_Cohorts.pdf).
- ^{xiii} *Id.* (citing State Bar of Cal., General Statistics Report: July 2018 California Bar Examination (Jan. 2, 2019) p.2 http://www.calbar.ca.gov/Portals/0/documents/admissions/JULY2018_CBX_Statistics.pdf).
- ^{xiv} *Id.* (citing Code Civ. Proc., 275, as amended by Stats. 1818, ch. 600, 2, p. 99 (approved Apr. 1, 1878); J. Clay Smith, Jr., EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944 (1993) p. 485).
- ^{xv} *Id.* (citing *In re Chang* (2015) 60 Cal. 4th 1169, 1171).
- ^{xvi} *Id.* (citing *Raffaelli v. Committee of Bar Examiners* (1972) 7 Cal.3d 288, 295).