

WASHINGTON STATE
B A R A S S O C I A T I O N

Board of Governors Meeting
Late Meeting Materials

June 26-27, 2020
Webcast & Teleconference

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June 19, 2020

Justices of the Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504

Re: Washington Supreme Court Vote to Sunset the LLLT License

Dear Justices:

We, the Limited License Legal Technician (LLLT) Board, are very concerned about not only the decision that you, the Supreme Court, made regarding sunseting the LLLT program but also and more importantly we are very concerned about the process, or lack thereof, used to accomplish that decision.

You are seen as the keeper of “rules and process.” When the Court acts in a quasi-legislative or rule-making role, it ought to be 100% in public and transparent. Deliberations should be open and with due process. We are of the mind that at a minimum the Court should hold hearings and invite stakeholders on all sides of the issue to present relevant evidence and arguments to discuss this program which embraces hundreds and hundreds of stakeholders (community colleges, students, LLLTs, trial judges, persons interested in access to justice and finally and certainly not last, the consuming public).

The time to complete the LLLT license requirements should be extended. As you will learn about later in this report, there are numerous students who have loans they took out to obtain a LLLT license. These funds are not transferable and will be lost. In addition, community colleges have invested heavily in this program over the last seven years. It is false economy to remove a program that trains people to provide the public with meaningful access to the courts. The provision of the legal services continues throughout the career of a LLLT with only regulatory oversight. Even if you sunset the program, there will still be expenses in connection with maintaining the licenses of the existing LLLTs.

The Court at a minimum should continue the program until the National Center for State Courts completes its study, which will be perhaps as long as two years. This study has been in the works for at least two years but had been awaiting funding from Congress. It would seem that the Court would be interested in the information and conclusions that such a study might shed on this topic. This study will undoubtedly answer the question of whether the LLLT program is “worth it.”

Some of you have suggested that the license and the LLLTs are not serving the clients as originally intended. This license was never conceived to serve only those with incomes of 0% to 200% of the federal poverty level. It was always designed to serve those who have some money (200% to 400%), but not enough to hire a lawyer. However, most LLLTs do also serve clients in the 0% to 200% portion of the market. In addition, they do more pro bono per capita than most lawyers.

As you may be aware, Utah has adopted a similar rule. There are other states and provinces which are seriously contemplating adopting similar licenses, including but not limited to: Oregon, California, Arizona, New Mexico, Colorado, Minnesota, Connecticut, Massachusetts, Ontario. This clearly is an idea whose time has come. This visionary program was initiated after much study, by GR 25 in 2001.

The LLLT program is not *the* solution to the access to justice problem, but it is a “tool in the toolbox” to help address this problem. It serves a public need. Our government has given the judicial branch of government and our profession a monopoly, and with that comes the obligation to deliver legal services to all so that they can effectively participate in this concept of governance.

If not this, then what? If not now, then when? We implore you to reinstate the license and allow us to inform you about all aspects of the license.

There are other stakeholders who are harmed by sunseting the program and whose voices should have been considered.

The Court did not fully consider the harmful impact of its sudden decision to sunset the LLLT program. The LLLT program was an investment in time and money not only from the WSBA, but also from LLLTs, potential LLLTs, community colleges, and UW and Gonzaga law schools. Stakeholders other than just the WSBA Board of Governors’ Budget and Audit Committee should have a voice in the Court’s consideration of the fate of the LLLT program.

There are immediate concerns that should be remedied for existing candidates in the LLLT pipeline. The date for completion of the LLLT license requirements should be extended for an additional three to four years.

Students are reeling from the Court’s decision. These are people who can ill-afford to absorb the loss of money and time spent pursuing the LLLT license. Students rely on career education programs offered by colleges and the expertise of advisors to make career choices. Their course of study dictates where they spend their limited financial resources -- whether it be financial aid, personal loans, personal funds, GI bills, grants, disability and worker retraining funds, or some combination of financial aid. Many students in the current LLLT candidate pipeline received funding from a State disability retraining program or a similar program. Student funds and the available funding for retraining are now lost; students will be repaying loans for classes in a career path no longer available due to the Court’s decision.

The LLLT core education takes two years of full-time attendance to complete, assuming the community college is offering the required classes in perfect order. The candidate must have another 1.5 years of full-time work to obtain the necessary work experience. The timeline for those who cannot afford school, have demands of family, are unable to navigate traditional education, and those who cannot find work experience will be longer.

Seven colleges relied on the promises of APR 28, outreach by the WSBA, and marketing for the LLLT program. Both the WSBA and the LLLT Board did outreach to schools and groups to inform people about

and to encourage them to pursue the LLLT license. People relied on those representations and began their coursework. Many of the students in the core curriculum classes would not be pursuing a paralegal degree but for the opportunity for a LLLT license.

The colleges offering LLLT pathway courses are reeling from the Court's decision and now must redesign programs in an effort to salvage students' education and expended funding. These schools have devoted countless hours, energy, and funds to create the core education programs for both a two-year A.S. degree and a LLLT certificate awarded to people who already have a bachelor's degree. The colleges designed classes, aligned class schedules, and marketed a new profession, only to have the Court take it away. The sunset of the program was without any input from those who have much to lose – the students and the institutions. The colleges modified their curriculum and some had to undergo an extensive on-campus program review by the LLLT education committee. The schools offering the LLLT core curriculum are:

- Edmonds Community College
- Highline College
- Spokane Community College
- Tacoma Community College
- Whatcom Community College
- University of Washington Continuum College
- Portland Community College

Under most educational structures for post-secondary institutions, student consumer protection laws and Title IV of the Higher Ed Act generally expect that colleges discontinuing operations or programs will engage in a three- to four-year “teach-out.” When phasing out any program, the college gives students already in the program an opportunity to complete their degree. The sunset deadline for completing LLLT license requirements should be extended by three to four years so that the schools can complete their obligation to their students.

The Washington State Board for Community and Technical Colleges (SBCTC) oversees the program approval process for professional and technical programs in the community and technical college system. This process includes guidance to colleges about how to assess program viability and the process to follow if they decide to close a program. SBCTC defaults to the three-year teach-out; colleges are required to continue offering those programs for three or four years if there are currently enrolled students. SBCTC guidelines should be considered and their input heard regarding the program and the timelines.

By imposing the arbitrary thirteen-month deadline to finish the license requirements, the Court has not fully considered all of the stakeholders. The closed-door decision of the Court did not give the stakeholder institutions or their students an opportunity to be heard. The decision disregards the time required for completing the path to becoming a LLLT and what the “pipeline” entails. Schools and students are severely and negatively impacted, both financially and by reputation, for having pursued the LLLT curriculum, which they now must abandon.

The efforts of the colleges to provide the education for the LLLT license has been tireless. For example, as recently as May 8, 2020, Spokane Community College completed the program review and approval process administered by the State Board for Community and Technical Colleges to add a LLLT Certificate to their program roster. Also recently, Whatcom Community College worked with UW and Gonzaga law professors over the last year to offer the Family Law Practice Area curriculum designed by the law schools. Since the UW Continuum College could not offer the classes, the LLLT Board and the law schools scrambled to move the classes so that LLLT students would not be further delayed in taking these courses.

The LLLT Board requests the Court reverse/reconsider the decision based in part on the following issues:

- **Loss of Irreplaceable Student Funding** - There are at least 275 students in the pipeline who have invested time and thousands of dollars pursuing the core education and the LLLT substantive education. Some of the funds used by students are specialized educational funding that cannot be replaced. Most of the 275 students cannot complete licensure requirements by June 31, 2021. Especially hard-hit are those students with disabilities.
- **COVID-19 Impairments** - Students in the educational pipeline, attorneys who provide supervision, and community college stakeholders are affected by COVID-19 restrictions which significantly impair timely completion of education, testing, and the experience hour requirements. Due to the physical and economic shutdown, LLLT candidates cannot find employment or even volunteer opportunities where they could obtain the required 3,000 hours of experience.
- **Community College Investment** - Seven Washington community colleges invested significant resources and hundreds of thousands of dollars in curriculum, staffing, faculty, and marketing to develop and implement the LLLT core curriculum and practice area classes. Those colleges are left holding the bag because to their detriment they relied on the promise of the LLLT license.
- **Teach-Out Requirements** - Community colleges are expected to provide a three- or four-year phasing out of educational offerings. To fulfill their obligations under Title IV, colleges should have a significant amount of time before program sunset so their students can complete the core curriculum.

Other stakeholders were adversely impacted and should have an opportunity for their voice to be heard:

- **No Cost Legal Resources** - Public law libraries and legal aid clinics developed LLLT-specific resources for indigent litigants and depend on LLLT volunteers for their clinics and workshops.
- **Practicing LLLTs and Attorneys** - Both LLLTs and attorneys have relied upon the growth of the profession and public awareness to build their businesses. Attorneys who developed profitable relationships with LLLTs have relied upon those relationships and referral sources to sustain their business models

- **The Legal Consumer** - Thousands of Washingtonians are now permanently priced-out of the legal marketplace.

Even if sunseting the program, the Court should change the rules to facilitate completion of the license requirements for those people already in the pipeline.

There are rule changes which should be adopted even if the program is sunset. At the May 12th meeting with the court, the LLLT Board requested a change in program test certification requirements, specifically changing the rule so that LLLT candidates do not have to take unnecessary redundant tests from the national organization (i.e. as addressed in GR 9 cover sheet, require either the PACE or the PCCE, but not both). Also requested was the reduction in the experience hours, from 3,000 to 1,500. The reduction in hours would help mitigate the COVID-19 impact on candidates who because of the shutdown are unable to obtain work or volunteer hours. The proposed rule changes regarding testing and experience hours should be adopted.

There should be further opportunity to be heard. Please hear us and the other stakeholders in the LLLT program.

The LLLT Board received no notice the Court was considering immediate termination of the Limited License Legal Technician license. Rather, we were working on the Court's prior requests for areas of practice that would align with the Civil Legal Needs Studies. No rule to terminate the license was proposed, nor was a comment period provided. The LLLT Board was not given the opportunity to explore and present information on alternative fundraising or program modifications that may have better informed the Court on the budget issue. The rule provided for self-sufficiency after a reasonable period. The Board believed that, similar to the nurse practitioner program, 10 to 15 years would be a reasonable period. Other scenarios are available and should be considered.

Neither the WSBA Board of Governors (BOG) nor the Budget and Audit Committee of the BOG had a public meeting or public vote to request an immediate sunset of the license. It was not until January 2020 that the Budget and Audit committee requested a business plan, which the LLLT Board provided in April 2020. Unlike the BOG's Memorandum of Understanding with the Access to Justice Board, which contains a provision for good faith in resolving disputes, the LLLT Board had no opportunity to engage in good faith discourse with the BOG about the LLLT Board's business plan.

In citing a "small number of interested individuals" as a reason to terminate the license, the Court seemingly overlooked hundreds of people (at least 275) who are and have been actively involved in developing and/or earning the LLLT license. There are numerous steps to becoming licensed: completion of core and practice area classes, passing multiple exams, working 3,000 supervised hours, obtaining malpractice insurance, and being sworn in. The LLLT process was developed with all the phases to help ensure quality services are provided to the public. Completion of all phases is time-consuming and delays the immediate licensing of LLLTs.

The pathway to becoming an LLLT was designed for inclusion. Community colleges have as a mission an inclusive learning environment that meets the needs of the local community. Often non-traditional students who cannot attend classes full-time, must drive hours to attend community college, while continuing to support their family, or those students who need a reasonable disability accommodation must take additional time to complete their degree. Students from underrepresented and rural populations needed time to find and start the program. Now that they have, they should be allowed to finish. Their voices should be heard and their needs considered.

Members of the public should have been given the opportunity to be heard. LLLTs have provided access to the courthouse that offers self-represented family law litigants both hope and actual results in obtaining fair and reasonable outcomes for their cases. If these members of the public had been given the opportunity to comment, the Court would have heard personal and agonizing stories about their difficulties in understanding court rules and unwritten court procedures, and understanding the law and their rights under those laws. Their needs are not met by a packet of materials mailed to them by NJP or purchased at a law library.

Everyone, from students to educators to LLLTs and attorneys, and most importantly, the public, should have been provided the opportunity to be heard. The Court made its decision without the necessary input from all stakeholders. We request the Court reverse its decision to sunset the LLLT license on that basis. If the Court will not consider ensuring all stakeholders are heard, then we ask that the Court extend the deadline for completing the requirements for licensure to at least August 1, 2023, which is enough time for a “teach-out” and for the National Center for State Courts to complete its study.

We ask the Court to respond as soon as reasonably possible. In particular, because students are registering for their classes, we request the Court extend the time for students in the pipeline to complete their education. We ask for enactment of the proposed changes in the rules regarding the duplicative national tests and reducing the experience hours in order to accommodate the difficulties caused by COVID-19. We request the Court reverse or defer the sunseting of the program until the National Center for State Courts completes its study.

Thank you for your further consideration.

Respectfully,



Stephen R. Crossland
Chair, Limited License Legal Technician Board

LLLT Board Committee Chairs:

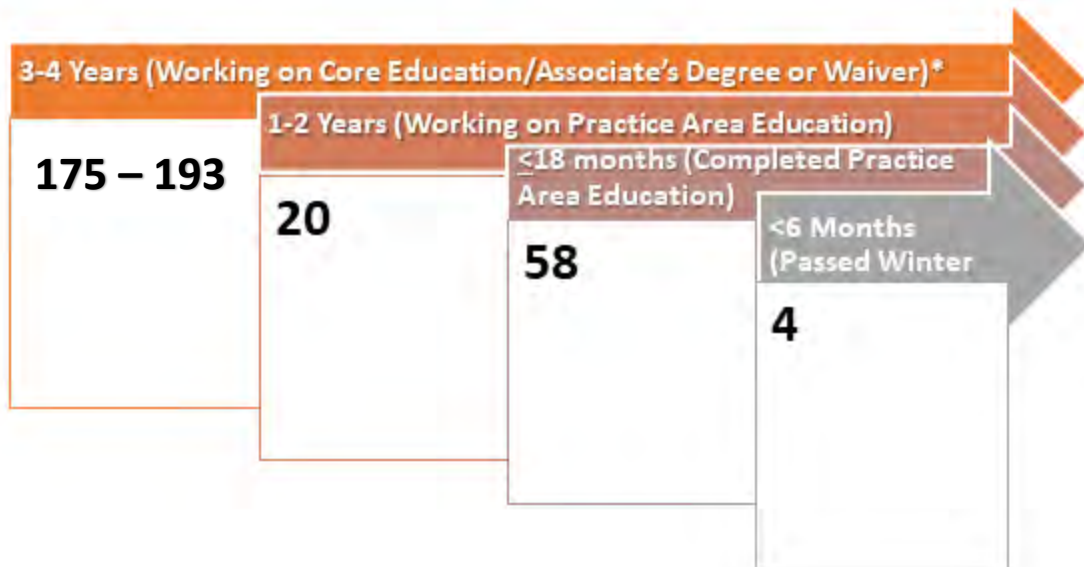
Sarah Bove
Christy Carpenter
Nancy C. Ivarinen
Jennifer Ortega
Jennifer Petersen
Amy Riedel

Enclosures:

1. Illustration - Students in LLLT Pipeline
2. Timeline to Complete LLLT Licensing
3. SBCTC 2012 Program Approval Guidelines
4. GR 9 Cover sheet re: PCCE/PACE requirements
5. Memorandum of Understanding - Access to Justice Board

Cc: Terra Nevitt
Rajeev Majumdar

Illustration – Students in LLLT Pipeline



We estimate 275 students are presently enrolled in core education/Associate's Degree programs with the goal of becoming a LLLT.

- 20 students are currently enrolled in the practice area education.
- 58 students have completed the Practice area education in less than the last 18 months, are working toward their 3,000 hours, and are studying for the LLLT licensing exam.
- 4 students passed the winter exam in February 2020 and are working towards their license.

Timeline to Complete LLLT Licensing

PCCE: Candidates must take and pass the Paralegal Core Curriculum Exam (PCCE), administered by the National Federation of Paralegal Associations (NFPA). This test is controlled by the NFPA and availability to take the exam is beyond the control of the candidate, colleges, LLLT Board or Court. Current candidates in the Practice Area Curriculum have contacted NFPA and have been advised the administration of the test is provided by a third party and NFPA has limited control over the test availability – students are awaiting confirmation from NFPA whether NFPA can do anything to work with students on testing availability.

Also, to even test for the PCCE, candidates must meet certain criteria, which many in the pipeline do not meet yet. This criteria was just changed a few weeks ago in response to COVID:

FastTrack PCCE® Synthesized Pathways

Education, Military Service, CRP credentials	Years of Substantive Paralegal Experience	CLE
Bachelor Degree or higher	6 months	1 hour of NFPA-approved ethics CLE, within 2 years preceding application
Associate Degree	1 year	1 hour of NFPA-approved ethics CLE, within 2 years preceding application
Paralegal Certificate[4]	1 years	1 hour of NFPA-approved ethics CLE, within 2 years preceding application
Military Paralegal Rate (Job)[5]	Defined by rank	1 hour of NFPA-approved ethics CLE, within 2 years preceding application
NFPA Assurance of Learning Education Partner Students[6]	N/A	N/A
High School or GED	5 years	12 hours of NFPA-approved CLES, including 1 CLE hour of ethics, within 2 years preceding the Application

<https://www.paralegals.org/i4a/pages/index.cfm?pageid=3813>

PACE/Waiver Students: The Court had the opportunity to fix this issue as a barrier to licensing and did not address the Board’s request. Students who have already taken and passed the Advanced Competency Exam (vs. the Core Competency Exam) will have to study and sit for the lower level exam. Even though it is theoretically less difficult, one cannot assume they do not need to study or that it is an easier exam. Test availability is again an issue.

LLLT Licensing Exam: LLLT licensing exams are offered in February and July each year. Those currently enrolled in the practice area curriculum will complete the curriculum on December 11, 2020 – which means they have to pay for and apply for the exam before beginning FL3 to avoid late fees (and pay FL3 tuition and exam fees almost simultaneously). The deadlines to apply for the exams are as follows:

Timeline to Complete LLLT Licensing

Examination	Applications Accepted	First Deadline	Late Filing Deadline with \$150 late fee	Failed Previous LLLT Exam Deadline With No Late Fee
Summer Exam	February 1	March 5	April 5	May 5
Winter Exam	September 1	October 5	November 5	October 5

If a candidate does not pass the February 2020 exam, the first exam date available to current practice area students, is taking the July 2021 exam even a viable option? How would one take the July 2021 exam and be licensed by the end of the month, considering:

- Exam grading and opportunity to challenge by the candidate
- Character and Fitness Review
- Criminal History Record Check
- Proof of Malpractice Insurance
- Proof of IOLTA

No lawyer is expected to pass the bar exam with only one opportunity, nor has this ever been the case for the LLLTs. **APR 28, Reg. 8(e)**: “An applicant who passes the practice area examination but fails the professional responsibility examination or vice versa may retake the failed exam at the next two administrations of the exam. The passing score shall be valid for one year from the date the applicant is notified of the exam results. If the applicant does not pass the failed exam within one year of such notification, the applicant shall be required to retake the exam he or she passed.”

3,000 Hours: Candidates in the pipeline have relied on **APR 28, Regulation 9**, which provides a candidate for licensure forty (40) months after passing the exam to get licensed. Most students are not in the position to complete the **RIGOROUS** education requirements and obtain all of their 3,000 hours simultaneously. 3,000 hours equals approximately eighteen-months of full-time employment. Most candidates do not receive credit from a supervising attorney on an hour-for-hour basis, as much time spent in a law office by a non-lawyer cannot be classified as “work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.”

As of June 5, 2020, the date of the Court’s letter, the court provides 60 weeks and 1 day to attain licensing:

Candidates who begin working on their hours as of the dates of the Court’s letter = 60 weeks to obtain 3,000 hours or 50 hours/week

Candidates who pass the July 2020 exam (assuming grade by Aug. 1) = 52 weeks to obtain 3,000 hours or 58 hours/week (although there will not be an exam due to the Court’s order on Admission by Diploma, 3,000 hours will still have to be worked)

Candidates who pass the January 2021 exam (assuming grade by Feb. 1) = 25.7 weeks to obtain 3,000 hours or 117 hours/week

Candidates who pass the July 2021 exam = zero weeks to obtain 3,000 hours



Professional-Technical Program Approval Process

Effective 2/10/12 (Revised July 2013)

All professional-technical degree and certificate programs must be approved by the State Board for Community and Technical Colleges (State Board) prior to program implementation (see excerpts from the State Board [Policy Manual](#) (Chapter 4, 4.40.00). As part of this responsibility, the State Board sets rules/procedures/guidelines, developed in cooperation with the college system, that provide for the approval of all proposed new professional/technical programs, curriculum modifications, and program title changes. Following are the guidelines for approval of professional-technical programs.

DEFINITIONS

- A. A **professional-technical** program prepares students for employment in a specific industry.
- B. An **associate degree** program conventionally entails approximately two academic years of study, i.e., 90 credits, or two years of 45 credits each. WAC 250-61-050 defines “associate degree” as a lower division undergraduate degree that requires no fewer than 60 semester hours or 90 quarter hours. Some highly technical programs may require more than this to ensure that students have the necessary preparation to succeed.

RCW 28B.50.140(12) states, “May grant to every student, upon graduation or completion of a course of study, a suitable diploma, degree, or certificate under the rules of the state board for community and technical colleges that are appropriate to their mission. The purposes of these diplomas, certificates, and degrees are to lead individuals directly to employment in a specific occupation or prepare individuals for a bachelor’s degree or beyond. Technical colleges may only offer transfer degrees that prepare students for bachelor’s degrees in professional fields, subject to rules adopted by the college board.”

RCW 28B.50.215 states, “Technical colleges may, under the rules of the state board for community and technical colleges offer all specific academic support courses that may be at a transfer level that are required of all students to earn a particular degree or certificate. This shall not be interpreted to mean that their mission may be expanded to include transfer preparation, nor does it preclude technical colleges from voluntarily and cooperatively using available community college courses as components of technical college programs.”

- C. An **associate in applied science–transfer (AAS-T)** degree is built upon the technical courses required for job preparation but also includes a college-level general education component, common in structure for all such degrees. Further, the general education courses for the degree are drawn from the same list as those taken by students completing the Direct Transfer Agreement (DTA) associate degree or the Associate in Science-Transfer (AS-T) degree. These degrees are consistent with the dual purpose of transfer and preparation for direct employment.

The general education component of the transferable technical degree is to be comprised of not less than 20 credits of courses generally accepted in transfer. These 20 credits must include as a **minimum** the following:

5 credits in Communication	English Composition
5 credits in Quantitative Skills	Any course from the generally accepted in transfer list with Intermediate Algebra as a prerequisite
10 credits in Science, Social Science, or Humanities	Courses selected from the generally accepted in transfer list including a course meeting the human relations requirement.

The 20 credit **minimum** is proposed in recognition of the difficulty that some technical programs would have in adding even more general education credits to their degree. Yet other technical degrees would go beyond the 20 credits minimum because the technical program may already include transferable courses including the introductory course in the technical field.

- D. A **certificate** is an award which may be made for completion of the competencies and requirements for an occupational program. Certificates less than 45 credit hours in length do not necessarily include related instruction. Certificates 45 credit hours or longer must include related instruction as a component. The requirement for related instruction can be found in [Standard Two, section 2.C.9](#) of the Accreditation Standards from the Northwest Commission on Colleges and Universities ([Home - NWCCU](#)).
- E. A **primary program** is any prescribed program of studies 20 credits or greater of instruction leading to initial employment or improvement of occupational skills. A primary program may have options.
- F. A **program option** is a variant of a primary program. At least 50 percent of the option must be drawn from the technical core of the primary program curriculum. (If less than 50 percent of the curriculum is from the technical core of the primary program, the college must apply for a new primary program.) Options are inventoried as separate programs and listed under the umbrella of the primary program.
- G. An **individualized education program** is a program that offers unique opportunities for a few students, and is designed to meet the career goals of the individual student. The education is to be accomplished on an individual basis with the technical portion of the program occurring in a work environment as contracted instruction or a cooperative arrangement. Degrees or certificates are issued for these programs. The total state completions in one occupation should not exceed probable job opportunities, but no more than four students should be enrolled at any point in time.

APPROVAL CRITERIA AND PROCESS

- A. **Programs of Less than 20 Credits.** No formal approval is required, but short-term certificates must be registered with the State Board office. Colleges will submit to the State Board staff, at a minimum, the program title, CIP and EPC codes, program description or learning outcomes, course listing, and number of credits.

- B. **Programs 20 Credits or Greater.** After the State Board staff endorses the “Professional-Technical Program Approval Request” (form *PAR*) for a new primary program, the college will submit any additional documentation required for final approval within six months. The State Board staff will notify the college within two weeks of receipt of the documentation as to any additional documentation that will be required before final approval is granted. Once final approval is granted, the program will be recorded on the college’s inventory of approved vocational programs.
- C. **AAS-T Degree Programs.** If a professional-technical associate degree program is already approved, the college need submit only the title of the approved professional-technical degree for which the AAS-T degree will be offered, the appropriate CIP and EPC codes, and a program/curriculum guide (list by course number, course title, credits per course, and total credits). If a professional-technical degree is not already approved, the college must submit appropriate documentation to support the addition of a primary or option.

D. Sequence of Actions

1. A college determines to seek approval for a new professional-technical program. Collaboration between colleges contributes to informed program decision-making, which benefits the state as well as the local community. Colleges should work collaboratively before submitting a request for a new program to the State Board office, avoiding overly competitive or adversarial approaches to new program startups. The proposing college will provide evidence of collaboration with those colleges that have programs that are the same or similar to that which is being proposed.

Some of the questions that need be answered when proposing a new program include:

- Who are potential regional and statewide colleges (those with similar programs) that might be impacted by this program start-up? (You may contact the State Board for a list of similar currently-approved programs.)
- How might start-up of this program at your college impact those programs (including, but not limited to, student base, employment opportunities, clinical space, and work-based learning sites)?
- Does the program prepare graduates to obtain living wage employment?
- Does the program require approvals/accreditations/certifications external to the State Board (e.g. Nursing Commission - See Page 6-J)?

2. In the case of a new **primary** program:

- a. The college submits a “Professional-Technical Program Approval Request” (form *PAR*) to the State Board office, along with documentation described on that form.
- b. The State Board staff will notify all community and technical colleges concerning the *PAR* via e-mail. A community or technical college **opposing** a *PAR* must provide written/e-mail notification of such opposition and rationale to the initiating college and the State Board office within three calendar weeks of the date notification that was e-mailed from the State Board office. Objections will be discussed between the chief instructional officers of the initiating and objecting colleges before they are forwarded to the State Board office. c.

If a college objects:

- (1) The objecting college(s) must provide evidence of attempts to collaborate. They must also provide evidence of how the proposed program will negatively impact existing program, including, but not limited to, student base, employment opportunities, clinical space, and work-based learning sites. In the case of programs offered via distance education, school(s) opposing the offering must thoroughly explain the negative impacts expected if the program is approved; i.e., unnecessary duplication or unfair competition.
- (2) The colleges will attempt to resolve the opposition. If agreement cannot be reached, the opposing college(s) must submit documentation that shows evidence of harm and unsuccessful attempts to collaborate to the State Board office within three calendar weeks of the *PAR* e-mail notification to the system.
- (3) Within 14 working days the State Board staff will assemble an advisory panel that may include education representatives, other workforce education directors, and other experts in the field, if they are reasonably available. This panel will recommend to the Executive Director of the State Board whether to sustain or over-rule the opposition to the *PAR*. The results of the decision of the Executive Director of the State Board will be final; therefore, it is imperative that dissenting rationale be well thought out and documented appropriately.

Within seven working days after the advisory panel has met, the State Board staff will advise the originating community or technical college whether the proposed program has been endorsed or rejected. If opposed, the reasons for rejection will be explained.

- d. After the State Board staff endorses a *PAR*, the initiating community or technical college must submit to the State Board office any additional/final documentation within six months. Once all documentation is received and approved, the program will be entered on the college's inventory of approved vocational programs. If final documentation needed to complete the approval is not received within the six-month period, the request will lapse, and reactivation will require the initiation of a new *PAR*. The six-month limitation may be waived in relation to the capital budget request or other circumstances that are beyond the control of the initiating district.
3. In the case of a new **option** or **contract program** the documentation required for approval of an option is the same as that for a primary program. The process differs in that the *PAR* is not sent to the colleges for the three-week comment period.
 4. Courses must be offered and students enrolled in a program within one year of the date of approval. The State Board staff may grant an extension for cause; e.g., capital construction delays.
 5. Following approval by the State Board office, a college may advertise, offer, or conduct professional-technical programs. A degree, certificate, or diploma recognizing successful completion of the program or prescribed course of study covered by this policy shall be awarded students who satisfy program requirements. Degree, certificate, or diploma programs shall meet all requirements of the State Board for Community and Technical Colleges.
 6. The State Board staff will distribute a quarterly report of programs approved or modified during the preceding quarter to all community and technical colleges within the system. Once a program is formally approved and listed on the quarterly report, it will continue to be approved

as long as it is not “substantively” changed in such a way as to cause it to lose its original content or context.

- E. **Collaborative Programs.** When a college, without approval for a professional-technical program, wishes to collaborate with another college that does have approval, the college requesting the collaboration will send to the State Board office a signed memorandum of understanding between the colleges providing the details of the partnership. The program will be added to the requesting college’s inventory under a separate category titled Collaborative Programs. A unique EPC will be issued for collaborative programs.
- F. **State Funded Contract Programs.** There are four types of contracts under which a college may offer courses—regular, supplemental, shared funding, and international student (see Chapter 4, Appendix J and Chapter 5, Section 5.90.40 of the State Board [Policy Manual](#)). Contracted programs with Department of Corrections, Job Skills Program, military, private industry, or others 20 credits or greater shall be submitted to the State Board office using normal approval procedures described in section D.3 above.
- G. **Individualized Education Program Specialty Approval.** Each college shall submit to the State Board office a form IEP for each individual enrolled in an individualized education program prior to beginning of instruction. The approval will expire for each individual at the conclusion of that individual’s training or separation from the program.

Each community and technical college using work-based learning processes shall have on file contracts as outlined in the [Policy Manual](#) (Chapter 4, Appendix E) and a detailed program for each student. If an employer-employee relationship exists, each student enrolled must be paid by the employer at the minimum wage or greater. Internships or other employment-based training situations are treated on an individual basis by each campus, but in no case will these situations result in displacement of employed workers.

- H. **Program Curriculum Modifications and Title Changes.** Any change to program title or curriculum modifications which result in a change to total credits must be approved by the State Board staff prior to the college offering the modified program. The college must submit an email of request and include a copy of the revised program/curriculum guide.

A program modification which increases a program from a certificate to a degree requires a new program approval request as a primary or option.

- I. **Inactive and Intermittent Programs**

- 1. **Inactive Programs.** Approved programs or options that become inactive for any reason (i.e., budgetary, job needs fulfilled, housekeeping, start-up delayed, etc.) may be placed in the inactive category on the program inventory by campus request made in writing to the State Board office. The purpose of this category is to allow a campus ample time to study the continued need or allow some time for program modification and facility, equipment, or instructor acquisition.

Upon request, State Board staff is available to assist colleges with a program viability analysis by conducting an onsite program review with a team that may include other workforce education

directors, industry representatives, and others deemed appropriate. The format used in this process can be found in Appendix B.

The maximum time that a program may remain in an inactive status is three years. If a program is not reinstated to active status during the three-year period, it will be removed from the respective college's inventory.

To reinstate a program from inactive to active status, the campus must make the request on form REIN and include all information requested on the form.

2. **Intermittent Programs.** Approved programs or options that are conducted on an intermittent basis (i.e., every other quarter, once every two years, etc.) are listed on the program inventory in a separate category. This listing alerts the State Board office of possible voids in enrollment information, as well as notification to prospective students. A program may be placed in this category by written request of the campus to the State Board office.
- J. **Nursing Programs.** In the case of new Nursing program the documentation required for approval is the same for either a new primary or option program (see 2-D and 3). The process differs in that prior to approval and implementation of the program the college must submit to the State Board office the following documentation:
- a. The submitted Program Approval Request (PAR) must include assurances of clinical sites.
 - b. Before final approval of the program, the college must receive approval from the Nursing Commission. A copy of the Nursing Commission approval letter must be submitted to the State Board.

PROCESS FOR TERMINATION OF PROGRAMS

A community or technical college district may, at its own discretion, terminate a program and shall notify the State Board office of such action within six weeks of the time that the program is terminated. Once a program is terminated, the State Board office will maintain as active for a maximum of three years the coding associated with that program.

If a college desires assistance in conducting a program analysis, the State Board staff will assemble an external team of experts to conduct the analysis, and will provide recommendations to the requesting college (see Appendix B).

List of Professional-Technical Program Approval Forms:

ADV – Professional-Technical Advisory/Planning Committee
IEP – Professional-Technical Individualized Education Program Approval
PAR – Program Approval Request
REIN – Request for Inactive Program/Option Reinstatement

APPENDIX A – BACKGROUND

RCW 28B.50.090, College Board – Powers and Duties, states the following:

The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(3) Ensure, through the full use of its authority:

(a) That each college district, in coordination with colleges, within a regional area, shall offer thoroughly comprehensive educational, training, and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and workforce literacy programs and services;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education.

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW. (c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificate awarded by the colleges.

The State Board *Policy Manual*, Chapter 4, section 4.20.00, Degree Requirements, states in part:

The content of the curricula and other educational and training programs (see RCW 28B.50.090(7)(c)) and the requirements for degrees, certificates, and high school diplomas awarded by the state's community and technical colleges must follow guidelines established by the State Board .

Section 4.40.00, Professional-Technical Programs, states in part:

All professional-technical degree and certificate programs must be approved by the State Board prior to course or program implementation (see RCW 28B.50.090(7)(c)). As part of this responsibility, the State Board:

1. Sets rules/procedures/guidelines, developed in cooperation with the college system, that provide for the approval of all proposed new professional-technical programs, curriculum modifications and program title changes.
2. Requires that colleges certify professional-technical staff and faculty as provided by WAC 13116-070 through WAC 131-16-095.

Section 4.40.20, Advisory Committees for Professional-Technical Programs, describes the requirement for each professional-technical program to have an industry advisory committee.

APPENDIX B – PROGRAM VIABILITY ANALYSIS

All programs should be continually reviewed for their effectiveness in meeting the training needs of industry, as well as in fulfilling the mission of the college. Programs failing to meet these needs should be subject to review for viability. The outcome of the review may involve program revision or elimination. Many factors are considered during this process:

1. Is enrollment adequate? Each program has an established average enrollment number that is determined by the college, in collaboration with the faculty, program director, and advisory committee, following analysis of the program curriculum needs: facility and equipment availability, safety factors, and the optimal number of students that the instructor(s) can successfully manage at one time. Is this established average enrollment figure being met?

The established average enrollment is listed on the State Board's inventory of approved professional-technical programs for the college as "maximum enrollment."

Enrollment is determined to be inadequate when the program's average enrollment is 75 percent or less of the established average enrollment figure. A review of the program should be triggered at any point in time that the enrollment dips below the 75 percent standard. During the review, up to three years of enrollment figures may be analyzed.

2. Does the program meet industry standards? Are the industry-validated competencies being successfully met by program graduates? If industry certification/formal recognition exists, has the program achieved said certification/formal recognition?
3. Are there sufficient employment opportunities for program graduates, and are graduates obtaining employment in the field?
4. Do entry-level wages exceed minimum wage?
5. Are there career advancement opportunities available for those graduates who perform successfully on the job?
6. Is the program advisory committee actively involved and supportive of the program?
7. Is the program cost-effective/economically supportable?
8. Other factors that may be determined during the process that may impact program viability.

While enrollment is a key factor considered in the review process, all factors listed above are important considerations and any of them could be a determinant for program viability even though adequate enrollment may exist.

GR 9 COVER SHEET

**Suggested Amendments to
ADMISSION AND PRACTICE RULES
RULE 3 – APPLICANTS FOR ADMISSION TO PRACTICE LAW
Submitted by the Limited License Legal Technician Board**

A. Name of Proponent:

Limited License Legal Technician (LLLT) Board

Staff Liaison/Contact:

Renata de Carvalho Garcia, Innovative Licensing Programs Manager
Washington State Bar Association (WSBA)
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539 (Phone: 206-733-5912)

B. Spokesperson:

Stephen R. Crossland
Chair of the LLLT Board
P.O. Box 566
Cashmere, WA 98815 (Phone: 509-782-4418)

C. Purpose:

The suggested amendments to APR 3(e)(3) seek to remove a redundancy and inconsistency regarding the requirement for a paralegal certification examination in order to qualify to sit for the Limited License Legal Technician (LLLT) examination. Currently, all LLLT candidates are required by APR 3(e)(3) to pass the Paralegal Core Competency Exam (PCCE), an entry level paralegal exam administered by the National Federation of Paralegal Associations. Applicants seeking a limited time waiver under APR 28 Regulation 4 are required to pass at least one of three LLLT Board approved national paralegal certification examinations [the Certified Paralegal (CP) Exam conducted by the National Association of Legal Assistants (NALA), the Paralegal

Advanced Competency Exam (PACE) conducted by the National Federation of Paralegal Associations (NFPA), and the Professional Paralegal (PP) Exam conducted by the Association for Legal Professionals (NALS)]. The three Board approved national paralegal certification examinations required for the limited time waiver are either equivalent or more advanced exams compared to the PCCE.

As written, a LLLT candidate who has passed one of the three equivalent or more advanced Board approved national paralegal certification examinations, must also pass the entry level paralegal examination (PCCE) in order to be eligible to sit for the LLLT exam.

For a candidate to sit for the LLLT exam, the current rule requires a LLLT candidate with a waiver (having already passed a more advanced paralegal exam) to take the less advanced and redundant PCCE exam.

These suggested amendments provide consistency by imposing equivalent testing requirement for all candidates. Furthermore, removing specific reference to the PCCE in APR 3(e)(3) will enable the LLLT Board to adjust the list of LLLT Board approved paralegal certification examinations in the future as needed.

Finally, the suggested amendments seek to eliminate the requirement for “original” proof of passing. The LLLT Board finds that electronic submission of proof of passage is sufficient to confirm passing. Electronic submission also streamlines workflow for staff and simplifies the application process for applicants.

D. Hearing: A hearing is not requested.

E. **Expedited Consideration:** Expedited consideration is not requested.

F. **Supporting Materials:** Suggested Rule Amendments to APR 3(e)(3).

SUGGESTED AMENDMENTS TO ADMISSION AND PRACTICE RULES

RULE 3 – APPLICANTS FOR ADMISSION TO THE PRACTICE OF LAW

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RULE 3. APPLICANTS FOR ADMISSION TO PRACTICE LAW

(a) – (d) Unchanged.

(e) Qualification for Limited License Legal Technician (LLLT) examination. To qualify to sit for the LLLT examination, a person must;

(1) – (2) Unchanged.

(3) present original proof of passing ~~the Paralegal Core Competency Exam administered by the National Federation of Paralegal Associations~~ a LLLT Board approved paralegal certification examination.

(f) – (i) Unchanged.



WSBA

WASHINGTON STATE BAR ASSOCIATION

MEMORANDUM OF UNDERSTANDING

Relationships

The Washington State Access to Justice Board (the "ATJ Board"), an autonomous board that reports annually to the Washington State Supreme Court and the Washington State Bar Association ("WSBA") Board of Governors, was established in 1994 and reauthorized by an order of the Supreme Court, dated November 2, 2000 (the "Order"). The Order charges the ATJ Board with responsibility to assure high quality access for low and moderate income residents and others in Washington State who suffer disparate access barriers to the civil justice system. To that end, the Order provides that the ATJ Board shall work to:

- Establish, coordinate and oversee a statewide, integrated, non-duplicative, civil legal services delivery system that is responsive to the needs of poor, vulnerable and moderate means individuals;
- Establish and evaluate the performance and effectiveness of the civil legal services delivery system against an objective set of standards and criteria;
- Promote adequate levels of public, private and volunteer support for Washington State's civil equal justice network;
- Serve as an effective clearinghouse and mechanism for communication and information dissemination;
- Promote, develop and implement policy initiatives and criteria which enhance the availability of resources for essential civil equal justice activities;
- Develop and implement new programs and innovative measures designed to expand access to justice in Washington State;
- Promote jurisprudential understanding of the law relating to the fundamental right of individuals to secure meaningful access to the civil justice system;
- Promote widespread understanding of civil equal justice among the members of the public through public legal education;

- Promote the responsiveness of the civil justice system to the needs of those who suffer disparate treatment or disproportionate access barriers; and
- Address existing and proposed laws, rules and regulations that may adversely affect meaningful access to the civil justice system.

The Order provides that the ATJ Board shall be administered by the WSBA, and specifically states that the ATJ Board shall be funded and staffed by the WSBA, which shall have authority to establish a budget and approve expenditures. Pursuant to this Memorandum of Understanding, the ATJ Board and the WSBA agree to the following understandings with respect to the relationships between the parties under the Order:

Budget Considerations

The parties agree that the ATJ Board will participate in the development of that portion of the WSBA annual budget that affects the operations of the ATJ Board. Such participation shall include:

(a) The ATJ Board's submission to the WSBA Department of Finance and Administration of a proposed budget in the same format used by the WSBA's own programs, together with such back-up information necessary to explain the proposed budget, or as requested in preliminary budget development. The budget submission will identify specific objectives and describe how progress will be evaluated; and

(b) The meaningful and timely opportunity for the ATJ Board to participate in WSBA's budget discussions and in making budget adjustments.

To the extent that the ATJ Board deems it necessary to request supplemental funding from the WSBA within a budget cycle, the ATJ Board will follow the above steps; provided, that budget changes of less than 10% in a line item do not require prior approval assuming that the overall budget remains constant.

To the extent that the ATJ Board seeks funding from outside sources, it shall do so in collaboration with the WSBA. WSBA shall be the contracting and grant agent for all outside funding received by the WSBA or the Washington State Bar Foundation and earmarked for the ATJ Board. Either the WSBA or the Washington State Bar Foundation, as appropriate, shall be responsible for reporting on the use of such funds to the outside funding source. Management of the funds may be delegated to the ATJ Board. Such funds shall only be used for the purpose(s) for which they were solicited, and subject to any conditions imposed by the grantor or donor.

Staffing Considerations

The WSBA shall provide the ATJ Board with adequate staff to fulfill its mission. A manager-level employee with knowledge of civil access to justice issues shall be dedicated to supporting and coordinating the work of the ATJ Board with the understanding that this employee may be assigned to perform other responsibilities as a WSBA staff member. The WSBA shall also provide the ATJ Board with such other full or part-time staff as may be necessary to enable the ATJ Board to perform its

functions as set forth in the Order. Appropriate staffing levels shall be determined annually in the budget process. Staffing levels shall be monitored in good faith by both the WSBA and ATJ Board to assure that staff use complies with the parameters established in the budget. Any modifications to staffing allocations or duties shall only be made after mutual consultation between WSBA and the ATJ Board.

The ATJ Board understands that WSBA Personnel Guidelines shall apply in hiring, job classification, salary, and conditions of employment for all WSBA employees and that the WSBA Executive Director has sole authority to employ and compensate all WSBA employees. The WSBA Executive Director has sole authority to select or terminate any WSBA employee, although the ATJ Board shall have the opportunity to participate in the selection or termination of the ATJ manager. The formal job descriptions of staff assigned to work with the ATJ Board shall be available to the ATJ Board, and the ATJ Board shall have the opportunity to provide comments on those descriptions during the Annual Review process, or as necessitated by changes in functions, duties or personnel. The ATJ Board shall also have the opportunity to provide comments on the Annual Review of the ATJ manager and other WSBA staff supporting the ATJ Board.

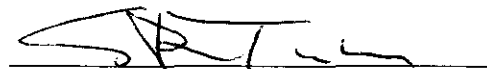
Other Matters

The ATJ Board shall be accountable to the WSBA for proper fiscal management and for using WSBA resources to carry out the mission as specified in the Order.

In the event that an issue arises that is not addressed in the Order or this Memorandum of Understanding, the WSBA and ATJ Board will work collaboratively to resolve the issue.

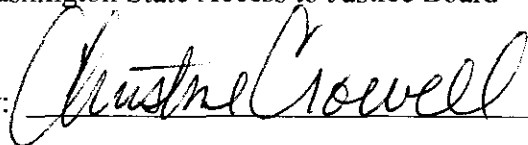
Washington State Bar Association

Washington State Access to Justice Board



S. Brooke Taylor
WSBA President

Date: 4-27-06

By: 

Date: 5/8/06



M. Janice Michels
WSBA Executive Director

Date: 4-28-06



June 19, 2020

The Supreme Court
State of Washington
Chief Justice Debra L. Stephens
P O Box 40929
Olympia, WA 98504-0929

Rajeev Majumdar, President
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Stephen R. Crossland, Chair
Limited License Legal Technician Board
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Terra Nevitt, Interim Executive Director
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

RE: Washington Limited License Legal Technician Program

Dear Justice Stephens,

The Supreme Court's decision to sunset the Limited License Legal Technician (LLLT) program and no longer allow licensing after July 31, 2021, was made without any input from the seven colleges approved to provide the core curriculum or the institution currently providing the Family Law practice area curriculum, thus denying these institutions any semblance of due process.

The Advisory Board of Edmonds College has unanimously agreed to seek the Court's reconsideration of the deadline for those in the pipeline. The process to become an LLLT was designed with accessibility and equity in mind and allowed students from diverse backgrounds to approach the education, exam, and experience requirements in a variety of acceptable timelines. We are especially concerned about students from diverse backgrounds regarding the sudden termination of the license program without any consideration for how this decision uniquely impacts the diversity of legal service providers.

At a minimum, the Board requests the Court adopt a more reasonable deadline for completion of requirements for licensure for those in the pipeline and a clear definition of who the pipeline includes. The Court could not have intended to have hundreds of students sidelined and thousands of dollars wasted by an unattainable deadline.

It is clear from the arbitrary thirteen-month deadline provided; the Court does not understand the path to becoming licensed as a Limited License Legal Technician (LLLT) or what the "pipeline" entails. The following stakeholder institutions and students are deeply impacted, both financially and by reputation, by the closed-door decision of the Court without the opportunity to be heard:

Edmonds College
Highline College
Spokane Community College

RE: Sunset of LLLT Program
June 19, 2020
Page 2

Tacoma Community College
Whatcom Community College
University of Washington Continuum College
Portland Community College

Student consumer protection and Title IV of the Higher Ed Act, requires transparency by educational institutions. Students rely on career education programs offered by colleges and the expertise of advisors to make career choices and where to spend their limited financial resources, whether it be by financial aid, personal loan, personal funds, GI bills, grants, etc. Multiple students in the current LLLT candidate pipeline receive funding from a State disability retraining program and similar programs. Student funds and funding are now lost, and students will be repaying loans for classes wasted on a career path no longer available due to the Court's decision.

The colleges, already reeling from the rapid changes brought on by the COVID-19 pandemic must now consider how to salvage students' education and expended funding.

These colleges have devoted countless hours, energy and funds to create the core education programs, design classes, align class schedules and market a new profession, only to have the Court take it away in an afternoon, absent any input from those who have much to lose – the students and the institutions.

Given a thirteen-month deadline, many of the students currently enrolled in the family law practice area curriculum will not be able to attain licensing and will completely lose out on the money, time and energy already expended over several years, it is simply untenable for many in the LLLT path. For example, unless a student has already attained at least half of the 3,000 hours of work supervised by an attorney – they likely will be unable to be licensed by July 31, 2021.

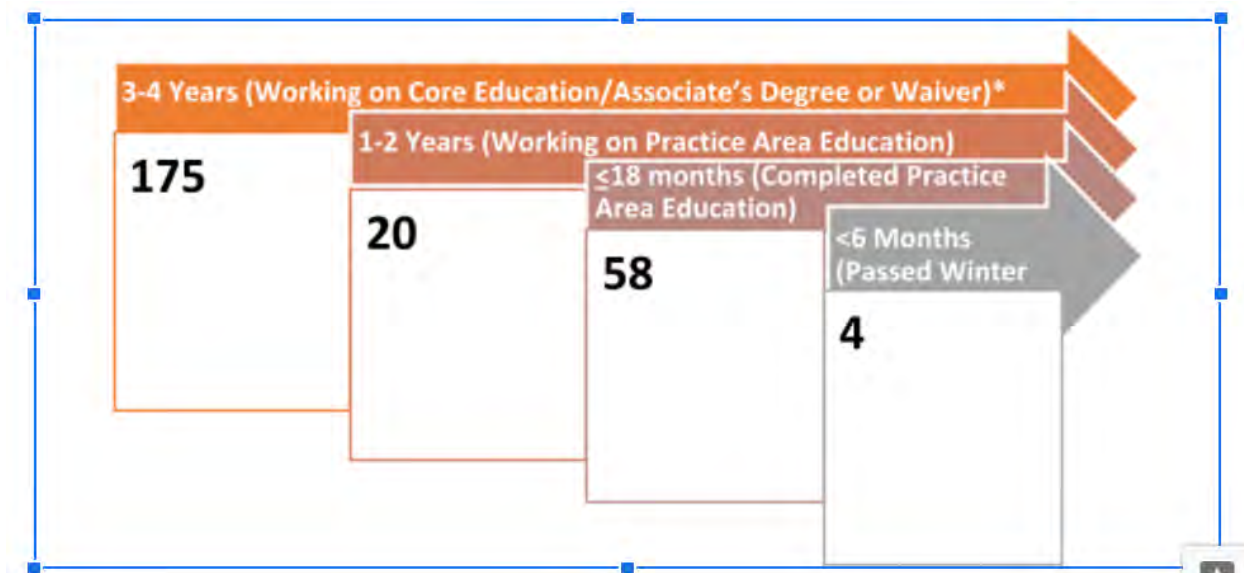
As the Court is aware, 3,000 hours equals approximately eighteen-months of full-time employment. Most candidates do not receive credit from the supervising attorney on an hour-for-hour basis, as much time spent in a law office by a non-lawyer cannot be classified as "substantive" legal work that would "otherwise be performed by a lawyer". Candidates in the pipeline have been relying on APR 28, Regulation 9, which provides a candidate for licensure forty (40) months after passing the exam to get licensed, so few have the necessary hours prior to completion of the practice area curriculum. Additionally, a very real problem is that students have a further burden in completing their hours due to the Stay at Home Order and impacts of COVID-19.

Candidates currently enrolled in the practice area classes will complete class on December 11, 2020. To sit for the licensing exam, in addition to completing the rigorous practice area classes, they must take and pass the Paralegal Core Curriculum Exam (PCCE), administered by the National Federation of Paralegal Associations (NFPA). This test is controlled by the NFPA and availability to take the exam is beyond the control of the candidate, colleges, LLLT Board or

Court. This must be accomplished prior to the deadline of October 5th in order to submit their application to sit for the February exam, over two months before they even finish the practice area classes. If a candidate sits for the February exam, the candidate will then have five months to acquire 3,000 hours of work experience (the equivalent of working 600 hours per month), if they have not been able attain those hours prior to sitting for the exam. Due to reliance on APR 28, Regulation 9, few candidates will be able to attain those hours prior to the July deadline.

If a current family law practice area student does not pass the February 2020 exam, the first exam date available to them, there is no way to take the July exam, receive their grade, complete any hours, submit their application for licensure and be licensed by the end of that very same month. No lawyer is expected to pass the bar exam with only one opportunity, nor has this ever been the case for the LLLTs (APR 28, Reg. 8(e): An applicant who passes the practice area examination but fails the professional responsibility examination or vice versa may retake the failed exam at the next two administrations of the exam. The passing score shall be valid for one year from the date the applicant is notified of the exam results. If the applicant does not pass the failed exam within one year of such notification, the applicant shall be required to retake the exam he or she passed).

Numbers are still being collected, but the LLLT Board estimated at least 200 students are presently enrolled in core education/Associate's Degree programs with the goal of becoming a LLLT. The LLLT Board reports there are twenty students currently enrolled in the practice area education, another fifty-eight students have completed the Practice area education in less than the last eighteen months and are working toward their 3,000 hours and studying for the LLLT licensing exam, and finally four students passed the winter exam in the last six months and are working towards their license.



RE: Sunset of LLLT Program
June 19, 2020
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For the Court's further consideration, the State Board of Community and Technical College's (SBCTC) default time period for sunseting a program is a 3-year teach out, provided students are in the program. The Federal Higher Education Act prohibits colleges from misrepresenting educational programs, financial charges or employability of its graduates. SBCTC handles the complaint review process for Washington state public community and technical college students (<https://www.sbctc.edu/colleges-staff/programs-services/student-services/resources.aspx>). It is anticipated the SBCTC will be asked to review complaints based on the Court's decision and its effect on pipeline candidates.

As noted above, there has been a substantial investment of time and money in the LLLT program. It was designed to provide legal services to those having difficulty paying for such services. It was intended to give more people effective access to our judicial system.

Information we've received indicates that this fledgling program is working well. We've received reports that various courts want this resource available to that portion of the public it was designed to serve. Attorneys appreciate having this service available for clients who, quite frankly, can't afford them but need legal services they can afford.

We've heard no reasonable justification for discontinuing this program. We are aware of no effort to obtain input from the public, the lower courts, or practicing members of the Bar.

In light of the benefits of the LLLT program to the public and our system of justice, and the significant amount of time, money and effort already invested in the program, it seems only prudent that a serious request for input be made before this program is abandoned.

Respectfully submitted,

Paralegal Program Advisory Committee – Edmonds College

The Hon. Theresa Pouley, Dept. Head
Scott Haddock
The Hon. Gary Bass
Brandon McGraw
Libby Freese

Mary K. Montgomery, Chair
Albert Lihrus
Jenna Wolfe
Sarah Cates Bove'
Rico Tessandore



June 16, 2020

Joint Statement by the AWAAG Organizing Committee and the Solidarity Caucus of the Professional Staff Organizing Committee

The organizing committee of the Association of Washington Assistant Attorneys General (AWAAG) and the Solidarity Caucus of the Professional Staff organizing committee of the same office condemn racism and commit to the work of effectuating change. The killing of George Floyd is yet another in a 400-year history of Black lives stolen. This has brought structural racism, white supremacist violence, and injustice towards persons of color -- particularly Black men, women, and youth -- to the forefront of our nation's discourse. The very foundation of our country was corrupted by slavery and the devaluation, exploitation, and disenfranchisement of Black, Brown, and indigenous people. Racism is deeply ingrained within our society, including and especially in the legal system. As aptly stated by the Washington Supreme Court, the “systemic oppression of black Americans is not merely incorrect and harmful; it is shameful and deadly.” Recognizing our own state and Office’s role in these systems, it is our moral obligation as the lawyers and staff of the Attorney General’s Office --Washington’s largest public law office -- to commit to the work of eliminating systemic racism in our society and profession.

As newly formed unions, it must be a priority above all others that we devote our collective power towards achieving equity in enforcing the rights of all of our members. Towards that end, our unions commit to demanding further implementation of processes that increase the diversity of our membership, establish equity in our compensation and benefits, and promote more members of color into management and leadership positions.

We call on our members to continuously educate themselves on issues of racism in this country and to take action. Whether it is engaging in conversations or marching in protest, we all have a role. As legal professionals, we have a unique set of skills and voices that we must use to amplify the cause of anti-racism. If you are looking for action steps you can take, here are a few suggestions from our organizing committee:

- Write, in your individual capacity, to your local, state, and national legislators.
- Vote, and encourage the people you know who abstain from participating in our election process to register to vote now.
- Discuss racism with your friends, family members and children.
- Support Black, Indigenous, and People of Color led organizations working to achieve racial equity.
- Read, watch, and listen to books, documentaries, and podcasts that address racism. The following are just a few suggestions:
 - The New Jim Crow, by Michelle Alexander
 - Just Mercy, a 2019 film based on Bryan Stevenson’s autobiography (available to stream free until June 29 at: <https://www.microsoft.com/en-us/p/just-mercy/8d6kgwxn0pzw?activetab=pivot:overviewtab>)
 - 13th, a 2016 documentary directed by Ava DuVernay on Netflix
 - How to be Anti Racist, by Ibram X. Kendi
 - The House I Live In, a 2012 documentary
 - The Case for Reparations, by Ta-Nehisi Coates
 - White Fragility, by Robin DiAngelo
 - A People’s History of the United States, by Howard Zinn
 - Unlocking Us with Brene Brown: Brene with Ibram Kendi on How to be an Anti Racist, a podcast episode released June 2, 2020

The mission of the Washington State Attorney General’s Office is to be the best public law office in the nation. That mission can only be realized by us, the rank and file attorneys and professional staff that serve the people of Washington. Our nation and this State can and must eliminate racism. We pledge to be part of the process.

Finally, as unions of professionals in the law, we implore our sibling unions in law enforcement to reject the perpetuation of racism and oppression against communities of color by holding your members accountable and affirming that Black Lives Matter.

WASHINGTON STATE BAR ASSOCIATION

Office of the President

TO: WSBA Board of Governors
FROM: Rajeev D. Majumdar
DATE: June 22, 2020
RE: Approving Communication and Discretion of Law Clerk Board to Represent its Perspective

ACTION/DISCUSSION: Approve Law Clerk Board to Communicate Directly to the Court re: Diploma Privilege

The WSBA administers the APR 6 Rule 6 program under the delegated authority of the Supreme Court- to achieve this end the WSBA created the Law Clerk Board to focus on those issues.

The Law Clerk Board met on an emergency basis on June 19 to discuss the recent Court order giving diploma privileges to those that have obtained a JD. Some Board members noted the inequity and discrimination for not including APR 6 Law Clerks in the order. They also noted that Law Clerks also face many barriers to sit for the bar exam related to COVID-19 and equally should not have to submit themselves to health hazards by sitting for the bar exam. Another Board member also raised a fact that Law Clerks have been in the practice for four years and are well-prepared for jumping straight into practice, more so than a JD student. Another note made by a Law Clerk Board member, is that there is a shortage of attorneys on the east side of the state with many law clerks anticipating to practice there.

I would recommend the Board of Governors approve the Law Clerk Board to communicate their concerns directly to the Court, as subject matter experts.

In Service,



Rajeev Majumdar

TO: WSBA Board of Governors
FROM: Daniel D. Clark, WSBA Treasurer & 4th District Governor
DATE: June 22, 2020
RE: July & September 2020 WSBA Bar Exam Potential Application Fee Refund Issue

ACTION/DISCUSSION: Discussion and recommendation from B & A Committee to Full Board of Governors to recommend denial of any refund for Summer (July & September 2020) WSBA Bar Examination Applicants.

WSBA Board of Governors,

As you know, the Washington State Supreme Court decided on June 12, 2020 to grant the diploma privilege to most applicants for the summer 2020 bar examination. The Court had previously voted to lower the MBE required score from 270 to 266, and to order that the exam be offered at multiple locations in both July and September 2020 dates and alternate locations as a way to provide greater social distancing and protections and safeguards for participants.

The Court's decision left open the decision as far as any refund of any application or bar examination fee(s) of the applicants for the WSBA to decide. It is my understanding that in multiple conversations with the Court, WSBA staff have been told that the Court is specifically allowing the WSBA through the Board of Governors to determine what, if any amount of refund should be appropriate in this unprecedented situation regarding the Court's June 12, 2020 Order.

The following will detail the latest known statistics of the issue and then as WSBA Treasurer, I will make a recommendation to the Budget of Audit committee of how I would recommend we proceed. The process will be that this matter will be on for a potential vote and recommendation to the full BOG at the June 22, 2020 Budget and Audit Committee meeting and then it will be sent to the full BOG for a final decision at the June 26-27 Board of Governors meeting.

Current WSBA Summer (July & September 2020) Bar Exam Applicants:

As of June 18, 2020, per Jean McElroy, Chief Regulatory Counsel for WSBA, there were a total of 701 applicants for the July and/or September 2020 bar exam. Of these applicants, the following breakdown had requested diploma privilege, and/or had indicated they wished to proceed with the July 2020 examination, or September 2020 examination. There were also 18 applicants had yet to indicate a decision or a request, and so they likely would be treated as wanting to take the exam.

UBE Bar Exam Test Takers July 2020	95
UBE Bar Exam Test Takers September 2020	50
UBE Bar Exam Test Takers Total July & September 2020 as of June 18, 2020	145

There are currently 18 applicants that qualify for diploma privilege that have not made a decision yet on the UBE exam. If we include those for purposes of this count, that would raise the total number of UBE Bar Exam applicants to 163.

Current Number of Applicants that are requesting diploma privilege:

Diploma Privilege Option (registered for July)	421
Diploma Privilege Option (registered for Sept).	127
Diploma Privilege Total	548

So there are 548 total applicants as of last count that could be subject to a potential partial or full refund of application and examination fees depending on the decision of B & A and the Board of Governors. This figure is assuming that all 18 undecided were to either failure to timely request the privilege and/or decide to take the UBE exam. It is also assumes, the APR Rule 6 graduate candidates are not eligible to apply for the diploma privilege.

Current potential Refund:

The minimum amount at issue is the \$585 dollar basic application fee times the current 548 applicants, or a total of \$320,580.00.

This amount would be the minimum amount, because per Jean McIlroy, some applicants file late and pay a higher fee (\$885) and some applicants are already licensed as lawyers in another state but don't qualify for Admissions by Motion or UBE score transfer, and those attorney applicants pay a higher fee (\$620 if they file timely, \$920 if they file late). Because of the current pandemic and working from home, there is not a current ability to reasonably pull up the actual numbers and determine exactly what the numbers would be at the time of drafting of this memorandum.

Under WSBA Admissions policies, the WSBA does not provide any refund if a request for a withdrawal and refund is made less than 60 days before the exam.

APR 3 (i) Applications; Fees; Filing currently provides in pertinent part:

(i) Applications; Fees; Filing. (1) Every applicant for admission shall:

(A) Execute and file an application, in the form and manner and within the time limits that may be prescribed by the Bar;

(B) Pay upon the filing of the application such fees as may be set by the Board of Governors subject to review by the Supreme Court; and

(C) Furnish whatever additional information or proof may be required in the course of investigating the applicant's qualification for admission or licensure, and investigating the applicant's good moral character and fitness pursuant to APR 20-25.6.

(2) Refunds of any application fees shall be handled according to policies established by the Bar.

(3) Transfers of applicants from administration of one examination to administration of another examination shall be handled according to policies established by the Bar.

Analysis:

As stated above, under existing Admissions policies, the WSBA does not provide any refund if a request for a withdrawal and refund is made less than 60 days before the bar exam. Under this policy, July test takers are not be eligible for any potential refund and only September test takers would be.

If the policy was different and permitted the refund all of the diploma privilege requestors fees minus the 300 dollar required deduction for mandatory WSBA fees, we would be looking at a minimum refund amount of \$320,580. This would likely be higher for the applicants that are either late filed, and/or attorney candidates from other states.

If the policy allowed for the refund for everyone less the \$300 dollar administrative fee (based on our minimum total application fee revenue amount of \$320,580), this would result in a minimum of \$156,180 paid out by the WSBA in return to the applicants. This figure may be higher depending on the number of candidates that paid higher than the minimum amount.

This is illustrated as follows:

Total minimum Diploma Privilege Amount	\$320,580
Less \$300 administrative fee based on minimum total amount of \$320,580).	\$320,580 - \$164,400
Total minimum paid out by WSBA to applicants:	\$156,180.

This figure would be higher obviously depending on the total actual number of late filers and attorney member filers from other jurisdictions that pay a higher application fee.

Treasurer Recommendation:

After examining existing WSBA reimbursement policies, APR 3, and the situation before us, It is my strong recommendation as WSBA Treasurer that the Budget and Audit Committee vote to recommend to the Board of Governors to recommend to follow the current WSBA policy and that less than sixty days existed between the

original July exam and the refund period so not to offer any refund. The Budget and Audit Committee voted 6 to 1 to support this recommendation.

It would be my strong recommendation to Board of Governors to follow the recommendation from the Budget and Audit Committee on this issue, to follow existing policy which would not offer any refund, and to welcome all Diploma privilege applicants, and graduates of the Summer 2020 bar exams into WSBA as members and to use these normal funds acquired through the bar examination process to absorb extra costs which will likely result from having to administer the Summer 2020 Exam in July 2020 and September 2020, and in offering the exam at multiple locations v. 1 traditional summer exam. I do not believe there is any court rule, or policy that would require the WSBA to refund the fees, and it seems reasonable that the fees normally would be non-refundable if an applicant took the exam pass or fail.

Additionally, every current applicant, regardless if they are requesting diploma privilege on the UBE portion of the exam, would still need to take other portions of the bar exam process, as well as be admitted into the practice of law, which are normal bar functions which require staff financial resources to administer. It is only in cases that an applicant is withdrawing from taking any portion of the exam and/or being admitted into the WSBA that a refund has historically ever been offered per WSBA policy.

To that end, it is the recommendation of WSBA Treasurer Dan Clark to recommend that the WSBA follow current policy, and the recommendation of the Budget and Audit Committee for denial of any refund to the summer 2020 (July & September) bar exam for applicants that invoke the diploma privilege.

Respectfully,

Daniel D. Clark

WSBA Treasurer/4th District Governor

DanClarkBoG@yahoo.com

(509) 574-1207 (office)

(509) 969-4731 (cell)

TO: WSBA Office of the President

FROM: WSBA Coronavirus Response Task Force
Kevin Plachy, Chair
Michael Cherry, Deputy Chair

DATE: June 24, 2020

RE: Advice to WSBA Office of the President on Diploma Privilege

At the June 18, 2020 meeting of the WSBA Coronavirus Response Task Force (Task Force), the task force members discussed the recent Supreme Court order on Diploma Privilege. Following these discussions, three motions were proposed as recommendations for your consideration:

Decision Period

Applicants considering choosing the Diploma Privilege admission to profession as a lawyer or limited license legal technician shall be given until July 7, 2020 to make the Diploma Privilege option.

The reason for requesting this extension is to allow sufficient time for applicants to make an informed decision. This extends the date of the Supreme Court order, but should be a decision the Bar could make.

For: 3 Against: 1 Abstained: 3

Diploma Privileges

Applicants using the Diploma Privilege admission should be entitled to all the privileges and subject to all the responsibilities of an active lawyer or limited license legal technician member. There should be no way to distinguish such individual members admitted under Diploma Privilege from a lawyer or limited legal technician member who passed a bar exam in the publicly available legal directory at <https://www.mywsba.org/PersonifyEbusiness/Default.aspx?TabID=1536>.

For: 7 Against: 0 Abstained: 0

Future of the Bar Exam

The WSBA should form a committee to examine the bar exam as constituted, to ensure the exam is non-discriminatory, and is a measure of an applicant's ability to practice law in Washington, and determine the role of such an exam in future admission to the bar.

For: 5 Against: 1 Abstained: 1

Respectfully Submitted,

WSBA Coronavirus Response Task Force

Kevin Plachy, Chair

Michael Cherry, Deputy Chair

June 23, 2020

The following is a compilation of comments taken from the WSBA Solo Small Practice, WSBA Family Law, WSBA RPPT, and Domestic Relations Attorneys of WA (DRAW) list serves. It also includes comments that were sent directly to Governor Carla Higginson.

Of the comments:

- Six support diploma privilege
- 52 oppose diploma privilege as granted
- 10 posted comments about their experiences with the bar exam and other jurisdictions with no clear opinion.

Comments Regarding Diploma Privilege from the Solo Small Practice List Serve

In Favor of Diploma Privilege:

Posted 6/18/2020

The Bar Exam and Diploma Privilege is something I have done a lot of research on (and am still learning more about). For those who are opposed to diploma privilege for these students there are some important things to know.

1) Attorneys from other states will not be able to take advantage of this. Only those were already registered for the summer bar are being granted diploma privilege.

2) The summer bar passage rate is typically around 70% not 48%

3) Though it has been around for over 100 years, there is no indication whatsoever that the bar exam is a reliable indicator of who should be admitted to the bar. **The best evidence we have is that the bar exam is not useful at all in predicting effective lawyers.** There have been a number of studies showing a strong correlation between LSAT scores, law school grades, and bar passage. However In a study commissioned by LSAC in which effective lawyering was measured across 26 factors. The study found no correlation whatsoever between lawyer effectiveness and grades or LSAT score. The NCBE itself recently instituted a task force to examine the validity of the bar exam. In its phase one report even the NCBE was forced to acknowledge that there are a number of shortcomings with the bar exam.

Setting all of that aside. The Supreme Court's decision is made. Undoubtedly, students who would have failed the bar exam will be admitted. But many more (statistically speaking) who would have passed the bar will be admitted without taking it. It is our responsibility as a community to welcome them all and mentor them as we would anyone else.

The main study I referenced is well worth reading for anyone interested and I'll post a link below. Lawyer effectiveness was determined based on 26 factors broken into 8 categories (also below). Those factors were



measured and tracked along 715 behavioral examples of performance that illustrated poor to excellent performance on each of the 26 factors.

To be clear this does not mean that law school is not valuable and I would not say that. What it does show though is something that is widely accepted in the education community, standardized exams are a poor indicator of intelligence and learning. While law school is incredibly valuable, there are studies (albeit none as rigorous as the LSAC study) that indicate that the way testing and grades are done in law school, the LSAT, and the Bar Exam correlates poorly with the skills necessary to practice law. For more on that I would highly recommend these two episodes of Revisionist History. <http://revisionisthistory.com/episodes/31-puzzle-rush>

<http://revisionisthistory.com/episodes/32-the-tortoise-and-the-hare>

LSAC Study: "Identification, Development, and Validation of Predictors for Successful Lawyering"

<https://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>

List of 26 Effectiveness Factors with 8 Umbrella Categories

1 : **Intellectual & Cognitive** - Analysis and Reasoning • Creativity/Innovation • Problem Solving • Practical Judgment

2: **Research & Information Gathering** - Researching the Law • Fact Finding • Questioning and Interviewing

3: **Communications** - Influencing and Advocating • Writing • Speaking • Listening

4: **Planning and Organizing** - Strategic Planning • Organizing and Managing One's Own Work • Organizing and Managing Others (Staff/Colleagues)

5: **Conflict Resolution** - Negotiation Skills • Able to See the World Through the Eyes of Others

6: **Client & Business Relations** - Entrepreneurship • Networking and Business Development • Providing Advice & Counsel & Building Relationships with Clients

7: **Working with Others** - Developing Relationships within the Legal Profession • Evaluation, Development, and Mentoring

8: **Character** - Passion and Engagement • Diligence • Integrity/Honesty • Stress Management • Community Involvement and Service • Self-Development

Posted June 18, 2020 - I am less concerned than other folks about this year's diploma privilege, for several reasons: (1) it's clearly a one-time thing, (2) time really is (was) of the essence for a decision to be made about the July exam - for the students/test takers to prepare for it, for the likely time consuming process of figuring out what alternative to use and then getting it implemented in time (and with sufficient notice to the test takers), lining up the technology, possibly revamping the structure of the exam entirely in order to fit whatever technology or exam administration is chosen, lining up venues if administration of the test is split up in order to accommodate social distancing (and the costs and staffing of multiple venues, assuming venues are even available and in the right phase of reopening), training proctors and setting them up with whatever tech is needed, etc etc etc.

At least there is now more time to focus on what changes to make for the winter exam and beyond.

Posted June 17, 2020 - I hope they do get rid of it. The bar exam is a waste of time and has zero to do with the actual practice of law. It just forces many students, who have already paid exorbitant sums for a three year education, to pay even more money for bar prep classes to learn a bunch of random things that will never be relevant in their actual careers.

Frankly the whole way lawyers are licensed is something that would not be tolerated in any other profession. It's major reason why many people are priced out of legal services.

(Follow up posting) I think I would probably respond the same way to that type of marketing as I do people who brag about their LSAT scores or class rank...

(Follow up posting) - "The exam (particularly the essay exam) is an excellent measure to test someone's ability to think on their feet, to work quickly, and problem solve."

Those skills maybe critical to being a good litigator, but they would be of much less use to a transactional attorney. There are many ways to practice law and the bar exam privileges those with a certain skill set.

Maybe the exam should be limited to those that want to have a courtroom practice?

(Follow up posting) I think that assumes those that fail do so because they lack knowledge or the ability to be a good attorney. Some of the best attorneys I know had to take it a couple times or more. Not because their knowledge was lacking, especially not in their practice areas, but because regurgitating massive amounts of information in a short period if time is not their skill set. But give them time and research tools and it's a different story. So they spent another 5 grand to learn a bunch of things they have never used again. Those of us who are good at tests had an easy time, not because we are better lawyers, but just because we're better tests takers.

Posted 6/17/2020 - I understand that this is a big shock but it is not a permanent change in the bar exam requirement. I am not in favor of diploma privilege but it wasn't up to me and I don't think it is the life-changing horror that others are fearing

I understand that it will affect about 650 people who have already registered for the exam and 7 people registered for the LLLT exam. Of the 650 people that will become lawyers through this WSC order, I would think that many will be working for the State or some agency or some law firm. This will likely mean supervision by more experienced lawyers and more training. Of those that go directly into practice for themselves, they may well be so anxious themselves that they take more CLEs, etc. to feel more confident.

I took the bar exam nearly 40 years ago. I don't think I currently rely on what I learned in a bar prep course for my present work. If I ever did. For example, I don't think I have thought of the UCC in 40 years. And, the things I needed to learn to be a family law attorney were really learned through experience, being mentored and attending CLEs. (By the way, don't forget to sign up for the always excellent WSBA Family Law Section Mid-Year being held this coming Friday and Saturday via webinar!!)

On the one hand, I could be jealous that these 650 people will not have to sit and take the bar exam but, on the other hand, I am also sympathetic about their need to get to work after being in school for so many years. I am willing to cut them some slack although I do wish the WSC had been more detailed so we could all understand what other options they considered and why they made the decision they did.

Frankly, as someone else said on this listserve, there are lawyers out there now that have some “drawbacks”. I have certainly met some people and wondered how he/she passed the bar exam at all. But, I have also met people who became lawyers through diploma privilege in other states before coming here to take our bar exam. One of them eventually became an excellent Administrative Law Judge!

My two cents.

Posted 6/17/2020 - The bar exam is an old fashioned concept like so many things lawyers do. I've taken two state bar exams and the patent bar. The only one of value was the patent bar because I learned discrete part of the law. I would advocate for an apprenticeship and then sitting for a specialty bar, if the person want to use it to show some extra proficiency.

What a great opportunity to think out of the box! And, re malpractice insurance, we can push to change how that works. I would think malpractice carriers would be happier to insure people who are being mentored.

Against Diploma Privilege as Granted:

Posted 6/18/2020

I am a bit late chiming in, but I do not agree with the decision to forego the Bar Exam requirement. I agree that the Bar Exam format itself may need to be reviewed, but that is a longer term problem to be addressed by a longer term solution. The merits of the Bar Exam itself are not what the Court was considering here (I don't think). As long as the Bar Exam is the standard, and until a different format for testing, apprenticeship, internship etc... is adopted, anyone admitted to practice should have to demonstrate that they can pass the exam. You shouldn't do away with one standard before coming up with a new one.

If I was graduating this year, I would honestly be frustrated. I would not want to feel like there was always an asterisk next to my qualifications... that I was a member of the year that the Bar was not required. Also, I took the Bar in 2003, and I know it has changed a lot since then, but I do feel I learned a lot through the Bar prep process. I do still lean on the basic concepts learned outside my area of practice... at least in the sense that I have enough understanding for me to spot an issue if there is one, and refer the matter that falls outside of my specialty area to another attorney. Legal issues don't exist in silos, and I think it is important to demonstrate some understanding of Contracts, Torts, Civ Pro, etc... no matter what specialty you plan to pursue.

I think offering some complimentary bar prep classes (for those who can show a financial hardship), the option to take the test at a later date if more time is needed to prep, remote testing options, and a temporary limited license to practice for those who already have (or will have) jobs lined up, makes a lot more sense.

All of that being said... since the decision was made... I agree with the sentiment that we need to welcome this class to practice and respect and support them as colleagues.

Posted 6/17/2020 - This is a very important point. I doubt they consulted the insurers on this!

This seems ill considered. Not because I think the test is a great indicator of a good lawyer. There's no substitute for experience. But you have to start somewhere. This is an opportunity to learn some key principles in a broad array of practice areas (perhaps before you've settled on your focus as a lawyer) and as pointed out to learn applicable law of the jurisdiction(s) the applicant intends to practice in. And law schools don't all cover the same subject matter so it may be the only time some encounter certain areas of law. For example, because Yale has such an unstructured curriculum (many core classes in other schools are just optional), there are JDs who only study contract and real property for the bar. At least this was the case when I took the bar in 1990. That's why the Yale pass rate was lower than for other schools like mine (Brooklyn law) which took a more nuts and bolts approach to curriculum.

And as pointed out, employers are likely to look at this class askance, as the one that didn't have to study for or take the bar. This decision is not helpful or fair to this class of applicants nor does it serve the Bar.

Posted 6/18/2020 - Wow, we didn't even need to go to law school...we could have gotten away with just reading The Firm and watching some Law & Order, perhaps Ally McBeal, and we'd be all set.

How was lawyer effectiveness being measured in those studies, anyway?

Posted June 18, 2020 - What will be the Bar numbers of these new attorneys?

I'm going to keep this in mind if I were to hire a new attorney.

Posted June 18, 2020 - All excellent points. I strongly believe that the Supreme Court should reconsider this order and I am willing to sign any declaration in support of a motion for reconsideration and/or support any other action ensuring that the Supreme Court to rethink its position. These recent graduates should be required to pass the bar exam at a later date, and in the interim be given a limited license to practice law, but only under the auspices of a licensed attorney. It is troubling that this Order was just dumped on the state bar members, without any input or feedback.

Posted June 18, 2020 - I am shocked by this action regarding law graduates. Will they be listed and numbered in the Legal Directory? Will they be required to inform clients they have not taken the bar exam or failed the bar exam? Will malpractice carriers go near them at all?

Posted June 18, 2020 - Well said, Joy. I fully agree with these points. (agreeing with post immediately below)

Posted June 18, 2020 - I respectfully disagree that the bar exam is a waste of time. For years, the bar exam has been a reliable and consistent indicator of who should be admitted to the bar. I for one do not want that function relegated to accredited law schools, where there is sometimes unchecked subjectivity in grading and admissions.

1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
800-945-WSBA | 206-443-WSBA | questions@wsba.org | www.wsba.org

The exam (particularly the essay exam) is an excellent measure to test someone's ability to think on their feet, to work quickly, and problem solve. My understanding is that the bar exam was never set out to ensure that admittees can practice law. The practice of law is ongoing.

Regardless, of the disagreements among us, there **should have been discussion** among the bar and the public about this. I do not understand how the Supreme Court has the authority to make this fast and wide-sweeping determination without studying the issue or seeking timely input. Were briefs filed and arguments made? **What was the public process?** I am concerned that my alma mater was able to reverse a decision with a letter? During these times of unprecedented government regulation and ordered shutdowns, we need more public trust in our profession not less!

I saw on Facebook that attorneys in other states are now interested in becoming barred in Washington through this loophole. For this and a number of other reasons, I am not in favor of this easy entrance/waiver to the bar to those who failed the exam before. I could be persuaded otherwise and perhaps this should be reviewed on a case-by-case basis, but my initial reaction is that disregarding long-term established guidelines for our profession – without a reasonable opportunity for the bar and constituents to weigh in—is a bad idea.

Posted June 17 and 18, 2020 - I would second Karen's comments about a longer term look at this. I question the usefulness of testing as any meaningful indicator, good or bad, per my prior comments. But I do think it should be a more permanent standard going forward. As things stand, if there is sufficient set-up and technology to execute the exam electronically or via alternate means, unless you're saying testing really isn't important on a more fundamental level, the testing should happen. Colleges are not handing out diplomas because of COVID, they are providing virtual testing.

As an interesting side note - many studies show that minorities overall are disproportionately affected by our "standardized" historical testing methods. A variety of reasons have been floated as to why but it does seem like the overall results is a valid observation. I do not know if there is any comparison specific to law school testing, though note that it's not just about differences when young or different quality schools, but even at elite schools (like Stanford) testing undergraduates, and some interesting observations there. But another topic.

The point here, given the current discussions at play in today's society (properly so in my view), for that reason alone it would be prudent to consider that and form a committee or such to take a serious look at this issue (though not solo - but rather as one of a multitude of problems with testing). This is not meant as a move to make things "politically correct" but rather to take note of what the current social movement brings attention to - the reasons for the differences to begin with and how to address those so that the results are meaningful indicators of what you're "testing" for.

So - I know I'm repeating myself - but I do encourage serious consideration of a general overhaul, as I've never felt standardized testing in any venue indicative of much other than do you test well, do you think in the same way that the test was developed and interpreted, and how do you retain information in the ways that tend to be how people prepare for such exams. I do think it should be a more meaningful overhaul, especially as COVID - even if we get another wave (which seems likely)- is no longer valid as an excuse given the alternate options for testing.

To waive it only because of an immediate circumstance that can be overcome is to say the testing isn't in the end all that important. Which I would tend to agree with - but if it's only for one class and you intend to go back to 'the usual' after that (suggesting you do think it's important), it's a problematic contradiction.

(Follow up post from 6/18/2020) - I hear where you're coming from but I would seriously disagree that the exam be based on what different area of practice you are in - much less given that you won't even know at that time (even if you think you do, you likely don't).

I applaud what we're trying to test for, but I still think there isn't much correlation being "quick on your feet" as a lawyer and "quick on your feet" in the context of sitting at a desk after cramming for an exam on topics you never cared about and never will (requiring everyone know a little about a lot is not a real test of anything but that you crammed well). Testing just flat out does not accurately or adequately test your analytical skills with the format of the test being used.

I have to admit I found this thought quite disturbing:

"My understanding is that the bar exam was never set out to ensure that admittees can practice law."

Then what is it for? (that's rhetorical - it damn well better be). Yes, it is an ongoing evolution. But if the bar exam is not some threshold measure of the ability to practice law, then it is pointless, and a false sense of security to the public and everyone else as that is precisely what they think the test is about.

I do think that the Court should have listened to the bar and am confused why it went against it so strongly. Does anyone know? I'd be curious if it is part of the current environment of vague distrust in the bar and the regulatory discussions of the last few years, and if that's true, that is a serious crack in the system that must be addressed. (I am not saying this out of paranoia, but various discussions from some people who are likely in a position to have some insight)

I do think that the Court should have allowed testing to go forward on any alternate means. So graduates can't get a B.A. just because they can't take final testing, presumably (maybe?) high school graduates will not graduate without their final testing, but a lawyer can now go practice law without the final testing?

I do think that the order should be limited to this year's grads and only this year's grads (not those who didn't pass before, not anyone from out of state, etc.), it seems there is some ambiguity there and it should be a strictly construed limitation.

The concept of a provisional admission is interesting I get the complications, such as hiring decisions have been made, firms are a bit on the hook as well (what if the lawyer then fails to pass the bar?), etc. But, it does something.

But I keep scratching my head going, why is this necessary with all of the alternate means of testing we have available?

I recognize that there would now be an "open book" component to the non-WA sections of the exam, but isn't that better than nothing? You can still corral that to a certain extent with the time limits, and again, better than no test at all. The Washington component is already online/open-book.

Which really is its own interesting question. Isn't open book how we practice? Isn't a significant part of the skill set to hone in on what you are looking for and be able to find it efficiently? Anything rote in your head (I keep

going back to the fact that 70% of the topics, minimally, will never be considered again for most lawyers) is moot the moment you walk out of that testing room. Not in the sense of not meaningful, but in the sense that you will need to double-check caselaw, the foundation law as against any particular facts, etc.etc. Frankly I've found that even after 20+ years, I don't put much in a brief that I haven't double-checked or gotten an updated case on to cite, and there isn't too much advice past an initial consult that I don't do a bit more than go off the top of my head. AND having open book means it was not about whether you were able to cram well or hold 100 topics in your head at the same time. So if we're going to test a lawyer's skills, open book seems completely logical and probably even a better measure.

I looked up the requirements for the bar exam having been a while since I took it. I found it interesting that the multistate professional responsibility exam can be taken up to 3 years prior to or up to 40 months after taking the uniform bar exam. And again the WA component is already on-line.

Which got me back to - why exactly are they doing this instead of some compromise middle ground? does anyone know?

Posted 6/17/2020 - I'm chime in briefly here. I think about 50% of the bar topics are archaic or superfluous. But while I primarily practice immigration (which isn't on the bar) and some low level criminal law, the core subjects like contracts, torts, civ pro, wills/trusts are all things I find useful in having a basic understanding of in practice. In addition Constitutional, Community Property and Property/LL-T law seem important in this state since we have our own twists on these oft inquired subjects which can vary greatly from other states and we should at least be aware of that.

We definitely need to focus it a bit and trim some dead wood from the exam so good lawyers aren't kept out, but I think it could still serve a purpose.

Posted 6/17/2020 - I have followed this debate on this listserve (and other listserves) with great interest.

I come down on the side of allowing provisional admission for newly minted lawyers, but require them to take the Bar exam in the future when it is practical to do so. Or allow them to take the Bar exam remotely. I would be comfortable with the examinees on Zoom so that they can be monitored. And of course sign a pretty specific list of *thou shalt nots* well in advance of the exam.

In this age of specialization, most of us practice in a few limited areas. I could care less about the UCC 99% of the time, but there's always that 1% that comes up (implied vs. express warranties, fitness for a particular purpose, or some esoteric bad check question).

It's not about mastering a whole bunch of substantive areas that most us are never going to use – it's about general knowledge, issue spotting, and reasoning your way through a hypothetical, which is what we do every time a new client walks into the office. If you have cross specialization (in my case, personal injury, workers comp, social security) so much the better. A client comes in and they think they have a social security disability question, but they may also have a workers compensation occupational disease arising out of employment that no one has spotted yet. Or they have a workers comp issue with potential third party liability that no one has thought about.

According to a post on another listserve (by a former Bar examiner who wrote the questions), they don't care if you get the specific law wrong. It's about spotting the issues and reasoning your way through a problem. If you need a score of 7 out of 10 to pass a particular question, if you've spotted the issue more or less correctly, you are probably already at a 7 even if you get the details wrong and as long as your reasoning is not incoherent. Law school is about learning how to think and how to reason, more than knowing the gory details.

The Bar exam is a rite of passage (which I never want to do again!), and a protection for the public against attorneys who manage to make it through law school but somehow don't have the intellectual tools to do the work. Bad law school students can and do absolutely end up being great lawyers, the skill sets are different, but the ability to think through a problem is a minimum requirement.

Posted 6/17/2020 - I have read all the emails. I have a few thoughts.

1. The bar exam does not guarantee competent lawyers. It does, however establish a floor and hopefully keep some of the really incompetent ones out. The exam that I took in 1978 was all essay. It required the applicant be able to analyze and clearly communicate what they meant. It should have been and should be open book.
2. Even with the diploma rule that the Court entered, there should be an ethics exam or required class.
3. The law profession has gone from being a "learned profession" to a profession to a trade, much like a real estate agent. We have ridden it down to the point where our Supreme Court experimented with legal technicians, a failed experiment. Even real estate agents and plumbers have to pass a test demonstrating some degree of competence.
4. When I started practicing there were 50 or so jerks in town. Everyone knew who they were and acted appropriately. Now there are 50 or so reasonable ones and they change from day to day and case to case. Civility has gone down the drain. So much so that the RPC's have gone through changes to limit the extent of advocacy.

We have done this to ourselves and if it is not going to get worse, the "profession" needs to start acting like professionals, not used car salesmen.

Posted 6/17/2020 - Hello, I'm sure that there are other professionals (such as doctors and teachers) where there is not always a correlation between their competency and their professional certifications. However, despite this, I believe a bar exam still serves multiple purposes:

1. It serves as promise to the public that this professional can be trusted with decisions that can have a monumental impact on their lives. The fact that a percentage does not pass suggests that tests do help insure at least some basic competency. Of course, there are always exceptions, but would you see a doctor whose qualifications were waived? Is it important to you that your children's teachers have certain credentials?
2. It serves as a lesson to those entering the profession of the importance of the work we do. I know that the time and stress of the bar exam, and the elation of passing, helped me understand that we hold a special responsibility in the world, despite what lawyer jokes suggest.

As a person of color, and the child of an immigrant, I understand the risks of exclusionary tests; however, I think the bar exam is one of those few tests that serves a greater purpose.

Posted 6/17/2020 - I am curious about mechanics of their law practices and the impact on the legal system.

When the lawyers in this group get malpractice insurance, will that somehow result in an increase of all lawyers' malpractice rates to cover the costs of this complicated situation?

When they join a WSBA listserv and ask questions, would you the lawyer who answers their question, want to know that they haven't taken a bar exam?

I know we don't discuss fees here, but will their pricing schedules differ and if so, would that affect law office management practices (by other lawyers not in their group)?

Will lawyers not in their group adopt an educational marketing strategy of including "... Attorney X has taken and passed a bar exam in the state(s) of _____ " and include other information on marketing materials and brochures?

In the event that attorneys implement this new reality in the practice of law in WA, it would be helpful to approach it in a thoughtful manner where we all present as professionals who can handle any crisis or change.

We will need to pivot our marketing strategies and show how we serve our clients' best interests and demonstrate the value of our time and money spent on prepping for, and passing, bar exams.

Posted 6/17/2020 - A couple of points. As for malpractice, the applications only ask about date of Bar admission and then if you've taken CLE. Because most of these carriers are in multiple states (and I believe I read in another thread not all states require a Bar exam), they probably have accounted for it somewhat. Now it is obviously possible that carriers in Washington might be looking to revise rates on new admittees but I have not heard that in any back channels (of course this is new so carriers probably haven't even seen it, or if they have, they've not yet had time to digest what this might mean for them).

For a different perspective, once upon a time in the State of Washington we had insurance brokers. A broker's role was that of representing the client primarily (obviously a bit of a dual role because you didn't want to put bad business with a carrier just for the benefit of the client). An agent's role was one that represented the company (because they had an appointment & a contract with that carrier). A broker had to take a test before receiving that license. As one who took that test and my only work experience had been in the lines of professional liability and some receptionist work for a home & auto agency, I had to take classes to help me beef up on jewelers block, yachts, trucking, contractors, etc. These were all areas I had zero intention of ever writing business within so it wasn't easy. But I will say that learning the concepts behind some of those things has helped me over the years – if at least to remember that I need to look deeper into a policy form before giving advice because I remember there was some little weird thing about those areas. Or for things like contractors to know that I only wanted to write simple contractors and not general contractors because of how many things to worry about in getting the policy right. And I remember that once upon a time when I was going to take the famous year off after getting the Bachelors before applying to Law school, it seems like I heard the same thing about law school & the Bar exam – it wasn't necessarily specific to the practice and in many ways was information you could forget immediately after and never have it affect your ability to be a good lawyer. And from the thread it seems that's still the case. But back to my point...about a year after I studied hard and passed my broker exam, the State of Washington began changing their rules that all insurance agents are now "Producers" and those that act in a broker capacity solely need to obtain a bond. No test, no extra education, no extra continuing education requirements, no longer a title of Agent vs Broker. I felt let down, and I witnessed some people branching into the broker field who I didn't feel were prepared

or knowledgeable about that role. To this day it still bugs me. So I would imagine that a great number of attorneys in the field will feel the same way.

Posted 6/17/2020 - Our state is an outlier (see <http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/status-table/>). As of now, our state is the only one that will allow both first-time *and repeat takers* to skip the exam. We are also the only state not requiring a set number of supervised hours before bar admission. (In Utah, 2020 graduates “must complete 360 hours of supervised practice under the observation of a Utah-licensed attorney by the end of 2020.”) <https://www.law.com/2020/04/13/ditching-the-bar-exam-puts-public-at-risk-says-test-maker/>

I am not in favor of the diploma privilege option as currently proposed. Instead, I am in favor of the hybrid solution recommended by Ms. Antipolo-Utt, the ABA, and others, that new law school graduates be temporarily licensed “to work under the supervision of licensed attorneys until they can take and pass the bar exam in their state,” balancing “concern for recent graduates with the need for public protection.” Also, I strongly support the rule applying only “to first-time takers of the bar examination, consistent with [the rule’s] emergency nature.”

<https://www.americanbar.org/content/dam/aba/administrative/news/2020/04/bog-040720r.pdf>

Also, as for longer-term action, I would urge due deliberation, especially given our state’s recent bar-exam pass rates. As two former Chief Justices for the Arizona Supreme Court wrote when voicing their support for the ABA’s proposal, “Law students, law schools, the profession, and state supreme courts are all under increasing pressure to find workable solutions to the problems created by Covid-19 for the class of 2020. All are working diligently to find those solutions. However, this is not a time to hurriedly discard processes and practices that have served important public protection purposes for many years.” In my opinion, their statement is applicable to both a COVID-19 solution and any long-term action.

<https://news.bloomberglaw.com/us-law-week/insight-covid-19-and-bar-exams-abas-proposal-strikes-a-needed-balance>

Thank you for passing along our comments, Ms. Higginson.

Posted 6/17/2020 - Dear Listmates: I, too, am unsettled that anyone could be allowed to enter the full profession of the law without completing all entry requirements for this profession, to include passing our uniform bar examination. I have passed both Washington and California bar exams, and the Certified Public Accounting exam, and I believe one of the cornerstones of any profession is a public demonstration of a minimum level of knowledge of (and competence in) that profession.

Two other comments: the current CPA exam is conducted totally on line, and as far as I can tell, there is no concern as to the integrity of the exam through this medium. Second, as a retired military officer and current War College professor, I teach the concept of a PROFESSION as a body of public servants who have demonstrated a high standard of knowledge and competence in the theoretical and practical concepts of the profession, INCLUDING a rigorous admissions process. The public demands this level of competence in exchange for their trust in our profession, and their belief that we, as professionals, are self regulating our membership to ensure the high standards expected of us in our society.

Posted 6/17/2020 - Hello All, No mixed feelings here. Being licensed in two states, Cali and here, it takes great pride and work ethic to study for and pass a Bar Exam. Passing the bar exam is a rite of passage.

Anything short of that is not going through a necessary step to gaining professional admission to our honorable profession.

The question then becomes, "Can we administer a bar exam remotely or virtually to other students, (through ZOOM or whatever) while at the same time accurately monitoring the timing and negate any chances at cheating during the exam, and provide very specific rules regarding the taking of the exam (such as not leaving your seat while taking the exam, or similar parameters) ? Because there MAY be a path forward in these high technology times. But, to be clear, I do not believe merely getting the J.D. without taking and passing a bar exam is enough, by itself, to gain automatic licensing admission.

Posted 6/17/2020 - One thing occurred to me -- how will Bar Exam-exempt lawyers ever be able to get malpractice insurance? I'd be hesitant if I were an underwriter looking at a few hundred or more lawyers who had never passed a Bar Exam. Is that not a threat to the public interest?

Posted 6/17/2020 - Many years ago I served as a Bar Examiner for several years and I was always favorably impressed by the leadership of Frank Slak, Joe Nappi and others and the integrity of the process. To be sure, no process is perfect and being open to a fresh look at our processes to stamp out bias is absolutely appropriate. I do not agree; however, with the quick and permanent response by the court without further consideration of options and Bar member comments. In my view, this is not simply the dispensation of the equivalent of the SAT precursor to college.

I am also surprised and disappointed by the low pass rates at our previous bar exams. It is reasonable for the public to expect that lawyers have been tested in some meaningful fashion and have achieved a basic level of competency (and our bar exam has never been about achieving or documenting a superior level or in depth determination of competency in all tested subjects). The Bar is a broad brush threshold determination of competency. There is also merit to engaging in a comprehensive Bar review study that provides a capstone to graduation from law school and I believe this level of study and diligence informally raises the bar of competence and diligence for all practicing lawyers.

I am not in favor of a permanent "pass" on new graduates taking the Bar. At most, a temporary arrangement, perhaps with oversight from an admitted lawyer, would be appropriate. It would be extremely helpful to know the many other alternatives and COVID19 mitigation options that were presented by the Board to allow members to weigh in on the same. Thanks again, stay safe and take good care!

Posted 6/17/2020 - I have mixed feelings about this.

On the one hand, I've been generally skeptical of jurisdiction-based exams to enter professions, especially ones where the exam is not tailored to the unique circumstances of the jurisdiction.

On the other hand, we're lawyers. We literally need to know jurisdiction-specific items to practice effectively in most matters.

I think the issues brought up are fundamentally separate and can be summarized as follows:

- 1) Given the current circumstances, should the Bar hold Bar admission exams at this time?
- 2) If exams are not held, what should we do with the applicants who would have taken the exam but cannot?
- 3) Should we require an exam at all or should we rely on law schools and firms to vet candidates accordingly?

I do not have good answers at this time. I do think at least a part of the reticence of current practicing attorneys to do away with exams is a sense of "earn your scars" that surrounds getting involved with many groups, though it is by no means the primary one, but one I do think should be acknowledged. I don't think doing away with the exam was the right move, as I think testing centers where individuals or small groups can effectively take the test in isolation would have been more effective while minimizing risk. I think any worries over cheaters is fundamentally as the exam format is so removed from the practice of law as to not make a difference (I've practically memorized my standard phrases and questions for my eviction hearings, but I still prepare notes just in case). However, I'm weary of just allowing them to just practice as is without some basic method of vetting as my biggest concern is the dunning-kruger solo practitioner.

Conversely, I think having the exam as the sole means of entering the profession does a disservice to potential clients and attorneys and I think a multi-year apprenticeship option that bypasses the exam requirement would be a good method of allowing talented individuals into the field in a way that still protects potentially vulnerable clients from outright incompetent counsel and representation. There's still issues of bias in those circumstances (anyone who thinks labor issues that exist elsewhere don't exist in the legal profession are willfully blind), but having the two options would go a long way to addressing issues with the current system. I would also like the idea of law schools being liable for an attorney's malpractice for the first few years of an attorneys practice if only to insure higher standards of the graduating class, but that's likely a step too far.

Still, as I explained to a client this morning when we got out of our telephonic eviction hearing, we live in irregular times, which means that the normal course of business is likely going to need to be modified to compensate.

To summarize: *shrug*

Posted 6/17/2020 - I agree that the diploma privilege admission should be provisional with a later completion of the Bar exam. I believe that taking the exam is an important part of the education of an attorney in addition to the vetting process an exam provides. I am concerned that having a group of attorneys who have not gone through the process creates the potential for that group to be singled out negatively in the future. Thank you for considering all the options.

Posted 6/17/2020 - I agree that this is a poorly considered move. This class will forever remembered as the "oh, you are in the no-bar-exam" class. Practicing law presents many challenging situations, and if one does not take and pass the bar exam, it results in a failure to prepare the law graduate and leaves the public at risk.

Posted 6/17/2020 - I can understand making a temporary exception for new law graduates during these “surreal” times (as the Dean puts it), but it should be a temporary exception for each individual attorney who benefits from it. The diploma privilege admission should be provisional, and these admittees should be required to complete the regular admission process within a reasonable time after the current crisis is over.

The Dean’s letter advocates for longer term action, as well – she wants to:

establish a study group to evaluate whether the bar examination is the best way to determine admission to the bar....We are aware of studies that suggest there are biases in testing and that there are more reliable ways to determine admission to the bar.

She may be right about that, and as an employment lawyer, I certainly support making sure that job-entrance tests are professionally validated. But in fairness to all practitioners, and to the public we serve, unless and until we have a new WSBA admission process, every WA lawyer should have to be vetted through the existing process.

Posted 6/17/2020 - I am not happy with this either. And, frankly, if I were a 2020 grad I would always wonder about not having passed a bar exam - how legitimate my license was. I think this is a bad idea.

Posted 6/17/2020 - What can we do now? Is there any effort to ask the Court to reconsider or to alert the public?

I am so frustrated with the Court’s actions. It seems as though they are actively working against us. The bar is a good indicator of who will be a good attorney and frankly I don’t want people being admitted to practice who can’t pass the bar exam. Not to mention all the time and money practicing lawyers spent to pass the bar.

Thank you for sharing this important information.

Comments from WSBA RPPT Section List Serve

Posted 6/22/2020 - List serve colleagues: I, for one, plan to write to the Supreme Court on this issue. This broad and sweeping decision to exempt all applicants for the summer 2020 bar exams to never have to take the bar in Washington is too broad. First, bar applicants who previously failed the Washington bar, no matter how many times, are now automatically admitted if signed up for the Summer 2020 exams (July and September). Second, the last bar exam pass rate was only 49%. When I took the bar in 1989, the pass rate was only 62%. I certainly have not followed bar passage rates in Washington, but I think they have varied between about 45% to 75% over the last 30 years. The exam is a competency measure to protect the public and to ensure a certain level of competency to practice law in Washington. We are a profession with many technical rules and requirements and the public deserves the protection the bar exam provides.

A more balanced approach could be that the 2020 summer exam applicants are admitted on a provisional basis and can practice law so long as they sit for the bar exam by the summer of 2021. Their admission to the bar would remain valid until the results are announced for the summer 2021 exam in the fall of 2021. If they pass that exam their admission continues. If they fail the bar exam in either the winter of 2021 or summer 2021, then their provisional admission ends until they take the exam again and pass. This approach balances the effect of the Corona Crisis on studying for and passing the bar exam during the crisis and allows for gainful employment in the

interim. This approach would also protect the public because those who ultimately have a problem passing the exam will not be admitted on a long term basis until they can show their basic competency to practice law.

I understand that this approach of temporary licensing is being used by the Washington State boards that license dentists and pharmacists; similarly it should apply to lawyers. I encourage each of you to write to the Supreme Court on this important issue for our profession.

Posted 6/23/2020 - I agree. Perhaps the most disturbing part of this situation is the utter lack of process the Court apparently chose to pursue. They are not subject to something like the federal APA, I realize, but we are still in a state that respects the rule of law, proper processes, reasoned decision making, and thoughtful contemplation of dramatic changes to long-standing rules and norms.

In my view, their decision is wrong at minimum because of the apparently permanent nature of the admission to practice; and the (again apparently permanent) application to re-takers (truly just a shocking “wave of the wand” by a court entrusted to safeguard the public in its management of a very powerful profession).

But even if their decision were right on the substance (or eventually is determined to be right on the substance), the utter lack of process, adversarial presentation, notice and comment — anything — is just plain shocking. If they indeed received a letter from law school professors on June 10 and drafted and issued an order on June 12 that is so fundamentally “disruptive of the norm,” then they violated the spirit of their inherent authority to manage the bar, if not the literal law applicable to their authority to manage the bar.

To me, this order goes far beyond any other orders or oversight they have provided to the recently tumultuous WSBA. I have not reacted at all to any of those orders or oversight efforts. To this one, I reacted with shocked disbelief. We few who did cannot be alone, and we cannot just be discounted as blind adherents to the way things have always been.

Posted 6/23/2020 - While an argument can be made that those who aren't able to take the test under these special circumstances should get a license (and yes why not make it provisional?) I think it is very poor judgment to grant a license to someone who flunked the test!! This doesn't make sense to me.

Comments Sent to Governor Carla Higginson:

In favor or Diploma Privilege:

Sent 6/19/2020: I'm writing in response to your post to the Snohomish County Bar Association. You encouraged us to send letters in regards to the Supreme Court's recent decision to grant diploma status to 2020 law school graduates, so that is what I am doing.

I agree with the Supreme Court's decision. In fact, I do not believe a bar exam should ever be required regardless of public health concerns. However, in light of a global pandemic, the Court's decision was even more necessary. As a recent law school graduate (University of Washington, 2018), I feel it is my obligation to tell you that I do not feel the bar exam is necessary to determine an individual's ability to practice law. My multiple choice contracts score, for

example, in no way relates to my ability to be a successful and skilled public defender. Yes, we had to go through the bar exam, but that does not mean it actually relates to one's ability to practice law. That is what law school is for. The bar exam, by its very definition determines competence. If WSBA is concerned that individuals graduating law school do not have the competence to practice law, that speaks to WSBA's issue with law schools' graduation requirements rather than the efficacy of the bar exam.

I also find it concerning that you omitted relevant information from your message to the entire Snohomish County Bar Association regarding bar exam pass rates. For example, you failed to include the summer pass rate (which is much higher than the winter pass rate) and the first-time taker pass rate (which is higher than the overall pass rate). In doing so, you are implying that most people granted diploma status would not have passed the bar. That is incorrect and misleading.

There are other problematic implications in your message as well. We as a society know that standardized tests, like the bar exam, are biased. In fact, there's been a recent push by educational institutions—including the largest educational institution in our state, University of Washington—to stop requiring standardized tests like the GED, SAT, and ACT for admissions due to their racial and non-native English speaker biases. The bar association should move towards racial justice and equity in the legal profession, rather than requiring outdated, problematic, and expensive tests that only maintain the (rich and white) status quo of the legal profession. I hope you feel the same way.

I am looking forward to you sharing my perspective with the entire Board.

Against Diploma Privilege as Granted:

Sent 6/19/2020 - Hope you are well and negotiating these covid19 days as best one can be expected to. Thanks for authoring the article in the Snohomish County Bar News regarding the June 12, 2020 Order Granting Diploma Privilege issued by the Washington State Supreme Court. Count me as a vote strongly opposed to waiver of the requirement that WSBA applicants need to pass the bar examination as a pre- condition to be admitted to practice. Remote on line testing is not that tough to implement. Particularly irked at the fact that someone who has previously failed the examination (1 or more times) gets a free pass because they signed up for another try. Outrageous is how I see it. Passing the exam separates the wheat from the chaff, the qualified from the inept and/or unqualified.

Sent Directly to the WSSC and Copied Governor Higginson 6/18/2020: I write to oppose the plan to allow attorney applicants to practice law without passing the bar exam. When I wrote ethics exams and graded them in the 1980s I was appalled then by the high failure rate on the ethics portion. It appears that the current failure rate is even higher.

When you let every applicant practice law, you put the public at serious risk. It is enough that some of those who pass the test turn out to be barely competent or unethical. I observed several of those in my cases over the years. They dishonored the profession.

Use as many locations as necessary to provide proper distancing, and provide masks. But hold to Washington's standard.

Sent 6/19/2020 - Do not abandon your public protection duties by waiving the bar examination passage requirement. Condoning the practice of law by numerous persons who may never be able to pass the examination is not in the public interest. Other measures may be taken to mitigate demonstrated extraordinary difficulties some candidates may be facing with regard to preparing for and taking the examination.

Sent 6/21/2020 - I agree with the positions outlined in the emails below. I am not in favor of the proposed diploma privilege option. I think a temporary license approach is most appropriate to allow new grads to earn a living while being appropriately supervised, and then being required to take the bar exam like all of us had to do in the past and all of those coming later will also be required to do. Thank you for your work on this matter.

Regards

Comments from WSBA Family Law and DRAW List Serves

OPPOSED TO DIPLOMA PRIVILEGE

Posted Wed, 17 Jun 2020

As one of the guilty ones who introduced a social story, let me bring this back to the point: Life is full of unfair events and circumstances. The bar exam, in and of itself, is one of them. That so many have had a range of bad experiences during the exam and somehow still managed to pass proves the point that despite all that, folks are able to adjust and move on.

It is no different for the class of 2020, or those of the class of 2019, 2018, 2017, and earlier who for one reason or another, have not passed yet.

As the old platitude goes, what does not kill you will make you stronger. Well, I bet if they administered the exam, despite COVID-19 and BLM demonstrations and police action, you'd probably see a similar pass rate to last year's summer exam. Someone mentioned it and I'd emphasize that traditionally, the winter exams have lower pass rates in large part because they usually consist of more repeat test takers.

I would not sell the 2020 examinees down the drain so easily nor underestimate their ability to adapt to the circumstances. Good lawyers do that, and that is who should be granted a license (and the privilege) to practice law. We can no longer discern the difference for these new licensees, and that it to their detriment, our detriment, and to the public's detriment.

Posted Wed, 17 Jun 2020

Whether or not you knew it, you were prepping for the bar exam by your method of study - identify the issues, identify the applicable law, and reason to a conclusion. But not only is that preparation for the exam, it's preparation for actual practice.

The difference between the multi-state and the essay questions is that, in the essay question, it is up to the examinee to spot the issues. If you are given a choice of possible issues, as in the UBE, that will also clue you to an issue that you may otherwise have overlooked. Same with identifying the law on the issue. With the essay questions, the applicant does not have any hints.

When a client walks into your office, and says "I need help," they don't give you a choice of issues or legal principles to choose from. Those issues and legal principles are buried in a jumble of facts that they spill out. It's up to you to spot the issues and to know, or research, the applicable law. You are not given a multiple choice. And that is exactly why Washington held on for many years to writing our own essay exams instead of using the multi-state. We were testing applicants to see if they had the minimum skills to hang out a shingle. I think it was a mistake to give up the essay exam and go to the UBE.

But having said that, I don't know why the passing rate with the UBE is lower than it used to be with the essay exam. Perhaps the UBE is tougher that I think - never myself having taken the multi-state. But even if it is tougher in some ways, I don't see how it tests the ability to spot issues and applicable law (without hints - as in actual practice) and reason to a supportable conclusion.

And I think it is dangerous to assume that any law graduate has those skills without some method of verification.

Posted Wed, 17 Jun 2020

BarBri forced me to learn every little obscure law and rule I missed in law school, and that information has come in handy at the strangest times. The bar exam may not be everything, but it does test the knowledge you need to be a competent lawyer.

Posted Wed, 17 Jun 2020

You can pretty much figure out if a lawyer knows what they're doing in a couple of weeks, but you can't know if they can handle whatever it is in their particular field that is stressful, until you

administer some kind of stress test. We stress test people, buildings, bridges, etc., to know they can handle the load in the real world when the public depends on them.

A do or die stress test that is the bar, which is easier for some and harder than others, is unfair, but nonetheless a stress test that is better than no test at all, when it comes to the public's right to have at least on paper, competent representation, especially when we ask them to take it on faith that we regulate *ourselves*. Think about it. No one else gets to do that the way we do. Everyone else has a state licensing board or agency of some kind and the requirements of their licenses are controlled by legislation. The Bar Act says the Supreme Court should figure that out, and the Court delegates to us (not the public at large), via the BOG.

Posted Wed, 17 Jun 2020

I think it goes back to the discussion about the Bar Exam being partly to test people's behavior under stress.

I have yet to have a Trial that went exactly as planned.... Gotta be able to think on our feet and do it quickly and under stress.

Posted Tue, 16 Jun 2020

If the candidates no longer have to take and pass the *Bar* exam, why do we need a Washington State *Bar* Association? Perhaps we should now abolish the Bar Association, and anyone with a J.D. can practice law.

Posted Tue, 16 Jun 2020

I found out I digested and integrated the law after I took Barbri, the prep test. Concepts jelled for me and have stuck with me over 30+ years in practice from the bar review prep process. I relied on the Barbri manuals for my first years of practice. The effort was rewarding.

They might change the rules later on perhaps. Future employers might discriminate if you don't pass the bar.

Posted Tue, 16 Jun 2020

Does this mean that other professions do not need to take a licensing exam this year? Essentially all professions have a qualifying exam to show minimum competence for the profession. Examples are doctors, nurses, "professional" engineers, electricians, plumbers, accountants, etc., etc. The whole idea of passing a professional licensing test is because merely doing the work to get the degree does not equate with competence to practice. It's a consumer protection thing.

If merely obtaining a degree was sufficient, then why do so many, with degrees, fail the exam? Perhaps it is test taking ability. A lot of people may freeze up on the first taking, realizing that after all that education it all comes down to passing the single bar exam. They might have a job that is contingent on passing the bar (I know my first job depending on me passing. The small firm did not need a Rule 9 hanging around for a year, but needed a lawyer. They weren't willing to keep on someone who wasn't licensed.) There can be all kinds of pressure to pass - I'm sure we all remember that experience. But, nevertheless, there must be some way to assure the public that, if someone hangs out a shingle, that person has at least a minimum level of competence.

I was a Bar Examiner for the Washington Bar in the '90s. Back then we wrote, and graded, our own exams. No multi-state. We had a procedure that was designed to be fair to the examinees as well as ensuring a minimum level of competence. There were over 100 members on the Committee, divided into several sub-committees. One group came up with the subjects for the examination. Another group wrote and graded the questions. And a third group handled appeals for applicants that did not pass. And all applicants were anonymous.

It went like this. There were 24 questions in different substantive areas of the law and ethics. As one of the 24 who wrote the exam, I was assigned a topic for examination. I then prepared the question which was a narrative of a fact situation, with a question at the end to be answered by the applicant. The questions were supposed to be real life situations that any lawyer might encounter in daily practice. The question was a fact pattern that a client coming into your office might present. The examinee then had to identify the issues, identify the applicable law, and apply the law to the facts to reason to a conclusion.

After writing the question, the examiner also had to prepare a model answer, and also had to write a brief on the model answer to support everything with statutory law and court decisions. We could not put obscure issues into the questions, but had to stick to basic everyday situations. Then, after writing the question, the model answer, and the brief, each examiner had to submit all this to another committee which reviewed all this, critiqued it, edited it, and sent it back for revision. I never sent a first draft that was accepted intact. Usually the question was revised at

least two times, sometimes more, before everyone agreed that the question was fair and was clearly written before it appeared on the exam.

In grading the exam, we were to give a maximum of 10 points. And the grading was not arbitrary. There were at least ten issues in the question. To get a point, the examinee had to (1) identify the issue [the main focus of the exam], (2) identify the law on that point, and (3) apply the law to the issue and reason to a conclusion. The main thing was to identify the issues presented. We recognized that in real life, the lawyer can always research the law, but if the examinee could not even recognize the issue in the first place, then where would they start their research? We did not look for a "correct" answer, since many issues have different opinions - as we all know from our daily work. And if a mistake in the law was made, that usually did not matter. [I recall one question regarding ex parte TROs. I got answers that said the TRO could not be longer than 7 days, or some said 30 days, maybe even 45 days. But that was not graded down, as the point we were looking for was that the examinee knew that an ex parte TRO could not continue for more than a short time without a hearing on the merits with the opposing party, As long as they knew that the OP had to be served and have an opportunity for a hearing, they got credit for the answer.]

To pass, the examinee had to score 7 out the 10 points available. But if they scored only 6 points on one question, but 8 points on another, they were OK as they had to only average 7 points per question. Thus someone could do poorly on the UCC but ace the Torts question and still pass. They had to pass the ethics portion separately, though.

When all grades were in, we met as a committee of all 24 examiners, and reviewed all questions for those who only missed the total points by a few. Usually, a few examiners could find an extra half point or so, so people that initially ended up missing by maybe 8 or 10 points total out of 24 questions [maximum score 240, minimum 168], would usually pass. So most with 160 or above would pass with a second look at their answers. And even then, if someone still did not make the cut, they had the right to appeal. The appeal went to an entirely new group of examiners who would regrade the scores. And if they still did not pass, they were sent the "model answer" prepared by the examiner, plus the three "best" answers by other examinees. I'm not sure how the UBA is scored as that is after my time on the committee, but my impression is that it is done by computer and no fudge room. Harsher!

My point is that the Bar Examiners really bent over backwards to be fair to the examinees. But we also had to keep in mind the Bar's duty to insure the "minimum" level of competence. Because we wrote our own questions, we could make the questions as close to real life as possible. Usually, "client walks into your office and presents the following:" Again, the exam was meant to insure that the applicant could at least identify the legal issues presented in the fact

pattern. If you could do just that much you got your 7 points and passed. It was meant to be as close to a real life situation as possible.

Back then, we usually had a pass rate of about 80%. Now that the Bar has gone to the Multi-state, the pass rate is considerably lower, and I've never been a fan of the Multi-state. But there were a number of exam papers I saw where an examinee got only 2 or 3 points, and some were almost incoherent. You had to wonder how they managed to graduate from law school. And they had to have a JD from an ABA school just to sit for the exam (or have completed the "apprenticeship" program).

And by the way, we never knew the identity of the examinee. Each examinee was given a number, and that's all we ever saw. I had no way to know the person's age, race, gender, where they went to law school, or anything else. It was simply a test to see if the examinee could identify the legal issues in the question, know something about the law on the issue, and reason to a conclusion.

So, based upon my experience as a Bar Examiner, back when we passed 80%, I have to say that about 20% of those admitted under the new Diploma Privilege, are being unleashed on a very unsuspecting public. Let the legal buyers beware.

Posted Tue, 16 Jun 2020

I still firmly believe there has to be some kind of test for admission. I'd even be fine with no testing but an articling requirement that is done in all other common law countries except the US (Canada, UK, Australia, NZ, etc.). The JD is nothing more than a certification that you passed classes. The bar exam is nothing more than a test to say you can spot basic issues and work under pressure, something family law lawyers have to do all the time. It's also a test of one's willingness to devote themselves to a singular task for a sustained amount of time. That's a lot like a trial, where for months or perhaps over a year or two you study for a trial, then under intense pressure, you put on a trial before a judge, or judge and jury.

Bar exams do not guarantee that those that pass will always be ethical. It does not ensure that they will not commit professional negligence either—that's why they invented malpractice insurance. But it does represent a measure of basic abilities to tell the public at large that a licensed lawyer has some certified basic abilities that they ought to be entitled to expect and rely upon. If the UBE or whatever test they use represents a poor measure of deciding if someone should have a law license, then fine, research and propose another testing method.

A quick note on testing. I tested in 2003 under the all essay format Washington had. I thought that was superior to multiple choice exams. There are all these multiple choice test taking

strategies to increase the odds of a successful answer that have nothing to do with knowing anything about the law. When was the last time you walked into court and the judge said, "are you a.) making a motion for temporary orders, b.) making a motion to ask for an order to show cause, c.) dreaming that you're standing in your underwear in my courtroom, d.) seeking CR 11 sanctions, or e.) all of the above. I'm sure there were reasons for adopting the UBE, that I bet I'd disagree with. If our most basic tool to practice law involves writing, how are multiple choice questions better than essays [he rhetorically asks]?

It bothers me less than most that it's unfair to have to test in the circumstances we now find ourselves in. To clients who complain that the system is not fair, and that they want fairness, I usually respond like this: Our system does not guarantee fairness. It guarantees, or tries to guarantee, a shot at fairness. In other words, due process is all about you get a day in court to tell your story, but no guarantee the judge or jury will agree with you. To new grads I'd say this is only the beginning of a lifetime of career unfairness they will encounter. Your job is to find solutions to unfair situations. If you can't handle this hiccup, and trust me, if you practice long enough, it will be just that, a hiccup, what are you going to do when _____ [fill in nightmare scenario from case] comes along?

Most professions have some kind of licensing test. The common thread running through them has to do with public safety and consumer protection. Doctors, pilots (private and commercial), dentists, electricians, police, fire fighters, CPAs, commercial truck drivers, real estate brokers and agents, etc. It used to be used improperly to control the numbers of people entering the profession. That was especially so through the mid to late 20th century. It's still a reason, that not everyone wants to admit. However, it's not as important anymore as the public protection aspect of such exams. Don't believe me?

Who here among us would let a surgeon without any board exams operate on their children? Are you comfortable on the road if the operator of the 80,000 big rig next you was never tested to see if they know how to check their tires or brakes before starting the truck down a 10% grade? You good with being policed by those who graduated a police academy with no psych testing? How about flying aboard a jet with untested pilots who graduated flight school? I know these tests do not weed out all the bad ones, but we do them across all these industries because we know we get a large number of otherwise unqualified folks out of those professions.

Do I have compassion for those that spend enormous sums or take on impossible student loans to earn a JD? Sure. But they did so knowing they'd have to take an exam to get a license. On balance, I'd be fine with temporary licenses, good for a year, so they can earn money and move on, but still require a test to obtain a regular license. History shows us that we have been through far worse times and somehow folks managed to take and pass bar exams. I'm not saying they should suffer just because we did. That would be silly. I'm saying if they are not tested, even in difficult circumstances, and there are always circumstances, they are not qualified.

How does the Supreme Court look the public in the face, with a clear conscience and declare, "We conferred licenses on these folks because when we weighed your interest in having competent legal representation versus the JDs' interests in getting a law license, we decided, without any study, or input from the public, only from financially interested law school Deans, it was better to put you at risk, rather than take reasonable steps to protect you." It's as if they are now spoon feeding those who would revive a Bar Act repeal with the perfect reason lawyers should not be a self-regulating profession. I'd vote to repeal the Bar Act and bring lawyer licensing under the DOL if I were a member of the legislature who's been told all this time to worry, because law is a self-regulating profession with high standards of admission.

To the JDs themselves, I'd at least want to know that if they want to be tested, since they've already paid for it, that they be allowed to test and have it say as much on their directory listing. If they took and passed bar exams in 2020, that would give licensees a bit of an asterisk to say, "I did it despite the world being nuts." Now, the opposite asterisk will accompany them all. An asterisk of derision for being licensed without demonstrating (via some kind of test) that they earned their licenses.

Ask yourselves this: With all things being equal, if the only difference between two lawyers is that one passed the bar and the one who did not, who do you hire?

And if the WSBA, by posting whether a lawyer has a history of discipline, intends to give the public fair warning, maybe they should similarly advise the public that 2020 admittees to the bar are untested? Maybe do so and allow the admittees to test when they feel up to it in order to remove said asterisk.

To those that say some folks don't test well, but are otherwise great lawyers, I get it. Even with testing accommodations, sometimes it's not enough. That is the unfair part of life. I'm happy to give tools or accommodations to those who need it to unlock what's in their minds and get past the issue holding them back. But at some point, some way, some how, all licensees are going to have to perform under tremendous pressure. Society deserves qualified lawyers who can perform under pressure and only a test of some kind, even a pressure filled one, will tell us if they can do so.

Posted Tue, 16 Jun 2020

I practiced in Wisconsin in the late '70s. Wisconsin has a diploma privilege, but you have to graduate from a law school in Wisconsin to take advantage of it. Having come from Washington, I had to take the bar myself. My friends there who had graduated from UW-Madison or Marquette law schools felt like prisoners in the state at times because those states that have reciprocity usually require that you pass some bar, somewhere.

I also wonder whether this year's graduates will forever be known as the Class of 2020, who never had to take the bar exam. .

Posted Tue, 16 Jun 2020

The short history of law practice in America...

Birth of a Nation until 1855: **Apprenticeship** (like "Article-ing" in Canada and Australia and maybe the UK has that)

1855 ish. the Bar Exam: The **first state** to employ a written version of the **bar exam** was Massachusetts, in 1855.

To Law School..."The next step in the evolution of the **bar exam** was diploma privilege, meaning that lawyers could practice law once they received their law school diplomas. Wisconsin is the only jurisdiction that still honors diploma privilege." <https://blog.adaptibar.com/the-evolution-of-the-bar-exam/#:~:text=The%20first%20state%20to%20employ,that%20still%20honors%20diploma%20p rivilege.>

Posted Mon, 15 Jun 2020

Here is the text of an email I just sent to the supreme court.

Dear Justices of the Supreme Court:

I am disappointed in your decision to grant the diploma privilege to those graduating from ABA accredited law schools. I realize that there is a pandemic, but it appears that you are granting permanent status to these individuals.

141 out of 296 participants passed the winter 2020 Washington State bar exam. That is 47.6 percent. That means that, under the rubric that we have been operating under for decades, 52.4 percent of the recent bar applicants are not qualified to practice law. I assume the percentages would have remained similar if the bar had been given now. That means that more than half of the young lawyers entering the legal field now are unqualified. Is that the purpose of this rule? How does that protect the public? Are you going to retroactively allow those who did not pass the most recent bar exam to now practice? If so, what about past exams? If not, why

not? Why are those applicants any less qualified than those who are getting the diploma privilege now?

You could have allowed these folks the opportunity to practice contingent on them passing the bar when it becomes safe to give it again. Those of us who passed the bar wonder why we were put through that strain. Those who failed wonder why they cannot start practicing now, and why they were deprived of the right to practice from the time of their bar exams until now. Your decision was not calculated to protect the public unless you believe that the bar exam was never meant to determine who was qualified and to therefore protect the public. If that is the case, what was the purpose of the bar exam?

Posted 15 Jun 2020 (re letter to the Court immediately above)

I like it. Thank you for sharing.

Posted 15 Jun 2020 (re letter to the Court immediately above)

Good letter.

Posted Mon, 15 Jun 2020

Apparently anyone with a law degree can now be a lawyer. God help us.

Posted Mon, 15 Jun 2020

Bar exams are exams of minimal competence. If you have been in practice for more than one hour, you know that passing a bar exam does not mean a damn thing in terms of the quality of legal services an individual might render or the ability of that person. How many of us have encountered a lawyer (colleague, opponent, etc.) and have scratched our heads wondering "Did this person really pass a bar exam?"

Now we no longer have to ask.

Posted Sun, 14 Jun 2020

The bar exam is truly a rite of passage. We all have our stories to tell. Yes, I'm not happy that people are being admitted without this rite of passage. But what about the people we know who have tried two, three, four or more times to pass. They graduated from ABA approved schools but they have been denied access to our profession. Doesn't it seem unfair to grant a pass to new graduates? I wonder if some of these folks can petition to be given access?

I can't believe there is not a better solution.

Posted Sun, 14 Jun 2020

My concern is for the clients who will have absolutely no notice that their attorney or legal technician lacks the basic legal knowledge needed to pass a Bar Exam or LLLT Exam. The LLLT Exam doesn't require applicants have degree ABA-accredited program and has a 66%+ fail rate. At least the attorney applicants are graduates of ABA-accredited programs.

The Bar Exam or LLLT Exam may not be everything, but there has to be some means to screen each applicant's knowledge of law and ethics, and the applicant's ability to spot issues. At least with the Bar Exam, a good Bar prep course (e.g. BarBri) helps ensure you learn anything an applicant may have missed in law school, and includes practice exam questions to gauge issue spotting.

Posted Sat, 13 Jun 2020

Did I miss something? Did anyone know this was even being considered as an option?

The content of the bar exam is archaic and unnecessarily sadistic. But there is something to be said for the discipline and discernment that the torture of bar prep teaches. There is also something to be said for a licensing exam of SOME SORT. To be allowed to practice without any type of licensing exam is irresponsible.

Why not Rule 9 until February or next year and allow them to take the exam for free?

Is there any chance of appeal or move to have them rethink this decision? It seems very knee jerk and extreme.

Posted Sat, 13 Jun 2020

With all due respect, this is not well thought out. I can see allowing them to practice temporarily until a bar exam can be administered at a later date and perhaps remotely on camera, but to never take a bar exam does not add up. What happened to protecting the public from lawyers who don't know the law? Or those who don't know ethics? The purpose of the exam may appear (to examinees) to be one last right of passage and mental torture, but that's not why we have a bar exam. It's done to protect the public. How do we as a profession answer the public when one or more of these newly admitted lawyers commits malpractice or worse, is found to have committed an ethical violation?

I remember in February 2004, after passing the Washington exam in 2003, I was going to sit for the California bar exam. Circumstances forced me to not take the exam in order to open my office in Seattle, but I had friends in that exam. It rained so hard the night before, that the basement used to administer a typing exam (most of us wrote exams back then) flooded. Chaos ensued.

The examinees were told they could wait until the next exam in July or take the exam on paper right then and there. People screamed, freaked, got upset, etc., all of which would have been me too. That being said, life is not fair, and things happen, and just like all those 2004 examinees had to put up with it, so too should the July 2020 examinees in Washington. I feel for them, and like I wrote above, I'm fine with them practicing on a conditional basis for now, but they need to sit for the exam and pass it to practice law as soon as practicable.

Posted Sat, 13 Jun 2020 (in regard to the immediately preceding post)

Here here.

TOOK BAR EXAM UNDER DIFFICULT CIRCUMSTANCES

Posted Thu, 18 Jun 2020

The stories from folks with respect to the Bar exams are quite interesting!. I am sure these stories are something to smile when we look back now. The Exam is no joke or fun- to say the least. I recall folks I came across on the day of the exam were just very serious people not

interested in having a chat with you. Nobody laughed! And it really scared the hell of me. That was my first time.

On the day of the exam, we had just settled down and writing the exam and this terrible Earth Quake occurred. That was February 2001. As the shaking was happening, I looked up the ceiling and engineering fittings in the building swinging especially the iron bars, it looked like it would give way and smash us inside. We scampered out of the hall for our lives. I have never experienced an Earth quake before. It was scary!. I read about it in newspapers.

I ran as fast as I could outside with others only to discover that the land was also moving. Some of us rushed back inside the building. I followed them. But alas, thinking that the Meydenbauer building might come down on me, I preferred that the earth swallowed me up than being crushed by the building. I could be rescued quickly outside than inside the building, I thought. I ran outside again. The shaking lasted for approx. 30seconds or so, as experts later said.

The agonizing part was that the requests made to the examiners to have the exam be postponed fell on deaf ears. We were told they have to consult with WSBA / Board and give us a feedback. It was like waiting for eternity!. Many were sure the exam would be continued. I was shocked and shaken to the extent that my legs couldn't carry me anymore. I had to sit down somewhere to regain my composure.

We waited approx. an hour hoping the exam would be continued. To our chagrin, the lead examiner told us the Bar insisted we continue with the exam. When they asked us back to the hall, so many students gathered their type writers, laptops, pens, submitted their papers and left the hall. I was so confused on what to do.

I didn't want to quit that way after working so hard preparing for the exam. I convinced myself to sit back. While inside, everything I learned seemed to have been erased. My biggest trouble was my hand. I could not steady my hand to hold my pen and write due to shock. I cried. When I looked at the remaining students, many were writing while others stared around on those writing or typing. I managed to stay on to the end that evening. That was the substantive portion!.

The following day, it appeared I was having a PTSD stemming from the shock of the earth quake. It was the day for RPC part. I was still terrified of the yesterday's event. At least, I was happy that I didn't go home like many that abandoned the exam entirely. I missed the RPC by 1/2 point. I appealed and still failed. I needn't an examiner to tell me the overall outcome. To cut the story short, I repeated the Bar exam and passed in 2002.

Posted Wed, 17 Jun 2020

I took the Washington Bar in 1976 and the Hawaii Bar in 1985. The Hawaii Bar had two days of essays and one day of the multi-choice national exam. The first day of the essays there was a banking question which made no sense. My heart dropped but I tried to make some sense. The next day, at the second day of essays, they started out by announcing that they had confused Bank A with Bank B in describing the situation and they were throwing the question out. I felt everything get lighter, that the powers that be were on my side and sailed through the rest.

I don't remember anything about the Washington Bar, just the preparation for it. I'd I got my JD in December 1975 and got a job that winter and spring as assistant to the Portland Affirmative Action Director and, after a nationwide job search, had gotten a job teaching law in the Department of Criminal Justice at the University of Wisconsin-Platteville starting that fall. Being 41 I did not see myself joining my much younger classmates on the lowest rung in a large law firm. I was pretty sure I would be coming back to Washington, though, so I signed up for the bar exam, and saved up for the bar review. I'd been offered a place to stay for the summer free but that fell through so I took my review savings and camped out in Bremerton in a tent in a state park, and then a one room shack on a beach with two kids and a husband. They played and I read, took the ferry over the day(s) of the exam.

Posted Wed, 17 Jun 2020

I was the July Bar. It seemed at the time that basically every Bar had something major happen that was really screwed up.

Mine they handed out the wrong test booklets, collected them, then handed them out, then collected them then handed out a third set. It was chaos. I was chair 1 in row E so I had a proctor in my face for three days. At beginning of day 2, an announcement was made that the WSBA had decided that our exam was not going to be canceled because of the prior day's incident. I was like... uh... was that an option?!?

I recall one before mine the roof fell in at Maydenbauer center, Another had a person have a heart attack during it, etc. There were lots of crazy Bar stories.

I was so stressed out about having car problems, etc. that, even though I lived in Federal Way, I rented a room at the hotel next to the Convention Center. I have never admitted this publicly, but

I guess the SOL has run... I had a room with a jacuzzi tub in it. Second night my then wife came to visit and ran the tub for me and I was not paying attention... tub overflowed and apparently soaked some wiring and the fire alarms went off. So, a hotel full of people taking the Bar was required to evacuate at about midnight. I remember people in their underwear, etc. standing in the parking lot holding the BarBri materials they had gathered up (instead of getting dressed, etc.). Just glad it was July and not January...

Posted Wed, 17 Jun 2020

I was TERRIFIED of the UCC questions. It was literally the one subject that just did not penetrate. I studied, and studied my UCC outline. When I finally got to my hotel room, I put my outline on a HUGE piece of butcher paper and taped it to the ceiling in my hotel room, so when I was too exhausted to study, I could at least stare at the ceiling and hope something would stick. The best part: the UCC was not on our exam that year!!

On the third day of my exam (PR), my computer cord started fritzing out, and it died in the middle of my test upload. I WAS IN TEARS. The proctor told me to go home and cross my fingers it would upload when I got home. I drove like a maniac to Federal Way, got my backup charger – and my test uploaded. PHEW.

Shouldn't every lawyer have to have an experience like this?

OBSERVATIONS ABOUT OTHER JURISDICTIONS/BAR EXAM

Posted Tue, 16 Jun 2020

I'm a UW-Madison law graduate circa 2003 and was admitted to practice there via the diploma privilege. I moved out here that same summer and sat for the February 2004 WA Bar exam. My personal recollection is that most of my courses emphasized general legal principles and concepts, same as any law school would. Perhaps there were some subjects, like criminal law, where there was more state-specific information. Hands down, the biggest difference I noticed in Bar admittance is that Wisconsin had an extremely detailed/rigorous character and fitness assessment--they wanted to know ALL about my adult life--and Washington's character/fitness was quite short.

Posted Tue, 16 Jun 2020

This is an interesting discussion about the bar exam. Just going to add a little commentary about my foreign licensing experience:

In Canada (where I grew up, attended law school, and practiced for a few years), all law graduates must complete what are called articles of clerkship before they can become licensed practitioners (before they can be “called to the Bar” as they call it).

What does that mean? Well, it varies by province, but the overall scheme is a 10-14-month period of supervised practice under a principal. Everything you do is supervised – all of your work product must be reviewed by your supervising attorneys (you have one principal, but with firms you can do work for any of the attorneys there). You cannot sign pleadings (there is some wiggle room with small claims court – they encourage newbies to take on small claims cases, because the dollar amounts in question are relatively low). It’s basically a year of assisting with and attending meetings, settlement conferences, depositions, trials; drafting pleadings, briefs and memos (there’s a lot of legal research involved); attending motions court to enter agreed orders, etc. – you know, real law practice. You get a salary, though it’s about half of what you’d earn as a first year associate (which isn’t so bad when you consider that the cost of law school in Canada is nowhere near what it is in the US).

And you’ll appreciate this (particularly in light of the recent discussions about LLLTs): the one area of practice with big restrictions in the articling program is family law! Those rules are designed to protect the public.

Articling runs in conjunction with mandatory training courses, which cover practice and procedure, ethics, practice management, legal skills, etc. And provinces do have some sort of testing (like a bar exam), but pass rates for the bar exam are extremely high. The bar exam in Canada feels like a rite of passage, maybe because in Canada there are only 24 law schools, so they weed people out with the LSAT.

There are a number of benefits to principal attorneys/firms (i.e. cheap(er) labor, mentorship, many firms end up hiring articling students once their placement has concluded).

I was really surprised when I moved here and learned that you can just sit for the bar exam and then immediately open your own law practice, with barely any practical training. I imagine at one time or other, the US (or at least some states) must have considered some sort of experiential practice requirement and determined that it wouldn’t work. Too bad because I learned so much during my articling year. The articling program isn’t a perfect system, but I do believe it protects the public in a way that the bar exam alone could never do.

Posted Tue, 16 Jun 2020

There have been comments about the Wisconsin diploma privilege. I am originally from Wisconsin. As was indicated you only receive the diploma privilege if you graduate from one of the two law schools in Wisconsin. If you do not graduate from one of those two law schools then in Wisconsin you have to take a bar exam. I did not attend law school in Wisconsin so I am not familiar with the curriculum, but I assume there is some Wisconsin law taught. In contrast, I graduated from UPS (Seattle U) in December 1978. The only class I remember taking that really touched on Washington law was community property and that looked at community property laws not only in Washington, but in other community property states.

While having a curriculum that actually addresses the local law might address the unique local laws for Wisconsin, it does not address the concept of analyzing facts and addressing the legal issues, however law school tests may have done that. I took the exam in winter 1979. I know there has been changes in the exam since then so whether local law or analysis of legal issues as was the primary method of examination when I took the bar still exists, I do not know.

Two of my Wisconsin high school classmates who were intelligent (both were in the equivalent of honors classes with me in high school) were not accepted at law schools in Wisconsin. Both had degrees from the University of Wisconsin - Madison as I did. One went to school in California and the other went to school in Idaho. Both passed the Wisconsin bar exam. One went on to practice law and the other, after a short while of practicing law worked for Church Mutual Insurance Company and ultimately became the CEO.

The bar exam does exist in Wisconsin, but only for those who do not attend local law schools.

Posted Tue, 16 Jun 2020

It would be interesting to know about the JD programs offered at the Univ of Wisconsin. Have they adapted their curriculum? Do they require more practical, generalized classes (to take the place of bar prep classes) so that grads can **recognize issues as a generalist would (which is more or less what the bar exam does); and to ensure a general minimum competency (which I suppose is also what the bar exam seeks to do – though we can debate whether that is an effective test of that or not...)**

The [Univ of Wisconsin](#) has 650 students (so graduating classes of approx 200). And ranked #38 of 192 law schools

Marquette has 575 law students (so graduate classes of about 180). And ranked #100 of 192 law schools.

As for WA, IF we are limiting the diploma privilege to WA based schools (and I didn't think that to be the case, but instead, any ABA accredited school, and maybe I'm wrong about that...)

UW: Enrollment 497 (so graduating classes of about 150?) And ranked #44 among law schools. All in all, very similar to the Univ of WI

Seattle U: 489 full-time. Ranked #129 of 192. A bit lower than Marquette, but fairly close.

Gonzaga U: 336 students. Ranked #117. Similar to SU.

So there are similarities in the State's set of ABA accredited schools...

In the long past, I've heard the BOG and the law school deans get into public debates on this issue, including at a time when there was maybe one school with a lower pass rate for the bar exam than the others...

It went something like...

The BOG: "the law schools need to prepare law students to take the bar exam"

Law schools: "no, that's what the bar prep classes do."

The BOG: "ok, how about preparing law students to be lawyers, i.e. a general competency of State law?"

The Law schools: "No, because we don't know where our students will go on to practice. Instead, we teach students to think like lawyers, which transcends any one state approach"

The BOG: "then why are law grads unable to figure out how to file a simple lawsuit or note up a motion?"

Me: :-#

And then this resulted in, in part, that intro mandatory CLE that the WSBA created for new admittees (in part from the efforts of the then WyLD)

The law schools were also advocating at that time that non US, non JD students (so LL.B's) who then received LL.Ms at the WA state based school should be allowed to sit for the WA bar exam.

I remember an Australian professor advocating this on behalf of the UW. But, in Australia, the rules on admission were, at least at the time, even more stringent than that which was being advocated for WA since non-common law country law grads (in Australia) were required to take and pass a very difficult Law school class in the common law before being eligible (I'm sure there were additional requirements as well).

Posted Tue, 16 Jun 2020

I have been pondering whether other states have "diploma privilege" and one you didn't discuss, whether the curriculum is different in a state that has diploma privilege.

I can only assume that Wisconsin understands there will not be an additional class (Bar Prep) and rigorous testing (3-day Bar Exam) and adjusts their curriculum accordingly. If WA is going to make the intentional decision to move to this process, I would hope they do some research and roll-out a program that trains people to adequately protect the public (and the Courts ☺) from an onslaught of freshly minted lawyers with no clue. The Letter to the Supremes from Washington's 3 law school which I read, stated "...we do not believe that diploma privilege is currently ripe for consideration." They stated a "careful balancing of myriad interests" would be needed. They also discussed several options and considerations, some of which have been touched on in this discussion. What changed?

Frankly, I have always thought the Bar Exam was an unnecessary event based on a tradition and "hazing" than on protecting the public. I am certain I could have passed with the Bar Prep Course alone. But, the combination of the skills and discipline I learned during Law School, along with the torture of the Bar Prep and Exam combine to make what I believe is an effective gateway to practice that protects the public.

Since shortly after graduating and passing the Bar in 1993, I have often voiced the opinion the process needed to change, because the paradigm was outdated even back then. Third-year law students and fresh graduates no longer get hired into a firm that will nurture and train them (much like a medical residency trains doctors). I imagine at least half (no support for this, but a feeling) of the newly minted attorneys are not hired into firms that continue their training, but

instead, “hang their own shingle”. I have said we need to change the process to one that replaces the tutelage of a firm, which has been lost for many, or most.

Sadly, this seems to be yet another in the ever increasing list of things where it just isn't fair not to let everyone play and get their participation trophy.

I only wish I was closer to retirement so I could look at these times as “what are those crazy kids up to now” rather than “what the hell are we doing?”

A final parting thought would be that we should be able to engage in civil discourse. We should not be taking shots at others who do not regurgitate our thoughts exactly. We should be trying to listen with an ear to learning. Learning both the good in others' thoughts as well as the bad and then discuss from our position why we think their bad, is bad. Discussion. Learning. Growth. Improvement. Where has that gone?

Posted Tue, 16 Jun 2020

I was initially admitted in Montana via the diploma privilege. There was only one law school and the courses through the first part of the third year were all mandatory (no electives to any treat extent), attendance at classes was mandatory (including the Saturday morning class taught by the Dean in the first year) and the Supreme Court visited on campus pretty much once per quarter to sit in on classes, etc. So the no elective, mandatory attendance, etc. were viewed as essentially a trade off for no bar exam. And if you were going to practice in Montana, it was expected you would come out of the UM Law School. Some years after I left, the diploma privilege was eliminated. Of course I moved here to undertake my LLM and had to take the Bar Exam.

There was also an expectation (if not requirement) that you do at least one internship within the practice during the first two summers (prosecutors office, public defender, private law firm, etc. were all options and the lawyers in the state cooperated to make those available. From a bottom line perspective, by the time one graduated, you “knew where the courthouse was”, could draft and file a complaint and had appeared in argument before one or more judges in real life disputes.

I did not feel that I received special treatment as a result of the diploma privilege. Rather I earned my way into the practice of law by the strict program which I attended. But my view

would be that the diploma privilege should depend on the level of competency that is force fed to the law students and the supervision of the curricula and teaching by the Supreme Court or its designated agency/entity.

SUPPORTS NO BAR EXAM

Posted Sun, 14 Jun 2020

Consider this: The current situation has gifted us with a control group – i.e., attorneys who have not passed the bar but are allowed to practice. Let's see if there are any comparative metrics that can find any differences in the quality of practice and behavior of this year's cohort as compared to the 2019 cohort that passed the bar. An opportunity to get some real world feedback as to whether or not the Bar Exam truly sifts for "protection of the public" and "ensuring qualified and competent attorneys" I am not convinced it does.

June 21, 2020

The Honorable Chief Justice Debra L. Stephens
Washington Supreme Court
415 12th Ave. SW
Olympia, WA 98501

Dear Chief Justice Stephens,

I write in response to the Court's decision to grant diploma privilege to those applicants registered for this year's Washington State Uniform Bar Exam, and to the letter from Dean Annette Clark that appears to have informed the Court's decision. I write because I believe the Court's decision disservices all involved: Washington attorneys who persevered through hardship to pass previous bar exams, this year's bar applicants in this season of COVID-19 and civil activism, and the Washington public. In lieu of a wholesale cancellation of the exam, I would urge the Court to reconsider reasonable accommodations that support applicants in overcoming, not escaping, the hardships of this unprecedented season.

The Court's reversal, with no notice to the Board of Governors and no opportunity for input from members, is highly discouraging to those members of the Washington bar who persevered, sometimes through significant hardship, to take and pass the exam. For my part, my 3L year and bar application were disrupted by a diagnosis of breast cancer two months before my graduation in 2013. But with the support of UW Law faculty and classmates, I did graduate with my class. WSBA administration allowed me to defer my bar application until February. And after five months of independent study while working full time, I passed that exam. A dear friend and colleague contends with a chronic medical condition that affects her mobility and at times her concentration; in law school, this condition periodically impacted her attendance and ability to study. She too graduated with her class in 2013, and she passed the bar exam that July. Another friend is a gifted and dynamic young attorney who failed the exam on her first attempt. Although demoralized by that experience, she persevered, redoubled her studies, and passed. Many of us have known or lived stories like this. It is impossible to measure the confidence and strength of character gained by facing and overcoming such obstacles.

Even in light of these unprecedented times, I believe the Court's decision sends a harmful message to this year's graduates and other bar applicants. Dean Clark refers to the "dedication and resilience" of her students. But her request for a waiver for this group of students communicates not a belief in their resilience, but the contrary—that her students are not sufficiently resilient to overcome the challenges facing them. Instead of supporting them in successfully confronting these obstacles, those in authority propose to simply remove them. Many will no doubt believe the implicit message and always wonder if they really had what it takes to pass the exam.

Are there not intermediate measures the Court could order that would both support this year's applicants and maintain appropriate standards? These additional measures might include conferring extended APR 9 status on graduates and other applicants, enabling them to practice under supervision while preparing for a delayed exam. The WSBA might arrange for additional

sites and dates for the exam beyond even the July/September schedule and locations already proposed. The law schools might implement additional instruction, to support students whose studies have been undeniably disrupted, first by COVID-19 and then by civil activism in response to the killings of George Floyd, Ahmaud Arbery, Breonna Taylor, and many others whose names we do not know. These measures would send a different message to all students, including students of color particularly affected by recent events: We see the toll that these unprecedented obstacles have taken on you. We have confidence you can surmount these obstacles. And we will do everything in our power to support you and enable you to succeed.

Dean Clark and the Court wish to further the ends of justice. And I agree with Dean Clark's call for an initiative to review the current bar exam for testing bias. But the Court's decision is unjust to current members of the bar who persevered through hardships to meet all qualifications, including perhaps more than one attempt to pass the exam. Dean Clark and the Court wish to show support to applicants and graduates who have been affected by recent events. But this decision is not supportive. To the contrary, it is deeply erosive to the confidence of these future bar colleagues, sending as it does the message that they do not have what it takes to persevere and meet the standard this state has determined is required to ensure the public's access to competent legal representation. We can and must do better, for these graduates, for the public, and for the integrity of the Washington bar.

Sincerely,

A handwritten signature in black ink, reading "Jeanine Blackett Lutzenhiser". The signature is written in a cursive, flowing style.

Jeanine Blackett Lutzenhiser, WSBA #47613

June 23, 2020

The following is a compilation of comments taken from the WSBA Solo Small Practice, WSBA Family Law, WSBA RPPT, and Domestic Relations Attorneys of WA (DRAW) list serves. It also includes comments that were sent directly to Governor Carla Higginson.

Of the comments:

- Six support diploma privilege
- 53 oppose diploma privilege as granted
- 10 posted comments about their experiences with the bar exam and other jurisdictions with no clear opinion.

Comments Regarding Diploma Privilege from the Solo Small Practice List Serve

In Favor of Diploma Privilege:

Posted 6/18/2020

The Bar Exam and Diploma Privilege is something I have done a lot of research on (and am still learning more about). For those who are opposed to diploma privilege for these students there are some important things to know.

1) Attorneys from other states will not be able to take advantage of this. Only those were already registered for the summer bar are being granted diploma privilege.

2) The summer bar passage rate is typically around 70% not 48%

3) Though it has been around for over 100 years, there is no indication whatsoever that the bar exam is a reliable indicator of who should be admitted to the bar. **The best evidence we have is that the bar exam is not useful at all in predicting effective lawyers.** There have been a number of studies showing a strong correlation between LSAT scores, law school grades, and bar passage. However In a study commissioned by LSAC in which effective lawyering was measured across 26 factors. The study found no correlation whatsoever between lawyer effectiveness and grades or LSAT score. The NCBE itself recently instituted a task force to examine the validity of the bar exam. In its phase one report even the NCBE was forced to acknowledge that there are a number of shortcomings with the bar exam.

Setting all of that aside. The Supreme Court's decision is made. Undoubtedly, students who would have failed the bar exam will be admitted. But many more (statistically speaking) who would have passed the bar will be admitted without taking it. It is our responsibility as a community to welcome them all and mentor them as we would anyone else.

The main study I referenced is well worth reading for anyone interested and I'll post a link below. Lawyer effectiveness was determined based on 26 factors broken into 8 categories (also below). Those factors were



measured and tracked along 715 behavioral examples of performance that illustrated poor to excellent performance on each of the 26 factors.

To be clear this does not mean that law school is not valuable and I would not say that. What it does show though is something that is widely accepted in the education community, standardized exams are a poor indicator of intelligence and learning. While law school is incredibly valuable, there are studies (albeit none as rigorous as the LSAC study) that indicate that the way testing and grades are done in law school, the LSAT, and the Bar Exam correlates poorly with the skills necessary to practice law. For more on that I would highly recommend these two episodes of Revisionist History. <http://revisionisthistory.com/episodes/31-puzzle-rush>

<http://revisionisthistory.com/episodes/32-the-tortoise-and-the-hare>

LSAC Study: "Identification, Development, and Validation of Predictors for Successful Lawyering"

<https://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>

List of 26 Effectiveness Factors with 8 Umbrella Categories

1 : **Intellectual & Cognitive** - Analysis and Reasoning • Creativity/Innovation • Problem Solving • Practical Judgment

2: **Research & Information Gathering** - Researching the Law • Fact Finding • Questioning and Interviewing

3: **Communications** - Influencing and Advocating • Writing • Speaking • Listening

4: **Planning and Organizing** - Strategic Planning • Organizing and Managing One's Own Work • Organizing and Managing Others (Staff/Colleagues)

5: **Conflict Resolution** - Negotiation Skills • Able to See the World Through the Eyes of Others

6: **Client & Business Relations** - Entrepreneurship • Networking and Business Development • Providing Advice & Counsel & Building Relationships with Clients

7: **Working with Others** - Developing Relationships within the Legal Profession • Evaluation, Development, and Mentoring

8: **Character** - Passion and Engagement • Diligence • Integrity/Honesty • Stress Management • Community Involvement and Service • Self-Development

Posted June 18, 2020 - I am less concerned than other folks about this year's diploma privilege, for several reasons: (1) it's clearly a one-time thing, (2) time really is (was) of the essence for a decision to be made about the July exam - for the students/test takers to prepare for it, for the likely time consuming process of figuring out what alternative to use and then getting it implemented in time (and with sufficient notice to the test takers), lining up the technology, possibly revamping the structure of the exam entirely in order to fit whatever technology or exam administration is chosen, lining up venues if administration of the test is split up in order to accommodate social distancing (and the costs and staffing of multiple venues, assuming venues are even available and in the right phase of reopening), training proctors and setting them up with whatever tech is needed, etc etc etc.

At least there is now more time to focus on what changes to make for the winter exam and beyond.

Posted June 17, 2020 - I hope they do get rid of it. The bar exam is a waste of time and has zero to do with the actual practice of law. It just forces many students, who have already paid exorbitant sums for a three year education, to pay even more money for bar prep classes to learn a bunch of random things that will never be relevant in their actual careers.

Frankly the whole way lawyers are licensed is something that would not be tolerated in any other profession. It's major reason why many people are priced out of legal services.

(Follow up posting) I think I would probably respond the same way to that type of marketing as I do people who brag about their LSAT scores or class rank...

(Follow up posting) - "The exam (particularly the essay exam) is an excellent measure to test someone's ability to think on their feet, to work quickly, and problem solve."

Those skills maybe critical to being a good litigator, but they would be of much less use to a transactional attorney. There are many ways to practice law and the bar exam privileges those with a certain skill set.

Maybe the exam should be limited to those that want to have a courtroom practice?

(Follow up posting) I think that assumes those that fail do so because they lack knowledge or the ability to be a good attorney. Some of the best attorneys I know had to take it a couple times or more. Not because their knowledge was lacking, especially not in their practice areas, but because regurgitating massive amounts of information in a short period if time is not their skill set. But give them time and research tools and it's a different story. So they spent another 5 grand to learn a bunch of things they have never used again. Those of us who are good at tests had an easy time, not because we are better lawyers, but just because we're better tests takers.

Posted 6/17/2020 - I understand that this is a big shock but it is not a permanent change in the bar exam requirement. I am not in favor of diploma privilege but it wasn't up to me and I don't think it is the life-changing horror that others are fearing

I understand that it will affect about 650 people who have already registered for the exam and 7 people registered for the LLLT exam. Of the 650 people that will become lawyers through this WSC order, I would think that many will be working for the State or some agency or some law firm. This will likely mean supervision by more experienced lawyers and more training. Of those that go directly into practice for themselves, they may well be so anxious themselves that they take more CLEs, etc. to feel more confident.

I took the bar exam nearly 40 years ago. I don't think I currently rely on what I learned in a bar prep course for my present work. If I ever did. For example, I don't think I have thought of the UCC in 40 years. And, the things I needed to learn to be a family law attorney were really learned through experience, being mentored and attending CLEs. (By the way, don't forget to sign up for the always excellent WSBA Family Law Section Mid-Year being held this coming Friday and Saturday via webinar!!)

On the one hand, I could be jealous that these 650 people will not have to sit and take the bar exam but, on the other hand, I am also sympathetic about their need to get to work after being in school for so many years. I am willing to cut them some slack although I do wish the WSC had been more detailed so we could all understand what other options they considered and why they made the decision they did.

Frankly, as someone else said on this listserve, there are lawyers out there now that have some “drawbacks”. I have certainly met some people and wondered how he/she passed the bar exam at all. But, I have also met people who became lawyers through diploma privilege in other states before coming here to take our bar exam. One of them eventually became an excellent Administrative Law Judge!

My two cents.

Posted 6/17/2020 - The bar exam is an old fashioned concept like so many things lawyers do. I've taken two state bar exams and the patent bar. The only one of value was the patent bar because I learned discrete part of the law. I would advocate for an apprenticeship and then sitting for a specialty bar, if the person want to use it to show some extra proficiency.

What a great opportunity to think out of the box! And, re malpractice insurance, we can push to change how that works. I would think malpractice carriers would be happier to insure people who are being mentored.

Against Diploma Privilege as Granted:

Posted 6/18/2020

I am a bit late chiming in, but I do not agree with the decision to forego the Bar Exam requirement. I agree that the Bar Exam format itself may need to be reviewed, but that is a longer term problem to be addressed by a longer term solution. The merits of the Bar Exam itself are not what the Court was considering here (I don't think). As long as the Bar Exam is the standard, and until a different format for testing, apprenticeship, internship etc... is adopted, anyone admitted to practice should have to demonstrate that they can pass the exam. You shouldn't do away with one standard before coming up with a new one.

If I was graduating this year, I would honestly be frustrated. I would not want to feel like there was always an asterisk next to my qualifications... that I was a member of the year that the Bar was not required. Also, I took the Bar in 2003, and I know it has changed a lot since then, but I do feel I learned a lot through the Bar prep process. I do still lean on the basic concepts learned outside my area of practice... at least in the sense that I have enough understanding for me to spot an issue if there is one, and refer the matter that falls outside of my specialty area to another attorney. Legal issues don't exist in silos, and I think it is important to demonstrate some understanding of Contracts, Torts, Civ Pro, etc... no matter what specialty you plan to pursue.

I think offering some complimentary bar prep classes (for those who can show a financial hardship), the option to take the test at a later date if more time is needed to prep, remote testing options, and a temporary limited license to practice for those who already have (or will have) jobs lined up, makes a lot more sense.

All of that being said... since the decision was made... I agree with the sentiment that we need to welcome this class to practice and respect and support them as colleagues.

Posted 6/17/2020 - This is a very important point. I doubt they consulted the insurers on this!

This seems ill considered. Not because I think the test is a great indicator of a good lawyer. There's no substitute for experience. But you have to start somewhere. This is an opportunity to learn some key principles in a broad array of practice areas (perhaps before you've settled on your focus as a lawyer) and as pointed out to learn applicable law of the jurisdiction(s) the applicant intends to practice in. And law schools don't all cover the same subject matter so it may be the only time some encounter certain areas of law. For example, because Yale has such an unstructured curriculum (many core classes in other schools are just optional), there are JDs who only study contract and real property for the bar. At least this was the case when I took the bar in 1990. That's why the Yale pass rate was lower than for other schools like mine (Brooklyn law) which took a more nuts and bolts approach to curriculum.

And as pointed out, employers are likely to look at this class askance, as the one that didn't have to study for or take the bar. This decision is not helpful or fair to this class of applicants nor does it serve the Bar.

Posted 6/18/2020 - Wow, we didn't even need to go to law school...we could have gotten away with just reading The Firm and watching some Law & Order, perhaps Ally McBeal, and we'd be all set.

How was lawyer effectiveness being measured in those studies, anyway?

Posted June 18, 2020 - What will be the Bar numbers of these new attorneys?

I'm going to keep this in mind if I were to hire a new attorney.

Posted June 18, 2020 - All excellent points. I strongly believe that the Supreme Court should reconsider this order and I am willing to sign any declaration in support of a motion for reconsideration and/or support any other action ensuring that the Supreme Court to rethink its position. These recent graduates should be required to pass the bar exam at a later date, and in the interim be given a limited license to practice law, but only under the auspices of a licensed attorney. It is troubling that this Order was just dumped on the state bar members, without any input or feedback.

Posted June 18, 2020 - I am shocked by this action regarding law graduates. Will they be listed and numbered in the Legal Directory? Will they be required to inform clients they have not taken the bar exam or failed the bar exam? Will malpractice carriers go near them at all?

Posted June 18, 2020 - Well said, Joy. I fully agree with these points. (agreeing with post immediately below)

Posted June 18, 2020 - I respectfully disagree that the bar exam is a waste of time. For years, the bar exam has been a reliable and consistent indicator of who should be admitted to the bar. I for one do not want that function relegated to accredited law schools, where there is sometimes unchecked subjectivity in grading and admissions.

1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
800-945-WSBA | 206-443-WSBA | questions@wsba.org | www.wsba.org

The exam (particularly the essay exam) is an excellent measure to test someone's ability to think on their feet, to work quickly, and problem solve. My understanding is that the bar exam was never set out to ensure that admittees can practice law. The practice of law is ongoing.

Regardless, of the disagreements among us, there **should have been discussion** among the bar and the public about this. I do not understand how the Supreme Court has the authority to make this fast and wide-sweeping determination without studying the issue or seeking timely input. Were briefs filed and arguments made? **What was the public process?** I am concerned that my alma mater was able to reverse a decision with a letter? During these times of unprecedented government regulation and ordered shutdowns, we need more public trust in our profession not less!

I saw on Facebook that attorneys in other states are now interested in becoming barred in Washington through this loophole. For this and a number of other reasons, I am not in favor of this easy entrance/waiver to the bar to those who failed the exam before. I could be persuaded otherwise and perhaps this should be reviewed on a case-by-case basis, but my initial reaction is that disregarding long-term established guidelines for our profession – without a reasonable opportunity for the bar and constituents to weigh in—is a bad idea.

Posted June 17 and 18, 2020 - I would second Karen's comments about a longer term look at this. I question the usefulness of testing as any meaningful indicator, good or bad, per my prior comments. But I do think it should be a more permanent standard going forward. As things stand, if there is sufficient set-up and technology to execute the exam electronically or via alternate means, unless you're saying testing really isn't important on a more fundamental level, the testing should happen. Colleges are not handing out diplomas because of COVID, they are providing virtual testing.

As an interesting side note - many studies show that minorities overall are disproportionately affected by our "standardized" historical testing methods. A variety of reasons have been floated as to why but it does seem like the overall results is a valid observation. I do not know if there is any comparison specific to law school testing, though note that it's not just about differences when young or different quality schools, but even at elite schools (like Stanford) testing undergraduates, and some interesting observations there. But another topic.

The point here, given the current discussions at play in today's society (properly so in my view), for that reason alone it would be prudent to consider that and form a committee or such to take a serious look at this issue (though not solo - but rather as one of a multitude of problems with testing). This is not meant as a move to make things "politically correct" but rather to take note of what the current social movement brings attention to - the reasons for the differences to begin with and how to address those so that the results are meaningful indicators of what you're "testing" for.

So - I know I'm repeating myself - but I do encourage serious consideration of a general overhaul, as I've never felt standardized testing in any venue indicative of much other than do you test well, do you think in the same way that the test was developed and interpreted, and how do you retain information in the ways that tend to be how people prepare for such exams. I do think it should be a more meaningful overhaul, especially as COVID - even if we get another wave (which seems likely)- is no longer valid as an excuse given the alternate options for testing.

To waive it only because of an immediate circumstance that can be overcome is to say the testing isn't in the end all that important. Which I would tend to agree with - but if it's only for one class and you intend to go back to 'the usual' after that (suggesting you do think it's important), it's a problematic contradiction.

(Follow up post from 6/18/2020) - I hear where you're coming from but I would seriously disagree that the exam be based on what different area of practice you are in - much less given that you won't even know at that time (even if you think you do, you likely don't).

I applaud what we're trying to test for, but I still think there isn't much correlation being "quick on your feet" as a lawyer and "quick on your feet" in the context of sitting at a desk after cramming for an exam on topics you never cared about and never will (requiring everyone know a little about a lot is not a real test of anything but that you crammed well). Testing just flat out does not accurately or adequately test your analytical skills with the format of the test being used.

I have to admit I found this thought quite disturbing:

"My understanding is that the bar exam was never set out to ensure that admittees can practice law."

Then what is it for? (that's rhetorical - it damn well better be). Yes, it is an ongoing evolution. But if the bar exam is not some threshold measure of the ability to practice law, then it is pointless, and a false sense of security to the public and everyone else as that is precisely what they think the test is about.

I do think that the Court should have listened to the bar and am confused why it went against it so strongly. Does anyone know? I'd be curious if it is part of the current environment of vague distrust in the bar and the regulatory discussions of the last few years, and if that's true, that is a serious crack in the system that must be addressed. (I am not saying this out of paranoia, but various discussions from some people who are likely in a position to have some insight)

I do think that the Court should have allowed testing to go forward on any alternate means. So graduates can't get a B.A. just because they can't take final testing, presumably (maybe?) high school graduates will not graduate without their final testing, but a lawyer can now go practice law without the final testing?

I do think that the order should be limited to this year's grads and only this year's grads (not those who didn't pass before, not anyone from out of state, etc.), it seems there is some ambiguity there and it should be a strictly construed limitation.

The concept of a provisional admission is interesting I get the complications, such as hiring decisions have been made, firms are a bit on the hook as well (what if the lawyer then fails to pass the bar?), etc. But, it does something.

But I keep scratching my head going, why is this necessary with all of the alternate means of testing we have available?

I recognize that there would now be an "open book" component to the non-WA sections of the exam, but isn't that better than nothing? You can still corral that to a certain extent with the time limits, and again, better than no test at all. The Washington component is already online/open-book.

Which really is its own interesting question. Isn't open book how we practice? Isn't a significant part of the skill set to hone in on what you are looking for and be able to find it efficiently? Anything rote in your head (I keep

going back to the fact that 70% of the topics, minimally, will never be considered again for most lawyers) is moot the moment you walk out of that testing room. Not in the sense of not meaningful, but in the sense that you will need to double-check caselaw, the foundation law as against any particular facts, etc.etc. Frankly I've found that even after 20+ years, I don't put much in a brief that I haven't double-checked or gotten an updated case on to cite, and there isn't too much advice past an initial consult that I don't do a bit more than go off the top of my head. AND having open book means it was not about whether you were able to cram well or hold 100 topics in your head at the same time. So if we're going to test a lawyer's skills, open book seems completely logical and probably even a better measure.

I looked up the requirements for the bar exam having been a while since I took it. I found it interesting that the multistate professional responsibility exam can be taken up to 3 years prior to or up to 40 months after taking the uniform bar exam. And again the WA component is already on-line.

Which got me back to - why exactly are they doing this instead of some compromise middle ground? does anyone know?

Posted 6/17/2020 - I'm chime in briefly here. I think about 50% of the bar topics are archaic or superfluous. But while I primarily practice immigration (which isn't on the bar) and some low level criminal law, the core subjects like contracts, torts, civ pro, wills/trusts are all things I find useful in having a basic understanding of in practice. In addition Constitutional, Community Property and Property/LL-T law seem important in this state since we have our own twists on these oft inquired subjects which can vary greatly from other states and we should at least be aware of that.

We definitely need to focus it a bit and trim some dead wood from the exam so good lawyers aren't kept out, but I think it could still serve a purpose.

Posted 6/17/2020 - I have followed this debate on this listserve (and other listserves) with great interest.

I come down on the side of allowing provisional admission for newly minted lawyers, but require them to take the Bar exam in the future when it is practical to do so. Or allow them to take the Bar exam remotely. I would be comfortable with the examinees on Zoom so that they can be monitored. And of course sign a pretty specific list of *thou shalt nots* well in advance of the exam.

In this age of specialization, most of us practice in a few limited areas. I could care less about the UCC 99% of the time, but there's always that 1% that comes up (implied vs. express warranties, fitness for a particular purpose, or some esoteric bad check question).

It's not about mastering a whole bunch of substantive areas that most us are never going to use – it's about general knowledge, issue spotting, and reasoning your way through a hypothetical, which is what we do every time a new client walks into the office. If you have cross specialization (in my case, personal injury, workers comp, social security) so much the better. A client comes in and they think they have a social security disability question, but they may also have a workers compensation occupational disease arising out of employment that no one has spotted yet. Or they have a workers comp issue with potential third party liability that no one has thought about.

According to a post on another listserve (by a former Bar examiner who wrote the questions), they don't care if you get the specific law wrong. It's about spotting the issues and reasoning your way through a problem. If you need a score of 7 out of 10 to pass a particular question, if you've spotted the issue more or less correctly, you are probably already at a 7 even if you get the details wrong and as long as your reasoning is not incoherent. Law school is about learning how to think and how to reason, more than knowing the gory details.

The Bar exam is a rite of passage (which I never want to do again!), and a protection for the public against attorneys who manage to make it through law school but somehow don't have the intellectual tools to do the work. Bad law school students can and do absolutely end up being great lawyers, the skill sets are different, but the ability to think through a problem is a minimum requirement.

Posted 6/17/2020 - I have read all the emails. I have a few thoughts.

1. The bar exam does not guarantee competent lawyers. It does, however establish a floor and hopefully keep some of the really incompetent ones out. The exam that I took in 1978 was all essay. It required the applicant be able to analyze and clearly communicate what they meant. It should have been and should be open book.
2. Even with the diploma rule that the Court entered, there should be an ethics exam or required class.
3. The law profession has gone from being a "learned profession" to a profession to a trade, much like a real estate agent. We have ridden it down to the point where our Supreme Court experimented with legal technicians, a failed experiment. Even real estate agents and plumbers have to pass a test demonstrating some degree of competence.
4. When I started practicing there were 50 or so jerks in town. Everyone knew who they were and acted appropriately. Now there are 50 or so reasonable ones and they change from day to day and case to case. Civility has gone down the drain. So much so that the RPC's have gone through changes to limit the extent of advocacy.

We have done this to ourselves and if it is not going to get worse, the "profession" needs to start acting like professionals, not used car salesmen.

Posted 6/17/2020 - Hello, I'm sure that there are other professionals (such as doctors and teachers) where there is not always a correlation between their competency and their professional certifications. However, despite this, I believe a bar exam still serves multiple purposes:

1. It serves as promise to the public that this professional can be trusted with decisions that can have a monumental impact on their lives. The fact that a percentage does not pass suggests that tests do help insure at least some basic competency. Of course, there are always exceptions, but would you see a doctor whose qualifications were waived? Is it important to you that your children's teachers have certain credentials?
2. It serves as a lesson to those entering the profession of the importance of the work we do. I know that the time and stress of the bar exam, and the elation of passing, helped me understand that we hold a special responsibility in the world, despite what lawyer jokes suggest.

As a person of color, and the child of an immigrant, I understand the risks of exclusionary tests; however, I think the bar exam is one of those few tests that serves a greater purpose.

Posted 6/17/2020 - I am curious about mechanics of their law practices and the impact on the legal system.

When the lawyers in this group get malpractice insurance, will that somehow result in an increase of all lawyers' malpractice rates to cover the costs of this complicated situation?

When they join a WSBA listserv and ask questions, would you the lawyer who answers their question, want to know that they haven't taken a bar exam?

I know we don't discuss fees here, but will their pricing schedules differ and if so, would that affect law office management practices (by other lawyers not in their group)?

Will lawyers not in their group adopt an educational marketing strategy of including "... Attorney X has taken and passed a bar exam in the state(s) of _____ " and include other information on marketing materials and brochures?

In the event that attorneys implement this new reality in the practice of law in WA, it would be helpful to approach it in a thoughtful manner where we all present as professionals who can handle any crisis or change.

We will need to pivot our marketing strategies and show how we serve our clients' best interests and demonstrate the value of our time and money spent on prepping for, and passing, bar exams.

Posted 6/17/2020 - A couple of points. As for malpractice, the applications only ask about date of Bar admission and then if you've taken CLE. Because most of these carriers are in multiple states (and I believe I read in another thread not all states require a Bar exam), they probably have accounted for it somewhat. Now it is obviously possible that carriers in Washington might be looking to revise rates on new admittees but I have not heard that in any back channels (of course this is new so carriers probably haven't even seen it, or if they have, they've not yet had time to digest what this might mean for them).

For a different perspective, once upon a time in the State of Washington we had insurance brokers. A broker's role was that of representing the client primarily (obviously a bit of a dual role because you didn't want to put bad business with a carrier just for the benefit of the client). An agent's role was one that represented the company (because they had an appointment & a contract with that carrier). A broker had to take a test before receiving that license. As one who took that test and my only work experience had been in the lines of professional liability and some receptionist work for a home & auto agency, I had to take classes to help me beef up on jewelers block, yachts, trucking, contractors, etc. These were all areas I had zero intention of ever writing business within so it wasn't easy. But I will say that learning the concepts behind some of those things has helped me over the years – if at least to remember that I need to look deeper into a policy form before giving advice because I remember there was some little weird thing about those areas. Or for things like contractors to know that I only wanted to write simple contractors and not general contractors because of how many things to worry about in getting the policy right. And I remember that once upon a time when I was going to take the famous year off after getting the Bachelors before applying to Law school, it seems like I heard the same thing about law school & the Bar exam – it wasn't necessarily specific to the practice and in many ways was information you could forget immediately after and never have it affect your ability to be a good lawyer. And from the thread it seems that's still the case. But back to my point...about a year after I studied hard and passed my broker exam, the State of Washington began changing their rules that all insurance agents are now "Producers" and those that act in a broker capacity solely need to obtain a bond. No test, no extra education, no extra continuing education requirements, no longer a title of Agent vs Broker. I felt let down, and I witnessed some people branching into the broker field who I didn't feel were prepared

or knowledgeable about that role. To this day it still bugs me. So I would imagine that a great number of attorneys in the field will feel the same way.

Posted 6/17/2020 - Our state is an outlier (see <http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/status-table/>). As of now, our state is the only one that will allow both first-time *and repeat takers* to skip the exam. We are also the only state not requiring a set number of supervised hours before bar admission. (In Utah, 2020 graduates “must complete 360 hours of supervised practice under the observation of a Utah-licensed attorney by the end of 2020.”) <https://www.law.com/2020/04/13/ditching-the-bar-exam-puts-public-at-risk-says-test-maker/>

I am not in favor of the diploma privilege option as currently proposed. Instead, I am in favor of the hybrid solution recommended by Ms. Antipolo-Utt, the ABA, and others, that new law school graduates be temporarily licensed “to work under the supervision of licensed attorneys until they can take and pass the bar exam in their state,” balancing “concern for recent graduates with the need for public protection.” Also, I strongly support the rule applying only “to first-time takers of the bar examination, consistent with [the rule’s] emergency nature.”

<https://www.americanbar.org/content/dam/aba/administrative/news/2020/04/bog-040720r.pdf>

Also, as for longer-term action, I would urge due deliberation, especially given our state’s recent bar-exam pass rates. As two former Chief Justices for the Arizona Supreme Court wrote when voicing their support for the ABA’s proposal, “Law students, law schools, the profession, and state supreme courts are all under increasing pressure to find workable solutions to the problems created by Covid-19 for the class of 2020. All are working diligently to find those solutions. However, this is not a time to hurriedly discard processes and practices that have served important public protection purposes for many years.” In my opinion, their statement is applicable to both a COVID-19 solution and any long-term action.

<https://news.bloomberglaw.com/us-law-week/insight-covid-19-and-bar-exams-abas-proposal-strikes-a-needed-balance>

Thank you for passing along our comments, Ms. Higginson.

Posted 6/17/2020 - Dear Listmates: I, too, am unsettled that anyone could be allowed to enter the full profession of the law without completing all entry requirements for this profession, to include passing our uniform bar examination. I have passed both Washington and California bar exams, and the Certified Public Accounting exam, and I believe one of the cornerstones of any profession is a public demonstration of a minimum level of knowledge of (and competence in) that profession.

Two other comments: the current CPA exam is conducted totally on line, and as far as I can tell, there is no concern as to the integrity of the exam through this medium. Second, as a retired military officer and current War College professor, I teach the concept of a PROFESSION as a body of public servants who have demonstrated a high standard of knowledge and competence in the theoretical and practical concepts of the profession, INCLUDING a rigorous admissions process. The public demands this level of competence in exchange for their trust in our profession, and their belief that we, as professionals, are self regulating our membership to ensure the high standards expected of us in our society.

Posted 6/17/2020 - Hello All, No mixed feelings here. Being licensed in two states, Cali and here, it takes great pride and work ethic to study for and pass a Bar Exam. Passing the bar exam is a rite of passage.

Anything short of that is not going through a necessary step to gaining professional admission to our honorable profession.

The question then becomes, "Can we administer a bar exam remotely or virtually to other students, (through ZOOM or whatever) while at the same time accurately monitoring the timing and negate any chances at cheating during the exam, and provide very specific rules regarding the taking of the exam (such as not leaving your seat while taking the exam, or similar parameters) ? Because there MAY be a path forward in these high technology times. But, to be clear, I do not believe merely getting the J.D. without taking and passing a bar exam is enough, by itself, to gain automatic licensing admission.

Posted 6/17/2020 - One thing occurred to me -- how will Bar Exam-exempt lawyers ever be able to get malpractice insurance? I'd be hesitant if I were an underwriter looking at a few hundred or more lawyers who had never passed a Bar Exam. Is that not a threat to the public interest?

Posted 6/17/2020 - Many years ago I served as a Bar Examiner for several years and I was always favorably impressed by the leadership of Frank Slak, Joe Nappi and others and the integrity of the process. To be sure, no process is perfect and being open to a fresh look at our processes to stamp out bias is absolutely appropriate. I do not agree; however, with the quick and permanent response by the court without further consideration of options and Bar member comments. In my view, this is not simply the dispensation of the equivalent of the SAT precursor to college.

I am also surprised and disappointed by the low pass rates at our previous bar exams. It is reasonable for the public to expect that lawyers have been tested in some meaningful fashion and have achieved a basic level of competency (and our bar exam has never been about achieving or documenting a superior level or in depth determination of competency in all tested subjects). The Bar is a broad brush threshold determination of competency. There is also merit to engaging in a comprehensive Bar review study that provides a capstone to graduation from law school and I believe this level of study and diligence informally raises the bar of competence and diligence for all practicing lawyers.

I am not in favor of a permanent "pass" on new graduates taking the Bar. At most, a temporary arrangement, perhaps with oversight from an admitted lawyer, would be appropriate. It would be extremely helpful to know the many other alternatives and COVID19 mitigation options that were presented by the Board to allow members to weigh in on the same. Thanks again, stay safe and take good care!

Posted 6/17/2020 - I have mixed feelings about this.

On the one hand, I've been generally skeptical of jurisdiction-based exams to enter professions, especially ones where the exam is not tailored to the unique circumstances of the jurisdiction.

On the other hand, we're lawyers. We literally need to know jurisdiction-specific items to practice effectively in most matters.

I think the issues brought up are fundamentally separate and can be summarized as follows:

- 1) Given the current circumstances, should the Bar hold Bar admission exams at this time?
- 2) If exams are not held, what should we do with the applicants who would have taken the exam but cannot?
- 3) Should we require an exam at all or should we rely on law schools and firms to vet candidates accordingly?

I do not have good answers at this time. I do think at least a part of the reticence of current practicing attorneys to do away with exams is a sense of "earn your scars" that surrounds getting involved with many groups, though it is by no means the primary one, but one I do think should be acknowledged. I don't think doing away with the exam was the right move, as I think testing centers where individuals or small groups can effectively take the test in isolation would have been more effective while minimizing risk. I think any worries over cheaters is fundamentally as the exam format is so removed from the practice of law as to not make a difference (I've practically memorized my standard phrases and questions for my eviction hearings, but I still prepare notes just in case). However, I'm weary of just allowing them to just practice as is without some basic method of vetting as my biggest concern is the dunning-kruger solo practitioner.

Conversely, I think having the exam as the sole means of entering the profession does a disservice to potential clients and attorneys and I think a multi-year apprenticeship option that bypasses the exam requirement would be a good method of allowing talented individuals into the field in a way that still protects potentially vulnerable clients from outright incompetent counsel and representation. There's still issues of bias in those circumstances (anyone who thinks labor issues that exist elsewhere don't exist in the legal profession are willfully blind), but having the two options would go a long way to addressing issues with the current system. I would also like the idea of law schools being liable for an attorney's malpractice for the first few years of an attorneys practice if only to insure higher standards of the graduating class, but that's likely a step too far.

Still, as I explained to a client this morning when we got out of our telephonic eviction hearing, we live in irregular times, which means that the normal course of business is likely going to need to be modified to compensate.

To summarize: *shrug*

Posted 6/17/2020 - I agree that the diploma privilege admission should be provisional with a later completion of the Bar exam. I believe that taking the exam is an important part of the education of an attorney in addition to the vetting process an exam provides. I am concerned that having a group of attorneys who have not gone through the process creates the potential for that group to be singled out negatively in the future. Thank you for considering all the options.

Posted 6/17/2020 - I agree that this is a poorly considered move. This class will forever remembered as the "oh, you are in the no-bar-exam" class. Practicing law presents many challenging situations, and if one does not take and pass the bar exam, it results in a failure to prepare the law graduate and leaves the public at risk.

Posted 6/17/2020 - I can understand making a temporary exception for new law graduates during these “surreal” times (as the Dean puts it), but it should be a temporary exception for each individual attorney who benefits from it. The diploma privilege admission should be provisional, and these admittees should be required to complete the regular admission process within a reasonable time after the current crisis is over.

The Dean’s letter advocates for longer term action, as well – she wants to:

establish a study group to evaluate whether the bar examination is the best way to determine admission to the bar....We are aware of studies that suggest there are biases in testing and that there are more reliable ways to determine admission to the bar.

She may be right about that, and as an employment lawyer, I certainly support making sure that job-entrance tests are professionally validated. But in fairness to all practitioners, and to the public we serve, unless and until we have a new WSBA admission process, every WA lawyer should have to be vetted through the existing process.

Posted 6/17/2020 - I am not happy with this either. And, frankly, if I were a 2020 grad I would always wonder about not having passed a bar exam - how legitimate my license was. I think this is a bad idea.

Posted 6/17/2020 - What can we do now? Is there any effort to ask the Court to reconsider or to alert the public?

I am so frustrated with the Court’s actions. It seems as though they are actively working against us. The bar is a good indicator of who will be a good attorney and frankly I don’t want people being admitted to practice who can’t pass the bar exam. Not to mention all the time and money practicing lawyers spent to pass the bar.

Thank you for sharing this important information.

Comments from WSBA RPPT Section List Serve

Posted 6/22/2020 - List serve colleagues: I, for one, plan to write to the Supreme Court on this issue. This broad and sweeping decision to exempt all applicants for the summer 2020 bar exams to never have to take the bar in Washington is too broad. First, bar applicants who previously failed the Washington bar, no matter how many times, are now automatically admitted if signed up for the Summer 2020 exams (July and September). Second, the last bar exam pass rate was only 49%. When I took the bar in 1989, the pass rate was only 62%. I certainly have not followed bar passage rates in Washington, but I think they have varied between about 45% to 75% over the last 30 years. The exam is a competency measure to protect the public and to ensure a certain level of competency to practice law in Washington. We are a profession with many technical rules and requirements and the public deserves the protection the bar exam provides.

A more balanced approach could be that the 2020 summer exam applicants are admitted on a provisional basis and can practice law so long as they sit for the bar exam by the summer of 2021. Their admission to the bar would remain valid until the results are announced for the summer 2021 exam in the fall of 2021. If they pass that exam their admission continues. If they fail the bar exam in either the winter of 2021 or summer 2021, then their provisional admission ends until they take the exam again and pass. This approach balances the effect of the Corona Crisis on studying for and passing the bar exam during the crisis and allows for gainful employment in the

interim. This approach would also protect the public because those who ultimately have a problem passing the exam will not be admitted on a long term basis until they can show their basic competency to practice law.

I understand that this approach of temporary licensing is being used by the Washington State boards that license dentists and pharmacists; similarly it should apply to lawyers. I encourage each of you to write to the Supreme Court on this important issue for our profession.

Posted 6/23/2020 - I agree. Perhaps the most disturbing part of this situation is the utter lack of process the Court apparently chose to pursue. They are not subject to something like the federal APA, I realize, but we are still in a state that respects the rule of law, proper processes, reasoned decision making, and thoughtful contemplation of dramatic changes to long-standing rules and norms.

In my view, their decision is wrong at minimum because of the apparently permanent nature of the admission to practice; and the (again apparently permanent) application to re-takers (truly just a shocking “wave of the wand” by a court entrusted to safeguard the public in its management of a very powerful profession).

But even if their decision were right on the substance (or eventually is determined to be right on the substance), the utter lack of process, adversarial presentation, notice and comment — anything — is just plain shocking. If they indeed received a letter from law school professors on June 10 and drafted and issued an order on June 12 that is so fundamentally “disruptive of the norm,” then they violated the spirit of their inherent authority to manage the bar, if not the literal law applicable to their authority to manage the bar.

To me, this order goes far beyond any other orders or oversight they have provided to the recently tumultuous WSBA. I have not reacted at all to any of those orders or oversight efforts. To this one, I reacted with shocked disbelief. We few who did cannot be alone, and we cannot just be discounted as blind adherents to the way things have always been.

Posted 6/23/2020 - While an argument can be made that those who aren't able to take the test under these special circumstances should get a license (and yes why not make it provisional?) I think it is very poor judgment to grant a license to someone who flunked the test!! This doesn't make sense to me.

Posted 6/23/2020 - This is a very short version of my personal experience and opinion as to why I believe eradicating the attorney bar exam is not the way to go.

I entered law school in my mid-50's, which is another story, but here is what I would (if you allow) add to a petition:

I have some mis-givings about this, especially in the light of the basis for making the request by Annette Clark.

Dean Clark speaks to the recent trauma experienced by those who would be in a position to be taking the Attorney bar exam.

While I was in law school (remember, graduating in 2-16), I lost several close family members. It was traumatic, but I kept compartmenteling my feelings because classes and studying for exams was the priority.

I took several bar prep classes and was ready to headlong into the exam process. Once I received my diploma, however, I found myself constantly distracted while studying for the Bar. I also hit a point where my brain just did not want to retain the information I was working so hard to memorize.

I took the July exam, but failed passing by a few points. I was not surprised with the fail. Afterwards, I took a month to just process the trauma and loss of my close family members.

This did not prohibit me from gainful employment in the legal field as a paralegal.

After having the chance to process the loss, my head was in a much better place. I studied again and took the Bar the following February and passed with a couple dozen points to spare.

I am sharing this because, although it is just my own personal experience. in hindsight, if I had passed the first time around and gone straight into practicing law (without having processed my trauma, loss, grief), I do not think I would have been as effective for my clients.

I do not agree that the Bar exam is only about memorization, it includes other elements, including endurance. My personal opinion is that lawyers should continue to take the Attorney Bar exam, but after giving themselves time to process their own personal feelings and issues.

Comments Sent to Governor Carla Higginson:

In favor or Diploma Privilege:

Sent 6/19/2020: I'm writing in response to your post to the Snohomish County Bar Association. You encouraged us to send letters in regards to the Supreme Court's recent decision to grant diploma status to 2020 law school graduates, so that is what I am doing.

I agree with the Supreme Court's decision. In fact, I do not believe a bar exam should ever be required regardless of public health concerns. However, in light of a global pandemic, the Court's decision was even more necessary. As a recent law school graduate (University of Washington, 2018), I feel it is my obligation to tell you that I do not feel the bar exam is necessary to determine an individual's ability to practice law. My multiple choice contracts score, for example, in no way relates to my ability to be a successful and skilled public defender. Yes, we had to go through the bar exam, but that does not mean it actually relates to one's ability to practice law. That is what law school is for. The bar exam, by its very definition determines competence. If WSBA is concerned that individuals graduating law school do not have the competence to practice law, that speaks to WSBA's issue with law schools' graduation requirements rather than the efficacy of the bar exam.

I also find it concerning that you omitted relevant information from your message to the entire Snohomish County Bar Association regarding bar exam pass rates. For example, you failed to include the summer pass rate (which is much higher than the winter pass rate) and the first-time taker pass rate (which is higher than the overall pass rate). In doing so, you are implying that most people granted diploma status would not have passed the bar. That is incorrect and misleading.

There are other problematic implications in your message as well. We as a society know that standardized tests, like the bar exam, are biased. In fact, there's been a recent push by educational institutions—including the largest educational institution in our state, University of Washington—to stop requiring standardized tests like the GED, SAT, and ACT for admissions due to their racial and non-native English speaker biases. The bar association should move towards racial justice and equity in the legal profession, rather than requiring outdated, problematic, and expensive tests that only maintain the (rich and white) status quo of the legal profession. I hope you feel the same way.

I am looking forward to you sharing my perspective with the entire Board.

Against Diploma Privilege as Granted:

Sent 6/19/2020 - Hope you are well and negotiating these covid19 days as best one can be expected to. Thanks for authoring the article in the Snohomish County Bar News regarding the June 12, 2020 Order Granting Diploma Privilege issued by the Washington State Supreme Court. Count me as a vote strongly opposed to waiver of the requirement that WSBA applicants need to pass the bar examination as a pre- condition to be admitted to practice. Remote on line testing is not that tough to implement. Particularly irked at the fact that someone who has previously failed the examination (1 or more times) gets a free pass because they signed up for another try. Outrageous is how I see it. Passing the exam separates the wheat from the chaff, the qualified from the inept and/or unqualified.

Sent Directly to the WSSC and Copied Governor Higginson 6/18/2020: I write to oppose the plan to allow attorney applicants to practice law without passing the bar exam. When I wrote ethics exams and graded them in the 1980s I was appalled then by the high failure rate on the ethics portion. It appears that the current failure rate is even higher.

When you let every applicant practice law, you put the public at serious risk. It is enough that some of those who pass the test turn out to be barely competent or unethical. I observed several of those in my cases over the years. They dishonored the profession.

Use as many locations as necessary to provide proper distancing, and provide masks. But hold to Washington's standard.

Sent 6/19/2020 - Do not abandon your public protection duties by waiving the bar examination passage requirement. Condoning the practice of law by numerous persons who may never be able to pass the examination

is not in the public interest. Other measures may be taken to mitigate demonstrated extraordinary difficulties some candidates may be facing with regard to preparing for and taking the examination.

Sent 6/21/2020 - I agree with the positions outlined in the emails below. I am not in favor of the proposed diploma privilege option. I think a temporary license approach is most appropriate to allow new grands to earn a living while being appropriately supervised, and then being required to take the bar exam like all of us had to do in the past and all of those coming later will also be required to do. Thank you for your work on this matter.

Regards

Comments from WSBA Family Law and DRAW List Serves

OPPOSED TO DIPLOMA PRIVILEGE

Posted Wed, 17 Jun 2020

As one of the guilty ones who introduced a social story, let me bring this back to the point: Life is full of unfair events and circumstances. The bar exam, in and of itself, is one of them. That so many have had a range of bad experiences during the exam and somehow still managed to pass proves the point that despite all that, folks are able to adjust and move on.

It is no different for the class of 2020, or those of the class of 2019, 2018, 2017, and earlier who for one reason or another, have not passed yet.

As the old platitude goes, what does not kill you will make you stronger. Well, I bet if they administered the exam, despite COVID-19 and BLM demonstrations and police action, you'd probably see a similar pass rate to last year's summer exam. Someone mentioned it and I'd emphasize that traditionally, the winter exams have lower pass rates in large part because they usually consist of more repeat test takers.

I would not sell the 2020 examinees down the drain so easily nor underestimate their ability to adapt to the circumstances. Good lawyers do that, and that is who should be granted a license (and the privilege) to practice law. We can no longer discern the difference for these new licensees, and that it to their detriment, our detriment, and to the public's detriment.

Posted Wed, 17 Jun 2020

Whether or not you knew it, you were prepping for the bar exam by your method of study - identify the issues, identify the applicable law, and reason to a conclusion. But not only is that preparation for the exam, it's preparation for actual practice.

The difference between the multi-state and the essay questions is that, in the essay question, it is up to the examinee to spot the issues. If you are given a choice of possible issues, as in the UBE, that will also clue you to an issue that you may otherwise have overlooked. Same with identifying the law on the issue. With the essay questions, the applicant does not have any hints.

When a client walks into your office, and says "I need help," they don't give you a choice of issues or legal principles to choose from. Those issues and legal principles are buried in a jumble of facts that they spill out. It's up to you to spot the issues and to know, or research, the applicable law. You are not given a multiple choice. And that is exactly why Washington held on for many years to writing our own essay exams instead of using the multi-state. We were testing applicants to see if they had the minimum skills to hang out a shingle. I think it was a mistake to give up the essay exam and go to the UBE.

But having said that, I don't know why the passing rate with the UBE is lower than it used to be with the essay exam. Perhaps the UBE is tougher that I think - never myself having taken the multi-state. But even if it is tougher in some ways, I don't see how it tests the ability to spot issues and applicable law (without hints - as in actual practice) and reason to a supportable conclusion.

And I think it is dangerous to assume that any law graduate has those skills without some method of verification.

Posted Wed, 17 Jun 2020

BarBri forced me to learn every little obscure law and rule I missed in law school, and that information has come in handy at the strangest times. The bar exam may not be everything, but it does test the knowledge you need to be a competent lawyer.

Posted Wed, 17 Jun 2020

You can pretty much figure out if a lawyer knows what they're doing in a couple of weeks, but you can't know if they can handle whatever it is in their particular field that is stressful, until you administer some kind of stress test. We stress test people, buildings, bridges, etc., to know they can handle the load in the real world when the public depends on them.

A do or die stress test that is the bar, which is easier for some and harder than others, is unfair, but nonetheless a stress test that is better than no test at all, when it comes to the public's right to have at least on paper, competent representation, especially when we ask them to take it on faith that we regulate *ourselves*. Think about it. No one else gets to do that the way we do. Everyone else has a state licensing board or agency of some kind and the requirements of their licenses are controlled by legislation. The Bar Act says the Supreme Court should figure that out, and the Court delegates to us (not the public at large), via the BOG.

Posted Wed, 17 Jun 2020

I think it goes back to the discussion about the Bar Exam being partly to test people's behavior under stress.

I have yet to have a Trial that went exactly as planned.... Gotta be able to think on our feet and do it quickly and under stress.

Posted Tue, 16 Jun 2020

If the candidates no longer have to take and pass the *Bar* exam, why do we need a Washington State *Bar* Association? Perhaps we should now abolish the Bar Association, and anyone with a J.D. can practice law.

Posted Tue, 16 Jun 2020

I found out I digested and integrated the law after I took Barbri, the prep test. Concepts jelled for me and have stuck with me over 30+ years in practice from the bar review prep process. I relied on the Barbri manuals for my first years of practice. The effort was rewarding.

They might change the rules later on perhaps. Future employers might discriminate if you don't pass the bar.

Posted Tue, 16 Jun 2020

Does this mean that other professions do not need to take a licensing exam this year? Essentially all professions have a qualifying exam to show minimum competence for the profession. Examples are doctors, nurses, "professional" engineers, electricians, plumbers, accountants, etc., etc. The whole idea of passing a professional licensing test is because merely doing the work to get the degree does not equate with competence to practice. It's a consumer protection thing.

If merely obtaining a degree was sufficient, then why do so many, with degrees, fail the exam? Perhaps it is test taking ability. A lot of people may freeze up on the first taking, realizing that after all that education it all comes down to passing the single bar exam. They might have a job that is contingent on passing the bar (I know my first job depending on me passing. The small firm did not need a Rule 9 hanging around for a year, but needed a lawyer. They weren't willing to keep on someone who wasn't licensed.) There can be all kinds of pressure to pass - I'm sure we all remember that experience. But, nevertheless, there must be some way to assure the public that, if someone hangs out a shingle, that person has at least a minimum level of competence.

I was a Bar Examiner for the Washington Bar in the '90s. Back then we wrote, and graded, our own exams. No multi-state. We had a procedure that was designed to be fair to the examinees as well as ensuring a minimum level of competence. There were over 100 members on the Committee, divided into several sub-committees. One group came up with the subjects for the examination. Another group wrote and graded the questions. And a third group handled appeals for applicants that did not pass. And all applicants were anonymous.

It went like this. There were 24 questions in different substantive areas of the law and ethics. As one of the 24 who wrote the exam, I was assigned a topic for examination. I then prepared the question which was a narrative of a fact situation, with a question at the end to be answered by the applicant. The questions were supposed to be real life situations that any lawyer might encounter in daily practice. The question was a fact pattern that a client coming into your office might present. The examinee then had to identify the issues, identify the applicable law, and apply the law to the facts to reason to a conclusion.

After writing the question, the examiner also had to prepare a model answer, and also had to write a brief on the model answer to support everything with statutory law and court decisions. We could not put obscure issues into the questions, but had to stick to basic everyday situations. Then, after writing the question, the model answer, and the brief, each examiner had to submit all this to another committee which reviewed all this, critiqued it, edited it, and sent it back for revision. I never sent a first draft that was accepted intact. Usually the question was revised at

least two times, sometimes more, before everyone agreed that the question was fair and was clearly written before it appeared on the exam.

In grading the exam, we were to give a maximum of 10 points. And the grading was not arbitrary. There were at least ten issues in the question. To get a point, the examinee had to (1) identify the issue [the main focus of the exam], (2) identify the law on that point, and (3) apply the law to the issue and reason to a conclusion. The main thing was to identify the issues presented. We recognized that in real life, the lawyer can always research the law, but if the examinee could not even recognize the issue in the first place, then where would they start their research? We did not look for a "correct" answer, since many issues have different opinions - as we all know from our daily work. And if a mistake in the law was made, that usually did not matter. [I recall one question regarding ex parte TROs. I got answers that said the TRO could not be longer than 7 days, or some said 30 days, maybe even 45 days. But that was not graded down, as the point we were looking for was that the examinee knew that an ex parte TRO could not continue for more than a short time without a hearing on the merits with the opposing party, As long as they knew that the OP had to be served and have an opportunity for a hearing, they got credit for the answer.]

To pass, the examinee had to score 7 out the 10 points available. But if they scored only 6 points on one question, but 8 points on another, they were OK as they had to only average 7 points per question. Thus someone could do poorly on the UCC but ace the Torts question and still pass. They had to pass the ethics portion separately, though.

When all grades were in, we met as a committee of all 24 examiners, and reviewed all questions for those who only missed the total points by a few. Usually, a few examiners could find an extra half point or so, so people that initially ended up missing by maybe 8 or 10 points total out of 24 questions [maximum score 240, minimum 168], would usually pass. So most with 160 or above would pass with a second look at their answers. And even then, if someone still did not make the cut, they had the right to appeal. The appeal went to an entirely new group of examiners who would regrade the scores. And if they still did not pass, they were sent the "model answer" prepared by the examiner, plus the three "best" answers by other examinees. I'm not sure how the UBA is scored as that is after my time on the committee, but my impression is that it is done by computer and no fudge room. Harsher!

My point is that the Bar Examiners really bent over backwards to be fair to the examinees. But we also had to keep in mind the Bar's duty to insure the "minimum" level of competence. Because we wrote our own questions, we could make the questions as close to real life as possible. Usually, "client walks into your office and presents the following:" Again, the exam was meant to insure that the applicant could at least identify the legal issues presented in the fact

pattern. If you could do just that much you got your 7 points and passed. It was meant to be as close to a real life situation as possible.

Back then, we usually had a pass rate of about 80%. Now that the Bar has gone to the Multi-state, the pass rate is considerably lower, and I've never been a fan of the Multi-state. But there were a number of exam papers I saw where an examinee got only 2 or 3 points, and some were almost incoherent. You had to wonder how they managed to graduate from law school. And they had to have a JD from an ABA school just to sit for the exam (or have completed the "apprenticeship" program).

And by the way, we never knew the identity of the examinee. Each examinee was given a number, and that's all we ever saw. I had no way to know the person's age, race, gender, where they went to law school, or anything else. It was simply a test to see if the examinee could identify the legal issues in the question, know something about the law on the issue, and reason to a conclusion.

So, based upon my experience as a Bar Examiner, back when we passed 80%, I have to say that about 20% of those admitted under the new Diploma Privilege, are being unleashed on a very unsuspecting public. Let the legal buyers beware.

Posted Tue, 16 Jun 2020

I still firmly believe there has to be some kind of test for admission. I'd even be fine with no testing but an articling requirement that is done in all other common law countries except the US (Canada, UK, Australia, NZ, etc.). The JD is nothing more than a certification that you passed classes. The bar exam is nothing more than a test to say you can spot basic issues and work under pressure, something family law lawyers have to do all the time. It's also a test of one's willingness to devote themselves to a singular task for a sustained amount of time. That's a lot like a trial, where for months or perhaps over a year or two you study for a trial, then under intense pressure, you put on a trial before a judge, or judge and jury.

Bar exams do not guarantee that those that pass will always be ethical. It does not ensure that they will not commit professional negligence either—that's why they invented malpractice insurance. But it does represent a measure of basic abilities to tell the public at large that a licensed lawyer has some certified basic abilities that they ought to be entitled to expect and rely upon. If the UBE or whatever test they use represents a poor measure of deciding if someone should have a law license, then fine, research and propose another testing method.

A quick note on testing. I tested in 2003 under the all essay format Washington had. I thought that was superior to multiple choice exams. There are all these multiple choice test taking

strategies to increase the odds of a successful answer that have nothing to do with knowing anything about the law. When was the last time you walked into court and the judge said, "are you a.) making a motion for temporary orders, b.) making a motion to ask for an order to show cause, c.) dreaming that you're standing in your underwear in my courtroom, d.) seeking CR 11 sanctions, or e.) all of the above. I'm sure there were reasons for adopting the UBE, that I bet I'd disagree with. If our most basic tool to practice law involves writing, how are multiple choice questions better than essays [he rhetorically asks]?

It bothers me less than most that it's unfair to have to test in the circumstances we now find ourselves in. To clients who complain that the system is not fair, and that they want fairness, I usually respond like this: Our system does not guarantee fairness. It guarantees, or tries to guarantee, a shot at fairness. In other words, due process is all about you get a day in court to tell your story, but no guarantee the judge or jury will agree with you. To new grads I'd say this is only the beginning of a lifetime of career unfairness they will encounter. Your job is to find solutions to unfair situations. If you can't handle this hiccup, and trust me, if you practice long enough, it will be just that, a hiccup, what are you going to do when _____ [fill in nightmare scenario from case] comes along?

Most professions have some kind of licensing test. The common thread running through them has to do with public safety and consumer protection. Doctors, pilots (private and commercial), dentists, electricians, police, fire fighters, CPAs, commercial truck drivers, real estate brokers and agents, etc. It used to be used improperly to control the numbers of people entering the profession. That was especially so through the mid to late 20th century. It's still a reason, that not everyone wants to admit. However, it's not as important anymore as the public protection aspect of such exams. Don't believe me?

Who here among us would let a surgeon without any board exams operate on their children? Are you comfortable on the road if the operator of the 80,000 big rig next you was never tested to see if they know how to check their tires or brakes before starting the truck down a 10% grade? You good with being policed by those who graduated a police academy with no psych testing? How about flying aboard a jet with untested pilots who graduated flight school? I know these tests do not weed out all the bad ones, but we do them across all these industries because we know we get a large number of otherwise unqualified folks out of those professions.

Do I have compassion for those that spend enormous sums or take on impossible student loans to earn a JD? Sure. But they did so knowing they'd have to take an exam to get a license. On balance, I'd be fine with temporary licenses, good for a year, so they can earn money and move on, but still require a test to obtain a regular license. History shows us that we have been through far worse times and somehow folks managed to take and pass bar exams. I'm not saying they should suffer just because we did. That would be silly. I'm saying if they are not tested, even in difficult circumstances, and there are always circumstances, they are not qualified.

How does the Supreme Court look the public in the face, with a clear conscience and declare, "We conferred licenses on these folks because when we weighed your interest in having competent legal representation versus the JDs' interests in getting a law license, we decided, without any study, or input from the public, only from financially interested law school Deans, it was better to put you at risk, rather than take reasonable steps to protect you." It's as if they are now spoon feeding those who would revive a Bar Act repeal with the perfect reason lawyers should not be a self-regulating profession. I'd vote to repeal the Bar Act and bring lawyer licensing under the DOL if I were a member of the legislature who's been told all this time to worry, because law is a self-regulating profession with high standards of admission.

To the JDs themselves, I'd at least want to know that if they want to be tested, since they've already paid for it, that they be allowed to test and have it say as much on their directory listing. If they took and passed bar exams in 2020, that would give licensees a bit of an asterisk to say, "I did it despite the world being nuts." Now, the opposite asterisk will accompany them all. An asterisk of derision for being licensed without demonstrating (via some kind of test) that they earned their licenses.

Ask yourselves this: With all things being equal, if the only difference between two lawyers is that one passed the bar and the one who did not, who do you hire?

And if the WSBA, by posting whether a lawyer has a history of discipline, intends to give the public fair warning, maybe they should similarly advise the public that 2020 admittees to the bar are untested? Maybe do so and allow the admittees to test when they feel up to it in order to remove said asterisk.

To those that say some folks don't test well, but are otherwise great lawyers, I get it. Even with testing accommodations, sometimes it's not enough. That is the unfair part of life. I'm happy to give tools or accommodations to those who need it to unlock what's in their minds and get past the issue holding them back. But at some point, some way, some how, all licensees are going to have to perform under tremendous pressure. Society deserves qualified lawyers who can perform under pressure and only a test of some kind, even a pressure filled one, will tell us if they can do so.

Posted Tue, 16 Jun 2020

I practiced in Wisconsin in the late '70s. Wisconsin has a diploma privilege, but you have to graduate from a law school in Wisconsin to take advantage of it. Having come from Washington, I had to take the bar myself. My friends there who had graduated from UW-Madison or Marquette law schools felt like prisoners in the state at times because those states that have reciprocity usually require that you pass some bar, somewhere.

I also wonder whether this year's graduates will forever be known as the Class of 2020, who never had to take the bar exam. .

Posted Tue, 16 Jun 2020

The short history of law practice in America...

Birth of a Nation until 1855: **Apprenticeship** (like “Article-ing” in Canada and Australia and maybe the UK has that)

1855 ish. the Bar Exam: The **first state** to employ a written version of the **bar exam** was Massachusetts, in 1855.

To Law School...”The next step in the evolution of the **bar exam** was diploma privilege, meaning that lawyers could practice law once they received their law school diplomas. Wisconsin is the only jurisdiction that still honors diploma privilege.” <https://blog.adaptibar.com/the-evolution-of-the-bar-exam/#:~:text=The%20first%20state%20to%20employ,that%20still%20honors%20diploma%20p rivilege.>

Posted Mon, 15 Jun 2020

Here is the text of an email I just sent to the supreme court.

Dear Justices of the Supreme Court:

I am disappointed in your decision to grant the diploma privilege to those graduating from ABA accredited law schools. I realize that there is a pandemic, but it appears that you are granting permanent status to these individuals.

141 out of 296 participants passed the winter 2020 Washington State bar exam. That is 47.6 percent. That means that, under the rubric that we have been operating under for decades, 52.4 percent of the recent bar applicants are not qualified to practice law. I assume the percentages would have remained similar if the bar had been given now. That means that more than half of the young lawyers entering the legal field now are unqualified. Is that the purpose of this rule? How does that protect the public? Are you going to retroactively allow those who did not pass the most recent bar exam to now practice? If so, what about past exams? If not, why

not? Why are those applicants any less qualified than those who are getting the diploma privilege now?

You could have allowed these folks the opportunity to practice contingent on them passing the bar when it becomes safe to give it again. Those of us who passed the bar wonder why we were put through that strain. Those who failed wonder why they cannot start practicing now, and why they were deprived of the right to practice from the time of their bar exams until now. Your decision was not calculated to protect the public unless you believe that the bar exam was never meant to determine who was qualified and to therefore protect the public. If that is the case, what was the purpose of the bar exam?

Posted 15 Jun 2020 (re letter to the Court immediately above)

I like it. Thank you for sharing.

Posted 15 Jun 2020 (re letter to the Court immediately above)

Good letter.

Posted Mon, 15 Jun 2020

Apparently anyone with a law degree can now be a lawyer. God help us.

Posted Mon, 15 Jun 2020

Bar exams are exams of minimal competence. If you have been in practice for more than one hour, you know that passing a bar exam does not mean a damn thing in terms of the quality of legal services an individual might render or the ability of that person. How many of us have encountered a lawyer (colleague, opponent, etc.) and have scratched our heads wondering "Did this person really pass a bar exam?"

Now we no longer have to ask.

Posted Sun, 14 Jun 2020

The bar exam is truly a rite of passage. We all have our stories to tell. Yes, I'm not happy that people are being admitted without this rite of passage. But what about the people we know who have tried two, three, four or more times to pass. They graduated from ABA approved schools but they have been denied access to our profession. Doesn't it seem unfair to grant a pass to new graduates? I wonder if some of these folks can petition to be given access?

I can't believe there is not a better solution.

Posted Sun, 14 Jun 2020

My concern is for the clients who will have absolutely no notice that their attorney or legal technician lacks the basic legal knowledge needed to pass a Bar Exam or LLLT Exam. The LLLT Exam doesn't require applicants have degree ABA-accredited program and has a 66%+ fail rate. At least the attorney applicants are graduates of ABA-accredited programs.

The Bar Exam or LLLT Exam may not be everything, but there has to be some means to screen each applicant's knowledge of law and ethics, and the applicant's ability to spot issues. At least with the Bar Exam, a good Bar prep course (e.g. BarBri) helps ensure you learn anything an applicant may have missed in law school, and includes practice exam questions to gauge issue spotting.

Posted Sat, 13 Jun 2020

Did I miss something? Did anyone know this was even being considered as an option?

The content of the bar exam is archaic and unnecessarily sadistic. But there is something to be said for the discipline and discernment that the torture of bar prep teaches. There is also something to be said for a licensing exam of SOME SORT. To be allowed to practice without any type of licensing exam is irresponsible.

Why not Rule 9 until February or next year and allow them to take the exam for free?

Is there any chance of appeal or move to have them rethink this decision? It seems very knee jerk and extreme.

Posted Sat, 13 Jun 2020

With all due respect, this is not well thought out. I can see allowing them to practice temporarily until a bar exam can be administered at a later date and perhaps remotely on camera, but to never take a bar exam does not add up. What happened to protecting the public from lawyers who don't know the law? Or those who don't know ethics? The purpose of the exam may appear (to examinees) to be one last right of passage and mental torture, but that's not why we have a bar exam. It's done to protect the public. How do we as a profession answer the public when one or more of these newly admitted lawyers commits malpractice or worse, is found to have committed an ethical violation?

I remember in February 2004, after passing the Washington exam in 2003, I was going to sit for the California bar exam. Circumstances forced me to not take the exam in order to open my office in Seattle, but I had friends in that exam. It rained so hard the night before, that the basement used to administer a typing exam (most of us wrote exams back then) flooded. Chaos ensued.

The examinees were told they could wait until the next exam in July or take the exam on paper right then and there. People screamed, freaked, got upset, etc., all of which would have been me too. That being said, life is not fair, and things happen, and just like all those 2004 examinees had to put up with it, so too should the July 2020 examinees in Washington. I feel for them, and like I wrote above, I'm fine with them practicing on a conditional basis for now, but they need to sit for the exam and pass it to practice law as soon as practicable.

Posted Sat, 13 Jun 2020 (in regard to the immediately preceding post)

Here here.

TOOK BAR EXAM UNDER DIFFICULT CIRCUMSTANCES

Posted Thu, 18 Jun 2020

The stories from folks with respect to the Bar exams are quite interesting!. I am sure these stories are something to smile when we look back now. The Exam is no joke or fun- to say the least. I recall folks I came across on the day of the exam were just very serious people not

interested in having a chat with you. Nobody laughed! And it really scared the hell of me. That was my first time.

On the day of the exam, we had just settled down and writing the exam and this terrible Earth Quake occurred. That was February 2001. As the shaking was happening, I looked up the ceiling and engineering fittings in the building swinging especially the iron bars, it looked like it would give way and smash us inside. We scampered out of the hall for our lives. I have never experienced an Earth quake before. It was scary!. I read about it in newspapers.

I ran as fast as I could outside with others only to discover that the land was also moving. Some of us rushed back inside the building. I followed them. But alas, thinking that the Meydenbauer building might come down on me, I preferred that the earth swallowed me up than being crushed by the building. I could be rescued quickly outside than inside the building, I thought. I ran outside again. The shaking lasted for approx. 30seconds or so, as experts later said.

The agonizing part was that the requests made to the examiners to have the exam be postponed fell on deaf ears. We were told they have to consult with WSBA / Board and give us a feedback. It was like waiting for eternity!. Many were sure the exam would be continued. I was shocked and shaken to the extent that my legs couldn't carry me anymore. I had to sit down somewhere to regain my composure.

We waited approx. an hour hoping the exam would be continued. To our chagrin, the lead examiner told us the Bar insisted we continue with the exam. When they asked us back to the hall, so many students gathered their type writers, laptops, pens, submitted their papers and left the hall. I was so confused on what to do.

I didn't want to quit that way after working so hard preparing for the exam. I convinced myself to sit back. While inside, everything I learned seemed to have been erased. My biggest trouble was my hand. I could not steady my hand to hold my pen and write due to shock. I cried. When I looked at the remaining students, many were writing while others stared around on those writing or typing. I managed to stay on to the end that evening. That was the substantive portion!.

The following day, it appeared I was having a PTSD stemming from the shock of the earth quake. It was the day for RPC part. I was still terrified of the yesterday's event. At least, I was happy that I didn't go home like many that abandoned the exam entirely. I missed the RPC by 1/2 point. I appealed and still failed. I needn't an examiner to tell me the overall outcome. To cut the story short, I repeated the Bar exam and passed in 2002.

Posted Wed, 17 Jun 2020

I took the Washington Bar in 1976 and the Hawaii Bar in 1985. The Hawaii Bar had two days of essays and one day of the multi-choice national exam. The first day of the essays there was a banking question which made no sense. My heart dropped but I tried to make some sense. The next day, at the second day of essays, they started out by announcing that they had confused Bank A with Bank B in describing the situation and they were throwing the question out. I felt everything get lighter, that the powers that be were on my side and sailed through the rest.

I don't remember anything about the Washington Bar, just the preparation for it. I'd I got my JD in December 1975 and got a job that winter and spring as assistant to the Portland Affirmative Action Director and, after a nationwide job search, had gotten a job teaching law in the Department of Criminal Justice at the University of Wisconsin-Platteville starting that fall. Being 41 I did not see myself joining my much younger classmates on the lowest rung in a large law firm. I was pretty sure I would be coming back to Washington, though, so I signed up for the bar exam, and saved up for the bar review. I'd been offered a place to stay for the summer free but that fell through so I took my review savings and camped out in Bremerton in a tent in a state park, and then a one room shack on a beach with two kids and a husband. They played and I read, took the ferry over the day(s) of the exam.

Posted Wed, 17 Jun 2020

I was the July Bar. It seemed at the time that basically every Bar had something major happen that was really screwed up.

Mine they handed out the wrong test booklets, collected them, then handed them out, then collected them then handed out a third set. It was chaos. I was chair 1 in row E so I had a proctor in my face for three days. At beginning of day 2, an announcement was made that the WSBA had decided that our exam was not going to be canceled because of the prior day's incident. I was like... uh... was that an option?!?

I recall one before mine the roof fell in at Maydenbauer center, Another had a person have a heart attack during it, etc. There were lots of crazy Bar stories.

I was so stressed out about having car problems, etc. that, even though I lived in Federal Way, I rented a room at the hotel next to the Convention Center. I have never admitted this publicly, but

I guess the SOL has run... I had a room with a jacuzzi tub in it. Second night my then wife came to visit and ran the tub for me and I was not paying attention... tub overflowed and apparently soaked some wiring and the fire alarms went off. So, a hotel full of people taking the Bar was required to evacuate at about midnight. I remember people in their underwear, etc. standing in the parking lot holding the BarBri materials they had gathered up (instead of getting dressed, etc.). Just glad it was July and not January...

Posted Wed, 17 Jun 2020

I was TERRIFIED of the UCC questions. It was literally the one subject that just did not penetrate. I studied, and studied my UCC outline. When I finally got to my hotel room, I put my outline on a HUGE piece of butcher paper and taped it to the ceiling in my hotel room, so when I was too exhausted to study, I could at least stare at the ceiling and hope something would stick. The best part: the UCC was not on our exam that year!!

On the third day of my exam (PR), my computer cord started fritzing out, and it died in the middle of my test upload. I WAS IN TEARS. The proctor told me to go home and cross my fingers it would upload when I got home. I drove like a maniac to Federal Way, got my backup charger – and my test uploaded. PHEW.

Shouldn't every lawyer have to have an experience like this?

OBSERVATIONS ABOUT OTHER JURISDICTIONS/BAR EXAM

Posted Tue, 16 Jun 2020

I'm a UW-Madison law graduate circa 2003 and was admitted to practice there via the diploma privilege. I moved out here that same summer and sat for the February 2004 WA Bar exam. My personal recollection is that most of my courses emphasized general legal principles and concepts, same as any law school would. Perhaps there were some subjects, like criminal law, where there was more state-specific information. Hands down, the biggest difference I noticed in Bar admittance is that Wisconsin had an extremely detailed/rigorous character and fitness assessment--they wanted to know ALL about my adult life--and Washington's character/fitness was quite short.

Posted Tue, 16 Jun 2020

This is an interesting discussion about the bar exam. Just going to add a little commentary about my foreign licensing experience:

In Canada (where I grew up, attended law school, and practiced for a few years), all law graduates must complete what are called articles of clerkship before they can become licensed practitioners (before they can be “called to the Bar” as they call it).

What does that mean? Well, it varies by province, but the overall scheme is a 10-14-month period of supervised practice under a principal. Everything you do is supervised – all of your work product must be reviewed by your supervising attorneys (you have one principal, but with firms you can do work for any of the attorneys there). You cannot sign pleadings (there is some wiggle room with small claims court – they encourage newbies to take on small claims cases, because the dollar amounts in question are relatively low). It’s basically a year of assisting with and attending meetings, settlement conferences, depositions, trials; drafting pleadings, briefs and memos (there’s a lot of legal research involved); attending motions court to enter agreed orders, etc. – you know, real law practice. You get a salary, though it’s about half of what you’d earn as a first year associate (which isn’t so bad when you consider that the cost of law school in Canada is nowhere near what it is in the US).

And you’ll appreciate this (particularly in light of the recent discussions about LLLTs): the one area of practice with big restrictions in the articling program is family law! Those rules are designed to protect the public.

Articling runs in conjunction with mandatory training courses, which cover practice and procedure, ethics, practice management, legal skills, etc. And provinces do have some sort of testing (like a bar exam), but pass rates for the bar exam are extremely high. The bar exam in Canada feels like a rite of passage, maybe because in Canada there are only 24 law schools, so they weed people out with the LSAT.

There are a number of benefits to principal attorneys/firms (i.e. cheap(er) labor, mentorship, many firms end up hiring articling students once their placement has concluded).

I was really surprised when I moved here and learned that you can just sit for the bar exam and then immediately open your own law practice, with barely any practical training. I imagine at one time or other, the US (or at least some states) must have considered some sort of experiential practice requirement and determined that it wouldn’t work. Too bad because I learned so much during my articling year. The articling program isn’t a perfect system, but I do believe it protects the public in a way that the bar exam alone could never do.

Posted Tue, 16 Jun 2020

There have been comments about the Wisconsin diploma privilege. I am originally from Wisconsin. As was indicated you only receive the diploma privilege if you graduate from one of the two law schools in Wisconsin. If you do not graduate from one of those two law schools then in Wisconsin you have to take a bar exam. I did not attend law school in Wisconsin so I am not familiar with the curriculum, but I assume there is some Wisconsin law taught. In contrast, I graduated from UPS (Seattle U) in December 1978. The only class I remember taking that really touched on Washington law was community property and that looked at community property laws not only in Washington, but in other community property states.

While having a curriculum that actually addresses the local law might address the unique local laws for Wisconsin, it does not address the concept of analyzing facts and addressing the legal issues, however law school tests may have done that. I took the exam in winter 1979. I know there has been changes in the exam since then so whether local law or analysis of legal issues as was the primary method of examination when I took the bar still exists, I do not know.

Two of my Wisconsin high school classmates who were intelligent (both were in the equivalent of honors classes with me in high school) were not accepted at law schools in Wisconsin. Both had degrees from the University of Wisconsin - Madison as I did. One went to school in California and the other went to school in Idaho. Both passed the Wisconsin bar exam. One went on to practice law and the other, after a short while of practicing law worked for Church Mutual Insurance Company and ultimately became the CEO.

The bar exam does exist in Wisconsin, but only for those who do not attend local law schools.

Posted Tue, 16 Jun 2020

It would be interesting to know about the JD programs offered at the Univ of Wisconsin. Have they adapted their curriculum? Do they require more practical, generalized classes (to take the place of bar prep classes) so that grads can **recognize issues as a generalist would (which is more or less what the bar exam does); and to ensure a general minimum competency (which I suppose is also what the bar exam seeks to do – though we can debate whether that is an effective test of that or not...)**

The [Univ of Wisconsin](#) has 650 students (so graduating classes of approx 200). And ranked #38 of 192 law schools

Marquette has 575 law students (so graduate classes of about 180). And ranked #100 of 192 law schools.

As for WA, IF we are limiting the diploma privilege to WA based schools (and I didn't think that to be the case, but instead, any ABA accredited school, and maybe I'm wrong about that...)

UW: Enrollment 497 (so graduating classes of about 150?) And ranked #44 among law schools. All in all, very similar to the Univ of WI

Seattle U: 489 full-time. Ranked #129 of 192. A bit lower than Marquette, but fairly close.

Gonzaga U: 336 students. Ranked #117. Similar to SU.

So there are similarities in the State's set of ABA accredited schools...

In the long past, I've heard the BOG and the law school deans get into public debates on this issue, including at a time when there was maybe one school with a lower pass rate for the bar exam than the others...

It went something like...

The BOG: "the law schools need to prepare law students to take the bar exam"

Law schools: "no, that's what the bar prep classes do."

The BOG: "ok, how about preparing law students to be lawyers, i.e. a general competency of State law?"

The Law schools: "No, because we don't know where our students will go on to practice. Instead, we teach students to think like lawyers, which transcends any one state approach"

The BOG: "then why are law grads unable to figure out how to file a simple lawsuit or note up a motion?"

Me: :-#

And then this resulted in, in part, that intro mandatory CLE that the WSBA created for new admittees (in part from the efforts of the then WyLD)

The law schools were also advocating at that time that non US, non JD students (so LL.B's) who then received LL.Ms at the WA state based school should be allowed to sit for the WA bar exam.

I remember an Australian professor advocating this on behalf of the UW. But, in Australia, the rules on admission were, at least at the time, even more stringent than that which was being advocated for WA since non-common law country law grads (in Australia) were required to take and pass a very difficult Law school class in the common law before being eligible (I'm sure there were additional requirements as well).

Posted Tue, 16 Jun 2020

I have been pondering whether other states have "diploma privilege" and one you didn't discuss, whether the curriculum is different in a state that has diploma privilege.

I can only assume that Wisconsin understands there will not be an additional class (Bar Prep) and rigorous testing (3-day Bar Exam) and adjusts their curriculum accordingly. If WA is going to make the intentional decision to move to this process, I would hope they do some research and roll-out a program that trains people to adequately protect the public (and the Courts ☺) from an onslaught of freshly minted lawyers with no clue. The Letter to the Supremes from Washington's 3 law school which I read, stated "...we do not believe that diploma privilege is currently ripe for consideration." They stated a "careful balancing of myriad interests" would be needed. They also discussed several options and considerations, some of which have been touched on in this discussion. What changed?

Frankly, I have always thought the Bar Exam was an unnecessary event based on a tradition and "hazing" than on protecting the public. I am certain I could have passed with the Bar Prep Course alone. But, the combination of the skills and discipline I learned during Law School, along with the torture of the Bar Prep and Exam combine to make what I believe is an effective gateway to practice that protects the public.

Since shortly after graduating and passing the Bar in 1993, I have often voiced the opinion the process needed to change, because the paradigm was outdated even back then. Third-year law students and fresh graduates no longer get hired into a firm that will nurture and train them (much like a medical residency trains doctors). I imagine at least half (no support for this, but a feeling) of the newly minted attorneys are not hired into firms that continue their training, but

instead, “hang their own shingle”. I have said we need to change the process to one that replaces the tutelage of a firm, which has been lost for many, or most.

Sadly, this seems to be yet another in the ever increasing list of things where it just isn’t fair not to let everyone play and get their participation trophy.

I only wish I was closer to retirement so I could look at these times as “what are those crazy kids up to now” rather than “what the hell are we doing?”

A final parting thought would be that we should be able to engage in civil discourse. We should not be taking shots at others who do not regurgitate our thoughts exactly. We should be trying to listen with an ear to learning. Learning both the good in others’ thoughts as well as the bad and then discuss from our position why we think their bad, is bad. Discussion. Learning. Growth. Improvement. Where has that gone?

Posted Tue, 16 Jun 2020

I was initially admitted in Montana via the diploma privilege. There was only one law school and the courses through the first part of the third year were all mandatory (no electives to any treat extent), attendance at classes was mandatory (including the Saturday morning class taught by the Dean in the first year) and the Supreme Court visited on campus pretty much once per quarter to sit in on classes, etc. So the no elective, mandatory attendance, etc. were viewed as essentially a trade off for no bar exam. And if you were going to practice in Montana, it was expected you would come out of the UM Law School. Some years after I left, the diploma privilege was eliminated. Of course I moved here to undertake my LLM and had to take the Bar Exam.

There was also an expectation (if not requirement) that you do at least one internship within the practice during the first two summers (prosecutors office, public defender, private law firm, etc. were all options and the lawyers in the state cooperated to make those available. From a bottom line perspective, by the time one graduated, you “knew where the courthouse was”, could draft and file a complaint and had appeared in argument before one or more judges in real life disputes.

I did not feel that I received special treatment as a result of the diploma privilege. Rather I earned my way into the practice of law by the strict program which I attended. But my view

would be that the diploma privilege should depend on the level of competency that is force fed to the law students and the supervision of the curricula and teaching by the Supreme Court or its designated agency/entity.

SUPPORTS NO BAR EXAM

Posted Sun, 14 Jun 2020

Consider this: The current situation has gifted us with a control group – i.e., attorneys who have not passed the bar but are allowed to practice. Let’s see if there are any comparative metrics that can find any differences in the quality of practice and behavior of this year’s cohort as compared to the 2019 cohort that passed the bar. An opportunity to get some real world feedback as to whether or not the Bar Exam truly sifts for “protection of the public” and “ensuring qualified and competent attorneys” I am not convinced it does.

June 19, 2020

The Honorable Chief Justice Debra L. Stephens
Washington Supreme Court
415 12th Ave SW
Olympia, WA 98501

Dear Chief Justice Stephens:

First, I want to thank the Court for its leadership in creating an option for diploma privilege for Juris Doctor (JD) graduates registered for the July and September 2020 Washington State Bar Examination. I support the Court's Order of June 12th and concur with your conclusion that this option is warranted in light of the extraordinary times in which we find ourselves. I will work to ensure that graduates who elect diploma privilege experience an unimpeded transition to practice.

I am writing today, however, to seek reconsideration for constituencies excluded from the Order. At all times since the WSBA and the Court began to consider accommodations necessary to safely administer the bar exam in light of COVID-19, I have always advocated that we maintain a pathway to practice for both JD graduates and foreign-trained lawyers receiving Master of Laws (LL.M.) degrees, who are bar eligible under APR 3(b).

On behalf of UW Law faculty and staff who work significantly with our graduate students, I am forwarding the attached letter requesting that the Court extend diploma privilege to registered LL.M. bar applicants who are eligible to practice under APR 3(b). I endorse the extensive and thoughtful justifications included in the letter. Our graduates are planning to advocate to the Court directly, and I support their motivations for doing so. For me, the most powerful reason for including LL.M. graduates is that they have been no less affected by COVID-19 and our national moment of racial unrest than have our JD graduates.

A significant number of our LL.M. graduates belong to the vulnerable groups — the immunocompromised, financially distressed, people of color — whom I suggested would be most negatively impacted in their attempts to prepare for the bar examination. Given the varied nature of their legal educations prior to initiating graduate studies in law in the U.S., LL.M. graduates did expect that there might be additional requirements for them to receive diploma privilege. They did not expect, however, to be wholly excluded.

Additionally, I want to ask the Court to reconsider the complete exclusion from diploma privilege of persons who were not registered for the July or September examinations at the time the order was issued. I have received numerous appeals from graduates who either declined to register for the July bar exam, registered for the July bar exam but withdrew, or registered for the July bar exam and transferred their registration to February 2020. In email exchanges with Jean McElroy, the WSBA Chief Regulatory Counsel, she confirmed that graduates in each of these categories were excluded from the Court's Order, and the WSBA was without the authority to grant exceptions.

My concern is that for a significant number of students who were unregistered, withdrew, or transferred their registration, they did so for reasons related to COVID-19. When they made their decision, they believed they had no other recourse because the Court, at the time, had declined to provide them other options. To the extent that COVID-19 or similarly pressing concerns affected their decision-making, it would seem to be both fair and humane to provide the WSBA discretion to provide limited exceptions to the current registration requirement. Moreover, for graduates who registered for July but transferred that registration to February 2021 rather than September 2020, it seems somewhat arbitrary that they are now excluded from the diploma privilege, especially where we might expect there to be fewer public health concerns with administering an exam in the winter of 2021 rather than the fall of 2020.

Again, please do accept my deep gratitude for the Court's bold action in creating the diploma privilege and responsive leadership during this time of crisis. I would be remiss, however, if I did not share with you my own concerns for graduates for whom I believe additional consideration for the diploma privilege is warranted. At your request, I am happy to make myself available to the Court or WSBA to provide any additional information or answer any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mario L. Barnes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mario L. Barnes
Toni Rembe Dean
Professor of Law

Enclosure: UW Law Graduate Faculty and Staff Letter of 18 Jun 2020

June 18, 2020

In the Matter of Statewide Response by Washington State Courts to the Covid-19 Public Health Emergency: Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules, No. 25700-B-630 (June 12, 2020)

Dear Chief Justice Stephens and Members of the Court,

We write on behalf of the University of Washington School of Law's Graduate Programs Directors, Faculty and Staff, who request that the Court afford a diploma privilege to all APR 3(b) qualified candidates who are currently or were formerly registered for the July or September UBE administration in Washington. We are, thus, asking the Court to modify its order *In the Matter of Statewide Response by Washington State Courts to the Covid-19 Public Health Emergency*, Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules, No. 25700-B-630 (June 12, 2020) (the "Diploma Privilege Order").

The Diploma Privilege Order granted the option of receiving a diploma privilege to practice law in Washington to some but not to all applicants who are currently registered for either the July or September 2020 bar examination. We urge the Court to announce that all currently and formerly registered candidates who meet the APR 3(b) eligibility requirements that the Court has already set for taking the bar examination be admitted to the Washington State Bar without being required to take the bar examination. Our reasoning for this request for modification of the Court's June 12 order is explained below.

For the following reasons, the University of Washington School of Law's Graduate Programs Directors, Faculty and Staff are deeply concerned that the Court's June 12 order *In the Matter of Statewide Response by Washington State Courts to the Covid-19 Public Health Emergency* granting the diploma privilege option only to some US juris doctorate graduates may: 1) lack any rational basis for such unequal classification, contrary to the US and Washington State Constitutions; 2) deny equal access to livelihoods and the legal profession without due process, contrary to the US and Washington State Constitutions; 3) be arbitrary and capricious; 4) grant a class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens, contrary to the Washington State Constitution; 5) subject foreign-trained lawyers, aliens, and members of several racial and other minority groups to invidious disparate impact without any occupational justification, contrary to the Washington Law Against Discrimination (WLAD); 6) violate the principle of *res judicata* by creating confusion and inconsistency with the Court's May 15 order in the same case; and 7) offend several other fundamental principles of justice which should always bind the legal profession above all others -- especially during such challenging times as these.

In the first recital to its Diploma Privilege Order, 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."

However, those extraordinary barriers are identical for all currently registered qualified bar applicants, not merely for those applicants who have graduated with a Juris Doctor (JD) degree from an ABA approved law school, APR 3(b)(1). Those extraordinary barriers equally confront all other APR 3(b) qualified applicants who have graduated with a Master of Laws (LLM) degree for the practice of law from an approved law school, APR 3(b)(4)(A&B), as well as all those who have qualified to take the Washington bar examination by completing the rigorous four-year Law Clerk Program, APR 3(b)(2) & APR 6, and all those who have who have qualified for the Washington bar examination through Admission to Practice in any Common Law Jurisdiction together with at least three years of recent legal experience, APR 3(b)(3). Since all of these different categories of qualified and currently registered applicants have already established their APR 3(b) eligibility to take the Washington bar examination under the rules promulgated by the Court, why should only some such qualified applicants but not others still be required to overcome those extraordinary barriers?

In the second recital to its Diploma Privilege Order, the Court notes that it “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.” But nowhere does the Court indicate that it has reviewed Washington’s APRs to consider whether those provisions should also be modified to accommodate current and former applicants who have otherwise completed all APR 3(b) requirements to sit for the summer 2020 bar examination, including those who have received master of laws degrees for the practice of law from approved law schools, those who have completed all their law clerk apprenticeship requirements, and practicing lawyers from other common law jurisdictions. Whether the Court’s omission is advertent or inadvertent, it is manifestly unjust.

In paragraph 1) of its Diploma Privilege Order, the Court orders that “[t]he 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.” While we do not question the decision to offer the summer 2020 bar examinations for those applicants who opt to receive a UBE score, all other APR 3(b) eligible bar applicants are thus being thrust into an incoherent categorization of those who do qualify for the bar examination but yet “who do not qualify for the diploma privilege.” To qualify to sit for the lawyer bar examination, a person must present “satisfactory proof of” inclusion in APR 3(b)(1-4), without any hierarchy among the required qualifications that are listed in those four paragraphs. The Court offers no rationale whatsoever for any such abrupt preference. This distinction without a difference is manifestly unjust.

Not only is this incoherent distinction unjust on its face, it is also inconsistent with the Court’s prior May 15 order in this matter, which plainly provides that: “The provisions of APR 9(b)(3) are modified to clarify that the term ‘graduate of an approved law school’ includes all applicants with the educational requirements to qualify to sit for the lawyer bar examination, as established in APR 3(b)(1), (2), and (4). The temporary modifications stated above will remain in effect until December 31, 2021, or until further order of the Court.” *In the Matter of Statewide Response by Washington State Courts to the Covid-19 Public Health Emergency*, Order Temporarily Modifying Admission and Practice Rules, No. 25700-B-623 (May 15, 2020). There is nothing in the Court’s more recent June 12 Diploma Privilege Order that suggests any intent to

undo the temporary time limit modifications of APR 9(b)(3). These newly extended time limits allow all recent approved law school graduates – specifically, JDs, LLMS, and Law Clerk apprentices -- to practice with their APR 9 licenses during the Covid-19 pandemic for more than the usual 18 months beyond graduation. So in its prior May 15 order, which effectively amounts to *res judicata*, the Court has already explicitly conceded that there is no real distinction between such APR 3(b) bar exam qualified lawyers.

Yet in paragraph 2) of its Diploma Privilege Order, the Court orders that “[t]he 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.” Inexplicably, all bar eligible master of laws for the practice of law graduates of approved law schools, APR 3(b)(4)(A&B) (as well as those who have completed their four-year law clerk programs, APR 3(b)(2), and recently practicing lawyers from common law jurisdictions, APR 3(b)(3)) are therefore automatically presumed to be less capable than APR 3(b)(1) US juris doctor graduates who have already failed the bar examination! This automatic adverse presumption is manifestly unjust.

The Court issued its Diploma Privilege Order two days after receiving a unanimous June 10 letter from the Seattle University law school faculty which stated: “In asking the Court to grant a diploma privilege, we recognize that our Seattle University School of Law 2020 graduates are not the only ones impacted by this decision. While we do not know the graduates of other schools as we know our own, we are certain that many of them are facing the same kinds of stresses as our graduates. The Court could take the position that Wisconsin does, providing admission to the Bar for graduates of Washington schools. Or, the Court could admit graduates of all accredited law schools who registered for the exam here and who otherwise meet the conditions for admission. The Court could also choose to limit the diploma privilege to those who have not previously taken the UBE in Washington.” Yet in its June 12 Diploma Privilege Order, the Court adopted none of those suggestions. Instead, without any notice, discussion, or explanation, the Court suddenly introduced its unprecedented restriction of the diploma privilege to the smaller APR 3(b)(1) subset of graduates of ABA accredited US law schools who hold juris doctorate degrees. Out of five bar eligible categories listed in APR 3(b)(1-4), including two categories listed in APR 3(b)(4)(A&B), the Court singled out just one bar exam qualified category for preferential treatment, by granting only that class of favored citizens the diploma privilege.

As noted by the Seattle University law faculty, the bar examination is a significant challenge at the best of times. “For those who have spent the final months of law school going to class online, who have had their living and working conditions disrupted, who have coped with supervising home schooling for their children, and who have helped family members who have become gravely ill from the virus and/or lost their jobs, the public health emergency has increased that challenge exponentially. With the tragedies of the past two weeks and the societal response to them, the stresses for some of our graduates have become overwhelming.” The Court’s response to this concern may suggest that it is seeking to honor its own recent statement on racial justice. As the Seattle University law faculty pointed out in its June 10 letter, “[t]he burdens of the coronavirus pandemic and the racial unrest we are experiencing are being disproportionately borne by our graduates of color as they struggle to prepare for the bar exam.

Removing the exam barrier to admission would be a step in responding to our graduates' concerns and in bringing 'greater racial justice to our system as a whole.'"

But if greater racial justice is intended, restricting the diploma privilege option only to APR 3(b)(1) US juris doctorate degree graduates is a step backwards, not forwards. At the University of Washington School of Law, our masters of law for the practice of law graduates who are currently or formerly registered for the summer 2020 bar examination disproportionately belong to a wide and diverse array of racial, ethnic, national, religious, cultural, linguistic and other minorities. Most are immigrants. As LLM graduates, with a higher degree in law, all have more legal education than JD graduates. Many are foreign-trained lawyers who have already practiced law in other jurisdictions. In the course of earning an LLM Degree for the practice of law, in full accordance with the APR 3(b) rules established by the Court, they have taken and passed required core law courses that have never been required of many JD graduates from throughout the US whom the Diploma Privilege Order grants the option to practice in Washington without passing the bar examination. Rigorous law practice training is also required for currently and formerly registered applicants who have completed the law clerk program, and for experienced lawyers admitted in other common law jurisdictions.

If the primary purpose of exempting APR 3(b)(1) US juris doctorate graduates is to reduce the large numbers currently registered for the summer 2020 Washington bar examination to such smaller numbers that can still be proctored in several locations with strict physical distancing requirements in place, this is completely unacceptable. If taking the summer 2020 bar examination presents a serious Covid-19 health risk, that risk must be borne equally by all currently registered eligible applicants, not merely by those whose qualifying APR 3(b) legal education was outside a US juris doctorate degree program. Fairness also requires that the Diploma Privilege Order be modified to include all those formerly registered bar examination applicants who withdrew from the summer 2020 bar exam due to concerns over Covid-19, some of whom relied on the Court's May 13 letter to withdraw their applications without any cancellation fees, or to transfer to the February 2021 sitting without any additional application fees.

We therefore urgently request modification of the Court's Diploma Privilege Order to include all currently and formerly registered bar exam applicants without discrimination or prejudice regardless of where they obtained the legal education which has already made them eligible to sit the summer 2020 Washington bar examination under the Court's own APR 3(b) rules. Without such modification, the Court's June 12, 2020 order *In the Matter of Statewide Response by Washington State Courts to the Covid-19 Public Health Emergency* will cast a lasting stain on our state jurisprudence and on our legal profession, just like *In re Takuji Yamashita*, 30 Wash 234, 70 P. 482 (1902). In that case, it took a full century for the Court to honorably and powerfully recognize its error at the behest of University of Washington School of Law faculty. *In re Ceremonial Induction of Takuji Yamashita*, 134 Wash. 2d, xxxiii-lix (2001). Fortunately, in the current and time-sensitive case of the Diploma Privilege Order, the Court can now modify its order and thus correct its grave error in less than one week.

Sincerely,

Graduate Programs Directors, Faculty and Staff

University of Washington School of Law
William H. Gates Hall Room 308 Box 353020
4293 Memorial Way NE, Seattle, WA 98195-3020
206.321.6348 (cell) / wawa@uw.edu / 206.685.7394 / 206.799.3340 (cell) / sbsiem@uw.edu

Be Boundless

June 24, 2020



Dear Members of the Board of Governors,

It is our understanding that some of you have expressed concerns about the diploma privilege granted by the Washington Supreme Court to graduates of the ABA-accredited law schools in this state. As practitioners and law professors, we write to express our strong support for the diploma privilege in light of the current and unprecedented circumstances. In our view, the Court appropriately considered the double impact on recent graduates of the virus crisis and of the racial killings and protests that followed. Granting the diploma privilege was a justified and completely appropriate response and deserves your unqualified support.

Recent law school graduates have had to contend with a set of challenges no previous class has faced. They are confronted with a deadly virus which has fundamentally altered the normal course of their lives. They face the financial and technical demands of operating almost completely in an online environment and the disruption of their lives following the George Floyd murder and resulting protests. Some of them and their family members became ill; some of them and their family members lost their jobs; some have children at home who would otherwise have been at school or in daycare. Because law school campuses are closed, if they had been required to take the Bar exam, graduates would not have been able to study comfortably in their usual locations with access to the resources that normally would have been available to them. It would have been deeply unfair and insensitive to those realities to require them to sit for and pass a Bar exam. Moreover, the discrimination based on wealth and race, and the headwinds imposed on those with disabilities that have always been present in the Bar exam would only have been exacerbated by requiring the very people whose lives have been most disrupted by these crises to study for and pass the exam.

We are aware that some Governors maintain that requiring applicants to take and pass the Bar exam is, "important to protect the public and ensure qualified and competent attorneys." However, our view is that in "normal" times, the Bar exam is a costly ordeal which often serves only to delay for months the entry of qualified applicants into the profession. It is at best of questionable value when considered in light of what the practice of law actually requires. More importantly, it is not a predictor of one's ability to ethically and competently practice law. On the contrary, the education students receive at Seattle University School of Law and at the other accredited law schools in this state directly serves the goal of preparing lawyers for practice. In addition to the rigorous course of study that has always been a feature of a law school education, our students are required to take experiential credits in the form of clinics, labs, simulations, practicums, and/or externships. They have already had to demonstrate both legal knowledge and the practical skills necessary to be competent attorneys. These are important considerations because we are not living in "normal" times, and all of us have been forced to set aside activities—like the Bar exam-- that are not justified by true necessity.

FACULTY OFFICES



Our view is that protection of the public includes protecting the public--including recent graduates and their families--from the spread of Covid-19 virus. Thus, the decision by our Supreme Court not to require hundreds of people to congregate indoors for two days to take the Bar exam this summer and fall was welcome news. We know that the WSBA shares the concern about congregating indoors, since you have taken the sound decision to conduct meetings of the Board of Governors virtually.

For all these reasons, we urge you to fully support the diploma privilege. We further urge each of you not to take a position which may in any way suggest that those who accept a diploma privilege are anything less than fully credentialed, qualified members of the WSBA. To do otherwise would suggest that there exists an informal, two-tier system of membership in the practice that would set a terrible precedent and unjustifiably undermine the credentials of some members in favor of others.

Through no fault of their own, recent law school graduates are at an unfair disadvantage with respect to past graduates in studying for and taking the Bar exam. In the best traditions of our profession, the Justices of the Washington Supreme Court recognized this manifest unfairness and granted the diploma privilege. The Board of Governors of the WSBA should unanimously and wholeheartedly support this decision.

Sincerely,

Michael J. Russo
Distinguished Practitioner in Residence
Seattle University School of Law

Robert C. Boruchowitz
Professor from Practice, Director, The Defender Initiative
Seattle University School of Law

Kathryn Naegeli Boling
Visiting Assistant Professor of Lawyering Skills
Seattle University School of Law

Steven P. Tapia
Distinguished Practitioner in Residence
Seattle University School of Law

FACULTY OFFICES



Amanda Stephen
Visiting Assistant Professor of Lawyering Skills
Seattle University School of Law

David A. Williams
Adjunct Professor
Seattle University School of Law

Paula Enguidanos
Visiting Assistant Professor of Lawyering Skills
Seattle University School of Law

Ronald H. Clark
Distinguished Practitioner in Residence
Seattle University School of Law

FACULTY OFFICES

PAULA PLUMER
Attorney at Law

September 27, 2016

Washington Supreme Court

Re: No. 25700-B-630 - ORDER GRANTING DIPLOMA PRIVILEGE AND TEMPORARILY
MODIFYING ADMISSION & PRACTICE RULES

Dear Honorable Justices:

Please reconsider the decision and Order referenced above.

It is truly shocking that the privilege was extended to likely unqualified applicants, including candidates that previously failed or have never taken a comparable exam.

It's a mistake to require the courts and society to absorb the potential harm and cost of accepting unqualified attorneys because a virus has impacted every aspect of our society.

The COVID emergency does not require the suspension of the bar exam testing requirements, the COVID emergency justifies a *delay* of testing. The applicants should bear the cost of the inconvenience, not the community, which should be entitled to rely on the fact that a licensed attorney of LLT is qualified.

Thank you for your attention to this.

Very truly,

/6/22/20 paula plumer/

PAULA PLUMER
Attorney at Law

Carla Higginson,

June 22, 2020

Requests for Extension of Order and Other Comments Related to Diploma Privilege

From: Chang, Robert (Faculty) **Sent:** Saturday, June 20, 2020 10:14 AM
To: Rajeev Majumdar; kyle.s@; bill@wdpickett; sunitha@; carla@higginson; khunterlaw; pjg@randalldans; pswegle@gmail.com; jkang@bryn.peterson; tomamcbride; habell@; rknight; alecstephensj
Subject: Concerns about WSBA BOG actions or communications against diploma privilege

Dear WSBA Board of Governors: (please forward to Treasurer/Governor Daniel Clark who has no email listed in his WSBA Directory page - also, though this email is addressed individually to each of you, I am making this an open letter that anyone is free to distribute and that I will distribute)

I am writing in my capacity as a WSBA member and as a Washington legal educator to encourage you to be more supportive of diploma privilege (DP) than appears to be the case based on certain communications by individual governors or the previous vote of this body.

Any action taken by this body with regard to DP based on concerns that DP is unfair to WSBA members raises protectionist and accompanying antitrust concerns.

Instead, following the institution of DP by Order of the Washington Supreme Court, WSBA must administer admissions in a way that respects the rights of the applicants who seek and obtain licensure through diploma privilege.

WSBA Bylaws state in I. Functions, A. Purposes: In General:

7. Administer admissions, regulation, and discipline of lawyers, Limited License Legal Technicians (LLTs), and Limited Practice Officers (LPOs) in a manner that protects the public and respects the rights of the applicant or member;

What about the “rights of the . . . member”? Doesn’t this mean that WSBA must administer admissions in a way that respects their rights? I would suggest that this provision needs to be revised, because it’s hard to understand what right (in the strong sense) a member has with regard to applicant admissions that does not run afoul of protectionism (thereby raising antitrust concerns).^[1]



Any policy adopted or action taken by WSBA that might prejudice those who seek and obtain licensure by diploma privilege because of perceived unfairness to current members is likely protectionist and would raise grave antitrust concerns.

Instead, I hope WSBA works to facilitate a smooth transition for all who obtain licensure during this cycle.

I also hope that WSBA encourages employers to not discriminate against job applicants based on whether they obtained licensure through diploma privilege or exam. Instead, encourage employers to do what they've always done – for jobs requiring licensure, accept licensure regardless of mechanism and then screen resumes, interview, and check references for the traits and qualifications that they believe will make the person a successful hire.

Sincerely,
Robert S. Chang
WSBA #44083

[11](#) Rights of members are important with regard to “regulation” and “discipline.” A revision would separate out what portions relate to admissions as opposed to regulation and discipline.

Robert S. Chang (he/him)
Professor of Law and Executive Director,
Fred T. Korematsu Center for Law and Equality
SEATTLE UNIVERSITY SCHOOL OF LAW
901 12th Ave, Seattle, WA 98122
Office: (206) 398-4025 | Fax: (206) 398-4077 | law.seattleu.edu

// AT THE HEART OF LAW

This email and any attachments thereto may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, please immediately notify us via return email or by phone at (206) 398-4025, and permanently delete this email and any copies or printouts thereof.

From: Tim A Brooks

Sent: Friday, June 19, 2020 5:55 PM

To: debra.stephens

Cc: Marcia Cho; Viktoriya Saditdinova; atchinson.sarah; Matthew.thomas.hernandez; Inyoung Cheong

Subject: Petition for Extension of the Order Granting Diploma Privilege

June 19th, 2020

The Honorable Chief Justice Debra L. Stephens

Supreme Court of the State of Washington

415 12th Ave. SW

Olympia, WA 98501

***Petition for Extension of the Order Granting Diploma Privilege
and Temporarily Modifying Admission & Practice Rules, No. 25700-B-630***

Dear Chief Justice Stephens and Honorable Members of the Court,

We are 2020 LL.M and J.D. graduates from all three Washington Law Schools.

We would first like to acknowledge and thank the Court for its recent decision concerning the grant of diploma privilege to July/September 2020 J.D. examinees. *In the Matter of Statewide Response by Washington State Courts to the Covid-19 Public Health Emergency: Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules, No. 25700-B-630 (June 12, 2020)* (“June 12th Order”).

We have prepared the attached [Petition for Extension](#), which includes over 200 [signatures](#), for the Court’s consideration. In our petition, we request an extension of the scope of the June 12th Order to include additional categories of eligible applicants to the Washington State Bar Examination in light of the COVID-19 pandemic and social circumstances incident to the George Floyd murder.

If you are inclined to deny this petition, which has been supported by both the [Dean](#) and [Graduate Faculty](#) of the University of Washington School of Law, we would like to request the opportunity to appear before you *pro se* to

plead orally on our own behalf. As an alternative to an oral hearing, we would request at least an informal meeting so that we can share our perspectives with the Court.

Respectfully,

Tim Brooks, B.A. Jurisprudence, LL.M.

Marcia Cho, J.D., LL.M.

Viktoriya Saditdinova, LL.B., LL.M.

Sarah Atchinson, J.D.

Sydney Finlay, J.D.

Matthew Hernandez, J.D.

Inyoung Cheong, LL.M., Ph.D. Candidate

Tim A. Brooks, LL.M.

University of Washington School of Law

William H. Gates Hall

Box 353020, Seattle WA 98195-3020

425.281.2569

brooks91@uw.edu

W UNIVERSITY of WASHINGTON

From: mbarnes3 <mbarnes3@uw.edu>

Sent: Friday, June 19, 2020 2:37:35 PM

To: Clark, Annette; Rooksby, Jacob; Jean McElroy

Cc: Rajeev Majumdar>

Subject: FW: Endorsing and Forwarding UW Law Faculty/Staff Request Regarding the Expansion of the Diploma Privilege

Dear Annette, Jacob, Jean and Rajeev,

Attached are two letters I forwarded to the Court today on behalf of myself and members of our UW faculty/staff who work with graduate students. The letters request the Court to reconsider who is eligible to exercise the newly created diploma privilege. I am also aware that a number currently excluded graduates will be forwarding their own petition to the Court. I will advise you if I hear back from the Court.

Regards,
Mario

Mario L. Barnes
Toni Rembe Dean and Professor of Law
University of Washington School of Law
Box 353020, Rm 371
Seattle, WA 98195-3020
(206) 543-2586
mbarnes3@uw.edu



June 19th, 2020

**The Honorable Chief Justice Debra L. Stephens
415 12th Ave. SW
Olympia, WA 98501**

CC:

**Rajeev Majumdar
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539**

**Petition for the Washington Supreme Court
to Extend the Grant of Diploma Privilege Due to COVID-19 Related Hardships**

We respectfully request that the Washington Supreme Court broaden its recent order *In the Matter of Statewide Response by Washington State Courts to the Covid-19 Public Health Emergency* (the “Diploma Privilege Order”) and extend the grant of diploma privilege to all eligible candidates who could not register for the July or September bar examination due to COVID-19 related hardship; those who registered but withdrew due to COVID-19 related hardships; those currently registered for a Washington bar exam without a J.D.; and those who postponed their bar exam to February 2021.

The Washington Supreme Court’s Diploma Privilege Order on June 12th, 2020 was predicated on a finding that there are currently “extraordinary barriers facing applicants . . . registered to take the bar examination in either July or September 2020.” We thank the Court for taking this compassionate and considerate action during such unprecedented times. Unfortunately, the Court restricted the scope of their order to only Juris Doctor (J.D.) graduates currently registered to take the July/September 2020 bar exam. The initial request by Washington law school deans (from the University of Washington School of Law, Seattle University School of Law, and Gonzaga University School of Law) sought an unimpeded pathway to practice for all, and explicitly included both 2020 J.D. and LL.M bar applicants.

Qualification for Lawyer Bar Examination

Under the Washington Supreme Court’s Admission and Practice Rules 3 (“APR 3”), “to qualify to sit for the lawyer bar examination, a person must be eligible for admission by motion or Uniform Bar Examination (UBE) score transfer and must present satisfactory proof of (1) graduating with a J.D. degree from a law school approved by the Board of Governors; (2) completing the law clerk program prescribed by these rules; (3) having admission to practice law, along with current good standing, in a common law jurisdiction, with active legal experience for at least three out of the five immediately preceding years; and (4) graduating with a LL.M. degree for the practice of law, as defined under APR 3.

Under APR 3, there is no stated distinction or hierarchy among any of the five qualifying categories according to the Court’s own published rules. However, the Supreme Court’s June 12th Order categorically determined that a limited group of applicants within the first category, namely applicants with a juris

doctorate degree from an ABA-accredited law school currently registered for the July/September 2020 bar, should be the only ones afforded diploma privilege.

1. Eligible Candidates Qualified and Registered to Take the July/Sept 2020 Bar

The omission from diploma privilege of other qualified categories of bar applicant under APR 3 is substantively unfair. These candidates have met the WSBA eligibility requirements for bar membership. They have also passed background checks and met all other eligibility requirements.

Non-J.D. candidates face the same struggles as they also try to navigate these difficult times. Indeed, the majority of students in the LL.M program, as one example, are students of color and/or ethnic minorities and already suffer a disparate impact. Data from the Centers for Disease Control and Prevention suggest a “disproportionate burden of illness and death among racial and ethnic minority groups” during the current pandemic. This point is echoed in the original request for diploma privilege by the law school deans, that “the negative impact on the performance of test-takers would be disproportionately borne by applicants from our most vulnerable communities and graduates of color.” Other applicants suffer the same stresses from the COVID-19 pandemic and the aftermath of the Minneapolis tragedy as their J.D. counterparts and they are equally deserving of the Court’s consideration and compassion.

It is inherently unfair to find other candidates ineligible for diploma privilege when the exact same barriers and risks justifying extension of the privilege to others apply equally, or arguably in greater force, to them. The Court’s preference for one group, J.D. candidates, over others manifests an arbitrary preference for one group at the expense of others nowhere supported in the Court’s own Admission and Practice Rules.

Further, this unequal treatment suggests that the Court may harbor a prejudice that other candidates are less qualified or less deserving than their J.D. counterparts, even though other registered candidates have met all requirements imposed by the Court.

If the Court believes that candidates, from any source, lack adequate preparation or otherwise require some additional curative, it could require that diploma grantees meet some minimum GPA in their qualifying legal education; or require that grantees complete a fixed term of mandatory supervision. In short, the Court could require any number of additional guarantees to ensure that candidates meet a certain quality bar or that they receive additional oversight upon entering the Bar. But as-is, the Court expresses a mere arbitrary preference as between registrant categories which is not justified by the categories themselves. Some J.D.s, for example, may be repeat test-takers; or have graduated low in their respective programs. It is fundamentally unfair for the Court to evaluate J.D. candidacy in a light most favorable to the candidate while denying that same deference to others. The Court has drawn a bright line, but that line is horizontal where it should have been vertical. Rather than segmenting between applicant categories, horizontally, the Court should have drawn a vertical line across all categories if the concern motivating the drawing of lines was one of quality. As is, the Order requires many eligible candidates to expose themselves to the very same risks and barriers that the Court is arbitrarily removing for one group of candidates only.

We must also reluctantly point out to the Court that consideration of the demographics for the respective candidate pools, first time J.D. takers versus all-others, will also reveal that this Order falls with

a disparate impact on communities of color and other racial and ethnic minorities. With the background of racial unrest already discussed, this decision may sadly serve as yet another example of unearned and unfair privilege and evidence yet more institutional ambivalence to the plight of those too long denied equal protection of the law.

2. Candidates for July/September 2020 Bar Who Withdrew/ Did Not Register/Moved their Registration to the February 2021 Bar, Due to COVID-19 and Surrounding Circumstances

A significant number of students are excluded from receiving diploma privilege because pandemic-related circumstances prevented them from committing to a July bar examination. On March 12, Seattle Public Schools and daycares closed, leaving no childcare for law students with children. As the pandemic worsened, other students worried that taking an in-person test would put themselves or other high-risk family members in danger of contracting the novel coronavirus. Other students faced economic challenges in committing to the bar in light of the pandemic's impact on the legal job market. Many students, particularly people of color and those with caregiving responsibilities, were forced to withdraw registration or found registration by the April 6 deadline unfeasible.

The Court's reasoning for initiating the diploma privilege is to "[recognize] the extraordinary barriers" brought on by COVID-19 and "accommodate" those facing these struggles. Many of these students would not be in this predicament if they were financially secure, had the necessary resources available to them, or had the opportunity to wait for the Court to order diploma privilege. In addition, these J.D. graduates who withdrew registration or failed to complete registration are equally as prepared to practice law as their colleagues who were granted the diploma privilege. We request that the Court extend diploma privilege to those students who under the circumstances of the pandemic, could not commit to a July bar examination.

Conclusion

One advocate for workplace diversity, software developer Patricia Aas, describes "privilege," not as a conscious bias, but rather as "being spared a hardship." The Court's Order, though welcome, spares many who have doubtlessly been spared many other hardships in their lives. And by excluding other candidates, many of whom are racial and/or ethnic minorities, the Court refuses to spare others those same hardships.

All candidates are equally deserving of the Court's protection. Potential concerns about the capability of those admitted will cut across all categories and should be applied, where appropriate, without regard to the source of eligibility. If the exigencies justifying extension of the privilege are real, which indeed they are, why would the Court take half-measures and preferentially protect some but not others or recognize the hardships of one category of applicant but not another? We respectfully urge the court to reconsider the June 12th Order in light of these pervasive and worsening conditions and extend the grant of diploma privilege to include all applicants currently registered and qualified to sit for the July/September 2020 bar, as well as those who either withdrew registration, could not register, or moved their registration to the February 2021 bar, due to uncertain pandemic-related conditions.

Respectfully,

1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539

800-945-WSBA | 206-443-WSBA | questions@wsba.org | www.wsba.org

Signatories [herein](#)

The University of Washington School of Law Student Bar Association

The University of Washington School of Law Minority Law Students' Association

Appendices

Appendix A - Matthew Hernandez

My name is Matthew Hernandez and I am a recent J.D. graduate from the University of Washington School of Law. I am writing in response to the Washington State Supreme Court's June 12th order granting diploma privilege to certain graduates in lieu of passing the traditional bar examination.

As it is written, the order only grants diploma privilege to those who are currently registered for either the July or September Bar examinations and have received a juris doctor degree from an ABA accredited law school. This means that students who could not apply for or who have had to withdraw their applications for the WSBA's July and September Bar Examinations due to COVID-19 related hardship, as well as LL.M.s and students from other legal professional degree programs would not be afforded diploma privilege. I believe that all of the aforementioned students should be afforded diploma privilege, as the Court's reasoning for initiating this privilege is to "[recognize] the extraordinary barriers" brought on by COVID-19 and "accommodate" those facing these struggles.

At the moment, I only meet one of the requirements set forth by the Court. Although I will be receiving my J.D. degree I am not "currently" registered for either the July or September Bar Examination. Due to financial and physical hardship brought on by COVID-19 I was forced to withdraw my Bar application on May 19, 2020. Having grown up as a queer low-income person of color, I find it difficult that I am yet again forced to deal with the symptoms of growing up in poverty. I would not be in this predicament if I was financially secure and had the opportunity to wait for the Court to order diploma privilege. I implore you to consider including students who like me had to withdraw their applications due to the COVID-19 pandemic.

Appendix B - Marcia Cho

My name is Marcia Hyunjin Cho and I am a recent LL.M. graduate from the University of Washington and a licensed attorney in Canada. I wrote the LSAT in 2014, received my Juris Doctor degree from the University of Calgary in 2018, and was admitted to the Ontario bar in June 2019. Rather than opting to practice in Canada for three years, which would have also qualified me to sit for the Washington bar, I decided to pursue my LL.M. instead, to foster my passion and curiosity for the law and have the benefit of receiving a legal education in the United States. I decided that Seattle was the perfect place to do so, given that home—Vancouver, B.C.—is only a car ride away. I am currently registered to take the July 2020 bar.

I will be practicing in the area of family law in Seattle, as I have done so back in Canada, which is an area I am passionate about. I will be focusing my practice, inter alia, on interjurisdictional separations, which is undoubtedly niche, but very much necessary, especially in a city like Seattle.

Many of my LL.M. colleagues, including myself, pursued a LL.M. at the University of Washington to further our legal education and supplement our knowledge of the law. Although there are only a handful of us actually taking the July/September 2020 bar, I know I speak on behalf of my colleagues when I say it is heartbreaking that we are being told that our degree--one that was deemed required by the Washington Supreme Court for foreign trained attorneys to be eligible to write the Washington bar--is now insufficient for diploma privilege.

The impact of COVID-19 is indeed unprecedented and has affected all of us immensely—I thank the Court for their understanding and compassion by granting diploma privilege to some of our J.D. colleagues. However, I strongly believe that in order to ensure a just and fair outcome, those who are currently registered to sit the July/September 2020 bar should be extended that privilege. I respectfully request that the Supreme Court broaden its June 12, 2020 Order, to include LL.M. applicants currently registered for the July/September 2020 bar, along with all candidates who had to withdraw/did not register due to COVID-19 related hardships.

Appendix C - Sydney Finlay

My name is Sydney Finlay and I am a recent J.D. graduate from the University of Washington School of Law.

I am one of the students who found registering for a July bar unfeasible. I have a toddler with a sleep breathing disorder, and her pulmonologist warned us that her risk if infected by the coronavirus is unclear. Out of an abundance of caution, I withdrew my toddler from daycare in early March. In addition, my financial aid was running dry, my husband's job in construction had already suffered from a temporary layoff, and the three of us decided to move in with my parents outside of Seattle to lessen our financial burden. Like many others, the pandemic has upended our lives and changed our plans drastically.

Rather than hope that my husband's job would stabilize enough for him to provide adequate childcare, I decided that taking the bar this summer would be unfeasible. While I had originally decided to not register for a July exam due to my toddler's health, it turned out that I would not have the economic ability to study for it anyway. I have no access to consistent and free childcare. My husband cannot provide childcare because in order to receive unemployment benefits during the weeks he is laid off, Washington law requires that he be available to work whenever he is offered a job. Therefore, because we solely rely on his paychecks and unemployment benefits, he cannot choose to take two months off to care for our child. I hope to find remote work that would pay enough to support a full-time nanny, so I do not have to expose my toddler to a daycare center, but I am afraid that now I am disadvantaged in the job market because I am in the minority of J.D. recipients who did not receive diploma privilege.

I am also worried about participating in an in-person exam anytime in the near future due to my daughter's health. If the coronavirus continues the way it has, I am afraid that I will have to make the difficult choice of also not taking the February examination.

I believe that I am qualified for diploma privilege. Not only did I have a successful law school experience, I managed to do so while balancing responsibilities as a full-time mom. UW Law's course load is rigorous and taught by excellent professors, and I have taken all required classes. I hope that the Court will consider our stories and extend diploma privilege to all J.D. and LLM candidates who hoped to take a July bar examination but were unable under the circumstances.

Appendix D - Daniel Gaud

My name is Daniel Gaud and I am a recent J.D. graduate from the University of Washington.

I did not register for the July bar exam. After much deliberation between my wife and I, and to our detriment, we decided to defer to the February exam. Given the information available at that time, it was too risky for me to sit for the July bar. My wife was pregnant—a pregnancy doctors considered high-risk—and due at the end of May and we also have a two-year old son at home. We were especially concerned about COVID-19 given we had experienced a traumatic premature birth with our first son. We took the governor's stay-home order seriously and immediately stopped childcare and seeing friends and family members.

After the WA Supreme Court issued the order granting the alternative September exam, I immediately emailed WSBA and asked if it could make an exception to allow me to register for the September exam. My wife and I felt it would be safer for me to take that exam. By then our newborn would have developed a more mature immune system and most important, the September exam included new safety guidelines as it was being administered at multiple test sites while following safety protocols. Unfortunately, WSBA denied my request and stated that the September test was only being administered to meet CDC guidelines and was not a separate exam.

Given the unprecedented situation we are in with a global pandemic and the Court's subsequent decision to grant diploma privilege to those registered for the July bar, I respectfully request that the Court considers granting diploma privilege to students like me. WSBA offering a September exam under safe conditions in lieu of the standard July exam was unforeseeable during the registration period. Had I known WSBA would be offering this I would have undoubtedly registered.

Being unable to practice law will cause my family significant financial hardship as it precludes me from working as an attorney for a significant period. It puts me at a disadvantage in an economy and job market that has recently entered a recession. We rely on my wife's income and she is employed in the construction industry. However, COVID-19 has negatively affected all construction in the state. Her income has been dramatically reduced and her job is in continuous jeopardy as her employer seeks ways to reduce costs.

I thank the Court for its compassion and for taking the time to read our statements.

Appendix E - Sarah Atchinson

My name is Sarah Atchinson and I am a recent J.D. graduate of the University of Washington School of Law. I am writing in response to the Washington State Supreme Court's June 12th order granting diploma privilege to only certain graduates.

This order excludes July applicants who chose to sit for the February bar exam as the third option provided by the WSBA. This option was considerate in light of so much uncertainty and was much appreciated. By May 22nd all July registrants had to choose to sit for the bar exam in July, September, or February.

I live at home with parents who are both immunocompromised and I decided the best option was to protect their health. Upon this deep concern, I chose the third option and transferred to the February exam.

To draw a bright line that excludes diploma privilege from those who made a decision out of the gravity for health concerns is inequitable and unjust. Nor is there a bright line to distinguish between those who transferred to February and those who are currently registered for the July or September exam. I continued to receive email updates from the WSBA Admissions for the July and September exams even after the May 22nd deadline. Furthermore, it's not even possible to apply for the February exam until October. The only registrants for the February exam are those who were registered for the July 2020 exam and decided to take an option that was provided by the WSBA in good faith.

July applicants who decided to transfer into the February exam out of caution for health concerns will now have to wait almost a year after we've graduated to be licensed. This was a sacrifice I was willing to make at the time when the latest date was responsible and equitable. This court order now places an undue financial burden that myself and others simply can't afford.

A response that privileges some and excludes others is contrary to the purpose of this entire social movement.

This exclusion from joining my classmates who I have spent the past three years studying and working with is hurtful and discouraging. I've prided myself for going to law school in Washington and for pursuing licensure in a state where the highest court both represents and has recognized those who are overlooked.

I'm asking you now to please not overlook those who ask for your help and reconsideration. Please recognize that not everything needs a bright line to be just and equitable. If there's anything this year has taught me it is that bright lines drawn for science, health, politics, or social justice are often at fault for exclusion and harm.

Appendix F - Tim Brooks

My name is Tim Brooks. I am a Washington native and longtime resident. I received my first law degree from Oxford University many years ago. Last year, after learning about APR 3, and wanting to make a difference with the last chapter of my working life, I quit my job and returned to law school in order to obtain an LL.M degree. I had the specific goal of qualifying for and taking the Washington Bar Exam.

I am also 54 years old. I am a veteran; a husband; a father of three; and now, in addition to studying for the bar exam, I am a home-school teacher. I have asthma and am very susceptible to respiratory illness. My mother, still living, has chronic COPD. And I literally watched my father die of respiratory failure. I am the literal poster child for the type of person who has something to fear from this virus. And I cannot, for

the life of me, fathom why there would be a desire to protect mostly twenty or thirty-something JDs, with substantially lower risk, while virtually ignoring someone like myself. We should all be protected.

I registered last year for the July 2020 Bar Examination and have maintained that registration. Not because I am not concerned for my health, or that of my family, but because I had no other choice. I have a family to support and a mortgage to pay. I am not someone of great means. I could afford to complete the LL.M and take the July bar exam, but after that, all bets were off. I maintained my exam registration because I literally had no other options.

Many others have faced similar challenges and have had to make the best choices they could under the circumstances. No one asked for this. No one planned for it. And all of us now graduating have been greatly impacted by it - whether we registered for the next bar exam or not. Unfortunately, I've seen many comments from licensed attorneys expressing zero empathy for those of us now faced with this dilemma. As though this is all just some lark that we are all trying to exploit. But how many of them had to complete their last two quarters of law school isolated and offline while also homeschooling children, taking care of sick relatives, unable to work, with little or no opportunity to find time or space to study, write papers, take exams, while living in constant fear of getting fatally ill? And then take all those same challenges, because the virus is still with us, and do it once more while preparing for the bar exam.

For myself, I only ask for fairness. I have met the requirements of APR 3. Telling me now, after I have cleared every other hurdle, that the finish line has been moved forward for everyone else but me, while leaving me exposed to the same risks others have been spared, is fundamentally unfair.

For my classmates and others who had to withdraw or were unable to register due to legitimate challenges not of their own making, I ask the Court to find a fair solution. Asking someone to risk their health and safety or study for an intensive exam under completely unrealistic conditions is not fair. Particularly if the underlying rationale is that others had to do it and so should they. No one now licensed who sat for the bar exam had to do it under these conditions. No one.

I know the Court wants to help. The current diploma order is absolutely a step in the right direction. It just does not go far enough and assumes too much in terms of the comparative equities.

Appendix G - Julian Glasser

My name is Julian Glasser and I am a recent J.D. graduate from the University of Washington School of Law. I intend to practice public interest law in both Washington and Oregon. However, I will not have the opportunity to do so for nearly a year in part because the Washington State Supreme Court's June 12th order to grant diploma privilege to some J.D. graduates did not extend to equally-qualified graduates from Washington law schools who, for various reasons, were not registered to take the July bar exam.

My plans have been severely disrupted by the COVID-19 pandemic. I decided to first apply for an Oregon bar license because my fiancé, a nurse, intends to enroll in a nurse practitioner program in Portland, Oregon. Although I timely applied to take the July Oregon bar exam, I will not be able to do so because the Oregon Supreme Court issued a last-minute order placing a 500-person limit on the number of individuals who may

take the July exam. By the time this order was announced, it was too late to apply to take the Washington bar exam instead. As a result, I will not have the opportunity to obtain a license to practice law in either Washington or Oregon until mid-2021.

This delay will have numerous adverse impacts on my career plans and personal life. As a recent graduate with \$93,317 in student loan debt, I worry that I will not be financially able to practice public interest law unless I can find interim work to cover my living expenses during the next year. Moreover, I can no longer assure my fiancé that I can financially support her plans to leave her job and start nurse practitioner school. I am especially frustrated about this because she has endured immense stress working as a nurse caring for high-risk patients during the COVID-19 pandemic and, unfortunately, I cannot help give her the opportunity to recharge before returning to school.

I recognize and accept that everyone must do their part to absorb the disruption and uncertainty caused by the COVID-19 crisis. I am well-acquainted with uncertainty after experiencing several other setbacks during law school: I was badly injured from a bicycle accident and unable to walk during my 1L year and I suffered the sudden death of a parent during my 2L year. In each of these cases, I found a way to adapt so that I could continue with my legal education.

However, there is very little that I can do to adapt to the present situation because it is impossible to predict how long the COVID-19 pandemic will last or how the Washington and Oregon courts respond to this ongoing public health crisis. I therefore respectfully request that the Washington State Supreme Court extend the same diploma privilege that it granted to July bar applicants to equally-qualified J.D. and LL.M graduates from Washington law schools.

TO: WSBA Board of Governors
FROM: Rajeev D. Majumdar, President
DATE: June 22, 2020
RE: **Revised** Proposed procedures for At-Large Governor Election

ACTION/DISCUSSION : Approve proposed procedures for 2020 at-large governor election

The 2020 at-large governor election will be conducted per the WSBA Bylaws that were in effect when the election process began, as the most recent Bylaws were approved by the Court too late to be put into effect for this election, and some election rules need to be modified per the Open Public Meetings Act. The modified procedures recommended by Executive Committee are as follows:

All candidates will be interviewed in public session. Due to the large number of candidates we are recommending that 3 minutes be reserved for an introduction, and 10 minutes to answer a set of fixed questions. (See proposed questions below.)

Following the interviews, the Board will discuss the candidates then conduct a public roll call vote, in the method required by the Bylaws:

If no candidate receives a majority of the votes cast, the two candidates receiving the highest number of votes will be voted on in a run-off election. In the event of a tie for the second highest vote total, all candidates who are tied will participate in the run-off election along with the candidate who received the most votes. The candidate with the most votes in the run-off will be deemed the winner.

If the first run-off election results in a tie, the Board will again discuss the candidates and vote. The Board will repeat this process until one candidate receives more votes than the others, and that candidate will be declared the winner.

Proposed questions for the candidates:

1. In your opinion, what do you think is the biggest issue facing the bar over the next couple of years and what ideas do you have to help the bar overcome this issue?
2. As a board member what would you do to promote diversity, equity, and inclusion on the BOG itself and in the profession as a whole?
3. What about the WSBA's actions this year have you found the most helpful to members?
 - 3a. Follow-up: What initiative would you like to see happen to help members in serving the public?