
August 6, 2020

Honorable Nathan L. Hecht
President, Conference of Chief Justices
c/o Association and Conference Services
300 Newport Avenue
Williamsburg, VA 23185-4147

RE: Bar Examinations and Lawyer Licensing During the COVID-19 Pandemic

Dear Chief Justice Hecht:

On behalf of the American Bar Association (ABA), the largest voluntary association of lawyers and legal professionals in the world, I write to urge the Conference of Chief Justices (CCJ) to prioritize the development of a national strategy for bar examinations and lawyer licensing for the thousands of men and women graduating law school during the COVID-19 pandemic. This is a temporary change and only as necessary to address the public health and safety issues presented during this crisis without closing the doors to our shared profession.

In particular, we recommend that this national strategy urge each jurisdiction to cancel in-person bar examinations during the pandemic unless they can be administered in a safe manner; establish temporary measures to expeditiously license recent law school graduates and other bar applicants; and enact certain practices with respect to the administration of remote bar examinations. We appreciate that some jurisdictions may have already taken some action, such as modifying the bar examination dates or setting or temporarily modifying their admission or practice rules. But the failure of all jurisdictions to take appropriate action presents a crisis for the future of the legal profession that will only cascade into future years.

Earlier this week, the ABA House of Delegates discussed this important subject and heard from many different stakeholders within the legal profession, including concerns from the National Conference of Bar Examiners. But ABA Delegates also heard from many new law school graduates who have had to balance substantial student debt and the urgent need to support their families against the substantial risks an in-person bar exam poses to their health and the safety of their loved ones. Other concerns were raised by those who sat for a remote bar exam but were forced to buy expensive new computer hardware because the examiners adopted a platform with far higher security standards than a traditional computer. And still more concerns were heard from graduates who are uncertain when their exam will even take place.

After weighing all of these views, the ABA House of Delegates adopted ABA Resolution 10G, which is available at <https://www.americanbar.org/content/dam/aba/administrative/news/2020/08/2020-am-resolutions/10g.pdf>

Every jurisdiction should remain free to determine the best approach for bar admission and licensure, but if we do not meet this national crisis head-on, this year's graduates will directly compete with next year's graduates for bar exam slots; many will move to states that provide a path to practice, thus

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increasing competition in those jurisdictions while leaving a vacuum in others; and other would-be exam takers who are forced to wait for prolonged periods of time before becoming licensed may have family responsibilities that require them to take alternative jobs, thus potentially ending their legal careers before they were even allowed to begin.

To aid the CCJ in its consideration of these issues, we encourage you to consider the three courses of action recommended by ABA Resolution 10G.

First, we recommend a halt to in-person bar exams until and unless public health authorities determine that the examination can be administered in a way that ensures the health and safety of bar applicants, proctors, other staff, and local communities, including appropriate social distancing and cleanliness throughout the public facility where the exam is held.

Second, we respectfully recommend that each jurisdiction considers establishing temporary emergency measures to expeditiously license recent law school graduates and other bar applicants when public health and safety concerns preclude safe administration of an in-person bar examination. These measures could include a remote bar examination, creation or expansion of certified legal intern programs, supervised practice programs leading directly to licensure, a form of diploma privilege, or provisional admission subject to passing an in-person bar exam when health and safety conditions permit.

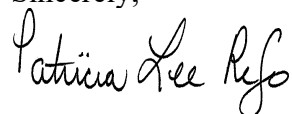
We appreciate that there is no single way to address the challenges, but the unique concerns and interests in each jurisdiction could be reflected in which emergency measures they pursue rather than whether to pursue to them. In determining whether to adopt emergency measures, we encourage each jurisdiction to collect and report on demographic data of those who would be most directly impacted in the absence of such measures.

Finally, we urge those jurisdictions electing to administer a remote bar exam—as many states are currently scheduled to do in coming months—to test the reliability and security of the online platform in advance, provide reasonable accommodations to applicants for whom taking a remote examination would create a substantial hardship, and take the other steps recommended in Resolution 10G.

I understand that each jurisdiction has been studying these matters for months as the COVID-19 pandemic has unfolded and that many jurisdictions have already adopted some of these recommendations. But we respectfully urge the CCJ to adopt a national strategy consistent with these principles to ensure that all qualified law school graduates can expeditiously earn the licenses they need to practice law and serve their communities despite the many challenges posed by the pandemic.

Thank you for your consideration of this input and please let me know if you have questions.

Sincerely,



Patricia Lee Refo
President, American Bar Association

cc:

Honorable Tom Parker
Chief Justice
Alabama Supreme Court

Honorable Joel Bolger
Chief Justice
Alaska Supreme Court

Honorable Michael Kruse
Chief Justice
High Court of American Samoa

Honorable Robert M. Brutinel
Chief Justice
Arizona Supreme Court

Honorable John Dan Kemp
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Arkansas Supreme Court

Honorable Tani Cantil-Sakauye
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Honorable Nathan B. Coats
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Honorable Collins J. Seitz, Jr.
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Honorable Anna Blackburne-Rigsby
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