



August 12, 2020

Clerk  
District of Columbia Court of Appeals  
430 E Street NW  
Washington DC 20001

To Whom it May Concern:

The attached position statement is submitted in response to the Court of Appeals' recent notice inviting members of the public to comment on whether the Court should broaden the circumstances in which law school graduates may temporarily practice law prior to admission to the bar and/or establish a diploma privilege for recent law school graduates. As set forth in its April 21, 2020 statement, the Clinical Legal Education Association (CLEA) supports the development of a variety of models to permit law graduates to temporarily practice law prior to admission, as well as licensing alternatives.

We also note that the ABA House of Delegates recently adopted Resolution 10G (attached), urging bar admissions authorities to "establish temporary emergency measures to expeditiously license recent law school graduates and other bar applicants ... including but not limited to administration of 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 examination when public health and safety concerns permit such an examination...."

Thank you for your consideration.

Sincerely,

Kendall Kerew  
CLEA President, on behalf of the Board of Directors



## **Statement of the Board of Directors on the 2020 Bar Examination**

**April 21, 2020**

The Clinical Legal Education Association (“CLEA”), the nation’s largest association of law professors, urges State authorities in charge of attorney licensure to promulgate rules and policies in response to the current pandemic that expand the availability of legal representation for underserved clients and equitably account for the impact of the COVID-19 crisis on recent law school graduates. In the face of this unprecedented crisis, we are called to work together to protect each other. We must be pragmatic, flexible and caring. While we are strongly drawn to precedent and tradition, as are all lawyers, we urge that strict adherence to the current model of a single, high stakes, timed bar examination as the primary gatekeeper to the profession will needlessly exacerbate inequality and further injustice during this pandemic.

As this crisis has developed, a number of approaches to bar licensure have emerged. Some jurisdictions have announced plans to postpone the bar exam a few months and then require applicants to sit for the traditional exam. These plans seem not to fully grapple with the difficult situation in which we find ourselves. CLEA joins others in calling for jurisdictions to adopt alternatives to the bar exam, such as supervised practice, sequential licensing, and diploma privileges. We recognize that one size may not fit all and that solutions will vary according to the needs and circumstances of each locale. Nevertheless, one thing is certain – this is not a time for business as usual.

CLEA has long expressed concerns about the deficits of the bar exam in the licensure system for American lawyers. This position is rooted in CLEA’s mission, which promotes justice and diversity as the core values of the legal profession and recognizes that licensure regulations inevitably shape legal education, particularly clinical legal education. CLEA has consistently urged that direct assessment of relevant professional skills, on analogy to training in medicine, would be better than inferring those skills from academic performance. Bar exam scores correlate well with law school GPAs and, to a lesser extent, with LSAT scores, but neither of these measures has been shown to relate to success in the profession or competence in lawyering. The bar exam is not designed to measure competence in representing clients or advancing justice, as is required of all lawyers. We have repeatedly urged that supervised practice and other experiential assessments would much better protect our clients and foster professional excellence. These deficits of the traditional bar exam are thrown into high relief by the bright light of the virus.

First, there is an unprecedented need for legal counsel for low and moderate income people, so many of whom will need legal assistance on issues of employment, housing, business and finance during and after this crisis. The need for advice and representation in family law, criminal law and immigration matters is also acute. Licensing alternatives such as supervised practice, graduated licensing and admission by diploma privilege would expand the availability of legal services at this crucial time and permit law graduates to serve their communities.

Second, the COVID-19 crisis has impacted law students unequally. Some are infected, while others are caring for family members. Many are dealing with severe economic dislocation and beset by daily crises; they are caring for children, older relatives and in some cases, face illness themselves. In the coming months, the results of any exam will turn upon the circumstances of the test taker rather than their ability to ethically practice law and meet their professional obligations. Most law schools have recognized that reality by adopting some form of pass/fail grading for this semester. In this moment, limiting admission to practice to those capable of sitting for and passing the traditional bar exam will only exacerbate these inequities; it will adversely impact those facing personal challenges brought on by this crisis while rewarding the fortunate and the wealthy.

Third, we must recognize the impracticality of administering a bar exam now or in the near future. Some states have announced their intention to move forward with the July 2020 exam and others have postponed the July exam to September. Although we cannot be sure, given the dynamism that characterizes this moment, there seems little likelihood that large groups of graduates could safely take an exam in person during the coming months.

We urge the state licensing bodies to recognize that this state of emergency requires us to seek creative, sensible and realistic solutions. We must try to better meet the legal needs of underserved groups and respond with care, concern and thoughtful reforms to the very serious challenges those striving to enter our profession face in this unprecedented time of crisis. Let us not look back and regret that we did not give enough attention to the least fortunate among us and let inequality flourish in disaster.

**ADOPTED**

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

**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

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

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

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

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

20 (2) provide reasonable accommodations, consistent with public health and safety  
21 guidelines, to applicants for whom taking a remote examination would create a substantial  
22 hardship—including but not limited to applicants with disabilities, applicants who serve as  
23 caregivers to children or other family members, applicants who lack access to an  
24 appropriate computer or reliable internet access, and applicants who lack a quiet place

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25 to take a remote bar examination—and, if such accommodations are not possible,  
26 establish alternate methods to ensure the expeditious licensing of such applicants;

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

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

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

## REPORT

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

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

The COVID-19 pandemic, however, has turned what is normally an orderly process into chaos. While the July 2020 bar examination had originally been scheduled to be administered in all jurisdictions from July 28-29, 2020, as of this writing there are at least seven different date permutations for this exam, including as late as October 5-6, 2020.<sup>1</sup> Although a growing number of jurisdictions have announced the cancellation of the in-person bar examination in favor of a remote bar examination administered online, as of this writing a majority of jurisdictions are still holding in-person bar examinations.<sup>2</sup> And while some jurisdictions have created or expanded certified legal intern programs or enacted a diploma privilege rule in order to permit some or all bar applicants to practice notwithstanding any delays in the bar examination date, others have delayed the bar examination without providing such accommodations. Nevertheless, as of this writing, only nine jurisdictions have proceeded with an exclusively in-person bar examination on July 28-29, 2020, without adopting or expanding some sort of provisional practice rule.<sup>3</sup>

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

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

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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administered remotely.

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

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

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

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

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

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

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

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

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

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

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

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<sup>6</sup> Copies of the 31 impact statements filed with the Supreme Court of Missouri can be found at [https://docs.google.com/document/d/1\\_cWJxiFEgdiOQffLIIVmOrRifV2DRTWk8tWI2GHdQ/edit](https://docs.google.com/document/d/1_cWJxiFEgdiOQffLIIVmOrRifV2DRTWk8tWI2GHdQ/edit) (last visited July 27, 2020).

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

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

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



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

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

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

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

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

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

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

The administration of a remote bar examination also raises serious disparate impact concerns. To sit for a remote bar examination, an applicant must have access to an appropriate computer<sup>17</sup> with reliable internet access, as well as the ability to take the exam uninterrupted for several hours in a quiet place. One recent survey has shown that a majority of bar applicants do not believe they have reliable internet access, and that white applicants are about 71 percent more likely to have such access when compared to black applicants.<sup>18</sup> The same survey found that a majority of applicants do not have access to a quiet space to take a remote bar examination, with white applicants again being substantially more likely to have access to a quiet place than an applicant of color.<sup>19</sup> And with schools and daycares closed in many parts of the United States, parents—and particularly mothers—cannot guarantee that they will not have to leave the room to attend to their young children.<sup>20</sup>

The remote bar examination necessarily requires the collection of substantial

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

<sup>13</sup> American Board of Surgery, *ABS Issuing Refunds, Launching Security Investigation for Virtual 2020 General Surgery QE*, [http://www.absurgery.org/default.jsp?news\\_virtualgsqe07.17](http://www.absurgery.org/default.jsp?news_virtualgsqe07.17) (July 17, 2020).

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

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

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

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

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

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

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

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

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

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

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

<sup>23</sup> *Id.*

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

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

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

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

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

Respectfully submitted,

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

August 2020.

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<sup>26</sup> Am. Bar Ass’n, Mission Statement, [https://www.americanbar.org/about\\_the\\_aba/aba-mission-goals/](https://www.americanbar.org/about_the_aba/aba-mission-goals/) (last visited July 27, 2020).

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

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## GENERAL INFORMATION FORM

### 1. **Summary of Resolution**

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

### 2. **Approval by Submitting Body**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N/A.

**6. Status of Legislation (if applicable).**

N/A

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

The recommendations would be disseminated to the highest courts and bar

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admissions authorities of each jurisdiction.

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

None.

**9. Disclosure of Interest.**

None.

**10. Referrals**

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

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

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

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646-565-6522  
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**EXECUTIVE SUMMARY****1. Summary of Resolution.**

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

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

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

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

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

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

No minority or opposing views have been identified.