



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.