

**COLLEGE OF LAW**

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July 10, 2020

Chief Justice Roger S. Burdick
Idaho Supreme Court
PO Box 83720
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Dear Chief Justice Burdick:

The undersigned faculty of the University of Idaho's College of Law write to request that the Idaho Supreme Court grant diploma privilege to all graduates of ABA accredited law schools who are currently registered for the July bar exam in Idaho, so long as they satisfy Idaho's character and fitness process and satisfactorily complete the MPRE. This grant of diploma privilege would not require the cancellation of the bar exam. Individuals who have not graduated from an ABA accredited law school, or those who wish to take the exam to obtain a portable UBE score or future reciprocal admission, may still take the exam. However, many prospective test-takers would likely take advantage of a diploma privilege option and forgo the bar exam at this time. This would greatly reduce the number of people taking the exam, and thereby facilitate a safer exam administration for the remaining test-takers.

For the reasons stated below, we respectfully recommend a broad and permanent diploma privilege as the best course under present circumstances. However, we also note alternatives that may advance some, but not all, of the interests served by this approach, including: a limited diploma privilege targeted at a smaller class of beneficiaries; a provisional diploma privilege subject to a probationary period, enhanced CLE requirements, supervision through an apprenticeship program, or successful completion of the bar exam within a prescribed time period; a modified bar exam that is shorter, remote, or both; or a temporary reduction in the passing UBE score.

Under normal circumstances, the goal of the bar exam is to determine whether new entrants to the Bar have the minimum competency to practice law. Under present circumstances, however, the bar exam is unlikely to serve that function effectively.

The COVID-19 pandemic substantially interferes with the ability of many graduates to adequately prepare for the bar exam. The interference is particularly severe for some graduates, including: those who become ill; those who must take additional precautions to avoid exposure because they or those close to them are in a high-risk category; those who suddenly face significant additional family caretaking responsibilities; those who have suffered adverse financial consequences due to economic disruptions; and those who must struggle with the mental health

challenges they or those close to them face as a result. These burdens fall disproportionality on women, persons of color, and individuals with limited financial resources.

This situation is simply unprecedented. Preparing for the bar exam is stress-inducing and challenging under normal circumstances. Today's graduates, however, are facing additional, atypical challenges. The public health crisis has dramatically increased the number of stressors and distractions placed upon these graduates.

For example, graduates report taking extreme lengths to isolate at this time. They are terrified of the consequences of becoming sick: from missing weeks of study time to possibly being prohibited from taking the exam at all, the consequences of catching COVID-19 could have devastating impacts on their career and their finances. The isolation they are experiencing brings with it its own stresses and mental health consequences that should not be overlooked.¹

The COVID-19 pandemic has caused great economic upheaval as well, and this has impacted graduates in various ways. Some have lost their own job, or their spouses are no longer working, causing acute stress. Other graduates have seen job offers disappear and are searching for employment in a poor job market.

Some graduates do not have regular or reliable childcare due to the COVID-19 pandemic. Just as practitioners across Idaho have struggled over the last several months to work from home while caring for their children, these graduates have faced significant, unanticipated challenges in trying to prepare for the bar exam. In some instances, these family obligations make adequate preparation virtually impossible.²

Some graduates do not have a quiet place with reliable internet to study for the exam, making a challenging preparation even more difficult. The College of Law had hoped to provide graduates

¹ Historically, law school students have been found to have clinically elevated levels of depression, anxiety, and other symptoms of psychological distress ranging from “eight to fifteen times that of the general population.” Lawrence S. Krieger, Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence, 52 J. LEGAL EDUC. 112, 114 (2002). Indeed, studies of law school students have reported “scores on anxiety measures that are comparable to psychiatric populations . . . [and] a “twenty to forty percent incidence of clinical depression.” *Id.* The COVID-19 pandemic has had significant mental health impacts, including exacerbating existing mental health conditions. *See, e.g.*, <https://www.kff.org/coronavirus-COVID-19/issue-brief/the-implications-of-COVID-19-for-mental-health-and-substance-use/>.

² A recent Washington Post article noted that “[t]hirteen percent of U.S. parents had to quit a job or reduce their working hours due to a lack of child care[.]” *See* <https://www.washingtonpost.com/business/2020/07/03/big-factor-holding-back-us-economic-recovery-child-care/>. Notably, the career impacts of COVID-19 have largely fallen upon women: more women have lost their jobs than men, and “economists are deeply worried the pandemic will set American women’s job prospects back for years.” *Id.*

with access to its buildings for them to use while studying. However, due to the increasing number of cases in our state, the College of Law has not been able to do so.

We now know that graduates of color and their families are disproportionately at risk of both contracting COVID-19 and of becoming severely ill.³ Additionally, the recent killings of George Floyd, Ahmaud Arbury, Breonna Taylor, Tony McDade, Elijah McClain, Rayshard Brooks, and others, along with the resulting protests, have further affected the individuals preparing for the bar exam – particularly graduates of color. These impacts on graduates are especially troubling.

The current trajectory of the pandemic in Idaho indicates that it may be impossible to safely administer an in-person bar exam this month – or in the near future.⁴ Diploma privilege would provide significant public health benefits at this critical time. The rising number of cases in Idaho highlights the risk that an in-person exam would pose to test-takers – especially those who fall into high-risk categories. Test-takers are being asked to risk their own personal health – and that of their loved ones – in order to begin their careers.

Like you, we take very seriously our responsibility to ensure that our graduates are prepared to practice law with diligence, skill, and professionalism. And, like you, we are committed to the well-being of recent law-school graduates. What we know is that the aggregate toll of all of the current public health and economic crises will impact graduates' ability to effectively prepare for the bar exam. The result is that this examination will not accurately assess minimum competency to practice law, but will rather measure in significant part the substantial and disparate impact of these unprecedented times.

The University of Idaho's graduates are not the only individuals impacted by the incredible circumstances present today. Accordingly, we do not just make this request on behalf of our graduates, but ask that all individuals who have graduated from accredited law schools and are registered for the bar exam who have otherwise met the conditions for admission be granted diploma privilege.

We strongly recommend diploma privilege as the best approach under these circumstances. This is the approach our neighboring states – Washington, Oregon, and Utah – have adopted in response to the extraordinary circumstances we face. However, we note some alternatives that

³ See <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>.

⁴ While other jurisdictions have postponed the exam to a later date, this change would compound financial hardship by delaying graduates' ability to begin their careers. There is currently little basis for confidence that conditions this fall or winter would support the safe administration of the exam. The average law student graduates with approximately \$107,000 in law school student loans. See <https://www.accesslex.org/index.php/xblog/what-do-we-know-about-law-student-indebtedness>. Most graduates are required to begin making payments on these loans six months after graduation. Graduates have ordered their lives and financial matters in reliance of receiving their bar exam results in September.

may mitigate some of the concerns discussed above. The Idaho Supreme Court could consider the following options:

- Grant diploma privilege on a limited basis, only to graduates of Idaho law schools, or only to first-time test takers in Idaho.
- Lower the minimum pass score on a temporary basis to account for the adverse impact of present circumstances on graduates' expected performance. Notably, in addition to granting diploma privilege, Oregon and Washington also lowered the minimum passing UBE score for graduates taking the exam this year.⁵
- Grant diploma privilege on a provisional basis. The provisional license could convert to a full license upon successful completion of the probationary period without professional misconduct.
- Grant diploma privilege on a provisional basis contingent upon practice under the supervision of a licensed attorney for a specified period of time.⁶ An apprenticeship program could have the additional benefit of providing opportunities for future employment, which is crucially important given the significant economic challenges the pandemic has created.
- Grant diploma privilege subject to enhanced CLE requirements for the first two years of practice for this cohort of new attorneys.
- Grant diploma privilege on a provisional basis, which automatically expires after a specified time period (such as 12 to 24 months) unless the graduate successfully passes the Idaho bar exam within that time period.
- Administer a modified bar examination that is shorter, remote, or both.⁷ While this would eliminate some of the problems presented by an in-person exam, an online administration may present significant administrative challenges. Additionally, steps would need to be taken to ensure that test-takers had reliable access to appropriate technology.

⁵ In addition to granting diploma privilege, Oregon reduced its UBE passing score from 274 to 266, and Washington reduced its UBE passing score from 270 to 266. Idaho's score of 272 is now the highest amongst our neighbors: Utah and Wyoming use a score of 270; Montana uses a score of 266. Even before other jurisdictions reduced their passing score, Idaho's score was higher than that of 31 other jurisdictions, including 14 jurisdictions with a score of 270, 11 with a score of 266, and 5 with a score of 260.

⁶ [Utah](#) adopted a 360-hour supervised practice approach to licensure, which is limited to graduates of ABA-approved law schools with an 86% first-time taker bar pass rate (which both Utah schools meet).

⁷ See [Washington, D.C.](#), [Indiana](#), [Louisiana](#), [Maryland](#), [Michigan](#), and [Nevada](#).

We know that our graduates are ready and able to be excellent practitioners and contribute as competent and ethical members of the Idaho State Bar. Accordingly, we ask that you grant diploma privilege as outlined above. Thank you for your consideration of our request, and for your leadership in these unprecedented times.

Sincerely,



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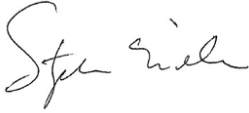
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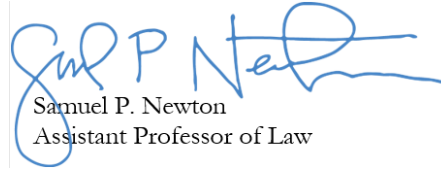
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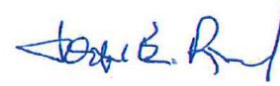
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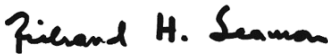
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