

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

April 28, 2020

Dear Chief Justice Stephens,

Thank you for this opportunity to provide input on the subject of licensure of new attorneys in view of the COVID-19 pandemic. We write as deans of the state's three law schools to provide our perspective on this important and difficult topic.

First, we unequivocally support providing a pathway to licensure for students graduating from our law schools this Spring. We view it vital that the public continue to benefit from the assistance of attorneys, including attorneys new to the profession, amidst these challenging circumstances. In this regard, we support the WSBA's proposal to offer the July administration of the bar exam at remote locations across the state, where social distancing and other protective measures can be implemented at test-taking sites in accordance with existing governmental regulations as may exist at such time. We are in the process of seeking and securing approval to make available our own law school buildings for this purpose at no cost to the WSBA. We further support offering an additional administration of the bar exam in September, to accommodate students whose personal and/or familial circumstances have been impacted by the pandemic such that they cannot sit for the exam in July.

Second, we understand that one option that may be considered should the WSBA be unable to administer a July bar examination is extending diploma privilege to some set of the current bar applicants. Given the likelihood of the WSBA being able to administer the bar in July and/or the Fall, we do not believe that diploma privilege is currently ripe for consideration. Additionally, any consideration of diploma privilege would not only need to address graduates of juris doctor programs, but also the significant number of Washington state bar applicants who are foreign-trained lawyers who have completed a U.S.-based Master of Laws program.

Should there be an inability to administer a July or Fall bar examination, there are varying approaches to instituting diploma privilege. We would welcome the opportunity to consult with the Court and the WSBA on the specifics of any diploma privilege proposal. For example, in their memo to the Court, students from the three Washington state law schools proposed diploma privilege as a provisional licensing measure that "would expire after 18 months or if the applicant fails the bar exam on their first attempt, whichever comes first." There are, however, other options. The Wisconsin bar, for instance, has a permanent rule that extends diploma privilege to qualified graduates of Wisconsin law schools. Utah, by contrast, recently adopted a temporary but non-provisional form of the privilege for June 2020 graduates.¹

¹ The Utah Supreme Court has approved diploma privilege for June 2020 graduates of ABA-approved law schools that had an overall first-time taker bar examination passage rate in 2019 of 86% (rounded to the nearest whole number) or greater and who engage in 360 hours of supervised legal practice. The complete order is available at <https://images.law.com/contrib/content/uploads/documents/292/Utah-Bar-Exam-order.pdf>.

Adopting any form of a diploma privilege would require a careful balancing of myriad interests.² Presently, without detailed information on the proposed elements of a temporary or permanent diploma privilege program for Washington, we do not have enough information to offer a substantive opinion on the subject.

Third, we offer for the Court and WSBA's consideration an idea that to our knowledge has not yet been discussed, which is the possibility of lowering the cut score required to pass the Washington state bar exam for the upcoming July and September 2020 administrations. Washington currently sets the passing score at 270, which is in approximately the middle range of what is required by UBE jurisdictions across the country. See <http://www.ncbex.org/exams/ube/score-portability/minimum-scores/>. Lowering the cut score to something like a 266 would be one way to acknowledge that, despite the WSBA's considerable efforts, there will be nothing routine about the July and September exam administrations and that many of the test takers will, despite their best efforts, face obstacles and challenges in preparing for and taking the exam that may impact their performance. We do not know enough about how the original cut score was chosen to know whether there might be a basis for looking at lowering it going forward rather than just on a one-time basis, but we did want to raise the one-time change as a possibility. As with the diploma privilege idea, we would welcome the opportunity to consult with the Court and WSBA on the specifics of any contemplated change to the cut score.

Fourth, and this probably goes without saying, we would ask the Court and the WSBA to do everything within your respective powers to ensure that, if the WSBA's plan is adopted, the September exam scores are computed and returned to test takers as rapidly as possible. As we know you understand, it is vitally important that those who are taking the exam later, either by choice or because they could not be accommodated in the July administration, are delayed as little as possible in being licensed to practice law and begin their careers.

In conclusion, we take seriously our roles in preparing students to enter the profession. The unprecedented challenges facing society make the attorney's role as important as ever. We thank the Court for its leadership and guidance in finding a solution that enables licensure of new attorneys without undue delay or hardship. We also want to acknowledge the efforts of each of our student bar organizations and their leadership in crafting proposals and providing helpful information to us, the WSBA, and the Court. These students have been professional, responsive, collaborative, and comprehensive in their approach to helping resolve these difficult issues on behalf of graduating students, and we appreciate their efforts. We also appreciate the WSBA and its tireless work on behalf of attorneys across Washington to further the profession and increase access to justice in our state. Together, we look forward to much brighter days ahead—for our soon-to-be graduates, practicing attorneys, and all Washingtonians.

² If the Court does consider the advisability of adopting some form of diploma privilege, we encourage the Court to review a larger and more representative sample of Washington state bar passage statistics than was provided by the WSBA in its submitted materials dated 4/23/20. The first-time ABA JD pass rate for the February 2020 exam was abnormally low, and the first-time JD pass rates for the July administrations are routinely higher than for February. For example, the first-time ABA JD pass rate for the July 2019 exam was 78.7% and the comparable pass rate for the July 2018 exam was 79.1%.

Sincerely,

The Deans of Washington State's Three Law Schools

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