

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0244

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IN RE THE RULES FOR ADMISSION

TO THE BAR OF MONTANA

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**PETITION**

To Adopt Emergency Temporary Rules Allowing Diploma Privilege for  
Admission to the Montana Bar in Light of the Covid-19 Pandemic

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**INTRODUCTION**

Petitioners are 2020 graduates of the Alexander Blewett III School of Law at the University of Montana. Most are applicants for admission to the State Bar of Montana who are scheduled to sit for the Montana Uniform Bar Exam (UBE) on July 28-29, 2020 in Missoula.<sup>1</sup> One petitioner began law school in Montana before transferring to and graduating from the UC Berkeley School of Law. She is an applicant for admission to the State Bar of Montana.

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<sup>1</sup> A few Petitioners have accepted jobs outside of Montana and registered for those states' bars.

In the interest of public health and safety, Petitioners respectfully request that additional emergency changes be made to the Rules for Admission to the Bar of Montana. The provisional licensure rule ordered by this Court in June 2020 was designed to provide temporary licensing for a few candidates who would be unable to sit for the exam. *See Order, In re Rules for Admission to the Bar of Montana* (June 17, 2020). However, it now appears that the risks of a two-day in-person bar exam are significant for everyone, necessitating a more comprehensive solution.

This Court has exclusive and inherent authority to govern the practice of law in Montana, including attorney licensure requirements. Mont. Const. art. VII § 2(3). Admission to the Bar of Montana is conditioned on passage of the UBE, unless an applicant meets an exception. Rules of Admission to the Bar of Montana III.C. This Court is vested with authority to waive any requirement under the Rules of Admission, including the bar exam passage requirement, “under circumstances it deems sufficient.” *Id.* XI.A.

The fundamental purpose of the rules for admission to the practice of law in Montana is “to protect the public from incompetent practitioners and to ensure fairness in the admission of qualified individuals who wish to practice law in the State of Montana.” *In the Matter of Proposed Amendments Concerning Bar Examination and Admission to the Practice of Law in Montana*, 187 Mont. 159, 160-61, 609 P.2d 263, 264 (1980) (adopting the bar exam and abolishing diploma

privilege). “The fact that the law student knows he must face the Bar examination after graduation and before admission to practice is a healthy, educational stimulant.” *Id.* at 169, 609 P.2d at 269.

The current circumstances caused by the Covid-19 pandemic justify an emergency measure waiving bar exam passage as a prerequisite to admission to the State Bar of Montana, and/or ordering changes to the administration of the in-person bar exam. The Board of Bar Examiners already canceled the Montana Law Seminar as an in-person event because of Covid. *See Admission*, State Bar of Montana, <https://www.montanabar.org/page/Admission> (last visited July 8, 2020) (“Due to the Covid-19 Pandemic and for safety reasons, the July 30, 2020 Montana Law Seminar (MLS) will be offered by Zoom only”). If the Montana Law Seminar cannot be safely administered in person, Petitioners respectfully wonder how the bar exam can be.

Petitioners request that the Court take judicial notice of the significant health risks bar examinees are being asked to take and order one or both of the following:

1. Grant emergency diploma privilege for full admission to the State Bar of Montana to those applicants who:
  - a. graduated from an American Bar Association-accredited law school in the last year;

- b. are currently registered to sit for the July UBE or were registered for the July UBE and deferred to February 2021;
  - c. have not previously taken a bar exam in any jurisdiction;
  - d. have obtained an MPRE score of 80 or higher;
  - e. have submitted the requisite academic transcript and accompanying documents to the Montana Board of Bar Examiners;
  - f. have passed a character and fitness investigation by the Commission on Character and Fitness; and
  - g. will attend the online Montana Law Seminar on July 30, 2020.
2. Grant diploma privilege to those who meet the above criteria, and direct the Board of Bar Examiners to administer the UBE for those who want a transferable score.<sup>2</sup>

### **ARGUMENT**

The Montana Bar Exam is scheduled for July 28-29, 2020, in the University Center Ballroom at the University of Montana. Approximately 90 people will sit in a room together for twelve hours over two days. Whether everyone wears masks the entire time or not (which is still unclear), this puts not only the examinees at

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<sup>2</sup> Based on an informal survey of Petitioners, it appears that fewer than one-third would choose to sit for a smaller UBE, and the remainder would accept diploma privilege.

risk but also everyone with whom they come in contact during and after the exam. Even if the room is divided in two, with 45 examinees on each side plus staff and proctors, attendees will breathe the same air, use the same bathrooms, and share the same hallways over the course of two days.

Many examinees are traveling to Missoula to take the bar exam either from elsewhere in Montana or from out-of-state. No quarantine is required. They are staying with friends and family or at local hotels, increasing the odds of viral transmission. They will likely eat at local restaurants and may celebrate at local bars. Some may behave safely; others may not. It will not be possible to discern the former from the latter.

It will also be impossible to know whether everyone taking the bar exam is uninfected and non-contagious. Cases in Montana have been increasing exponentially over the past few weeks. As of 10 a.m. on July 9, Missoula County had 123 cases of Covid-19—the third highest in the state. Montana recorded 96 new cases on July 9—almost three times higher than the highest number (35) in late March. Missoula County is one of the Montana counties that is experiencing community transmission of the virus. *See Coronavirus Disease 2019*, <https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt/demographics> (last visited July 8, 2020).

These facts and numbers are no longer abstract for Petitioners. During the past week alone, Petitioners have learned that several law students have been exposed to Covid. They expect more in the coming weeks.

**A. Covid is Frequently Transmitted from Asymptomatic Individuals.**

Scientists determined early in the pandemic that individuals can be infected with Covid-19 and have no symptoms—no fever, no cough, no sore throat—and still be contagious. Wycliffe E. Wei et al., *Presymptomatic Transmission of SARS-CoV-2 – Singapore, January 23-March 16, 2020*, 69 MMWR Morbidity and Mortality Weekly Report 411 (Apr. 10, 2020). Moreover, people without symptoms are estimated to be responsible for 40%-60% of Covid transmission. See, e.g., Melissa M. Arons et al., *Presymptomatic SARS-CoV-2 Infections and transmission in a Skilled Nursing Facility*, 382 N. Engl. J. Med. 2081 (May 28, 2020); Miriam Casey et al., *Pre-symptomatic transmission of SARS-CoV-2 infection: A secondary analysis using published data*, (June 11, 2020) <https://www.medrxiv.org/content/10.1101/2020.05.08.20094870v2.full.pdf+html>; Xi He et al., *Temporal dynamics in viral shedding and transmissibility of COVID-19*, 26 Nature Medicine 672 (Apr. 15, 2020).

While the bar examiners' plan to take every examinee's temperature is a good idea, it simply will not catch individuals who are asymptomatic or presymptomatic and contagious.

## **B. Aerosols and Droplets: The Evolving Science of Covid Transmission.**

The bar examiners have said that examinees will sit at individual tables in the UC Ballroom with sufficient distance between tables. However, recent research suggests that distance minimizes transmission by droplets but may have little to effect on airborne transmission, especially when individuals are indoors and breathing the same air for several hours.

Covid-19 is transmitted primarily via respiratory droplets from sneezing and coughing. Pien Huang, *Aerosols, Droplets, Fomites: What We Know About Transmission of COVID-19*, NPR (July 6, 2020),

[https://www.npr.org/sections/goatsandsoda/2020/07/06/887919633/aerosols-](https://www.npr.org/sections/goatsandsoda/2020/07/06/887919633/aerosols-droplets-fomites-what-we-know-about-transmission-of-covid-19)

[droplets-fomites-what-we-know-about-transmission-of-covid-19](https://www.npr.org/sections/goatsandsoda/2020/07/06/887919633/aerosols-droplets-fomites-what-we-know-about-transmission-of-covid-19). The advice to maintain six feet of social distance reflects this, as droplets are heavy and cannot travel far. Droplets are considered the most frequent mode of Covid transmission.

*Id.* (citing the United States Centers for Disease Control and Prevention,

<https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread>, and the World

Health Organization, [https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1)).

A letter sent to the World Health Organization just this week, signed by 239 scientists, contends that mounting evidence suggests Covid-19 is released as someone breathes or talks “in microdroplets small enough to remain aloft in air and pose a risk of exposure at distances beyond 1 to 2 m from an individual.” Lidia

Morawska & Donald K. Milton, *It is Time to Address Airborne Transmission of COVID-19*, *Clinical Infectious Diseases* (July 6, 2020),

<https://doi.org/10.1093/cid/ciaa939>. “This poses the risk that people sharing [indoor] environments can potentially inhale these viruses, resulting in infection and disease.” *Id.*

Hand washing and social distancing are appropriate, but in our view, **insufficient to provide protection** from virus-carrying respiratory microdroplets released into the air by infected people. **The problem is especially acute in indoor or enclosed environments**, particularly those that are crowded and have inadequate ventilation.

*Id.* (emphasis added). HEPA filters can minimize this mode of transmission, as can ultraviolet light. *Id.* To the best of Petitioners’ knowledge, the UC Ballroom has neither.

Airborne transmission appears to be the primary explanation for “super spreader” events. *See, e.g.*, Max SY Lau et al., *Characterizing super-spreading events and age-specific infectivity of COVID-19 transmission in Georgia, USA*, Abstract (June 20, 2020) (estimating that 2% of cases may have directly infected 20% of all infections) <https://doi.org/10.1101/2020.06.20.20130476>. Moreover, children and adults under 60 years old may be “the main driver of super-spreading.” *Id.*

Super-spreading appears to be widespread across space and time, and it may have a particularly important role in driving the outbreak in rural area and



increasing importance toward later stages of outbreaks in both urban and rural settings.

*Id.*

Petitioners are not asking the Court to make a factual determination as to the validity of coronavirus science. Instead, they ask the Court to take judicial notice of the fact that the scientific community is in the throes of a debate over the importance of indoor microdroplet transmission of Covid-19. In light of that debate, and the potential risks Petitioners will be forced to take, the question is who should bear the burden of this scientific uncertainty.

Petitioners respectfully contend that protecting the public from the unnecessary and preventable transmission of disease is as important as protecting the public from the small number of examinees who could be expected to fail the bar examination. Ensuring fairness in the admission of qualified individuals who wish to practice law in Montana surely must be achievable without asking applicants to sacrifice their health and the health of those around them.

### **C. The Long-Term Consequences of Covid Are Potentially Severe.**

Although some perceive Covid as just another form of flu—something young people especially do not have to worry about—anecdotal reports as well as research studies increasingly suggest otherwise. In addition to reports observing that Covid acts as a vascular disease leading to complications from blood clots,

many studies also report neurological damage. *See, e.g.,* Dana G. Smith, *Coronavirus May Be a Vascular Disease, Which Explains Everything* (May 28, 2020), <https://elemental.medium.com/coronavirus-may-be-a-blood-vessel-disease-which-explains-everything-2c4032481ab2>; UCL News, *Delirium, rare brain inflammation and stroke linked to Covid-19*, University College London (July 8, 2020) <https://www.ucl.ac.uk/news/2020/jul/delirium-rare-brain-inflammation-and-stroke-linked-covid-19> (“Some patients in the study did not experience severe respiratory symptoms, and the neurological disorder was the first and main presentation of Covid-19”).

Moreover, in a study released just yesterday, physicians report a nexus between Covid-19 infection and neurological complications even in cases where the underlying respiratory disease was not severe. Ross W. Patterson et al., *The emerging spectrum of COVID-19 neurology: clinical, radiological and laboratory findings*, *BRAIN* (July 8, 2020) (the “high incidence of acute disseminated encephalomyelitis . . . was not related to the severity of the respiratory COVID-19 disease.”), <https://academic.oup.com/brain/article/doi/10.1093/brain/awaa240/5868408>.

#### **D. Large Gatherings Are High-Risk Events.**

In response to Covid-19, the Missoula City & County Health Department has adopted stricter requirements than those mandated by Governor Bullock. *See*

Order of the Missoula City & County Health Officer, May 28, 2020

<https://www.missoulacounty.us/home/showdocument?id=71875>. The Health

Officer's Order is clear about the risk of spreading the virus through large gatherings:

The CDC recognizes that large events and gatherings can contribute to the spread of COVID-19 and can introduce the virus into communities through travelers who attend the events. Further, **CDC recommends canceling large gatherings and events if the community spread of COVID-19 is "minimal to moderate" within the community.**

Adhering to the requirements outlined below will help mitigate the risk, but will not eliminate it.

*Id.*, Events and Gatherings with More than 50 People,

<https://www.missoulacounty.us/home/showdocument?id=71877> (emphasis

added). Petitioners are grateful that the bar examiners are consulting with the

health department about the bar exam; however, they also understand that

while the risks can be minimized, they cannot be eliminated.

Importantly, every examinee has different levels of risk. It is impossible to put ourselves in others' shoes. Some are immunocompromised from previous bouts of cancer, autoimmune disease, or diabetes. Some are pregnant. Others live with loved ones who are immunocompromised. *See generally Exhibit C.* It is difficult to risk one's own health. Risking the health of someone you love is an entirely different matter.

## **E. Petitioners Struggle with Unanswered Questions.**

In addition to the inherent risks presented by an in-person bar exam, Petitioners note the practical uncertainties that will confront them and the bar examiners on July 28 and 29. The Covid-19 guidance from the Montana Board of Bar Examiners does not say what happens in any of the following circumstances:

- 1. An applicant has a fever on the day of the exam, although has no other symptoms.** Will this person be unable to sit for the exam and forced to wait until February, incurring tremendous expense as well as spending another two months studying?
- 2. An applicant is under quarantine because of exposure to someone with a positive Covid test.** Contact tracing of people with positive tests leads to quarantine for asymptomatic individuals who were sufficiently exposed to someone who tested positive. The usual quarantine period is 14 days. If someone is subject to a quarantine under these circumstances—and has no symptoms of disease—must he or she defer the bar exam to February?
- 3. An applicant knows of exposure but is not within contact tracing.** If an applicant knows he or she has been in contact with a Covid-19-positive person, but is not quarantined by the health department, can he or she can sit for the bar exam?

These scenarios are not only foreseeable, they are likely. As cases in Missoula increase, so do the number of people who have been exposed. Each is a foreseeable scenario for which plans can and should be made.

The most important backup plan would allow potentially contagious applicants to take the bar exam in a room alone, perhaps with a proctor in the hall and a laptop with Zoom turned on in the room. Backup plans like this would increase the likelihood that people would be more likely to report—rather than fail to mention—such exposures.

**F. Provisional Licensing Does Not Allow Applicants to Fully Commit to Their Careers.**

The Court's temporary rule for provisional admission allows an applicant to practice under a supervising attorney, delaying the bar exam to some unknown time in the future. While Petitioners appreciate the Court's efforts in finding an acceptable ground, the increasing presence of Covid in Montana and other states makes the perceived risks of sitting for the bar exam much higher now than they were even a month ago.

A few months ago, it did not seem that provisional admission would be necessary for more than a few applicants. Now, however, with cases and exposures increasing daily, most applicants are understandably reluctant to sit in a room with 45-90 other people for 12 hours over two days.

Importantly, many Petitioners have incurred substantial debt throughout college and law school. Many are barely able to survive time off from work to study for the bar exam. Being forced to delay the bar exam for several months means that at some point in the future a Petitioner would have to find time in the midst of a busy practice or judicial clerkship to turn her attention to studying for the bar exam. As any attorney knows, the realities of law practice do not neatly make room for a return to law-school studying. This would be difficult for many provisionally licensed lawyers, their clients, and their supervising attorneys.

Similarly, canceling the July bar exam would create more problems than it would solve. Many Petitioners have jobs; most Petitioners must get back to work to support their families, pay their mortgages, and begin paying their student loans.

### **G. Petitioners' Proposed Alternatives to a Required In-Person Exam.**

#### *1. Diploma Privilege*

Petitioners have spent the past three years preparing to take the bar exam, and much of the past seven weeks studying for it. They have been planning for the opportunity to join the legal profession in the same way so many others have—by passing a bar exam. They have expected to take a bar exam since the moment they applied to law school. They just did not anticipate having to do so in person during a global pandemic.

For those who intend to practice law in Montana, diploma privilege eliminates all risks of an in-person exam. It allows an applicant to turn to the important work of being a lawyer and serving the public without having to stop at some unknown point in the future and focus on the bar exam. In addition, it reduces the risks to the public.

Diploma privilege is not unknown to Montana, having been abolished in 1983. Many practicing Montana lawyers were admitted to the bar via diploma privilege. About 10 percent of the attorneys supporting this petition were admitted under diploma privilege, including retired Supreme Court Justice Bill Leaphart.

*See Exhibit D.*

## *2. Diploma Privilege Plus UBE*

While diploma privilege solves important problems, it does not produce a transferable UBE score. The transferability of a bar exam score is important to some Petitioners, including some who are sitting for the Montana bar but expect to work in another UBE state.

Thus, a second option would be for the Court to grant diploma privilege to those who meet the above criteria, and also administer the UBE for those who want a transferable score. The diploma privilege option would significantly reduce the number of takers at an in-person UBE administration, making it much safer for everyone.

## **H. Montana is Not Alone: Everyone is Struggling with the Bar Exam.**

When the Covid epidemic hit Montana this spring, many businesses immediately transitioned to work-from-home. Law school classes across the country went on Zoom. Unfortunately, the National Conference of Bar Examiners (NCBE), which administers the UBE, was—and still is—unprepared to offer examinees an online UBE. On June 1, 2020, it announced that it would release limited testing materials for a remote UBE in October—but said:

This remote testing option will not constitute the full bar exam or the UBE. Scores earned on the remotely administered test will be used for local admission decisions only, and will not qualify as UBE scores.

*NCBE Covid-19 Updates*, NCBE (June 1, 2020 4:00 PM CDT)

<http://www.ncbex.org/ncbe-covid-19-updates/>. In the midst of this crisis, the organization devoted to uniform bar exam testing throughout the United States has been unable to offer a safe alternative to in-person testing.

As a result, other states are moving forward with alternatives to in-person bar exams. Washington, Utah, and Oregon have granted temporary diploma privilege to recent graduates. *See* **Exhibit A-1**, Order Approving 2020 Attorney Admissions Process (Or. June 29, 2020); **Exhibit A-2**, Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules (Wash. June 12, 2020); **Exhibit A-3**, Order for Temporary Amendments to Bar Admissions Procedures During COVID-19 Outbreak (Utah April 21, 2020). The Minnesota



Supreme Court recently opened a public comment period regarding diploma privilege in response to a student petition. *See Exhibit A-4*, Order Establishing Public Comment Period on Petition for Proposed Temporary Waiver of Bar Examination Requirement for Admission to the Minnesota Bar (Minn. June 24, 2020). Illinois, Missouri, South Carolina, Tennessee, and others have similar petitions or formal requests pending before their state’s highest courts. *See, e.g.*, Petition for Emergency Supreme Court Rule Amendment or Waiver, *In re: Diploma Privilege for 2020 Illinois Bar Applicants* (Ill. July 6, 2020).

Additionally, the deans of all ABA-accredited law schools in California have unanimously agreed “to recommend that the California Supreme Court accord ‘diploma privilege’ to those who were scheduled to take the summer 2020 bar exam.” *See* Letter from Dean Erwin Chemerinsky, UC Berkeley School of Law, to Chief Justice Mike McGrath (July 8, 2020), attached as **Exhibit B**. Dean Chemerinsky notes:

For those of us who have taken the bar exam, we know that studying for the bar is difficult and stressful in the best of times. And we’re not living in the best of times. We are living in the worst of times. And the stress, the uncertainty, and the fear are taking a severe mental and physical toll on our graduates.

*Id.* at 2.

Even the legislative branch is getting involved. The Chair of the New York State Senate Judiciary Committee introduced legislation to grant diploma privilege

to 2020 law school graduates. *See* S. 8682, 2019-2020 Leg. Sess. (N.Y. 2020) (“To create and implement a modified diploma privilege for law school graduates seeking admission to practice law in New York State during the COVID-19 State of Emergency”).

This Court adopted a bar examination requirement in 1980, grandfathering in students already enrolled at UM. *In the Matter of Proposed Amendments Concerning Bar Examination*, 187 Mont. at 162-63, 609 P.2d at 265-66. The Court’s essential reasons for eliminating diploma privilege were that it was unnecessary and unfair. *Id.* at 168-70, 609 P.2d at 268-69. The circumstances created by Covid are changing that calculus.

### **I. Petitioners’ Hardships and Inequities.**

Since the pandemic began in mid-March, Petitioners have experienced a variety of hardships, creating profound inequity. Some Petitioners have written statements describing their hardships, which are attached as **Exhibit C**. They include:

- a. financial stress and housing uncertainty from income loss and employment uncertainty;
- b. increased child-care responsibilities due to school closures and limited child-care availability;

- c. obligation to support family and friends who suffered job loss or who have heightened risk, have fallen ill, or have died from Covid-19;
- d. mental health impacts, such as anxiety, depression, grief resulting from death of close family members by Covid-19, and social isolation from family and friends due to public health recommendations;
- e. physical health impacts, such as respiratory issues and increased migraine headaches;
- f. lack of appropriate study space from prolonged closure of places of public gathering and family members forced to work from home; and
- g. moral obligation to serve local communities and tribes.

These impacts have affected Petitioners unevenly, leading Petitioners to consider whether the July 2020 bar exam is unfairly testing individual examinees' privilege and access to resources more than it is their competence to practice law.

As fledgling lawyers committed to equality and justice, Petitioners urge the Court to exercise its inherent power to achieve a fair and just result for all.

**J. Petitioners Have Substantial Support from Montana Lawyers.**

Petitioners have reached out to individual lawyers across Montana, many of whom asked to have their names included in support of this petition. *See Exhibit*

**D.** Petitioners have the support of a wide range of members of the Montana Bar.

Admission dates range from 1963 (Cal Christian) to 2020 (Rebekah Hall).

Supporters live and practice law all over the state of Montana—from Miles City, Glasgow, Plentywood, and Billings, to Havre, Great Falls, and Helena, to Bozeman, Missoula, Kalispell, and Whitefish. Supporters include retired justices of the Montana Supreme Court—Justice Jim Nelson, Justice Bill Leaphart, Justice Jim Regnier, and Justice Mike Wheat—as well as Bob Carlson, the immediate past president of the American Bar Association.

In addition, Dean Erwin Chemerinsky, dean of UC Berkeley School of Law, has expressed his support and rationale for emergency diploma privilege. *See*

**Exhibit B.**

## CONCLUSION

For all the foregoing reasons, Petitioners respectfully request that the Court grant this Petition.

DATED this 9<sup>th</sup> day of July, 2020.

By: /s/ Elizabeth A. Brennan  
Elizabeth A. Brennan

*On behalf of:*  
Members of the Class of 2020  
*Petitioners*

1. /s/ Dustin Allen, J.D. 2020
2. /s/ Alex Ames, J.D. 2020
3. /s/ Austin Wallis, J.D. 2020
4. /s/ Marshall Anderson, J.D. 2020
5. /s/ Robert K. Belle, J.D. 2020
6. /s/ Dylan Berget, J.D. 2020
7. /s/ Brett Berntsen, J.D. 2020
8. /s/ Daniel Brister, J.D. 2020
9. /s/ Shane Cashin, J.D. 2020
- 10./s/ Erika Colstad, J.D. 2020
- 11./s/ Karra Comstock, J.D. 2020
- 12./s/ Davis Connelley, J.D. 2020
- 13./s/ Elspeth Cooper, J.D. 2020
- 14./s/ Ryan Douglas, J.D. 2020
- 15./s/ Lacey Fortin, J.D. 2020
- 16./s/ Kiernan Gallagher, J.D. 2020
- 17./s/ Misty Gaubatz, J.D. 2020
- 18./s/ Nyles Greer, J.D. 2020
- 19./s/ Rebekah Gryder, J.D. 2020
- 20./s/ John Hall, J.D. 2020
- 21./s/ Natalie Hammond, J.D. 2020
- 22./s/ Gregory Hill, J.D. 2020
- 23./s/ Dylan Jaicks, J.D. 2020
- 24./s/ Adam Johnson, J.D. 2020
- 25./s/ Layne Johnson, J.D. 2020
- 26./s/ Hallee Kansman, J.D. 2020
- 27./s/ Alicia Kelly, J.D. 2020
- 28./s/ Jory Knott, J.D. 2020
- 29./s/ Lindsay Love, J.D. 2020
- 30./s/ Brittney Mada, J.D. 2020
- 31./s/ Lauren Maes, J.D. 2020
- 32./s/ Marissa Mahkuk Compton,  
J.D. 2020
- 33./s/ Makenzi Mansfield, J.D. 2020
- 34./s/ Elliott McGill, J.D. 2020
- 35./s/ Ben McPherson, J.D. 2020
- 36./s/ Augustine Menke, J.D. 2020
- 37./s/ Angie Miller, J.D. 2020
- 38./s/ Thomas Mooney-Myers, J.D.  
2020
- 39./s/ Daniel Olinger, J.D. 2020
- 40./s/ Logan Olson, J.D. 2020
- 41./s/ Matt Paoli-Asaro, J.D. 2020
- 42./s/ Victoria Parker, J.D. 2020
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- 44./s/ Aaron Rains, J.D. 2020
- 45./s/ Scotti Ramberg, J.D. 2020
- 46./s/ Jacob Rebo, J.D. 2020
- 47./s/ Matt Rossmiller, J.D. 2020
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- 54./s/ Joshua Thornton, J.D. 2020
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- 56./s/ Marthe VanSickle, J.D. 2020
- 57./s/ Tyler Waite, J.D. 2020
- 58./s/ Austin Wallis, J.D. 2020
- 59./s/ Ryan Warner, J.D. 2020
- 60./s/ Riley Wavra, J.D. 2020
- 61./s/ Joseph Weaver, J.D. 2020
- 62./s/ Mitchell WerBell V, J.D.  
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- 63./s/ Brandon Zeak, J.D. 2020

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(c) of the Montana Rules of Appellate Procedure, I hereby certify that the foregoing Petition is:

- printed with a proportionally spaced typeface of 14 points;
- double-spaced (except for footnotes and indented quotes, which are single-spaced);
- contains 1-inch margins all around; and
- the word count calculated by Microsoft Word is under 4,000 words, excluding the table of contents, table of authorities, caption, signature block, certificate of service, and the certificate of compliance.

DATED this 9<sup>th</sup> day of July, 2020.

/s/ Elizabeth A. Brennan  
Elizabeth A. Brennan

## CERTIFICATE OF SERVICE

I certify that I served true and correct copies of the foregoing to the following on

July 9, 2020:

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/s/ Elizabeth A. Brennan  
Elizabeth A. Brennan



## EXHIBIT A-1

In the Matter of 2020 Attorney  
Admissions Process

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SUPREME COURT ORDER  
No. 20-012

ORDER APPROVING 2020 ATTORNEY  
ADMISSIONS PROCESS

At a public meeting on June 29, 2020, the Oregon Supreme Court considered requests from the deans of the three Oregon law schools, and considered input from the Oregon Board of Bar Examiners (Board), relating to the upcoming July 2020 Oregon Bar examination and the spread of the COVID-19 virus.

WHEREAS, the Chief Justice previously issued Chief Justice Order 2020-09 (Order Amending Oregon State Bar Rules for Admission and Bar Rules of Procedure During COVID-19 Outbreak), to allow the Oregon State Bar and Board additional flexibility in administering the July 2020 Oregon Bar examination;

WHEREAS, the court acknowledges that the spread of the COVID-19 virus represents an extraordinary burden to applicants registered for the July 2020 Oregon Bar examination and that that burden has had a significantly unequal impact on applicants;

WHEREAS, the Board understands that the rules governing the practice of law permit recent law school graduates to work under the supervision of a member of the Oregon State Bar; and

WHEREAS, this court has inherent authority to regulate the practice of law in Oregon, including regulating admissions to the Oregon State Bar (Bar), under Article VII (Amended), section 1, of the Oregon Constitution, and ORS 9.006, has authority to direct the manner of examination for applicants for admission to the Oregon State Bar, under ORS 9.210 and ORS 9.220;

THE COURT HEREBY ORDERS:

1. Addition of Remote October 2020 Bar Examination
  - a. Under this court's Rules for Admission of Attorneys (RFA) 5.05, the Board shall offer a special bar examination, to be remotely administered on October 5 to 6, 2020, using examination materials provided by the National Conference of Bar Examiners.
  - b. Any person who obtains a passing score on the October 2020 Oregon Bar examination, and who otherwise is eligible for admission under the Rules for Admission of Attorneys, shall be admitted to practice law in Oregon. However, the October 2020 Oregon Bar examination will not be a Uniform Bar Examination (UBE).
  - c. The October 2020 Bar examination may be administered to:

- (1) Any person who submitted a complete application, postmarked by May 30, 2020, for the July 2020 Oregon Bar examination; and
    - (2) Any person who took, but failed to pass, the February Oregon 2020 Bar examination and who did not submit a complete application, postmarked by May 30, 2020, for the July 2020 Oregon Bar examination.
  - d. Except as provided in subparagraph 1.c., the Chair of the Board of Bar Examiners (Chair) shall have discretion to expand enrollment for the October 2020 Bar examination to individuals not identified in subparagraph 1.c., but who otherwise qualify to sit for a bar exam under the Rules for Admission. The Chair also shall have discretion to impose a limit on the total number of applicants enrolled under this subparagraph.
  - e. A person who takes any bar examination in the United States in 2020 after the issuance of this order is not eligible to sit for the October 2020 Oregon Bar examination.
  - f. The Board shall have discretion to impose deadlines for submitting complete applications, including the payment of fees, for the October 2020 Oregon Bar examination.
  - g. For individuals registered for the July 2020 examination who elect to take the October 2020 examination, any monies paid by the individual toward the fees for the July 2020 exam will be applied as a credit toward the October 2020 exam.
2. 2020 Oregon Emergency Diploma Privilege
- a. Notwithstanding ORS 9.210(2), ORS 9.220(3), or the Rules for Admission of Attorneys, a person may be admitted to the Oregon State Bar without taking an Oregon Bar examination required by RFA 5.05 and RFA 5.15 if the person:
    - (1) Submitted a complete application, postmarked by May 30, 2020, for the July 2020 Oregon Bar examination, regardless of whether the person received an examination number; and
    - (2) Graduated in 2020 from either
      - (A) Lewis and Clark Law School, University of Oregon School of Law, or Willamette University College of Law; or
      - (B) Any other law school accredited by the American Bar Association that had an overall institutional bar examination passage rate, for persons taking a bar examination for the first time in 2019, of 86 percent (rounded to the nearest whole number) or greater.
  - b. A person who requests admission without taking a bar examination under subparagraph 2.a. must satisfy all other requirements for admission to be

admitted to the Bar, as outlined in the Bar Act, ORS chapter 9, and the Rules for Admission of Attorneys, including that the person demonstrates requisite good moral character and fitness.

- c. A person admitted to the Bar under this section will be a fully licensed member of the Bar with the same rights and responsibilities as other Bar members.
- d. The Board and Bar have discretion to develop any process necessary to implement this paragraph, including establishing a list of law schools qualifying under subparagraph 2.a.(2).(B).

### 3. Adjustment to Minimum Passing Score

Supreme Court Order 17-019, which set the pass score for the Oregon Bar examination at 274, is temporarily modified to allow for a minimum passing score of 266 for:

- a. The July 2020 Oregon Bar examination; and
- b. Any other Uniform Bar Examination taken between the date of this order and September 30, 2020, for purposes of admission to the Oregon Bar under RFA 19.05.

### 4. Additional Provisions

#### a. Applicant Election and Timeline

- (1) Any person currently registered for the July 2020 Oregon Bar examination may:
  - (A) Sit for the July 2020 Oregon Bar examination;
  - (B) Opt out of the July 2020 examination and elect instead to take the remote October 2020 Oregon Bar examination; or
  - (C) Opt out of all 2020 examinations and elect to request the diploma privilege if qualified to do so under this order.
- (2) Any person who is not currently registered for the July 2020 Oregon Bar examination, but who otherwise qualifies for diploma privilege under this order, may
  - (A) Elect to request the diploma privilege; or
  - (B) Elect to sit for the October Oregon Bar examination.
- (3) The Board has discretion to set a deadline for applicants to submit an application to sit for the October 2020 Bar examination.

- (4) The Board shall immediately develop a procedure for making the elections described in subparagraphs 4.a.(1) and (2), and announce that procedure on its website and through any other means that the Board deems necessary.
- (5) Any person who elects to request the diploma privilege must notify the Board of the election, in writing, on or before July 6, 2020, in the manner directed by the Board. No person may elect the diploma privilege after July 6, 2020.
- (6) Any person currently registered for the July 2020 Oregon Bar examination who opts out of the July 2020 examination and elects instead to take the remote October 2020 Oregon Bar examination must notify the Board of the election, in writing, on or before July 6, 2020, in the manner directed by the Board.
- (7) If the Board does not receive a timely election pursuant to subparagraph 4.a.(5)-(6) from an applicant currently registered for the July 2020 Oregon Bar examination, the applicant will remain registered for that examination.

**b. Fees**

The court delegates to the Board the discretion to determine whether, or to what extent, any fees may be refunded or additional fees may be required and the deadline for paying any required fees..

**c. Waiver of Rules**

Any Rule for Admission of Attorneys that is inconsistent with this order is waived.

**d. Effective Date**

This order becomes effective immediately.

Dated this 30th day of June, 2020.

  
\_\_\_\_\_  
Honorable Martha L. Walters  
Chief Justice

## THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF STATEWIDE RESPONSE	)	ORDER GRANTING
BY WASHINGTON STATE COURTS TO THE	)	DIPLOMA PRIVILEGE AND
COVID-19 PUBLIC HEALTH EMERGENCY	)	TEMPORARILY MODIFYING
	)	ADMISSION & PRACTICE
	)	RULES
	)	
	)	No. 25700-B-630
	)	
	)	
	)	
	)	
	)	

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WHEREAS, the court recognizes the extraordinary barriers facing applicants currently registered to take the bar examination in either July or September 2020, or the limited license legal technician (LLLT) examination in July 2020; and

WHEREAS, the Court has reviewed Washington's Admission and Practice Rules (APRs) to consider whether any of its provisions should be modified to accommodate current applicants who have received juris doctorate degrees from ABA accredited law schools or have completed all requirements to sit for the July 2020 LLLT exam;

The Court by majority hereby enters the following order establishing temporary modifications to some provisions of the current APRs:

- 1) APR 3 and 4 are modified to the extent that applicants for admission to practice law who are currently registered for either the July or September 2020 bar examination and who have received a Juris Doctorate degree from an ABA accredited law school, and applicants currently registered to take the LLLT examination scheduled for July 2020, are granted the option of receiving a diploma privilege to practice in

ORDER GRANTING DIPLOMA PRIVILEGE AND TEMPORARILY MODIFYING  
ADMISSION AND PRACTICE RULES

No. 25700-B-630

- Washington. The bar examinations in July and September 2020 will still be offered for those who do not qualify for the diploma privilege and those who wish to take the exam to receive a Uniform Bar Exam (UBE) score.
- 2) The diploma privilege option will be available to applicants currently registered to take the examinations who are taking the tests for the first time and those who are repeating the tests.
  - 3) The court delegates to WSBA the appropriate discretion to determine the timelines for eligible applicants to notify WSBA of their intent to receive the diploma privilege in lieu of taking an examination, and whether or to what extent any registration fees may be refunded.

DATED at Olympia, Washington this 12<sup>th</sup> day of June, 2020.

For the Court

  
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Matter of Emergency Modifications to  
Utah Supreme Court Rules of Professional Practice,  
Rules Governing Admission to the Utah State Bar

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**ORDER FOR TEMPORARY AMENDMENTS  
TO BAR ADMISSION PROCEDURES  
DURING COVID-19 OUTBREAK**

*Based upon the Utah Supreme Court's constitutionally granted authority to regulate the practice of law in Utah, and in consideration of the public health threat currently posed by the novel infectious coronavirus (COVID-19), the Utah Supreme Court orders that the Bar Examination passage requirement be modified on an emergency basis for certain eligible Qualified Candidates as defined herein.*

**I. Definitions**

- a. Unless otherwise defined in this Order, all terms defined in Rule 14-701 of the Supreme Court Rules of Professional Practice are hereby incorporated into this Order.
- b. "Qualified Candidate" means a person who:
  1. Is either:
    - A. A law school graduate who:
      - i. Has graduated by June 30, 2020 with a First Professional Degree in law from an ABA-approved law school that had an overall first-time taker bar examination passage rate in 2019 of 86% (rounded to the nearest whole number) or greater; and
      - ii. Has not, as of the date of this Order, previously sat for any bar examination in

any state or territory in the United States and will not be taking the bar examination in any state or territory in the United States in July 2020; or

- B. An attorney admitted by bar examination to another jurisdiction and meets all requirements of Rule 14-704(a) except for passing the Utah Bar Examination; and
- 2. Submitted an application for the Utah Bar Examination on or before April 1, 2020, in accordance with the information and instructions on the admissions website, including all fees and necessary application forms, along with any required supporting documentation, character references, and a photo. Late or incomplete applications will not be accepted.
- c. "Supervised Practice" means the 360 hours of supervised legal practice that a Qualified Candidate must complete under the supervision of a Supervising Attorney in accordance with and under section III of this Order.
- d. "Supervising Attorney" means a person (or persons) who supervises the Qualified Candidate in accordance with and under section III of this Order and is either:
  - 1. An attorney who has:
    - A. An active Utah Bar license,
    - B. A minimum of 5 years as a licensed attorney in any U.S. state or territory,
    - C. A minimum of 2 years as a licensed attorney in the State of Utah, and
    - D. No record of public discipline in any jurisdiction in the United States; or
  - 2. A state court or federal court judge.

## **II. Emergency Admission of Qualified Candidates**

- a. Qualified Candidates who meet all the requirements of subsection II(b) by no later than December 31, 2020, shall be



admitted to the Utah Bar without passing the Utah Bar Examination. This admission will be effected as soon as practically possible.

- b. The burden of proof is on the Qualified Candidate to establish by clear and convincing evidence that she or he:
  - 1. Is a Qualified Candidate as defined in subsection I(b);
  - 2. Meets all requirements of Rule 14-703 (if applied to take the Bar Examination as a Student Applicant) or Rule 14-704(a) (if applied to take the Bar Examination as an Attorney Applicant), except for passing the Utah Bar Examination;
  - 3. Has passed or does pass the Multistate Professional Responsibility Examination by no later than December 31, 2020 unless no MPRE is offered in 2020 after the publication of this Order, in which case Qualified Candidates who have not yet passed the MPRE but have fulfilled all other requirements for admission under this Order will be given an extension to pass the MPRE until after scores are published following the first MPRE administered in 2021;
  - 4. Has provided a completed criminal background check by no later than December 31, 2020;
  - 5. Has submitted proof of law school graduation by June 30, 2020; and
  - 6. Has completed 360 hours of Supervised Practice by no later than December 31, 2020.
- c. Nothing herein shall prevent a law school graduate who does not meet the definition of a Qualified Candidate from performing legal services under Rule 14-807 of the Supreme Court Rules of Professional Practice.

### **III. Supervised Practice Requirement**

- a. The purpose of the Supervised Practice requirement is to provide eligible Qualified Candidates with supervised training in the practice of law and to assist the Bar and the judiciary in discharging their responsibilities to help create a just legal system that is accessible to all.

- b. Subject to the inherent power of each judge to have direct control of the proceedings in court and the conduct of attorneys and others who appear before the judge, the courts of Utah are authorized to allow eligible Qualified Candidates to participate in matters pending before the courts consistent with this Order.
- c. All time spent in any activity related to developing the Qualified Candidate's legal competence (whether paid, unpaid, pro bono, or low bono) shall be counted toward the 360-hour requirement including, but not limited to, representing clients, providing direct assistance and counsel to judges, advising businesses and their employees, developing or implementing policies and practices for nonprofit organizations or government agencies, and meeting with the Supervising Attorney or attorneys for whom the Supervising Attorney has delegated direct supervision under subsection III(e). CLE courses and other professional trainings or workshops as would be typical of an attorney in that area of practice may be counted toward the 360-hour requirement but shall not exceed more than 10% of the Qualified Candidate's total hours. The determination of whether a specific position or activity qualifies for the purpose of this provision shall be at the Supervising Attorney's discretion.
- d. Subject to all applicable rules, regulations, and statutes, a Qualified Candidate may engage in the following activities during the 360 hours of Supervised Practice, so long as the client and Supervising Attorney consent in writing to each activity, and the Supervising Attorney remains fully responsible for the manner in which the activities are conducted:
  - 1. Negotiate for and on behalf of the client, subject to the Supervising Attorney's final approval, or give legal advice to the client, provided that the Qualified Candidate:
    - A. obtains the Supervising Attorney's approval regarding the legal advice to be given or plan of negotiation to be undertaken by the Qualified Candidate; and

- B. performs the activities under the general supervision of the Supervising Attorney.
2. Appear on behalf of the client in depositions, provided that the Qualified Candidate has passed a course in evidence and performs the activity under the direct supervision and in the personal presence of the Supervising Attorney.
  3. Appear in any court or before any administrative tribunal in this state. In order to participate in any evidentiary hearing, the Qualified Candidate must have passed a course in evidence, and in the case of a criminal evidentiary hearing, must have also passed a course in criminal procedure. The Supervising Attorney's and the client's written consent and approval, along with a law school certification regarding the required coursework, must be filed in the record of the case and must be brought to the attention of the judge of the court or the presiding office of the administrative tribunal. In addition, the Qualified Candidate must orally advise the court at the initial appearance in a case that he or she is certified to appear pursuant to this rule. A Qualified Candidate may appear in the following matters:
    - A. *Civil Matters.* In civil cases in any court, the Supervising Attorney is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the Supervising Attorney's absence.
    - B. *Felony or Class A Misdemeanor Criminal Matters on Behalf of the Prosecuting Attorney.* In any felony or Class A misdemeanor prosecution matter in any court, the Supervising Attorney must be personally present throughout the proceedings.
    - C. *Infraction of Class B or Class C Misdemeanor Criminal Matters on Behalf of the Prosecuting Authority.* In any infraction or Class B or Class C misdemeanor matter in any court with the Supervising Attorney's written approval, the Supervising Attorney is not required to be

personally present in court; however, the Supervising Attorney must be personally present during any Class B or Class C misdemeanor trial.

- D. *Felony or Class A Misdemeanor Criminal Defense Matters.* In any felony or Class A misdemeanor criminal defense matter in any court, the Supervising Attorney must be personally present throughout the proceedings.
- E. *Infraction or Class B or Class C Misdemeanor Criminal Defense Matters.* In any infraction or Class B or Class C misdemeanor criminal defense matter in any court, the Supervising Attorney is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the Supervising Attorney's absence; however, the Supervising Attorney must be personally present during any Class B or Class C misdemeanor trial.
- F. *Appellate Oral Argument.* In any appellate oral argument, the Supervising Attorney must be personally present and the court must give specific approval for the Qualified Candidate's participation in that case.
- G. *Indigent defense.* Provide assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court; if there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the court on behalf of such a client must be reviewed and signed by the attorney of record and the Supervising Attorney.

4. Perform other appropriate legal services, but only after prior consultation with the Supervising Attorney.
  5. Notwithstanding the terms above, the court may at any time and in any proceeding require the supervising attorney to be personally present for such period and under such circumstances as the court may direct.
- e. The Supervising Attorney is responsible for ensuring that the Supervised Practice of the eligible Qualified Candidate complies with this Order. The Supervised Practice requirement provides an opportunity for the Supervising Attorney to demonstrate professionalism and impart principles of ethics, civility, and service that should characterize all members of the Utah Bar. This training can be accomplished only if the Supervising Attorney is actively involved in the process. The Supervising Attorney may delegate direct supervision of a Qualified Candidate to another attorney who, in the professional judgment of the Supervising Attorney, would effectively promote these goals. If the Supervising Attorney delegates direct supervision to another attorney, communication between and among the two attorneys and the Qualified Candidate should be regular and substantive. Pro bono programs preapproved by the Utah State Bar's Access to Justice program effectively promote the goals of the Supervised Practice requirement, and Supervising Attorneys shall count hours served by the Qualified Candidate in such programs without the need of express delegation or regular and substantive communication with any attorneys directly supervising the Qualified Candidate in those programs.
- f. A Qualified Candidate's eligibility to provide services under this Order will terminate immediately upon the Bar's determination that the Qualified Candidate lacks the requisite character and fitness to practice law in Utah.
- g. Prior to beginning the 360 hours of Supervised Practice, the Qualified Candidate must:
1. Obtain the consent of a Supervising Attorney,
  2. Provide the Bar Admissions' office with the Supervising Attorney's name, and

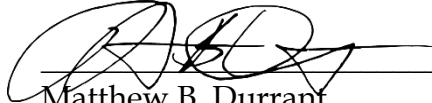
3. Provide the Bar Admissions' office with a signed and dated letter from the Supervising Attorney stating that she or he is qualified and willing to serve as a Supervising Attorney and has read this Order and agrees to comply with its conditions.
- h. A Qualified Candidate's 360 hours shall be recorded in one-tenth hour increments and submitted pursuant to the requirements set forth by the Bar Admissions' office.
- i. Upon completing 360 hours of Supervised Practice, the Qualified Candidate must provide the Bar Admissions' office with a statement from the Supervising Attorney attesting to the veracity of the Qualified Candidate's submitted record. If the Qualified Candidate has more than one Supervising Attorney, each Supervising Attorney shall sign the portion of the record that he or she supervised.
- j. Completion of the 360 hours of Supervised Practice required for admission under this Order does not excuse the Qualified Candidate from completing the requirements currently imposed upon newly admitted attorneys, including the requirements of the New Lawyer Training Program (if applicable), and the 360 hours shall not be counted toward any post-admission requirements.

#### **IV. The July 2020 Bar Examination**

- a. No Bar Examination shall be administered in Utah in July 2020.
- b. The Utah Supreme Court intends that the Bar Examination be scheduled at the earliest possible date in 2020 after the public health crisis abates and the Bar Examination can be administered safely.
- c. Persons who are currently scheduled to sit for the July 2020 Bar Examination in Utah who do not qualify for admission under the emergency modifications outlined in Section I or are unwilling to do so may elect one of the following options for proceeding with their application:
  1. Withdraw the application for a full and complete refund of all application fees paid;

2. Transfer the application and fees, without further charge, to the February 2021 Bar Examination or the July 2021 Bar Examination; or
  3. Maintain a pending application to remain registered for the Bar Examination in the event a Bar Examination is scheduled to take place at some later point in 2020. If such a Bar Examination does not take place, the individual will be able to select from option (1) or (2) above.
- d. Nothing herein shall prevent a Qualified Candidate admitted pursuant to this Order from applying to take a future Bar Examination, but the applicant will be required to submit a new application and fees.

DATED this 21st day of April, 2020.



Matthew B. Durrant  
Chief Justice

**FILED**

June 24, 2020

**OFFICE OF  
APPELLATE COURTS**STATE OF MINNESOTA  
IN SUPREME COURT

ADM10-8008

**ORDER ESTABLISHING PUBLIC COMMENT PERIOD  
ON PETITION FOR PROPOSED TEMPORARY WAIVER  
OF BAR EXAMINATION REQUIREMENT FOR  
ADMISSION TO THE MINNESOTA BAR**

An applicant for admission to the Minnesota bar must take a written examination and secure a passing score, among other criteria for admission. *See* Minn. R. Admission to the Bar 4(A)(4) (requiring an applicant for admission to the Minnesota bar to obtain a “[p]assing score on the written examination”). The Minnesota State Board of Law Examiners holds the bar exam in February and July each year, Minn. R. Admission to the Bar 6(A), and this year, in light of the current public-health emergency, will also administer the exam on September 9–10, 2020. A petition has been filed requesting a temporary waiver of Rule 4 of the Minnesota Rules for Admission to the Bar, in light of current circumstances, in order to permit applicants who otherwise qualify for admission to the Minnesota bar to be admitted based on a diploma privilege and without taking the bar examination. A copy of the petition can be found on the appellate courts’ public website, P-MACS.

The court will consider the petition and the proposed temporary waiver of Rule 4 after providing a period for public comment.

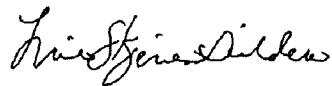
IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or in opposition to the petition proposing a temporary waiver of Rule 4 of the Minnesota Rules for Admission to the Bar, in order to allow



applicants otherwise qualified for admission to be admitted to the Minnesota bar based on a diploma privilege, shall file those comments with the Clerk of the Appellate Courts, using the appellate courts' e-filing application, E-MACS, if required to do so. *See* Minn. R. Civ. App. P. 125.01(a)(1). All comments shall be filed so as to be received no later than July 6, 2020.

Dated: June 24, 2020

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lorie S. Gildea".

Lorie S. Gildea  
Chief Justice

July 8, 2020

Chief Justice Mike McGrath  
Associate Justices  
Montana Supreme Court  
215 N Sanders St #323  
Helena, MT 5960

Dear Chief Justice McGrath and Associate Justices,

I understand that your Court soon will be making a decision concerning the July 2020 bar exam. I write as the dean of a law school that will be having a student taking your bar exam. I appreciate your considering my views.

I very much worry about an in-person bar exam anywhere in the country in July. Inevitably, a bar exam puts people in close proximity with one another, which is obviously dangerous at this point in time.

The deans of all of the ABA-accredited law schools in California met and unanimously agreed to recommend that the California Supreme Court accord “diploma privilege” to those who were scheduled to take the summer 2020 bar exam. The California Bar Examiners and the California Supreme Court held a meeting with the law school deans last Thursday, July 2. Four deans – David Faigman (Hastings), Jennifer Mnookin (UCLA), Song Richardson (UC Irvine), and I – spoke on behalf of all of the deans.

In case it is of use and interest, here is what we said, which also would apply to Montana, or any state:

“We speak with one voice when we recommend that the Court adopt an emergency diploma privilege for any graduate of an ABA-accredited school seeking to practice in California.

The public health situation continues to deteriorate, with no end in sight. In fact, it is worsening in California. The emotional, financial, and physical toll of this global pandemic continues to wreak havoc on the lives of our graduates. This alone should be enough for the Court to take bold action in the form of an emergency diploma privilege.

However, coronavirus isn’t the only challenge our graduates are facing. As if that wasn’t enough, they are simultaneously dealing with our nation’s long-overdue reckoning with issues of anti-blackness and racism.



Importantly, both of these issues -- COVID 19 and racial unrest -- are having a disproportionate impact on our graduates of color. Not only are they and their families at higher risk of contracting the virus, they are also disproportionately affected by the racial injustice and the activism that has followed the senseless killings of black individuals across the country.

For those of us who have taken the bar exam, we know that studying for the bar is difficult and stressful in the best of times. And we're not living in the best of times. We are living in the worst of times. And the stress, the uncertainty, and the fear are taking a severe mental and physical toll on our graduates. As Deans, we see this first-hand.

Let us share some examples of what our graduates have had to endure while attempting to study for this high stakes exam.

- They're caring for toddlers, sometimes as single parents with no alternative childcare.
- They're home schooling their children, sometimes as single parents.
- They're caring for sick and infirm family members.
- Some have no reliable internet, which means it is difficult to even complete their on-line bar prep courses.
- Some face housing insecurity.
- some face food insecurity;
- Some have lost their jobs, or have family members who have lost their jobs leading to a lack of income for food and other essentials.
- Some are living in studio and one bedroom apartments with large families and have no quiet place to study. And, given public health concerns arising from the pandemic, they have no other place where they can go to study.
- Some are personally impacted by the racial unrest that is sweeping the country

These are just some of the devastating challenges our graduates are facing. Many of these challenges are disproportionately borne by our graduates of color, and our first gen and low-income graduates.

Let us not add any more to the mental, emotional and physical toll our graduates are enduring. Let's not add to their suffering.

Let's not wreak more havoc on their lives when there's something that we can do, right now. And that's emergency diploma privilege.

Emergency diploma provides an equitable pathway to practice for our graduates while also protecting vulnerable Californians who'll face acute needs for legal services during and in the aftermath of this global pandemic.

We are living in profoundly imperfect times. Struggling to find a perfect solution to the licensure of lawyers is doomed to fail. The California Supreme Court and the State Bar of California must have the vision and courage to meet the times we live in. This means making difficult decisions under extraordinary conditions and, more particularly, when knowledge about the next several months is exceedingly uncertain.

The deans of California's ABA schools believe that a diploma privilege is the right course of action. It is one that three other Western States—Utah, Washington and Oregon—have adopted, albeit in different forms. Others will follow. It provides immediate certainty regarding the path ahead, which, with or without this decision, is marked by doubt and insecurity.

We understand, of course, that a principal premise of the Bar exam is ensuring the minimum competency of law graduates to practice law. Although all law deans would likely maintain that anyone awarded a degree from their institution is, by that measure alone, qualified to practice law, the Bar Exam has provided a layer of extra protection for the public during ordinary times. And when ordinary times return, there will be opportunity enough to consider the many questions that have swirled around its administration in recent years.

But we are not living in ordinary times; indeed, far from it. The question, then, is whether a diploma privilege might be tailored in a way to ensure that the ultimate objective of the bar exam—ensuring the minimum competency of law graduates to practice law—is met. The deans of ABA-accredited law schools believe that what we have been calling a “diploma privilege with guardrails” provides this assurance.

In fact, we believe that such a course of action might be understood in very positive terms, notwithstanding the crisis-times we must all maneuver. We believe this is true for several reasons.

First, the guardrails mean that law graduates' interactions with the public will be overseen and guided by licensed attorneys. This, of course, is what usually happens when junior attorneys begin their careers in any case, but will be mandated, with whatever specificity the Court directs, in the case of July 2020 candidates for the Bar. The public is thus protected through the involvement, and the responsibility of, licensed attorneys. The Court can provide whatever conditions on this supervision it deems appropriate, including requiring some level of seniority for the designated supervising attorney.

Second, adopting the rule of a diploma privilege with guardrails has the benefit of involving the practicing bar in the solution to the current crisis. Lawyers have a duty to the profession and the public. The Preamble to the Model Rules of Professional Conduct provide that “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.” The tumult of this moment requires a concerted response from the profession at-large. The diploma privilege with guardrails produces this result.

Third, the most common methods of studying law in the mid-eighteenth century were as an apprentice under a practicing lawyer. Historically, this practice involved doctrinal learning and an introduction into the practice of law. Today, attorneys receive this training through three years of rigorous study in law school. Law schools provide the foundation, but years of experience turn our graduates into effective advocates. This should begin, and historically has begun, with effective mentorship from more senior members of the profession. The diploma privilege with guardrails effectively formalizes this best practice.

Fourth, although the bar exam ensures that law graduates have the doctrinal knowledge, reasoning skills, and analytical ability to begin practicing, there is so much more to being a lawyer. Aptitudes not tested on the Bar exam, but which are foundational to being a good lawyer, include the ability to research effectively, interpersonal skills, responsibility and responsiveness

to client needs, negotiation, and good judgment. While not subjects on the Bar Exam, they would very much be part of any mentorship required under a diploma privilege with guardrails.

Finally, creating a diploma privilege does not preclude adoption of a modified Bar Exam for those unable to qualify under whatever standards are adopted for supervision. Indeed, the option of supervision might not be appropriate form, or desired by, all candidates for the 2020 Bar.

There is unanimity among the California law deans of ABA-accredited law schools: We all strongly believe that emergency diploma privilege for the graduates of ABA law schools – with appropriate guardrails that can protect the public – would be by far the best and most equitable solution in this unprecedented time and in this global pandemic. We certainly agree with the importance of public protection, but we are confident that with thoughtful design of an appropriate approach to supervision by attorneys, and additional MCLE, perhaps including MCLE specifically developed for this cohort and situation, those needs can be fully met. We would be pleased to participate in thinking through in further detail what those specifics could look like, were there interest in having us assist in that way.”

I very much appreciate your considering my views.

Sincerely,

Erwin Chemerinsky

**The following statements were written by graduates of the Alexander Blewett III School of Law at the University of Montana to explain how Covid has affected their lives and their ability to prepare for the bar exam.**

**PETITIONER A**

Preparing for the bar exam was going to be difficult. I knew that much going into law school. What I did not know was that as I prepared for the bar exam, I would simultaneously be home schooling my young child and working. These additional stressors, directly related to the COVID-19 pandemic, have shaken me to my very core.

Currently, I work 7 days per week from 6 am to 10 pm. My spouse has experienced a reduction in her income at work because of COVID-19, which has meant I have needed to pick up the slack and earn money. Without childcare or schooling, our family has been working together from the same table: video bar prep lectures, clients on the phone, elementary school teachers on zoom, emails from supervisors, help with reading, crayons, Band-Aids, law outlines, dinner, life. My eighteen-year marriage is on frighteningly shaky grounds right now as the family is pushed to its limits in terms of stress, anxiety, and responsibilities. My ability to focus on preparing for the bar exam is limited by both my mental state and the constant interruptions of work and childcare. It is recommended that bar examiners prepare in a focused way, in a setting that mimics the bar exam in both setting and time of day. This is currently impossible for me.

In addition to these personal stresses, I am concerned that gathering for the bar exam will expose each of us, as well as the proctors and all of our immediate families, to potential infection with COVID-19. I envision our legacy to the community as one of legal exceptional service, not as a super-spreader of a potentially lethal, infectious disease. While it is right that the bar exam is much revered, in light of the current crises, however, it would be irresponsible of us to gather in this way for two days, and it would be unconscionable for the virus take even one of our lives as potential sacrifice for this exam.

With great humility, respect, and urgency, I ask for emergency diploma privilege to be extended to those registered to take the July 2020 Montana bar exam. Thank you for your time and consideration.

**PETITIONER B**

I am pregnant. The research and knowledge of how COVID could impact the health of a fetus is unknown. Regardless of the direct impact, if I were to get sick from sitting through the July administration, there may be severe consequences to my family and me. I am concerned for the health of my unborn baby if forced to continue to endure the stress surrounding the uncertainty of the bar and ultimately sitting at the July administration. The option to defer and sit instead in February is not sufficient to combat the uncertainty our Montana community and nation are facing (through COVID and social unrest), as the same concerns will ultimately continue into our future until a time we cannot predict. Expecting students to sit through an in-person bar after the extreme obstacles we have had to overcome because of COVID neglects to acknowledge that we likely cannot be testing “at our best,” and an expectation to do so is unreasonable.

**PETITIONER C**

I was forced to choose between caring for my child and studying for the Bar. In normal times, I would have access to multiple options for childcare, but in these unprecedented circumstances many of us are left without this basic need being met. I made the decision to postpone taking the bar exam when my child told me that the caregiver, the only one we had available, was calling my child names and belittling my child. Of course, I pulled my child from the situation immediately, but that meant me making the decision to postpone. Postponing means that I will need to work, take care of my child, and also study for the Bar this winter. This was not really a choice at all, and my hopes were that maybe I would be able to take the test in February safely. There is absolutely no guarantee of that for me or my classmates because of the pandemic.

Through the course of this pandemic, I have also had migraines, which range from distracting pain to debilitating pain. As someone who is normally able to manage my mental health, I fell into depression and anxiety while I was isolated from my peers and everyone that I love. Migraines, depression, and anxiety do not lead to a very conducive environment for studying, as you can imagine. In fact, as I was initially studying, I could tell that my stress levels were impacting my retention in ways that made it difficult to read through something and remember any significant portion of it. This would leave me reading a page five times to try and hold onto the content. All the while, the unknowns of taking the Bar were haunting me. We didn't know the conditions under which we would take the exam for weeks. We still don't know how the exam conditions will protect us from

getting sick, because we know they can't. At this time, it looks like Montana will have its highest level of cases yet, right around the end of July.

I remember the last thing my supervising attorney said to me in my final evaluation for clinic. She told me with tears in her eyes, "You are ready."

**PETITIONER D**

As a result of the first wave of the COVID-19 pandemic, I lost my job and was forced to relocate to my parents' home in a different area of the state. COVID-19 recently reached the county I am located in for the first time the week of June 22 and is already spreading rapidly. As a result of potential exposures, some members of my household have been and will continue to be required to work from home, which negatively impacts my ability to study for the exam by limiting the time and space available to me to study in isolation. Other members of my household are still required to go to work, risking exposure for themselves and the rest of our household. A member of my household is considered to be very high-risk if they contract COVID-19, so their health is of great concern to our family at this time.

The resurgence of the virus — and the recent spread in my own county — has put a considerable amount of added stress on me and has begun to severely impact my studies. Furthermore, the stress and concern of contracting COVID-19 in the next two to three weeks and the potential that I would not be able to sit for the exam are also greatly impacting my mental and emotional health. As great as my concern is for myself and my family, I am equally concerned for my friends and colleagues who are potentially experiencing these impacts on a more significant scale. For these reasons, I strongly feel the current situation would disparately impact this year's applicants, and I therefore support the Court's consideration of emergency diploma privilege.

**PETITIONER E**

On March 14, 2020, my life was normal. It was spring break and I had the privilege of spending the week backcountry skiing with my partner and some friends from out-of-state. But as we made our way from Big Sky, Montana, to Jackson Hole, Wyoming, on March 17, things started to become much less normal. Restaurants and shops began closing; town was eerily empty; and my friends, attorneys from Colorado, began to receive increasingly panicked phone calls from



clients seeking legal advice. Consequently, we cut our trip short and, with a vague sense of existential dread, returned home to a radically changed world.

Recognizing my 450-square-foot basement studio apartment would not be conducive to finishing the semester online, my partner's family graciously allowed us to move in with them. Hours away from our friends, community, and sense of normalcy, my partner completed her final semester of medical school, and I finished law school, sitting together at a table in our bedroom at her parent's house.

With a vague sense of emptiness, we passively watched our respective graduation ceremonies online and shared a strange feeling of detachment from the accomplishment that is supposed to accompany the honor of a doctoral degree. Nevertheless, recognizing that self-pity is unbecoming, we have continued to trudge forward.

My partner has since begun her residency as an emergency medicine physician in a metropolitan city with a population the size of Montana. I sit at home with my head down, attempting to prepare for the bar, while plagued with feelings of self-doubt continually fretting about the state of the world. As civil unrest builds across the country and this global pandemic spreads, the prospect of sitting to take the July Uniform Bar Examination becomes increasingly unimaginable.

I recognize that my life is both an inextricable amalgamation of numerous unearned privileges and hard-earned accomplishments, but perpetuating an illusion of normalcy by sitting for a bar examination during a global pandemic because it is the way things have always been done is not a struggle I think anyone should be asked to overcome.

Accordingly, I request that the Alexander Blewett III School of Law faculty, the Montana Board of Bar Examiners, the State Bar of Montana, and the Honorable Supreme Court of Montana recognize that these are extraordinary times requiring drastic measures. I believe that the criteria set forth by my fellow applicants for a temporary rule change will still effectively ensure the protection of the public. Please consider the possibility of granting diploma privilege, as we all work toward and dream about returning to life as normal once again.

## **PETITIONER F**

Studying for the bar is a massive undertaking under normal conditions. We all get lectures from professors, mentors, bar prep specialists, and past exam takers on how to best take care of ourselves during this time. The common theme of all the advice is to protect our mental health by doing things such as eating healthy, exercise regularly, and be around your support system.

## **EXHIBIT C**

However, in a pandemic all of those things are much more difficult, if not impossible. Getting healthy food means going to a grocery store. Going to a grocery store means we are exposing ourselves to being infected. Getting sick during this study time is a complete unknown. Will I be sick for a few days? Will I be sick for weeks? Will I be able to study while I'm sick? If I get sick do I automatically ask to move my test date?

Trying to exercise brings about the same fears and even social distancing from loved ones. I live in a constant fear of what happens if I get sick. I do not trust my friends or family enough to be around them. All because of the thought, "What happens if I get sick and can't keep up my pace of studying?"

The stress of studying for the bar is real and expected. This is different. I do not trust my food, being around my loved ones, leaving my house not only because of the fear of getting Covid but the fear of what happens to my bar prep if I get Covid. More days than not I wake up with a headache and unable to eat.

I do understand and believe in the integrity of taking a uniform exam, partly because I have grown up in an era where at every step in my career I have to take a standardized test, but I also respect and admire the legal profession for having this entrance exam. However, I do not believe under these conditions that this is the same exam. As the cases in Montana are rapidly rising, and the test is getting closer, I am scared to leave the house even for basic needs.

It is difficult to speak up because in a way the pandemic has been politicized, and I have heard the frustrations from classmates about rules we need to take the exam under. I know there are classmates who plan on having friends from out-of-state visit the week before the exam and who plan on still taking the exam. I know there are classmates traveling from out-of-state to take the exam. I know there are classmates who do not believe in socially distancing or wearing masks at all. So now I am in a state where I am living in isolation to protect myself so I can stay healthy to study, but I will knowingly sacrifice that the day I walk into the exam.

It is a completely confusing and unknown time and again, while I respect the integrity of the legal profession and the importance of the exam, when broken down to the logistics of what it looks like to study for the bar and take the bar during the pandemic and political unrest our country is in, I do not think it makes sense to take an exam to demonstrate our minimal competence when doing so puts both our physical and mental health in extreme jeopardy.

## **PETITIONER G**

I am worried about everyone traveling back from wherever they have moved (postgraduation) just to sit in an enclosed space with each other for three days

without any quarantine time. We will also all be using the same bathrooms, faucets, door handles, eating areas, etc. without extra cleaning or precautions during this time. I just feel this puts all of us at an unnecessarily high risk of infection considering the rising rates of COVID we are seeing re-ignite in our state and throughout the country. I can't afford to take that back to my family and reservation. As a result, I am already considering withdrawing from the July Bar Exam, although I have yet to make a final decision.

Taking the Bar Exam is a highly stressful situation under normal conditions. But during this pandemic, a lot of us are strained financially and beyond our capacity mentally. This is an extraordinary situation that deserves a similar response. We are not asking for permanent diploma privilege. Just a one-time emergency exception to go along with a once in a hundred years pandemic.

### **PETITIONER H**

As we continue to watch Covid cases rise in Montana, we fear for our safety and our success on the bar exam. With a predicted spike happening from now until early August, I am concerned that my first encounter with a large group people is going to result in increased panic, anxiety, and insecurity on exam day, and potentially—the worst-case scenario—getting Covid. Regardless of my best efforts (studying 8+ hours each day, sacrificing weekends and mental health) I face many distractions as a person, like many of my colleagues. On top of Covid, there is a fear that if we work, we have to sacrifice our studying time and risk our health by potentially exposing ourselves to Covid. This is a completely new and uncertain time, but what could help relieve stress and uncertainty is knowing, for certain, that I will be safe and my classmates will be safe.

I hope this helps express a view of one person who doesn't have kids, doesn't have to take care of elderly family, but who does have a significant other who works and as someone who has been very adamant about the precautions that coincide with Covid.

### **PETITIONER I**

Since March 11, many of have been living in a state of unrelenting stress and anxiety. We have been isolated and were forced to finish our last semester of law school in duress. Access to internet and study space has been exceedingly difficult and many do not have internet because they cannot afford it or live in rural areas. We finished one of life's biggest accomplishments with an inability to celebrate

with our friends and family and enjoy our feat. Studying for the bar is stressful under normal circumstances, but trying to prepare in these current conditions is exacting. Every little cough or tickle in my throat leaves me panicked for hours that I've contracted Covid-19, and instead of focusing on studying, my anxiety leads me away. I am basically living in isolation. Instead of meeting law friends to discuss the bar, I am home, worrying about the exam, money, family, friends, and whether I am going to get sick. I am terrified of taking an in-person exam and sitting in a room for two days with multiple people and contracting the virus, but I have no choice. My livelihood depends on it.

Further causing stress and anxiety is my family. My parents are both in the high-risk group. My Dad recently had surgery that has left him housebound until mid-August. Several days a week I have been helping my Mom with tasks around the house and in the yard. I feel like my only choice after the exam is to quarantine for two weeks to prevent spreading the virus and to protect those I love. Unfortunately, without me to help around the house that adds extra stress and strain on my parents. But the alternative is worse. The thought of being responsible for causing illness to my parents is unimaginable.

### **PETITIONER J**

I have been studying for the July 2020 Uniform Bar Examination to the best of my ability during this difficult period, which has generated additional anxiety. I have asthma, and the decision about whether to risk serious illness so I can join this honorable profession has been weighing heavily on me recently, in light of the rising number of COVID-19 cases in Montana and right here in Missoula. This is not about escaping the bar exam. I have known for years that this day would come; I have prepared for that day. Instead, this is about a global public health crisis that is affecting our community. Please consider the merits of Petitioners' request in these difficult times.

### **PETITIONER K**

When the initial shutdowns for the virus occurred, my fiancé lost her position at a local office. Without any notice, she was told the office would be moving to a remote model and could not continue to employ her. She was told at the end of her shift that would be her last day and she could not return the following day. She was our only source of income at that time. We were both already financially strapped from me being in law school. To cut costs, we had

rented an apartment in Great Falls where we intended to settle and where she was working while I studied for the bar. Our plan was to let our current lease in Missoula run out and pay for the cheaper apartment in Great Falls. I was going to sleep on the floor of a classmate's apartment in Missoula and commute back to Great Falls on weekends to finish out the semester.

When she lost her job, we did not know what to do. My fiancé has epilepsy and does not drive because of it. With public transportation already shut down, she was limited to jobs that she could walk to from our apartment. We also had concerns about how contracting the virus would potentially interact with her epilepsy. We have found that generally, any illness lowers her seizure threshold and makes her more susceptible to grand mal seizures. We quickly came to the grim realization that her getting a job any time soon was both unlikely and dangerous. I had to start working to keep our heads above water. Luckily, I was able to work for a family member at a construction company. But I then determined that it would be impossible for me to take the bar exam this summer.

There was absolutely no way we could afford the fees unless I was working, and there was no way for me to devote time to studying if I was working. With the decision already made for me, I started the process of transitioning to the February bar. This has put my legal career on hold until I can take the bar and receive results. I am hopeful that the position I was anticipating will be available to me when I am licensed to practice law, but there are no guarantees. Further, student loan deferment has put me in the uncomfortable position of having to begin repayment before even taking the bar exam. With cases soaring yet again, I feel very uncertain about the bar exam and my legal career.

### **PETITIONER L**

Even while the stress of the bar looms, it is not my biggest stressor (maybe not even top five). Health, safety, shelter, and daily necessities max out my capacity before I even face my computer. I wake up; the first cognizable thoughts go to the very real looming threats. I wonder if the shifting in the night with the muffled cough is something more than a tickling throat. I panic that perhaps the essential trip to the store was too risky for what danger I may have brought back home.

Further, I am concerned I don't remember the last time I was able or inspired to smile. The impacts on my mental health and my perception of the industry I am aiming to enter are being damaged daily in ways I'm not sure are repairable.

Now, I am not only on guard against the pandemic of COVID-19, but I am also palpably fearful of the pandemic of mental health illness. I am living and

coping with the predicted and named elements of unemployment, loss of medical insurance, small, cramped family living, tight budgeting, study distractions, increased caregiving demands, and homelessness that all arose directly as fallout of COVID-19. Yet, the most critical challenge I face is compromising my vitality in ways that will likely take years of therapy, depressed professional and personal production, and addictive behavior assistance to get me back to the 'me' of 45 days ago.

**PETITIONER M**

The ongoing pandemic has held recent graduates in limbo for many months. This uncertainty has seriously affected my life, as well as the lives of my classmates.

Montana is currently experiencing a spike in Covid cases greater than that which originally required statewide changes. Taking the July exam would create a risk to my health and potentially even at-risk loved ones; a risk that is not alleviated by a socially distanced exam. There are simply too many other necessary actions that accompany taking the exam, which are not within the control of test-takers. In my case, I would need to travel across the state—over five hundred miles—twice. Doing so, at a minimum, will require refueling in affected communities and staying in an affected community. Upon my return, I may be subject to quarantine restrictions, which creates an additional risk of financial hardship. Deferral to the February exam appears necessary for me under the circumstances, but that is problematic as well. Many of the same risks may still be present, and I will be stuck in uncertainty for an additional six months.

My livelihood, health, and the health of loved ones is being placed in jeopardy. Please consider the extensive, unnecessary risks my fellow graduates and I are being required to endure. Diploma privilege will not return any our lives to normal, but it will reduce the extensive burdens many of us face in these unusual times.

**PETITIONER N**

Thankfully, I haven't had to face the same burdens from the pandemic as some of my classmates. I do not have children to care for or mouths to feed other than my own. I don't look after my parents, and I have enough saved to float me through the exam. However, the circumstances in the state and country since March have had a deleterious effect on my mental health and ability to study for

the bar exam. I cannot imagine how much worse it must be for those with responsibilities to those around them.

While taking the MPRE in March, I had intrusive thoughts and worries about COVID-19 that stole my focus. Not a day goes by where I don't worry about the health and safety of my parents or my grandmothers. I put in the hours every day to study, but it is an uphill battle given the constant distractions of bad news. Because things are getting worse in the state and more people are requested to quarantine as a result of contact tracing, I have serious doubts about my ability to stop those intrusive thoughts once again come the July bar exam. This anxiety has taken a toll on my mental and physical wellbeing and will continue to do so. I worry about every contact I have, particularly when it comes to my parents and my immunocompromised friends. I do not doubt my ability to pass the bar, but that is a function of my privilege of means, health, and circumstance rather than a reflection of my competence. I hope that you will consider not just stories like mine that highlight the difficulties of these times, but also those of so many of my classmates who will be forced to choose between their health and their financial wellbeing. Thank you.

### **PETITIONER O**

Is my long-term dream of becoming a lawyer really worth jeopardizing my physical health and the physical health of my family members for? Sadly, I have had to ask myself this question numerous times in the past couple of months. I wish coronavirus would have never happened, and if I could go back in time to ensure coronavirus would have never happened, I would. However, I don't have superpowers or a time capsule, unfortunately. People I loved and cared for have been killed because of this dehumanizing, god awful pandemic — right here in Montana. Coronavirus is here, it is real, and it is not going away any time soon as much as I hate to say it. I have been actively self-quarantining to keep myself and my family safe, but it seems counterintuitive when in four weeks I will be required to sit in a room with 60+ other people to take the bar exam. I know you will do what is best but all that I ask is that you do not take this decision lightly. Thank you.

### **PETITIONER P**

My county is considering a mandatory two-week quarantine for people returning from travel to communities with active cases if cases continue to climb through the early weeks of July. In travelling 550 miles across the state from

Northeast Montana to Missoula, I will be required to stop for gas in nearly every affected community across the state and ultimately stay in a community with active cases. When I return, I will be required to quarantine for two weeks. After paying over \$500 this month simply to sit for the bar, being prohibited from going into the office for two weeks is going to put me in a very difficult financial situation.

### **PETITIONER Q**

The novel Coronavirus has changed all of our lives. Instead of graduating among my peers in a day of celebration, I sat in my living room watching a YouTube video commemorating my experience. Instead of finishing my final week of school and celebrating with friends, I was alone in my home quarantining. Instead of starting my dream job in Missoula after the bar exam, I was laid off due to the economic downturn related to COVID-19. Things are hard on everyone right now, and I am thankful for my continued health and the health of my family.

The pandemic has taken over 137,000 American lives alone. The virus has not abated; it is still easily transmissible at gatherings of people, whether masked or not. It is obvious to me, and to a litany of mental health professionals around the country, that the virus and its progression have had a deleterious impact on the mental health of people globally, not just those taking the bar here in the United States.

While I lost my job here in Montana, I have been extremely lucky to find another job. This new job is in Colorado, and I am slated to start September 1, 2020. I had a strong GPA in law school and, regardless of the ethics of being forced to take this test, I have studied for over 350 hours thus far with a month to go. There is more to good lawyering than taking a test where a week later you forget the mnemonic tools that enabled you to cram. I have no doubt that I would, and will if needed, pass the bar exam. But I don't feel as if I need to put my life on the line to prove this point

Fortunately, I will be able to keep this job if I am admitted to a state bar somewhere. Therefore, in the interest of the examinees' health, please consider granting an emergency, temporary diploma privilege and consider the option of retaining an in-person UBE with limited examinees attending.



# Montana Lawyers in Support of Emergency Diploma Privilege

## EXHIBIT D

1. **Lee Armstrong**, Sidney (1998)
2. **Trent Baker**, Missoula (2001)
3. **Tim Bechtold**, Missoula (2000)
4. **Randy Bishop**, Kalispell (1977)
5. **Natalie Black**, Missoula (2018)
6. **Jonah Brown**, Missoula (2018)
7. **Katie Carlson**, Missoula (2010)
8. **Robert Carlson**, Butte (1979)
9. **Joseph R. Casillas**, Missoula (2008)
10. **Calvin Christian**, Missoula (1963)
11. **Janet Christoffersen**, Sidney (2002)
12. **Laura Christoffersen**, Glasgow (1986)
13. **John Connors**, Helena (2014)
14. **Domenic Cossi**, Bozeman (2010)
15. **Emily J. Cross**, Billings (2019)
16. **Molly Rose Fehringer**, Billings (2013)
17. **John J. Ferguson**, Missoula (1998)
18. **Jenna Fiscus**, Billings (2018)
19. **Lori Freeman**, Missoula (1990)
20. **Patrick Gallagher**, Anaconda (1993)
21. **Amanda Galvan**, Bozeman (2018)
22. **Andrew Gorder**, Missoula (2011)
23. **Patricia Danielle Gornick**, Lolo (2019)
24. **Sarah Gray**, Hamilton (2016)
25. **Rebekah Hall**, Helena (2020)
26. **Benjamin J. Halverson**, Billings (2012)
27. **Dillon Haskell**, Billings (2018)
28. **M. David Hoffman**, Helena (1984)
29. **Jason T. Holden**, Great Falls (2001)
30. **Nate Holloway**, Missoula (2011)
31. **Larry Howell**, Missoula (1992)
32. **Nathan Hulling**, Stevensville (2017)
33. **Malin Stearns Johnson**, Missoula (2004)
34. **Martin Judnich**, Missoula (2002)
35. **Elizabeth Kaleva**, Missoula (1995)
36. **Clare Kealey**, Missoula (2019)
37. **Kaden Keto**, Havre (2019)
38. **Hon. William Leaphart**, retired Montana Supreme Court justice, Helena (1972)
39. **Timothy Little**, Helena (2006)
40. **Hertha Lund**, Bozeman (1995)
41. **Molenda McCarty**, Helena (2018)
42. **Brianne C. McClafferty**, Billings (2015)
43. **Craig McCormack**, Durango, CO (2019)
44. **Mike McLean**, Helena (1997)
45. **Kathryn Mazurek**, Bozeman (2010)
46. **John Melcher**, Helena (1987)
47. **Edward G. Miller**, Missoula (2017)

**Montana Lawyers in Support of Emergency  
Diploma Privilege**

**EXHIBIT D**

48. **Monte Mills**, Missoula (2015)
49. **John Morrison**, Helena (1987)
50. **David Murray**, Missoula (2018)
51. **Hon. Jim Nelson**, retired Montana Supreme Court justice, Helena (1974)
52. **Garrett Norcott**, Helena (2009)
53. **Loren O'Toole**, Plentywood (1981)
54. **Denny Palmer**, Helena (2011)
55. **Vincent Pavlish**, Missoula (2009)
56. **Jori Quinlan**, Missoula (2011)
57. **Joshua Racki**, Great Falls (2003)
58. **Alex Rate**, Livingston (2009)
59. **Hon. Jim Regnier**, retired Montana Supreme Court justice, Lakeside (1978)
60. **Martin Rogers**, Missoula (2016)
61. **William A. Rossbach**, Missoula (1977)
62. **SK Rossi**, Helena (2010)
63. **Paul Ryan**, Missoula (1993)
64. **Ellie Hill Smith**, Missoula (2014)
65. **Dan L. Spoon**, Missoula (1981)
66. **Bryan L. Spoon**, Missoula (2011)
67. **Justin Stalpes**, Bozeman (2009)
68. **Colin Stephens**, Missoula (2005)
69. **Lori Suek**, Billings (1991)
70. **Roger M. Sullivan**, Kalispell (1985)
71. **Zane Sullivan**, Missoula (1974)
72. **Joel M. Thompson**, Billings (2000)
73. **Thomas Trigg**, Missoula (1985)
74. **Jack R. Tuholske**, Missoula (1985)
75. **Michael Viscomi**, Whitefish (1998)
76. **Hillary Wandler**, Missoula (2004)
77. **Gregory H. Warner**, Great Falls (1968)
78. **Evonne Smith Wells**, Missoula (1986)
79. **Hon. Mike Wheat**, retired Montana Supreme Court justice, Bozeman (1978)
80. **David K. Wilson**, Helena (1985)
81. **Molly Woodman**, Billings (2019)
82. **John M. Wolff**, Billings (2016)
83. **Joseph Zavatsky**, Miles City (2013)