

PENNSYLVANIA BAR ASSOCIATION COVID-19 TASK FORCE

Recommendation

The PBA COVID-19 Task Force recommends that the PBA request the Board of Law Examiners to adopt measures to assist students on schedule to graduate from law school in May 2020. Specifically, the COVID-19 Task Force recommends that students who graduate in May 2020 be issued a provisional license with specific additional requirements (such as those outlined below) and that, if those graduates complete additional requirements established by the Board of Law Examiners, they be issued a full license without the need to take the bar examination.

Report

In March of this year, Pennsylvania Bar Association (PBA) President Anne John convened a task force of PBA members (COVID-19 Task Force), focused on addressing issues facing the practice of law during the COVID-19 pandemic. The COVID-19 Task Force believes that the following position should be taken by the PBA related to the Pennsylvania Bar Examination, set to be administered in July 2020. Because the Board of Law Examiners is set to meet in the week beginning April 13, 2020, the COVID-19 Task Force asks the Board of Governors to act in lieu of the House of Delegates, which will not meet until sometime after the Board of Law Examiners' scheduled meeting, and adopt the following Report and Recommendation.

These are extraordinary times. As recently as one month ago, students believed they were going to graduate and enter one of the strongest job markets in a decade. Instead, they now face perilous conditions. The uncertainty of this situation is compounded by the fact that these students do not know when they will be able to sit for the next bar examination, be it in July, the fall, or February 2021. While the Board of Law Examiners should take all necessary steps, in accordance with federal and state health guidelines, to give the bar exam—in some format—at the end of July, it may be impossible to predict when this crisis might end. Planning should begin now on how to address the reality that a July exam in any format may not be feasible.

Although simply postponing the bar exam seems like a logical solution, this solution delays graduated students, facing enormous educational debt, from earning a living. These graduates will be prohibited from taking vital positions in our profession and penalized for conditions beyond their control. There is no way to guarantee that if the bar exam were postponed, that it could be rescheduled. Even if this crisis ends by mid-to-late summer, numerous events will need to be rescheduled. New York, one of the first states to postpone its bar exam, has recently acknowledged this reality.

The COVID-19 Task Force does not make this recommendation lightly. The PBA must remain committed to the integrity of the profession and ensuring that the public receives the type of representation to which it is entitled. Any alternative path to licensure needs to balance those needs with the needs and realities faced by this year's law school graduates. With all of these

concerns in mind, however, a provisional license with the following conditions could accomplish those objectives.

One such option would be allowing May 2020 graduates to obtain a provisional license and be required to temporarily (*e.g.*, four months) provide legal services to the indigent in a community legal aid program or law school clinic.¹ Such a program would have logistical challenges and would need to be a partnership between the Board of Law Examiners, the law schools, legal aid programs, and the judiciary. Notwithstanding those challenges, however, graduates who participate in such a program would be afforded an opportunity to deal with clients in real-world situations, completing—albeit a different manner—an educational exercise aimed at ensuring they have specific skills necessary to practice law.

Alternatively, those graduates issued emergency provisional licenses could be allowed to enter the practice of law immediately but be required to perform 250 hours of *pro bono* work through legal services, clinics, and other approved programs during the calendar year. Additionally, those graduates would be required to successfully complete other requirements designed to ensure competency (*e.g.*, completion of bridge-the-gap and passage of character and fitness requirements). Those that complete the required 250 hours with appropriate certification and any other requirements deemed necessary would then become permanent members of the bar without needing to take the bar exam. Those that fail to do so would be required to take the July 2021 (or subsequent) bar exam. Notably, under this approach, those graduates provided provisional licensure would be required to work under the supervision of an attorney until completing the requirements to obtain full licensure.

Provisional licensure shares characteristics with diploma privileges, the latter having been adopted by the State of Wisconsin in 1870 and in New Hampshire, in a limited fashion, in 2005. The State of Wisconsin already provides this course of action to students graduating from Wisconsin law schools who meet certain requirements. By adopting this course of action, the Board of Law Examiners would allow graduates to get practical, real world experience assisting

¹ New Jersey, which has postponed its bar exam, will allow students to temporarily practice under the supervision of a licensed attorney while waiting for the examination to be rescheduled. While this solution has merit, it will mean that an entire graduating class of lawyers will be required to study for a subsequent bar exam while attempting to earn an income. This has been noted to make the exam itself statistically more difficult. Notwithstanding that, this approach, while presenting a host of challenges for May 2020 graduates (*e.g.* delaying their full admission to the bar based on conditions beyond their control), it is arguably better than making students wait for the rescheduled bar exam. See <https://www.nj.com/coronavirus/2020/04/nj-law-graduates-can-temporarily-practice-without-license-amid-coronavirus-crisis-court-says.html>. Likewise, the deans of the New York law school have sent a letter to the New York Chief Justice asking that New York adopt New Jersey's approach while creating an alternative path to licensure that does not require passage of the New York bar exam. The New York Dean's request is similar to this proposal, but it only requires practice under the supervision of an attorney for a period of time, not a required *pro bono* element. <https://news.law.fordham.edu/blog/2020/04/02/deans-letter-to-ny-court-of-appeals-on-the-bar-exam/>

clients, while earning the right to practice law. The crisis caused by COVID-19 is going to impact indigent members of our society at a time when legal services are already stressed beyond capacity. Looming in the future are soaring unemployment, the potential for bankruptcies and evictions, and countless other issues. By providing graduates with the option of an emergency provisional license and requiring that they provide *pro bono* service in some manner, rather than taking the bar exam, citizens of the Commonwealth with a critical need will receive legal representation while we prepare these graduates for the real world. This proactive approach will put Pennsylvania in a position to be ready to confront these issues in ways it currently is not.

For these reasons, the COVID-19 Task Force requests that the Board of Governors adopt the recommendation that, to the extent it is not possible to safely administer the bar exam in July 2020, that the Supreme Court grant a provisional license as outlined above to those May 2020 law school graduates who have submitted an application to take the Pennsylvania Bar Examination and submit this recommendation to the Supreme Court of Pennsylvania and the Board of Law Examiners for consideration.

Respectfully Submitted,

Michael Jones, Esq.
Co-Chair
PBA COVID-19 Task Force

Jonathan D. Koltash, Esq.
Chair, Subcommittee on the Bar Exam
PBA COVID-19 Task Force

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