

**PENNSYLVANIA BAR ASSOCIATION
COVID-19 TASK FORCE**

Recommendation

Based on additional developments throughout the Commonwealth and further study, the PBA COVID-19 Task Force recommends that the PBA Board of Governors act *in lieu* of the House of Delegates and request that the Pennsylvania Supreme Court and Pennsylvania Board of Law Examiners (“Bar Examiners”) offer a diploma privilege to students who have (1) graduated from law school between April 1, 2020 and June 30, 2020; (2) registered to take the 2020 Pennsylvania Bar Examination on or before June 30, 2020; and (3) satisfied all requirements set by the Pennsylvania Supreme Court and Bar Examiners for admission to the bar of Pennsylvania except for passing the Pennsylvania Bar Examination. Specifically, the PBA recommends that the Supreme Court and Bar Examiners consider imposing the following requirements for a recent graduate to obtain a license under the diploma privilege:

- Graduation from an ABA-accredited U.S. law school between April 1, 2020 and June 30, 2020 and registered to take the Pennsylvania Bar Examination on or before June 30, 2020;
- Meet the current standards related to passing the MPRE . If the applicant has not already taken and passed the MPRE, the applicant must pass the MPRE by December 31, 2020, unless unable to take the MPRE in the remainder of 2020. If unable, the applicant may request an extension to submit proof of passing the MPRE until 30 days after the scores are published following the first MPRE administered in 2021;
- Meet the current standards regarding Character and Fitness qualifications;
- Not be sitting for a bar examination to be given in any other jurisdiction that uses the MBE on or before the end of October 2020;
- May not apply if they have previously failed any bar exam in any state; and
- Completion of a Pennsylvania Bridge the Gap course – virtually or in-person – prior to being granted a diploma privilege rather than at the conclusion of the first continuing legal education compliance period.

Report

In March 2020, then 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. One such function of the COVID-19 Task Force was to review the effect COVID-19 had on recent law school graduates – specifically those scheduled to take the July 2020 Pennsylvania Bar Examination (“Bar Exam”).

As a result of the COVID-19 pandemic, in April 2020, the Bar Examiners delayed the Bar Exam until September 2020. At the same time, in conjunction with the recommendation of the COVID-19 Task Force, the Bar Examiners created a limited license for 2020 graduates while

they waited for the September examination. This limited license allows those graduates to work, as if barred, as long as they do so under the supervision of a barred attorney.

In July 2020, the Bar Examiners cancelled the September 2020 bar examination, moved the examination to October 2020, and made the bar exam an entirely virtual, on-line examination. Additionally, the Bar Examiners extended the bar exam, normally a two-day examination, to a three-day examination.

The COVID-19 pandemic rages on, with surges occurring throughout the country. By all indications, these surges will continue to occur throughout the Fall of 2020. In Pennsylvania, recent surges have resulted in Governor Wolf issuing a new Executive Order, effective July 16, 2020, once again restricting the number of people who may gather indoors to a maximum of 25 and requiring teleworking if possible. Additionally, the City of Philadelphia has restricted gatherings of more than 25 until Spring 2021 (although the restriction does not apply to private property). As a result, Pennsylvania law schools and other entities that may have planned to host students for the online exam can no longer do so in a feasible manner. Not all applicants have reliable internet in their homes and not all applicants have a home situation that allows them to take a three-day exam with adequate uninterrupted concentration. Not having the ability to seek alternative locations – such as at a local law school – disadvantages students who otherwise do not have the means to take the examination at home in optimal conditions.

Moreover, even those with ideal home conditions will be at the whim of a storm, accident, or equipment failure that causes a loss of power during the exam. Neither public health officials nor the medical community at large can give any reliable prediction of where Pennsylvania or the country will be in October 2020 as it relates to the pandemic. A diploma privilege would provide some certainty to the recent law school graduates who are trying to enter the profession at the most uncertain time in the history of the bar exam. While a diploma privilege does sacrifice the testing of graduates, the majority of people who take the Pennsylvania Bar Exam for the first time in July pass the test. (The first-time pass rate for the July exam for each of the past three years was approximately 80%). Many of those who do not pass the bar exam the first time do successfully pass the bar exam during a subsequent test – often on the second try.

It cannot be denied that these are extraordinary times. As recently as February 2020, third year law students believed they were going to graduate and enter one of the strongest job markets in a decade. Instead, through no fault of their own, they now face perilous conditions. Those unable or unwilling to meet the standards for diploma privilege may still take the October 2020 online exam (or wait for a later exam, whether in person or on-line).

The COVID-19 Task Force does not make this recommendation lightly. The PBA remains committed to the integrity of the profession and ensuring that the public receives the type of representation to which it is entitled. Nothing in this recommendation should be considered an assault on the bar exam itself, its future administration, or the administration of the online exam for those who have previously failed the exam¹. Notwithstanding this, an alternative path to licensure needs to balance those needs with the needs and realities faced by

¹ The COVID-19 Task Force believes that offering the October Bar Exam virtually for those who do not meet the criteria for a diploma privilege, who elect to take the examination, or who are taking the examination for a subsequent time allows the Bar Examiners to provide the exam in a virtual manner with a smaller universe of test takers in the event that it will have to administer a virtual bar examination for subsequent administrations of the bar exam.

this year's law school graduates. With all these concerns in mind, a diploma privilege balances those concerns under the current conditions.

Also, a diploma privilege is not unique to Pennsylvania. States including Utah, Washington, and Oregon have already undertaken similar steps because of COVID-19. Likewise, diploma privileges have existed in the State of Wisconsin since 1870 and, albeit in an extraordinarily limited program, in New Hampshire since 2005. It must be noted that the programs that exist in Wisconsin and New Hampshire do include requirements not contained in this proposal – such as specific courses of study and law school performance. However, nothing prevents an attorney barred in Wisconsin or New Hampshire from entering Pennsylvania to practice law through reciprocity – even if their licensure was through diploma privilege rather than examination.

Requirements in the Wisconsin and New Hampshire programs, as well as those requirements in Pennsylvania's recent limited license order requiring graduates to work under a supervising attorney until taking the bar exam, are laudable. However, once licensed, these applicants will be bound by the Pennsylvania Rules of Professional Conduct. Rule 1.1 requires competence, which can be satisfied through necessary study or association of a lawyer with established competence. By requiring the diploma privilege applicants to attend Pennsylvania's Bridge the Gap program prior to admission rather than before the completion of the first compliance period ends, those receiving a diploma privilege should fully understand and be educated in compliance with Rule 1.1. The Bridge the Gap program, and the education already provided by accredited law schools, strikes a balance between protecting the public and the absence of a lawyer passing the bar exam in the current environment. By offering a diploma privilege, the Supreme Court and the Bar Examiners help reduce the potential that 2020 law graduates suffer prolonged economic hardship as a result of the pandemic, which will have a ripple effect on the community at large via unemployment, delayed employment, and/or fewer attorneys available to assist the public at a time of unprecedented unemployment, illness and death.

Based on the foregoing and the current on-line test date of October 2020, the COVID-19 Task Force recommends that the Board of Governors act *in lieu* of the House of Delegates and request that the Pennsylvania Supreme Court and Bar Examiners provide for a diploma privilege admission to the bar of Pennsylvania, allowing 2020 law graduates to enter the practice of law without taking and passing a bar exam, under and subject to the specific and limited conditions articulated herein.

Respectfully Submitted,

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****Approved by the Board of Governors, acting in lieu of the House of Delegates, July 29, 2020.***