

Members of the Law School Class of 2020

April 15, 2020

Chief Justice Loretta H. Rush
Indiana Supreme Court
311 State House
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Indianapolis, Indiana 2732
loretta.rush@courts.in.gov

Dear Chief Justice Rush,

As third year law students planning to sit for the July 2020 bar exam, we appreciate that Indiana is monitoring the viability of a July administration of the bar exam. We are confident our state Supreme Court's independence and leadership will allow you to find an innovative solution to the current threat to licensing the class of 2020 in the face of the COVID-19 crisis.

We write today to ask for an alternative path to obtaining an Indiana law license outside of the normal administration of the state bar exam. As students, we understand the task you face has no guidelines to follow and there are no easy answers right now. The global pandemic and national emergency caused by the spread of COVID-19 has put us squarely into a once-in-a-generation, unprecedented state of crisis. We believe planning now for small group testing sites in July or alternatively emergency diploma privilege are the safest options.

We entered law school with the end goal of taking the bar exam as the final step into our chosen profession. We would like to see plans set in motion to administer the July bar exam at various sites across the state in order to accommodate small groups spread across a multitude of rooms. For instance, the Maurer School of Law in Bloomington has indicated a willingness to proctor the exam locally for its students. If each law school were to offer space and proctors for their students and the convention center in Carmel could serve out of state test takers, this might allow enough space to stay physically distant while taking the exam. We do recognize that the logistical, financial, and administrative challenges involved in satellite testing sites may be too great to put in place on short notice, but hope it can be considered.

Should it become necessary as a result of the pandemic to cancel or postpone the July exam, that decision will upend the lives of the class of 2020 law graduates hoping to practice law in Indiana. We have jobs starting this fall that require an Indiana law license. We need to be able to afford housing, food, student loan payments, and health insurance. In addition to those of us

already supporting a family or other relatives, the COVID-19 pandemic is adding personal and financial burdens and straining the ability of our friends and family to help us through an extended period of time without a law license and without the ability to start our careers. Unfortunately, life and its associated expenses are not postponed with the bar exam.

Setting the stress, grief, and anxiety of the COVID-19 pandemic aside, a real or potential postponement or cancelation of the July 2020 bar exam will force the majority of students to begin legal work or find other employment to make ends meet and prevent us from focusing solely on studying when an exam is finally offered. This pandemic presents a severe disadvantage unlike any prior graduating class in recent decades has faced. Further, the economic turmoil, high unemployment, and risk of serious illness that accompany this pandemic will only provide further substantial hurdles.

We hope the Court will take into account the struggle students will face specifically because of the COVID-19 pandemic. Most of us have never experienced this extreme level of stress, grief, and anxiety all at one time from an omnipresent global threat. Our world order has been turned upside down, with members of the class of 2020 now facing extensive child care, elder care, and self care responsibilities while finishing law school and looking ahead to the bar exam. The facilities students rely on to support bar studying are closed – daycares, libraries, and coffee shops shuttered for the foreseeable future. A high stakes exam such as the bar requires months of studying 8-12 hours per day, which will be difficult to achieve for those without a secure housing situation or reliable internet (particularly with in-person bar review options closed). Anyone dealing with family issues, financial problems, or fighting the virus will face a disproportionately heavy struggle with both a July bar and a delayed bar exam administration. The pandemic has fundamentally altered the test taking landscape beyond our wildest imagination and out of our control.

The July 2019 Indiana bar exam saw first time test takers pass at a rate of 76% compared to repeat takers passing at only 23%. Studies suggest that repeat takers pass at a significantly lower rate because they are unable to focus solely on studying for the bar exam like most first time takers right out of law school are able to do. The majority of us would be working by the time a bar exam was eventually administered under a postponement or cancelation for July. Many of us will be working in a reduced capacity in the legal profession, although many will likely also leave the legal field and find it extremely difficult to return.

Emergency diploma privilege is the most practical alternative if no exam can be given in July in this global pandemic. The impact of postponing the bar exam even by a few months or canceling the July exam altogether will be felt beyond the lives of individual students. Employers throughout the state in the private sector, government, and at legal aid clinics are

anticipating the fall arrival of new lawyers. We as students are eager to serve our fellow Hoosiers at a time when their lives, jobs, and relationships are in turmoil - a time when Hoosiers need access to the justice system most. But, we need to be licensed to practice law to make a positive impact on our future clients. When the pandemic is over, there will be a backlog of clients needing legal representation throughout the state of Indiana. Some states are graduating and licensing medical students early to help fight the virus. The legal system likely will face a wave of high demand as court systems reopen and people face the legal aftermath of the pandemic.

We understand the need to protect the public by having rigorous standards to be admitted to the state bar. The state can protect the integrity of the legal profession and take measures to ensure only qualified individuals are admitted to practice through diploma privilege in this growing pandemic. These measures might include applying the emergency exception to just the Class of 2020 spring graduates who are first time test takers. The state could impose additional weekly or monthly CLE requirements for our early years of practice. Every candidate for diploma privilege must still pass the rigorous bar application process and character and fitness standards as well as scoring satisfactorily on the MPRE. With some combination of these measures, the state can practically guarantee a competent, professional group of new attorneys. The state of Wisconsin has had great success with diploma privilege in their state using similar criteria.

State diploma privilege does raise questions about licensing for out of state students planning to practice in Indiana. The Court could offer diploma privilege to all candidates for the July 2020 bar who meet other strict requirements without consideration of the state in which they attended law school. Alternatively, out of state students might follow a different route to licensing, such as a supervised practice plan or diploma privilege with additional CLE requirements focused on Indiana state laws. These suggestions are just a few possibilities that would allow qualified, competent candidates for the Indiana bar exam to begin practice. Recently, the state of Utah announced it is considering a licensing plan for the class of 2020 using diploma privilege with a period of supervised practice and a requirement to have graduated from a law school meeting certain bar exam passage rates. Utah's plan is more restrictive than Wisconsin's, but these licensing plans show that a viable alternative to the bar exam exists.

We want to take the bar exam in July, but the reality of sitting for the exam is in serious jeopardy due to a global pandemic. Until a promising antiviral drug or a vaccine is available, which could take 12 to 18 months, sitting for the bar exam presents a grave danger to the health of each student and their immediate families, as well as state employees and proctors. With asymptomatic transmission, there is no clear way to exclude the carriers of the virus from the testing site. No one can predict today what the public health guidelines and state and local orders will be in late July. We recognize a decision has to be made with imperfect information. Students

are already in an unprecedented and precarious situation that will be exacerbated by a late decision close to the exam date to cancel after we have put in months of studying. The Indianapolis area has been termed a COVID-19 “emerging hot spot” by the U.S. Surgeon General. Test takers will be expected to descend upon the hardest hit area of the state with a need to find places to stay overnight and safe sources of food. After the exam, we as students will be faced with a decision: go home to our families or self-isolate for fourteen days following a large gathering and potential exposure from the unknown crowd.

In this time of uncertainty, we are asking for understanding and recognition of the hardship we already face with a frightening pandemic which is only compounded by the threat of not being licensed to practice law. Fall dates for the exam do not add any additional level of certainty as models suggest second and third waves of the virus are possible, if not likely. No one knows when “normal” might return and large group gatherings may not be possible this calendar year. Test takers might be faced with defying stay at home orders and travel restrictions to take the exam.

We have considered both a postponed exam and a temporary license allowing us to practice under supervision until the next exam is offered. Both scenarios leave little time for studying while working as clerks, associates in firms, or in any number of other positions and industries as our personal situations dictate. Employers may not allow the time needed to study. Some employers may decide to not hire a graduate who has temporary privileges, or only intern status, and requires time off to study, rescinding offers of employment.

The alternatives to a July exam that require the bar exam to be taken at a later date have a disparate impact across the class of 2020. Those of us entering a small firm, legal aid clinic, or government position do not have employers who can financially back us through a delay in obtaining a license. Indiana Admission and Discipline Rule 2.1(4) states that a firm may not charge for the services of a legal intern acting in a representative capacity. Even those of us entering a larger law firm face uncertainty in employment or at the least a reduction in salary during the delay. The vast majority of law firms in the U.S. have ten or fewer attorneys and firms of this size represent the largest category of law firm jobs for recent law school graduates. These smaller, county seat practices are the very firms serving the needs of every day Hoosiers facing legal challenges as a result of the COVID-19 pandemic. A delay in licensing graduates headed to small firms and legal aid clinics cuts against increasing access to justice in the state.

Supervised practice until the next exam, as discussed in the April 8, 2020, order in Supreme Court Case No. 20S-MS-249, comes with a variety of concerns for graduates. According to Indiana Admission and Discipline Rule 2.1(4), graduates require supervision by an attorney in open court and clients must be informed the graduate is an intern instead of an

attorney. Those of us entering small firms, legal aid, and prosecutors and public defenders offices will be of limited value to our employers under the Admission and Discipline Rules if we are so restricted in our legal work. All graduates working as interns will be competing with student interns for jobs potentially. A student entering a small firm may need to forego practice during the delay and supervision period because the reputational harm of starting as an intern and possibly losing the ability to practice after the next exam would be extremely damaging. For reference, 48.1% of all 2018 graduates went into firm jobs in Indiana, with 43.6% of those graduates in firms of 1-10 lawyers, according to the National Association for Law Placement. Additional questions involving the impact on a student hoping to hang their own shingle and the economics of practice such as malpractice insurance will impact some students more acutely than others. If a supervised practice approach structured as an apprenticeship rather than a delay until an exam is considered, this raises questions about what constitutes practice during the interim period for in-house counsel and judicial clerks among others.

To avoid the very real professional, psychological, and economic damage a postponed or canceled July bar exam presents to the class of 2020 law graduates, our future employers, and the broader legal market in Indiana, there needs to be an alternative route to licensing. Unprecedented times call for emergency measures to ensure the health and safety of our community as well as to keep the careers of the state's newest lawyers on track. Included with this letter is an attachment containing a few personal stories of how students will be impacted.

We came to law school to be lawyers, to serve others in a time of crisis in their lives. We have learned to be tough, confident, and zealous advocates, but we have also learned when to ask for help. Today, we need your help. We are asking for your help to allow us to deliver much needed legal services to our friends, family, and neighbors in a time of incredible uncertainty. As a society, we are all in this together around the world and at home in Indiana. The class of 2020 requests that the Court consider a reasonable alternative to the traditional bar exam.

Signed,

Members of the Law School Class of 2020

Attachment: 1

[attachment omitted]

[student signatures omitted]