

[EXTERNAL] Re: Remote Bar Exam

Daniel Huynh <dmhuynh@scu.edu>

Thu 8/20/2020 4:28 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Justices,

First, I would like to thank the Court for opening a door for public comments and concerns about the bar exam under the current extreme difficulty. I personally support Diploma Privilege in Maryland because there is overwhelming evidence showing that the bar exam is not an indicator in measuring an attorney's competency. In the current system, the prospective lawyer is fully licensed to practice law if she passes the bar exam, assuming other requirements are met, but the legal profession is a research profession and a problem-solving profession, requiring attorneys to spend time and effort to learn and research for solutions, not something coming from their memories. Therefore, applying whatever they memorize from the bar exam preparation to a real problem is a serious malpractice issue, that harms clients, and the profession itself.

Further, the bar exam is costly and time-consuming. Even, a person graduating from Harvard in the top 1% still has to purchase a bar prep course, which is designed solely for the bar exam. The average cost for bar prep is about \$1,700 to \$2,200, plus the opportunity cost that the student has to forgo to study for the bar. However, these costs do not enhance prospective attorneys' competency. It creates more financial burden, unnecessary stress, social disconnection on prospective lawyers. In the alternative world with diploma privilege, prospective lawyers would be admitted to the bar upon graduation and immediately join the workforce. In this world, a newly admitted lawyer can apprentice under an experienced attorney in the field she wishes to practice. In this world, a newly admitted attorney can further acquire additional training in the specific areas of law, such as tax law, immigration, IP law, ..etc., those laws are not on the bar exam. So back to the current world, a prospective attorney who would like to practice tax law, which is not on the bar exam, would be required to do unnecessary extra steps to become a tax attorney.

The option for an online bar exam is not viable because the letter from the Boards of Law Examiner pointed out that there is only one vendor administering the online bar exam for over 26 jurisdictions on the same day. That vendor administered the MI bar exam in July and they had to ask the FBI to investigate DDOS attacks on their system. The BLE also failed to take consideration of unreliable internet, noises, living conditions of bar applicants. However, their analysis much more emphasizes on a perfect world in the absence of covid19, wildfires, power outages, roommates, family cares, and financial issues. For the majority of the population, being confined in their residence tremendously affect their mental health. However, the Board of Law Examiner did not assess and provide a fair opinion to the Court.

Granting emergency diploma privilege or passing the bar exam are not different from each other because all newly admitted attorneys must spend time to research the law, learn how to solve the problem, and complying with the ethic codes. And those requirements are well-taught in law school. So the question is why the Court still needs the bar exam?

In my opinion, to achieve the subjective goal that "protect the public interest," The Court should permanently grant diploma privilege for those who wish to practice law in Maryland. The applicant can apply for admission:

1. within 2 years upon graduation from an ABA law school,
2. must achieve a passing score on MPRE,
3. successfully complete Court Practice Course,
4. complete 50 hrs CLE each year in the first 2 years, then 25 hrs thereafter

5. practice law under the supervision of an experienced attorney in the first year or acquire an additional advanced degree in a specific field, such as tax, immigration, IP law, etc.. with a final path to a full license.

In addition, the law school must certify that the prospective attorney is capable of practicing law. The Bar can issue a guideline for the "Court practice training course," which enhances ethical educations, maintaining records of CLE, and speed up attorney disciplinary. The ultimate goal is to provide a competent and ethical attorney to society at the cheapest costs to both society and prospective attorneys. Additionally, it could achieve diversity and bring down legal costs, so that economically disadvantaged groups of people could access legal assistance.

I very much appreciate the Court in considering my above opinion.

Very respectfully,

Daniel Huynh

[EXTERNAL] Comment: Emergency Diploma Privilege

Devan Patel <devan94patel@gmail.com>

Thu 8/20/2020 4:50 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To Whom It May Concern:

I wish to submit a comment in response to the statement issued by the Maryland Court of Appeals on August 20, 2020.

The Maryland State Board of Law Examiner's ("SBLE") responded to Petitioners' motion for emergency diploma privilege and I would like to make a few comments regarding said response as a first-time MD bar applicant. Ultimately, I advocate for the granting of emergency diploma privilege to applicants that does not require applicants to later take the bar exam.

(1) In their response, SBLE first discusses the experiences in four other states, dismissing three of the situations as inapplicable due to the use of ILG Software and then moving onto Michigan's administration of the exam via ExamSoft. SBLE seemingly writes-off the issues faced by Michigan examinees as minor and easily remedied with extra test time allocated, that examinees were unable to access the passwords but Michigan examiners quickly disseminated that information via email and social media. However, even a cursory survey of Michigan examinees' experience as well as social media on the day of the examine will reveal that the situation was not as minor and smoothly-handled as SBLE paints it to be. Examinees were frantically searching social media, posting pleas on websites to any other examinees who had access to the correct passwords. A 30-40 minute delay may seem minor to SBLE, but in the course of taking an exam, no less the Bar Exam, a 30-40 minute interruption mid-exam has the potential to greatly stifle an examinee's flow of information, resulting in sub-par performance after the 30-40 minute interruption is remedied. Anyone who has ever taken a multi-hour test will know the importance of maintaining your flow of writing and information in order to do your best. Furthermore, SBLE discusses ExamSoft's swift and successful defense against "a sophisticated form of cyberattack" (SBLE, page 4 of 9). Firstly, it should be noted that a DDOS attack, which is what happened in Michigan, is *not* a sophisticated cyberattack - in fact, it is one of the easiest forms of cyberattacks to launch, so easy that it can be automated and does not require the active work of mastermind hackers. If ExamSoft cannot ensure a safe and smooth testing experience for Michigan examinees, I have zero confidence it can ensure a safe and smooth experience for nearly **40 times** the number of examinees on October 5 and 6.

(2) SBLE then goes on to address examinees' concerns about taking the exam - addressing the viability of remote delivery, data privacy, and exam day conduct. SBLE then goes on to say that since SBLE has received only a handful of emails discussing these issues, that that surely means these are not terribly important issues. First, SBLE just assumes that anyone who has an issue surely has already come to them with that issue. What SBLE seems to

ignore is that many applicants have not reached out directly because of pride. Minority applicants are disproportionately affected by the current situation due to already-existing disparities - quality of laptop, quality of internet, no quiet place to study/take the exam, more often than their counterparts to be helping in the household with raising children or caring for the elderly. Some applicants and examinees in these positions feel a shame if they try to reach out to the SBLE to address these concerns. This is not mere conjecture either: I had the privilege of serving as the Student Bar Association President at Notre Dame Law School for the 2019-2020 school year. In March of 2020, like everyone else, Notre Dame Law went to remote instruction. Over the course of the next two to three months, I received over 300 messages from concerned students and parents. What I noticed was that while some did reach out directly to communicate their disparities in resources, many, if not most, did not - these reports came from the friends or families of students who were concerned for them and knew that those students would not communicate that information to me or the school administration directly out of pride or not wanting to call attention to their disparities.

Second, the Bar Exam is months away, with examinees' situations ever in flux and unpredictable this far out from the exam. In June, I personally foresaw zero issues on my end in taking the remote exam in October. But then I had to move back home with my parents in California after I lost my job offer in Washington DC. Now that I am in California, I have to worry about the three-hour time difference between myself and Maryland in terms of the exam. I will be faced with the choice of either waking up at 4 AM to take the MD Bar and thus put myself at a disadvantage or fly out the week before the exam to the East Coast in order to be in the same time zone but risk getting Covid or staying in a hotel with inadequate internet. If the exam were still in-person, I would still have to fly out for the exam, but at least I would not have to be concerned with losing connection or being unable to upload my exam from the room of a Holiday Inn.

Third, SBLE says that examinees have no reason to worry about data privacy. What SBLE fails to mention, however, is that the exam software requires what is known as "root permission." What this means is that the exam software needs access to the very core information of your computer. Any application with root permission can access *everything else* on your computer once it is granted that initial access. Fears that ExamSoft will have this capacity are one thing, but supplement that fear with the concern that ExamSoft will fall to simple data hacks and breaches once again and thus examinees' information could be compromised. It does not matter that examinees do not have to pay the software fee ourselves and thus not risk our credit card information becoming private when the exam software will give hackers access to all of that information anyway. Once again, if we cannot guarantee the integrity of the software for Michigan, how are we to have any confidence that examinees' information will be safe when there will be nearly **40 times** more examinees across the country that day?

(3) I urge that the COA does not go the way of Delaware - a decision to grant temporary licensure and force applicants to take the February 2021 exam is the worst of all possible worlds. This situation forces applicants to somehow find the time to study for the bar exam *again* after spending these past few months day in and day out studying. Not only that, but

applicants will have to study while practicing - yes this is something that lawyers do all the time, but never in the midst of a global pandemic while they care for loved ones in hopes they do not get infected, *and* after the proverbial can gets kicked down the road multiple times over the course of the previous year.

(4) The granting of emergency diploma privilege will not lead to a class of unqualified lawyers prone to dramatically higher levels of malpractice issues. The other requirements for MD applicants still stand - graduating from an ABA-approved law school; achieving a qualifying score on the MPRE; passing the MD bar exam supplement; and passing a character and fitness evaluation by the SBLE. The COA can require the class of attorneys admitted under emergency diploma privilege to complete a higher than usual number of CLE credits and/or it can require a number of supervised practice hours for these attorneys. Furthermore, data from Wisconsin shows that malpractice has not gone through the roof following its adoption of diploma privilege years ago - just ask Judy Gundersen, President of the NCBE who herself was admitted to the Bar via diploma privilege.

(5) For the forgoing reasons, I ask that the COA grant emergency diploma privilege to bar exam applicants. I am not asking for unequivocal diploma privilege for *all* applicants - I understand that repeat takers present a different situation, and so I am keeping my request to first-time applicants.

Thank you for your time and consideration.

Best,

Devan N. Patel

[EXTERNAL] Comment on Remote Administration of the 2020 Bar Examination

Kyle Campbell <Kyle.Campbell@law.ua.edu>

Thu 8/20/2020 5:36 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Judges,

Thank you for soliciting public comment on SBLE's response regarding the October 2020 Remote Bar Examination. I am a 2020 graduate of the University of Alabama School of Law, soon to begin work as Associate General Counsel of a labor organization that represents members throughout the country and in Maryland. I initially registered for the July 2020 Maryland Bar Examination because I intended to practice there, but also because it would be convenient for me to transfer my UBE score to D.C. and other jurisdictions. I appreciate the work SBLE has done to establish new reciprocity agreements with several jurisdictions, and if I believed that the October remote exam was feasible, taking the exam would be the optimal choice for my career. I am nonetheless writing to advocate for Diploma Privilege because I firmly believe the exam will not be possible.

In law school, I took over a dozen final examinations. All of these, until Spring 2020, utilized ExamSoft software. Without exaggeration, I did not take **one** exam in which several students did not experience technical issues with the software. Fortunately, we had excellent IT specialists on staff, who in most cases were able to sort out the issues; when they could not do so, students had the option to handwrite their exams. When our classes moved online in the Spring, instructors and administration universally agreed that using ExamSoft for remote exams would not be possible, so our exams were administered without the software.

Due to the failures of ILG described in SBLE's response, ExamSoft is now the only vendor for the October remote exam, for which 30,000 applicants are expected to sit. This will be a disaster. Despite SBLE's characterization of the issues with Michigan's administration as minor, it is difficult to imagine dealing with 40 minutes of stress that one's months of preparation for the most important exam of one's life were all for naught, and then to receive the amount of time allotted to students who did not experience this failure as "compensation." Even though these issues in Michigan were caused by a DDOS attack (which could just as easily be replicated to greater effect on a national scale), to my knowledge, no DDOS attacks were launched during my section's Civil Procedure final; technical issues abounded regardless. If the October remote exam goes forward, it will fail, and this Court will be faced with the choice of granting Diploma Privilege after asserting the exam is necessary or denying applicants the ability to work in the legal profession, at a time when the need for more attorneys has never been more clear. This Court could prevent that eventuality by making the just decision today.

Finally, I want to express that temporary licensure under a program that requires applicants to sit for a future administration of the UBE is the absolute worst of all options. Each of us has spent months diligently studying full-time for this exam. In the best case scenario of temporary licensure, applicants will be forced to re-learn all of the material ahead of the February exam (assuming that exam is possible) while balancing a full-time job. More likely, employers will be unwilling to hire job applicants who cannot guarantee licensure prior to April 2021 at the earliest. Granting applicants Diploma Privilege, with the additional safeguards of CLE or

supervised practice hours described in SBLE's response, properly balances protection of the public with applicants' very real need for financial stability.

I very much wish that I was enjoying a brief vacation right now, several weeks after taking the bar at the Baltimore Convention Center and before beginning work. It is not so. Instead, my future and the future of 1,100 other applicants, who have dreamed our entire lives of becoming attorneys, hangs in the balance of this Court's decision. I am hopeful that you will make the equitable choice.

Thank you,

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Kyle Campbell
The University of Alabama School of Law
Juris Doctor | Class of 2020
334-470-6543

[EXTERNAL] Against Temporary Diploma Privilege for MD

Dominic Gilani <dgilani@umaryland.edu>

Thu 8/20/2020 6:04 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Hello Clerk of the Court and Court of Appeals Staff,

I thank you all for allowing us to send our thoughts on diploma privilege. Given the situation with the COVID-19 pandemic and everything else that has upended world normalcy, I am currently against temporary diploma privilege for Maryland. Respectfully, here are my reasons:

1. I already paid \$2,078.00 for Barbri bar prep. I began my study lessons on May 11, 2020 and completed them all on August 5, 2020. As of now, I am studying the "more practice/ supplemental practice" portions of Barbri and will continue to do so up until the day of the exam. There is uncertainty that Barbri will refund the \$2,078.00, and cancelling the bar exam could make the scenario of wasting \$2,078.00 on unneeded bar prep a reality. I am poor, I am unable to get money from my parents and family, and I could have really used that \$2,078.00 on rent and food.
2. I am starting my judicial clerkship with my Circuit Court Judge for Baltimore County on August 26 and already asked for October 5 and 6 off. The courts are in a rough spot, and messing around with my time off is a bad look, especially when I would have barely been in my job for 6 weeks at that point.
3. Passing the bar means I would be admitted to the bar, however, Maryland offers law clerks who are barred an extra \$5,000 in pay. I would likely need to extend my job as a clerk (if I am able to) for an extra year because the economy is going to be terrible for the foreseeable future. If diploma privilege means I am unable to get that raise, then that means I would be out \$10,000, which would harm my livelihood because I can't ask my parents for money.
4. Right now is really bad timing to keep kicking the bar down the road. It has already been delayed twice, and we are about 6 weeks out from taking the exam. Keeping this Diploma Privilege debate open only adds more uncertainty and makes it seem like there is no semi-secure plan to move forward. After having dealt with 2 delays in the exam date, the debate for Diploma Privilege should have been foreclosed by now because many other students and I have studied for this exam and put in the hard work to become lawyers and positively contribute to the Maryland legal community.
5. The SBLE has worked really hard to secure reciprocity agreements with neighboring states for the bar exam. If the bar is cancelled, then reciprocity will likely not be a thing anymore. I was hoping to waive into Washington D.C., however, rules may change because of diploma privilege and we may be banned from waiving in because we never took a bar exam.

6. The absolute worst thing that can come from this uncertain time is to grant temporary diploma privilege and cancel the bar while requiring us to take the bar exam 1-3 years in person or whenever the time is right. That would be awful because I would be knee deep into the early years of my career; moreover, no one knows when COVID-19 will end or when it will ever be safe to take the exam in person. The bar requires heavy studying and is not something to mess around with. It is the most serious and consequential exam of my entire life because the bar dictates whether you will have an actual career as a lawyer or not. If you never pass the bar, or if the bar is delayed to many years into the future, then law school and being a lawyer was literally all for nothing. Taking the bar 2 years or 3 years from now would add so much uncertainty to my career. I can't get married right now to my current partner of 8 years because of COVID-19, but I need to have a stable career before I embark on that journey. Continually kicking the bar down the road will wholly destroy my early law career and private life, because life as a lawyer will never, never, never, ever be realized until the bar exam is passed. Otherwise, there is no point in even being a lawyer.

7. I am in favor of full-blown diploma privilege. If that means that we get admitted to the bar as equal lawyers compared to lawyers that actually took the bar, then that is fine. If full-blown diploma privilege means that we are fully admitted and need not take the Maryland Bar Exam 2 years or 3 years or 18 years into the future (or whenever it will be safe), then that is fine.

I have respect and understanding for the situation the SBLE and the Court of Appeals are in. We are all in a rough spot because of worldwide uncertainty and the COVID-19 pandemic. I feel, however, that continually kicking the metaphorical "bar" can down the road is only making things worse. The only 2 probable options that make the most common sense would be to grant full-blown diploma privilege with no strings attached (which means no taking the Maryland bar exam in the future or anything crazy), or just administering the bar exam remote online in October as currently planned. I am extremely fearful that temporary diploma privilege will be granted, the bar exam cancelled, and then I have to come back and take the bar exam 1-3 years or 10 years into the future or something crazy. That will destroy my legal career because I have to study and have this exam done and finished before I can move on with my life and career. As per the NCBE website, (<https://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/#District>), at least 18 states issued the bar exam in person back in July and 14 states, including Washington D.C., will issue the bar exam remote in October with Maryland. I am politely and respectfully imploring the SBLE and Court of Appeals to either administer the exam remotely as usual in October or grant full-blown diploma privilege with no strings attached. The temporary diploma privilege with the condition that we come back years into the future to take the bar would inevitably destroy my career mobility, income ability, private life for planning major life events due to lack of career stability, and severely diminish my financial ability to earn enough to pay off the \$175,000 debt I received from going to law school. Please consider this depressing situation I am in and either administer the bar as planned remotely in October or do the full-blown diploma privilege thing with no strings attached. Personally, I prefer to take the bar exam in October and get it over with, but granting full-blown diploma

privilege with no strings or requirement of taking the bar exam in the future would be kind of cool, too. I hope you all are healthy and safe during this crazy time, and thank you for taking the time to read this, I appreciate it deeply.

Respectfully,

Dominic

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Dominic Gilani

University of Maryland Francis King Carey School of Law

Juris Doctor Candidate 2020

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[EXTERNAL] Re: Comment on SBLE's response to emergency petition on Diploma Privilege

Noor Amin <noorfamin@umaryland.edu>

Thu 8/20/2020 6:23 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Madam Clerk,

Competence in any profession—whether it is one that pertains to the practice of jurisprudence or one that involves pleasing the facades of buildings with bricks—must be measured by some uniform examination. This prerequisite rests on the simple, crystal clear fact that humans differ widely in their abilities to perform certain tasks; it, unequivocally, rests on the unshakable law of evolutionary biology that individual members of a species vary in their traits and their characteristics. This principle also applies to the practice of law in America. And this is why for the better half of American history, we have required law graduates to sit for the bar exam. An assessment assures that an individual has finally completed his journey and is competent to serve the needs of his fellow citizens, who time and time again seek legal assistance.

However, troubling times demand for an equitable solution. Troubling times also demand that we revisit a practice implemented 135 years ago and ask whether it still serves the same purpose today that it did back then. In the 1800s, when bar examination was made a prerequisite to the practice of law, individuals did not have to obtain a Juris Doctor in order to be an attorney. They could simply obtain a Bachelor of Law (L.L.B), which is still the rule today in many other common law states. But Americans made the decision in the 20th century to require aspiring attorneys to complete an additional 3 years of education post to obtaining their university degree. This new rule had one purpose: to ensure that attorneys entering the legal field in the United States were highly competent and far more analytical in the practice of law than their peers in neighboring states. A degree of Juris Doctor makes the bar exam an unnecessary requirement.

I request the Court of Appeals to take into account these aforementioned facts before rendering its decision. The SBLE's response—which although responded to logistical concerns of the remote bar exam—failed to address the fact that many law graduates have either not been able to find employment due to the pandemic or have found it extremely difficult to balance their work life and bar prep. Therefore, I humbly request the Court of Appeals to grant Diploma Privilege to those who applied for the July bar exam. Thank you.

Sincerely yours,
Noor

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Noor F. Amin, J.D.

University of Maryland Francis King Carey School of law—**May 2020.**

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[EXTERNAL] Comments Re: Diploma Privilege in Maryland

Tina Azarvand <tina.azarvand@frostdtaxlaw.com>

Thu 8/20/2020 7:14 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To Whom it May Concern:

Here are my comments, as a 2020 UB Law graduate sitting for the July/September/October 2020 bar exam:

Post JD Education is Impacted

Many students, like myself, have made the decision to pursue post-JD degrees long before the COVID-19 pandemic. I am currently enrolled at the University of Baltimore for my Masters in Laws in Taxation for Attorneys (Tax LL.M.) for fall 2020 onward, having originally anticipated a July bar exam would have permitted me to attend August courses to continue pursuing my anticipated specialty in tax law. Now, because the bar exam was postponed to September and then to October, I am forced to decide whether I want to fall two months behind in my courses while studying for the twice-delayed bar exam, or if I want to drop out for a semester so that I don't fall behind. SBLE, and even the Petitioner's have both failed to consider the very real concerns of those students who are pursuing specialized education past their JD.

Transferring of Scores

The lack of portability is a major issue. While I commend SBLE for making efforts to have 13 other jurisdictions allow our scores to become portable, they fail to consider the actual incoming attorneys and their plans. For example, I intended to first become barred in Maryland, and then Virginia, Utah, and DC. Now, only one of those additional jurisdictions outside of Maryland will be possible at this present time. While I am a drop in the bucket, I do not doubt I am not alone in actually being impacted by the lack of portability.

Utah DP is for their in-state graduates

When SBLE mentions Utah requiring an 86% pass rate and stating that if we were to apply the same, UB and half of the DC schools would be ineligible, they are incorrect.

"On Tuesday the Utah Supreme Court announced that it will grant emergency diploma privileges to the new graduates of the University of Utah S.J. Quinney College of Law and the J. Reuben Clark Brigham Young University Law School, in addition to graduates from other law schools who meet certain requirements." This quote is directly off of the SJ Quinney School of Law website.

Utah has two law schools and graduates of both were granted diploma privilege. If Maryland were to apply the same, UB graduates, such as myself, would not be excluded due to the pass rate of prior graduates.

Unfair to Students Sitting for Different Bars Receiving Different Treatment

The lack of consistency across the country is extremely unfair to students. For example, I could have graduated from the University of Utah and have been granted diploma privilege, or could have sat for the exam in Illinois and have had an open book exam, or have sat in Florida and have had my bar exam postponed at the last minute, or be sitting in Maryland and have to take an online bar exam at home with no bathroom breaks and hopes that my upstairs neighbors won't be loud, or that my internet won't cut out as it frequently does?

Students are Unable to Work Full-Time to Support Themselves During Bar Study

The delayed bar exam costs money. Most students took work off to begin studying for the July bar exam in May, only to be told it is postponed until September after already reducing their income by not working to study. Then, as students began studying for the September bar exam, the bar exam was delayed until October, again stretching the amount of time that students are unable to work and support themselves.

Thank you,

Tina J. Azarvand

University of Baltimore School of Law 2020

[EXTERNAL] Re: Public Comment on the SBOLE Update Regarding the October 2020 Remote Bar Examination

Alex Polsky <abpolsky@gmail.com>

Thu 8/20/2020 7:39 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I respectfully submit the below comment in response to the Maryland Court Of Appeals request for public comments on the State Board of Law Examiners' update dated August 20, 2020.

I am a 2020 law school graduate but have not applied for admission in Maryland and do not intend to practice in Maryland. I am scheduled to take the remote October 2020 bar exam in another jurisdiction utilizing the ExamSoft proctoring software and have kept up to date on the various online exams that have been offered so far this year.

The SBLE's response letter of August 18, 2020 purports to speak to the concerns of diploma privilege (DP) advocates but does not satisfactorily address several key issues with a remote online exam.

In its discussion of other states' experiences with remote administration of the 2020 bar exam, the SBLE rightly points out that Maryland's vendor, ExamSoft, has not experienced the same public failure that ILG has suffered. However, the experience of delivering an exam to just 500 examinees in Michigan or 350 examinees in California is not necessarily indicative of ExamSoft's ability to administer an exam to roughly 30,000 examinees across many states in October. Today, New Jersey changed its provider for the October exam from ILG to ExamSoft. It is likely that other jurisdictions currently contracted with ILG will be forced to do the same given the unreliability of the ILG software. With each state that switches vendors, the difficulty of administering a simultaneous-start exam continues to climb.

With respect to data privacy, SBLE focuses on the link between the information shared with ExamSoft and applicants' personal or financial data. SBLE does not address the vast amount of video recording data and/or facial recognition information that will be collected by the ExamSoft software. Even if the software only records a portion of the testing experience on video, it could potentially transmit to ExamSoft a vast amount of information from each examinee to ExamSoft. The SBLE has not yet adequately explained what security measures are in place to protect that data from theft and exploitation during the upload process or following the exam. With the rise of facial recognition technology, an expansive database of video could be used for nefarious purposes if it falls into the wrong hands. Several experts have raised privacy concerns regarding the accumulation of video data in this manner.

With respect to exam day conduct, the SBLE seeks to assure the Court and examinees that any "flagged" conduct will be reviewed by human proctors and will not necessarily trigger failure on the exam. This is of limited comfort to examinees for two reasons. First, the added stress of trying to conform to the AI software's requirements in order to reduce these "flags" will only exacerbate an already difficult experience for test-takers. This added stress will further disproportionately impact disabled test takers such as those suffering from ADD, ADHD, Tourette's syndrome or a range of other physical and mental conditions that can make complying with restrictions on movement, fidgeting, or eye contact with the screen much more difficult. Second, because the SBLE and ExamSoft have not clarified which forms of activity will be mere "flags" and which will be disqualifying – other than to assure examinees that there will be a secondary review of flags – examinees cannot know what innocent conduct might be misinterpreted by both "flags" and subsequent review as cheating.

The SBLE also assures the Court that its prohibition on scratch paper and physical exam materials is not materially different from the procedures used at an in-person exam. This is simply not accurate. Every law graduate preparing for the bar exam is taught to use underlining, highlighting, and diagramming strategies as part of their test preparation. Given the intense time constraints of the bar exam even under normal circumstances, such methods are necessary to ensure examinees have

adequate time to answer all the questions on the exam. So-called “virtual scratch paper” tools are not sufficient substitutes for traditional test-taking strategies and methods.

Although applicants may be able to secure adequate quiet space to take the exam through the efforts of Maryland’s law school deans and other advocacy groups, this does not solve the problem of applicant access to technology or test preparation space. I have read numerous anecdotal reports of my colleagues being forced to buy new laptops in order to meet the higher performance requirements of the video proctoring software. At a time when most recent law graduates are unable to work because we are not licensed and are stretching savings to cover the unanticipated delay of the exam, many will be forced to make the hard choice between paying for necessities and purchasing new hardware on which to run the test software. The online exam also fails to account for the randomness of weather, power outages, or other natural conditions that may affect test takers in one area while leaving others unaffected, which is never the case with the in-person bar exam. If, for example, a recent graduate living in another state but planning to practice in Maryland suffers a power or internet outage on the day of the exam, she will have no recourse but to wait four months or more for the next test administration. If, by contrast, the testing location for an in-person exam suffered a power failure on the day of the test, the entire examinee cohort would be equally harmed and that harm could be equitably mitigated.

Broader problems with technology accessibility do not only exist on test day. Examinees who do not have access to a quiet, secluded testing space at home for test day likely don’t have access to such a space for the weeks leading up to the test either. In normal times, such students could be expected to study at local libraries or at their law schools during the bar preparation period, but many such locations are closed due to the pandemic.

The impact of COVID-19 on this year’s class cannot be overstated. A normal period of bar preparation does not equate to studying in the shadow of a global pandemic. Many examinees have had family members contract COVID-19. Others have had to adjust plans for childcare in order to avoid infecting at-risk family members. Parents of school-age children must supervise online classes in jurisdictions where schools are not reopening. The list of added stressors during the pandemic is almost infinitely variable. Dealing with stress during bar prep is nothing new; every year tens of thousands of recent graduates buckle down for 6-10 weeks to prepare for this exam. But this year’s class has been balancing these outside conditions with acute financial pressures and shifting deadlines for months, with many weeks still to go.

The SBLE fails to adequately address the tremendous financial harm and stress being inflicted by the decision to delay the bar exam. In a typical year, graduates can expect to finish law school, study for approximately 2-3 months, then take the bar exam. Whether by taking out additional loans, receiving employer salary advances, or carefully saving during law school, it is very feasible for most students to maintain financial stability until they can acquire their license to practice. This year is different. Money set aside to allow graduates to last until August or September simply cannot last until November or December. Graduates who have taken the bar can typically start working within a matter of weeks, even while the character and fitness process and other licensing measures are ongoing. My own start date at a law firm was scheduled for the second week of September, based on a bar exam in late July. Whether the Court can schedule bar admissions ceremonies at or near its traditional December dates, as SBLE suggests, is irrelevant to the question of whether examinees can continue to pay bills and put food on the table, especially if the October exam fails.

Perhaps most importantly, the SBLE fails to adequately address the cumulative impact of all of these factors. The combined consequence of a new test format being delivered via largely untested software to examinees on an unprecedented scale after months of delay and confusion, along with the constraints of AI flagging, lack of scratch paper, and unequal testing conditions is incalculable. There is simply no way that an online exam administered in this manner is comparable to any other year’s in-person exam. Even if we accept that the traditional bar exam adequately protects the public by measuring attorney competency, there is simply no way that this online exam in October is going to achieve that objective. Even the NCBE, which provides the testing material being used in the October exam has admitted that it is not a comparable test and cannot be scaled to equate with the

traditional bar exam without additional psychometric research. This accounts for the NCBE's decision to not provide scaling services to states using NCBE materials for the October exam.

Finally, the SBLE outlines other jurisdictions' decisions to allow emergency diploma privilege plus (DP+). The SBLE correctly points out that several of these jurisdictions impose additional requirements for diploma privilege, including a certain number of supervised practice hours. It is worth pointing out here that Utah approved DP in late April with a 360-hour supervised practice requirement that had to be completed by December 31st. That represents perhaps 6-8 weeks of practical experience under supervision. In my law school career, I spent nearly 1,000 hours in supervised practice in clinics and externships. I second-chaired felony trials, prepared misdemeanor cases, and did substantive work on violent crime and complex fraud cases at the state and federal level. This does not include my 22 weeks of supervised practice as a summer associate. Many of my peers have likewise spent substantial time in law school in supervised practice. We would all gladly spend weeks or months more in supervised practice for the opportunity to enter the workforce now and begin our careers instead of taking on more debt just to survive until an exam can be administered safely and equitably.

Although I will not personally benefit from your decision, I urge you to adopt diploma privilege with additional supervised practice and CLE requirements to license 2020 law graduates in Maryland. This is not a typical year and there will be no typical bar exam administered in 2020. A bold solution that places applicants in the best position to immediately begin their careers and work under supervision towards full licensure without an exam is the best path forward for the legal profession and the people of Maryland.

Respectfully,

Alex Polsky

J.D., Washington University School of Law

Class of 2020

[EXTERNAL] Diploma Privilege Comment

Parag Dharmavarapu <parag.dharmavarapu@gmail.com>

Thu 8/20/2020 8:55 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Hello,

My name is Parag Dharmavarapu, and I am a recent graduate of the University of Chicago Law School. I plan on practicing in DC, but I plan on living in Maryland in the future.

I am writing to urge the court to adopt emergency diploma privilege with the option of a transferable online exam. Temporary licensure does not allow students to meaningfully practice, and delaying the bar exam means denying hundreds of future legal professionals from providing legal services across the state right now.

Moreover, I am not convinced that ExamSoft will be able to administer an exam with 30,000 applicants. The SBLE's response to the problems associated with Michigan's exam was not helpful. The DDOS attack could have easily been caused by hundreds of examiners logging in to retrieve their passwords. There is simply too much uncertainty with the exam to simply take SBLE's word for it that ExamSoft will be able to perform for thousands of students across the country, let alone hundreds of Marylanders across the state.

Thank you for your consideration in this matter.

Best,

Parag

--

Parag Dharmavarapu

The University of Chicago Law School | J.D. Candidate 2020

Northwestern University | B.A., Political Science and International Studies | Class of 2016

paragdharmavarapu@gmail.com | (314) 791-5975

To: Maryland Court of Appeals

From: Jake Dziubla, Carey Law '20

Re: Public Comment – Remote Bar Examination

Date: August 20, 2020

A sincere “thank you” for allowing public comments about the October 2020 Maryland bar examination. I am grateful to be a citizen in a state where the judiciary is seriously willing to listen to the concerns of the public.

My statement will be brief, we all have important work that needs to be done.

I, like thousands of others, graduated from law school in May of this year and expected to take the bar exam in “normal” fashion in July. Initially, I was reluctant to support the idea of diploma privilege. However, after witnessing all three of the software vendors’ systems fall to glitches, security attacks, and other technological hiccups, I began to change my mind. Florida’s unconscionable decision to postpone the exam on such short notice, and the poor decision-making of other boards of law examiners and courts across the country, only deepened my skepticism that an October online exam can be successfully operational.

While I do not support unconditional diploma privilege, the circumstances lead me to believe that optional diploma privilege (with conditions), in order to facilitate the portability of scores, is the lesser of all evils.

What will happen if, no, **when**, a technological issue indeed arises during this October exam? Those of us in this profession are trained to assess risk and strategize accordingly. Is proceeding in the face of this known, substantial risk worth it? At what cost and for what gain?

I believe, as little as my opinion may be worth, that this Court and the State Board of Law Examiners (“SBLE”), as well as the legal community in general, risks a severe blow to its reputation if it continues to falter in the face of this crisis. This profession already has a reputation for its reluctance to adapt and its adherence to outdated customs. As someone who fervently desires to be a part of this community, to say that I am concerned about the public’s trust in the legal community going forward is an understatement. Holding an online exam, only for foreseeable technological

problems to arise, would be a disappointing and costly embarrassment for the entire legal community.

And no, I do not believe a form of diploma privilege will in fact erode the public's confidence. In fact, I do not think the public realizes that those of us at the University of Maryland are required to practice as student attorneys for at least a semester as part of our curriculum. This is in addition to externships, internships, and many other practical experiences. My colleagues and I are more than prepared to work and contribute to our communities.

The mere risk of scores becoming lost in nightmarish fashion like those of over one-hundred Law School Admissions Test examinees, in addition to the many other possible technological glitches involving ExamSoft, or any vendor for that matter, render this examination both not equitable and an especially poor measure of competency given the far-reaching effects of COVID-19 crisis. The possibilities for error are endless given that this technology has **never been used on this scale** in the history of the bar exam.

This Court and the SBLE have the brainpower and resources to craft a fairer and more practical solution and I sincerely hope that the entire legal community can come together in solving this issue.

The time has never been riper than amid this crisis to revisit the utility of the bar exam. This Court and the State Board of Law Examiners have before them an incomparable and pivotal opportunity to bring Maryland out of the bar exam's dark ages and into a new era marked by a shift from exam scores to work experience as a measure of competency. I implore this Court to seriously consider the concerns surrounding this online exam, as well as the efficacy of the bar exam in general.

Thank you for your time. I wish you and your families the best during this time of uncertainty.

Respectfully,

Jake Dziubla, University of Maryland Carey Law '20

312 Selwyn Drive, Apt. 2C

Frederick, MD 21701

dziubla94@gmail.com

(240) 446-3044

[EXTERNAL] Comment on Remote Bar Exam Discussion/Diploma Privilege

Keisha Hargo <keisha_hargo@yahoo.com>

Fri 8/21/2020 12:50 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear SBLE -- This email is to offer my comments and thoughts on the petition to the Maryland State Board of Law Examiners (SBLE) to offer "diploma privilege" to all 2020 Maryland Bar Exam takers. I am a 2008 graduate of the Catholic University Columbus School of Law and will be sitting for the Maryland Bar Exam for the second time.

Like many other prospective exam takers, I have been preparing to sit for the exam since at least 2019. The bar exam application process is stressful in itself. As you are aware, sitting for a bar exam involves more than just signing up and paying the exam fee. The application form is formidable, and takes hours to accurately complete. Completing the process just to be granted permission to sit for the exam is a series of hoops and hurdles. Expensive hoops and hurdles. And, of course, to increase your chances of passing the bar exam, you should probably take a bar prep course. My total costs so far for the privilege of sitting for this exam is almost \$3,000. This year the anxiety was exacerbated by COVID-19.

And the anxiety has not diminished as the exam has already been rescheduled twice. The anxiety is heightened by the news of serious problems in states that have attempted to administer their bar exams using the same software Maryland wants to use. My concerns are:

1. What will happen if the ExamSoft software does not work or there is a failure with the software that doesn't allow you to successfully complete the exam?
2. Has the SBLE taken in to account how it will communicate to examinees if issues arise and the process and procedures for extending time to complete the exam?
3. I believe we all hope that the SBLE will review all of the issues that have arisen in other states attempting to administer the bar exam using ExamSoft. But why is there no other contingency plan for administering the exam? SBLE has had months to figure out the plans for administering the exam and time to test the software to be used or to ensure that the vendor of ExamSoft has the capability to administer the exam--not only in Maryland, but in all of the other states that also have contracted with ExamSoft for their exams. Administering the exam in one state on one day is not the same as administering the exam with the software in multiple states for thousands more examinees.
4. Will 2020 examinees be able to sit for the February or July 2021 exam--at no additional fee or character background check if the software fails or the exam is canceled?

The year 2020 has exposed many issues and areas that are in need of examination and new thought. This pandemic has thrown the bar exam process in to disarray. It has exposed the underlying problems of relying on only one way to administer the exam. It raises the question of why a course of study that lasts three or four years does not properly prepare the students to practice in the area they are studying? Why must law school graduates take a 12-14 week course of study to learn how to pass an exam that tests your legal knowledge? Shouldn't you have learned that in your 3-4 year course of study? And if not, why not? Why does the law school curriculum not teach students how to be lawyers? For almost \$100,000 per year in tuition/fees/books/living expenses, you should be ready to be a lawyer when you graduate. But

you're not. You then should pay an additional few thousand dollars to prepare for the exam after paying several hundred dollars to apply to just sit for the exam.

All of these steps are effective in maintaining barriers to entrance to the legal profession of those who do not have the monetary and/or time resources to run the gauntlet that you must complete in order to become a lawyer.

I am not relying on passing the bar exam to secure employment nor is being a member of the bar a requirement for my current job. However, I am in support of the petition to award "diploma privileges" if it is determined that it is not feasible or possible to administer the bar exam as scheduled on October 5 and 6 as I am not confident that the SBLE can successfully administer the bar exam using the ExamSoft software.

Sincerely,
Keisha Hargo, JD

[EXTERNAL] Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Zoe Adams <zadams131@gmail.com>

Fri 8/21/2020 10:17 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Zoe Adams

zadams131@gmail.com

August 21, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Zoe Adams, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces

financial hardships due to the pandemic would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Zoe Adams

Katelynn Watkins
311 Murdock Road
Baltimore, MD 21212
katelynnwatkins@gmail.com

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Katelynn Watkins, a bar applicant scheduled to take the October 2020 remote bar examination am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, the in-person bar exam, a decision for which I am grateful due to the concerns related to covid-19 and the safety of myself and my immediate family. However, this decision was not without consequences for myself and the other October 2020 bar applicants. We graduated law school in the midst of a global pandemic and resulting economic recession, and I am sure I am not alone in reporting the financial insecurity we are currently facing as we experience an extended period of unemployment between finishing law school and obtaining licensure to practice law. I graduated from Michigan State University College of Law with a 3.48 GPA, several jurisprudence achievement awards, and an impressive resume of legal experience during law school, and although I have applied for dozens and possibly hundreds of jobs, I have yet to meet the qualifications for most of them because I currently lack admission to a state bar.

Further, I am deeply concerned about the demonstrated technological infeasibility of ExamSoft, the software company the State Board of Law Examiners has adopted for Maryland's bar exam. Other states that have administered remotely proctored bar exams have experienced serious technological problems in administration, causing widespread doubt regarding the software company's ability to accommodate the massive number of examinees scheduled to take the October remote bar exam. I am additionally concerned about the security of the exam after Michigan's bar exam, which was administered by ExamSoft, was subjected to a distributed denial of service (DDoS) attack, which I understand is still under investigation. Finally, I am concerned about the requirements of the remotely proctored testing environment and my ability to secure a quiet space to take the exam free of external noise and my ability to sit still for the entire duration of the examination without bathroom breaks, water breaks, the lack of access to scratch paper or highlighters, or the ability to stretch or look away from my computer screen at all. No class of applicants to the Maryland bar have had such restrictions stacked on top of the already anxiety-producing and daunting task of studying for and sitting for the bar exam. I believe the Court should

enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE), and a passing score on the Maryland Law Component qualifies graduates as competent individuals ready to practice law. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public by ensuring ethical behavior will remain a priority. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent clients.

Additionally, I have completed several hundred hours of bar examination preparation through and by the time the October exam rolls around I will have completed my entire bar preparation course. While I believe emergency diploma privilege is the most equitable solution to attorney licensure in the midst of a global pandemic, I also believe the compromise stuck by Indiana, which opted to issue an open-book exam sent to applicants and submitted by email, was a reasonable alternative which allowed the applicants the ability to showcase their legal knowledge and competence while removing the technological uncertainty and insecurity from the exam administration. This would be a reasonable alternative for the Maryland bar examiners to adopt in light of the serious concerns regarding the remotely proctored bar exam. I would also like to note that it is my understanding that ExamSoft did not originally design its software to be used for large-scale, event-style, remotely proctored exams, which is the reason Extegrity, another software company approved by the National Conference of Bar Examiners, has responsibly withdrawn its participation in this year's bar exam administration. Several thousand applicants throughout the country are depending on the secure and successful administration of a remote exam administered by a company that has already proven it cannot deliver on such promises. I believe the Court and the State Board of Law Examiners should seriously consider these concerns and adopt a reasonable alternative, such as emergency diploma privilege or an open-book exam that does not depend on remote proctoring software, to grant licensure to October 2020 bar applicants.

I thank the Court for its time and consideration on this urgent matter. I am beyond honored to have the opportunity to become a member of the legal profession in Maryland.

Respectfully,
Katelynn Watkins

[EXTERNAL] Public Comment RE: the SBLE's 8/20/20 Decision

Chase Eshelman <chado576@gmail.com>

Fri 8/21/2020 10:51 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good morning,

As you are aware, the Maryland State Board of Law Examiners decided to proceed with the administration of the October remote bar examination. This decision was made despite recent law graduates, law faculty, and the deans of both Maryland law schools advocating for diploma privilege. Per the Court of Special Appeals, public comment on the SBLE's decision can be made prior to Monday.

I am a recent graduate of the University of Baltimore School of Law, and this summer has been tumultuous, to say the least. I write to you today to further advocate the diploma privilege. I have serious misgivings about the efficacy of the remote bar exam - especially with Exegrity, one of the main remote software providers, pulling out from the October remote bar due to their belief that the test is not feasible. Further, the argument that the bar exam is necessary to ensure the public's safety from incompetent lawyers is a weak one at best. Even with diploma privilege, applicants undergo a robust character and fitness evaluation, must score high enough on the MPRE (Maryland requires a scaled score of 85, one of the highest in the country), and must pass the Maryland law component. With all of these safeguards in place, I fail to see the merits of the "public safety" argument.

I graduated near the top of my class, and I have already taken and passed a simulated MBE. I am not concerned about my ability to pass the test due to a lack of knowledge or preparation, I am concerned about other factors that are outside of my control such as faulty internet, hardware, or malfunctioning test software. Regardless of the portability/reciprocity of the October remote bar, I will likely take the VA UBE in February or next July to obtain a truly portable score. In many ways, I am actually disappointed that I was unable to take the July bar exam. In some sense, I feel that I would not be deserving of admittance before the Court of Appeals without first taking the exam; but taking a full in-person exam is not possible now, and the remote bar exam is too poor a substitute. As such, I firmly believe that diploma privilege is the only viable solution.

This pandemic has wreaked havoc on all of us, and my fellow law school graduates and I did not even have the privilege of finishing classes in person or properly celebrating our graduation with a ceremony. I entreat you to please reconsider the SBLE's decision and grant us diploma privilege. Anything less is, in my opinion, inequitable given the circumstances.

Sincerely,
Chase Eshelman
UB School of Law Class of 2020

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges:

Thank you for the opportunity to provide comments on the proposal to grant emergency diploma privilege to the 2020 October Maryland bar applicants. I stand in strong support of extending emergency diploma privilege to these candidates. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. The global pandemic has wreaked havoc on these candidates, who have experienced financial and housing insecurity that exceeds other crises faced by our nation. Compounding matters, the pandemic has led to an economic recession. These would be reasons enough to grant these candidates emergency diploma privilege, but on top of these factors, we have witnessed the technological infeasibility and insecurity of ExamSoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration.¹ Based on these reasons, I urge the Court of Appeals to enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.


¹ See, e.g., S. Skolnik, "October Online Bar exams Spark Technology, Privacy Concerns," *Bloomberg Law* (August 18, 2020), available at <https://news.bloomberglaw.com/us-law-week/october-online-bar-exams-spark-technology-privacy-concerns>; S. Ward, "Software Provider Pulls Out of Remotely Proctored Exams Because of Technology Concerns," *ABA Journal* (August 18, 2020), available at <https://www.abajournal.com/web/article/due-to-technology-concerns-software-provider-pulls-out-of-remotely-proctored-bar-exams>; K. Lisa, "Lawmakers Seek Diploma Privilege for Law grads Amid Looming Virtual Bar Exam," *The Daily News* (August 19, 2020), available at https://www.thedailynewsonline.com/news/lawmakers-seek-diploma-privilege-for-law-grads-amid-looming-virtual-bar-exam/article_b5b3c6a4-761e-5b30-8b08-b1ceec57f8ba.html

As a member of the legal community, I firmly believe that graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam, and a passing score on the Maryland Law Component qualifies law school graduates as competent to practice law. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. These requirements are more than enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent clients.

I have read numerous commentators complain that allowing these candidates diploma privilege is somehow unfair to lawyers who had to pass the bar to practice law. These commentators ought to recall that attorney professionalism requires demonstrating empathy for others.² My bar admission is not diminished by granting bar admission to others through diploma privilege.³ A bar exam is not a "rite of passage;" it is well within your power to set it aside as the conditions demand. 2020 is a moment when empathy is required. I urge you to grant diploma privilege to these candidates for the bar, both as a matter of public health and morality.⁴

I thank the Court for its time and consideration of this urgent matter.

Respectfully,

A handwritten signature in cursive script, reading "Catherine M. Brennan". The signature is written in dark ink on a white background.

Catherine Brennan

² MD Rules Attorneys, Appendix 19-B, Ideals of Professionalism, Fairness Civility and Courtesy at (1), "(a)n attorney should understand that: (1) professionalism requires civility in all dealings, showing respect for differing points of view, and demonstrating empathy for others."

³ I have sat for two bar exams: Maryland and New York. As a side note, I suffered from generalized anxiety disorder in my 20s, when I was in law school and was a candidate for bar admission. I was able to pass each bar exam on my first attempt in part because the exam proctors provided me a reasonable accommodation during each exam – the ability to stand up, leave the room and pace. I have deep empathy for candidates this year who also suffer from anxiety that is alleviated by movement. See S. Pillay, "How Simply Moving Benefits Your Mental Health," Harvard Health publishing (March 28, 2016), available at <https://www.health.harvard.edu/blog/how-simply-moving-benefits-your-mental-health-201603289350>. Although I have not raised this issue in this letter, query whether the conditions under which these bar candidates have been asked to take the bar exam violates the Americans with Disabilities Act.

⁴ As you are undoubtedly aware, the bar exam itself has a racist past. See, e.g., L. Hutton-Work and R. Guyse, "Requiring a Bar Exam in 2020 Perpetuates Systemic Inequities in the Legal system," *The Appeal* (July 6, 2020), available at <https://theappeal.org/2020-bar-exam-coronavirus-inequities-legal-system/>; P. Hernandez Escontrias, "The Pandemic is Proving the Bar Exam is Unjust and Unnecessary," *Slate* (July 23, 2020), available at <https://slate.com/news-and-politics/2020/07/pandemic-bar-exam-inequality.html>.

Madeline Pardes
maddiepardes@yahoo.com

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Madeline Pardes, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who feels that now more than ever, our community needs environmental lawyers to fight against the current climate crisis, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Madeline Pardes

[EXTERNAL] Remote Bar Exam

Glenn E. Bushel <GBushel@tydings.com>

Fri 8/21/2020 12:01 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Court of Appeals:

Though this has the aroma of a fait accompli, I had to chime in. While perhaps better than the loony idea of skipping the bar exam altogether, the concept of a remote exam is not far behind. If not for the bar exam, a large percentage of law students would have rarely cracked a book. Taking the exam itself in the same manner, under the same conditions, and at the same time as many others is part of the ordeal and rite of passage in a very substantive, positive sense. Lawyers deal with people, and cannot do that effectively without ever leaving a bubble.

COVID notwithstanding (about which there is precious little fact based consensus, scientific or not), a traditional, live exam can be safely handled. If applicants don't want to come, they can take the exam in February. Remember when people were treated like individuals in this country? Well, I'm old enough to recall the concept. Let the adult exam takers decide for themselves when to sit, but don't drop the standards, and feed the rampant paranoia emanating from some quarters.

--Glenn E. Bushel

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[EXTERNAL] My comments on July 2020 Maryland bar applicants diploma privilege

Calli Levine <callilevine@gmail.com>

Fri 8/21/2020 12:13 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Calli Levine

callilevine@gmail.com

August 21, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Calli Levine, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces potential legal action in the future, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Calli Levine

[EXTERNAL] Comment to emergency diploma privilege plus

Leda Kaveh <ledakaveh1@gmail.com>

Fri 8/21/2020 12:25 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dr. Leda Kaveh

LedaKaveh1@gmail.com

August 21, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Leda Kaveh, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces challenges running a mental health practice due to COVID-19 circumstances would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Dr. Leda Kaveh

--
Leda Kaveh, Psy.D.
Licensed Clinical Psychologist
Washington Psychological Wellness LLC
845-F Quince Orchard Road
Gaithersburg, Maryland 20878

washington-psychwellness.com

Direct Contact Phone: 301-769-5878

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[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Jack Quint <jackbquint@gmail.com>

Fri 8/21/2020 12:48 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Jack Quint

Jackbquint@gmail.com

August 21, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Jack Quint, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam.

However,

considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent.

Furthermore,

the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Jack Quint

The Honorable, The Judge of the Court of Appeals of Maryland
361 Rowe Boulevard
Annapolis, MD 21401

Comment Regarding Remote Bar Exam

I am currently registered to sit for the October 5th and 6th remote bar exam and support Diploma Privilege Plus. This Court has thankfully taken prudent steps to ensure that we are not facing the same challenges as other states such as Florida, and I am thankful that the Court has taken the action that it has. However, as the days go on, it is obvious that an online exam is not possible or fair.

I am an African American who is currently living and studying at my mother's row home in Baltimore City. My study space is not conducive to the intensive studying required for the bar examination. Given this, I am fearful that I will not have the opportunity to properly study and ultimately take the bar examination. My study space and area to take the exam is in my basement which, although minimally reduces noise, has spotty Wifi that has already been proven to be unreliable. In addition, my mother is working from home, which means that I can hear her conference calls while I am studying. I am also distracted constantly by our two dogs that start barking whenever someone walks past our home. Given that I am always home, they are in constant need of my attention, which takes away from my studying. Furthermore, the new online format bars students from using scratch paper to assist with complex multiple-choice questions, forcing students to answer questions that were never intended to be solved without such assistance. This adds an additional burden on me and so many other students who are already facing restraints in their current living situations.

The only available option is to get a hotel room for the exam. Given my living situation, I have unfortunately taken serious consideration of this option even though it has several downfalls. There are so many unknown variables that I cannot control for if I were to take the bar examination in a hotel room. For example, I am unaware of the hotel's noise level or the reliability of Wifi available. Given the outbreak of COVID-19, I also put my health at risk by getting a hotel room just to take an exam that can ultimately be waived. In addition, having to pay for a hotel room is an added expense that I do not have the means to pay for. My income has been dramatically reduced because of a rescinded offer due to the uncertainties associated with COVID-19. The reason why Diploma Privilege Plus is the best option is because we were put in this situation at no fault of our own, but our lives and careers are being shaped by the inability to start our profession.

The State Board of Law Examiner's response did not adequately respond to the concern of test takers. The Board clearly acknowledges that no online bar exam has been completed successfully but it wants exam takers to be Guinea pigs for a new system. In fact, one of the online vendors decided not to offer the exam because it believed the task was impossible. The ABA indicates that there should be more research conducted regarding the efficacy of online exams before trying to administer this exam. The only fair option is to allow us to start our careers with certain obligations, which has been successful in other jurisdictions. I pray that this Court continues to act prudently and allow me to begin my career and join this profession.

Respectfully,
Brandon C. James
Brandon C. James

[EXTERNAL] Community Member Diploma Privilege Comment

Jodee Finestone <joalja@verizon.net>

Fri 8/21/2020 1:15 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Jodee Finestone
Joalja@verizon.net

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and
Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Jodee Finestone, member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE), and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces future potential legal assistance would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Jodee Finestone

Peter J. Luck
peterjosephluck@gmail.com

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Peter J. Luck, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces unemployment, financial insecurity, poor studying conditions, learning disabilities, unreliable internet service, and significant emotional distress would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Peter J. Luck

[EXTERNAL] Diploma Privilege

Mark Shapiro <mshapiro@shapirocompany.com>

Fri 8/21/2020 2:02 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

This is an unprecedented time in our country's history that calls for adjustments to the norm. In that respect, I am writing in support of Diploma Privilege allowing current law school graduates to be exempt from taking the Maryland Bar Exam. Let us have confidence that our law schools have properly prepared their graduates for a law career.

Mark Shapiro

Sent from Mail for Windows 10

[EXTERNAL] Bar Exam Issue

Pete Saucier <Sauce23@KollmanLaw.com>

Fri 8/21/2020 2:03 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Clerk,

I think it is important to conduct an examination before admitting someone to practice law in Maryland. I am struck by the reason offered in the Daily Record for not administering any examination that it would be "unfair to applicants who lack the financial or at-home resources to take the test remotely." Yet, that same person will be required to pay the Client Security Trust Fund? Someone who passes may then hang out a shingle and be expected to administer an escrow account? Everything I file in court these days is accomplished remotely by computer. Do we want certify lawyers for regular practice who cannot figure out how to take a remote bar exam?

I do not feel that new graduates should have to "run the gauntlet" just because I did. A reduced and remote exam designed to gain some assurance of competence seems adequate.

Finally, we risk saddling this group of lawyers for life with having to admit when asked that they did not ever pass a bar exam. That could be awkward for years to come.

My view is that this Court should administer an exam of some sort that satisfies this Court that a level of competence above attaining a 2.0 GPA in law school has been shown.

Yours,



Peter S. Saucier

sauce23@kollmanlaw.com

Tel: [410-727-4300](tel:410-727-4300) | <https://www.kollmanlaw.com>

[1823 York Road](#) | The Business Law Building | Timonium, MD 21093

"Things as they are; are changed upon the blue guitar." –Wallace Stevens

Any spelling or format errors in this message are the fault of the blue guitar known as the internet.

[EXTERNAL] Maryland Bar Applicant - Comment

Dylan Gerry <dylan.gerry1@gmail.com>

Fri 8/21/2020 2:10 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good afternoon,

I'm writing to this Honorable Court to respectfully request Diploma Privilege be granted to the Class of 2020 law school graduates.

I graduated from the University of Baltimore School of Law in May 2020. Since that time, I have been studying for the bar exam. Going into law school, I was well aware of the bar examination and having to pass it to practice in Maryland, however, the circumstances surrounding a safe administration of this exam and the furtherance of our careers requires a diploma privilege waiver for this year.

Like many of my classmates, I have well over \$100,000 worth of debt just for my law degree. I am unable to move out of my mom's basement and still will likely struggle to be able to afford my student loans on my current law clerk salary.

Additionally, my home WiFi is not the greatest. As stated above, I live with my mother, but also my sister, and her boyfriend. I cannot guarantee that the WiFi will not cause my connection to lag out during the exam.

Once I pass the bar or become licensed as an attorney, I hope to move up within my office and become an Assistant State's Attorney for Baltimore County. This has been a dream of mine, to give back to the community I am from and to give a voice to Victims of crime.

Diploma Privilege would not be taking the "easy" way out, rather it would be showing sympathy to a class who has been affected beyond their control.

I respect whatever this Court decides to do, however I urge this Court to hear what my friends have to say and try to understand that we are in unprecedented times with seemingly no end in sight.

Sincerely,

Dylan Gerry
J.D., Class of 2020
University of Baltimore School of Law
Applicant for admission to the Maryland Bar
(410) 215-2543

Mike Ritchie
Mritchie2242@gmail.com

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Michael Ritchie, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces an issue with a former employer on lost wages, I would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Michael T Ritchie

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Flanagan, Milan N. <mnf2120@cumc.columbia.edu>

Fri 8/21/2020 2:20 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Milan Flanagan, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community, know individuals who currently face unsafe employment conditions and eviction during the COVID-19 pandemic. These individuals would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of them.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Milan Flanagan

--

Milan Flanagan, MSN, RN
Psychiatric Mental Health DNP Candidate
Columbia University

[EXTERNAL] Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Alex Frisbie <afrisbie88@gmail.com>

Fri 8/21/2020 2:31 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Alexander Frisbie, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me. I thank the Court for its time and consideration on this urgent matter. Respectfully,
Alexander Frisbie

The Honorable Mary Anne Barbera
Chief Judge, Maryland State Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401

Jonathan A. Azrael, Esq.
Chairman, State Board of Law Examiners
Judiciary A-POD3
580 Taylor Avenue
Annapolis, MD 21401

August 21, 2020

Re: The Adoption of Diploma Privilege

Dear Chief Judge Barbera and Mr. Azrael:

My name is Nandini Ruparel. I am a 2020 law school graduate and I plan to take the October bar exam this year, and I have accepted a fellowship position at small firm in Baltimore for my post-bar. As you consider the petition delivered by the Diploma Privilege for Maryland team and the administration of the online bar exam, I wanted to share my journey in taking the bar exam and urge the adoption of diploma privilege.

I, like all of my peers, knew when I applied for law school that part of becoming an attorney meant taking the bar exam – and possibly multiple bar exams in multiple jurisdictions -- and I was more than willing to pass that hurdle in order to fulfill my dreams of practicing law. However, the shifting bar date and remote administration requirements have placed significant burdens on disabled examinees such as myself. For the first two-and-a half-scheduled months of bar examination preparations, I delayed a number of necessary surgeries and procedures in order to study with focus and discipline. As the date of the bar exam shifts, I am being forced to choose between my health and my studies. The delay has caused a severe flare up of pain and symptoms from my chronic illness. Many disabled applicants I know are in similar circumstances.

Applicants this year have watched a multitude of state bars struggle and fail with administering the bar examination online.¹ It is more than likely that the bar examination as administered by

¹ See, for example, Michigan: Kim Kozlowski, “The Michigan bar exam crashes online; company points to cyberattack,” *The Detroit News* (Jul. 28, 2020) <https://www.detroitnews.com/story/news/local/michigan/2020/07/28/michigan-bar-exam-crashes-online-company-cites-cyberattack/5527628002/>;

Nevada: Jacob Solis, “Modified bar exam leave bar examiners, law school grads split as Supreme Court mulls how to handle testing amid pandemic,” *The Nevada Independent* (Aug. 4, 2020) <https://thenevadaindependent.com/article/decision-on-modified-bar-exam-leaves-bar-examiners-law-school-grads-split-as-supreme-court-mulls-how-to-handle-testing-amid-pandemic>;

ExamSoft will be postponed again. This places disabled applicants in a situation in which they are again forced to choose between their health and career. I personally would likely have to postpone my examination date to February 2021 to take care of my health, and would likely lose my job offer and any health insurance attached to it. It is unfair to place the burden of this uncertainty on applicants.

Furthermore, I fear that the SLBE has forgotten the basic access requirements of what it means to study for the bar. I planned to study in my law school's library, where there is access to MBE and MEE questions. With the loss of these resources, I would have to pay for extra questions at a time when my job offer has been pushed back and I am unable to earn. Similarly, I am not privileged to pay for a quiet place to study; I live at home with four family members. This year, the administration of the bar examination has become more of a question of resources and privilege than it is of competence and protection of the public.

Finally, many of the applicants – as noted by the SBLE in their announcement regarding online administration² – are out of state and taking the Maryland Bar Examination. I am one from California. Currently, California is undergoing a state of emergency due to the rampant wildfires³ and heat wave, and many cities are struggling with unplanned, continuous rolling blackouts.⁴ The internet connection is unstable and the situation is likely to last for multiple months. It is not unlikely that one of these rolling blackouts will occur during the administration of the bar examination, failing all students from this state. I am sincerely concerned about whether I will have stable internet access to be able to take the bar examination in California.

I am – and have been – excited to join the scores of Maryland lawyers who have done work to help their community and the country. I am asking the Court to consider the unique circumstances of the 2020 summer applicants and the significant financial, health, and social consequences that have come from the uncertainty and confusion surrounding the examination. We understand that the SBLE is in a difficult position and that they are doing their best to

Florida: Karen Sloan, "Florida Postpones Online Bar Exam Two Days Before the Test," *Law.com* (Aug. 17, 2020) <https://www.law.com/dailybusinessreview/2020/08/17/florida-postpones-online-bar-exam-two-days-before-the-test/>

Louisiana: WDSU Digital Team, "Louisiana Bar Exam now open-book test," (Aug. 12, 2020) <https://www.wdsu.com/article/louisiana-bar-exam-now-open-book-test/33586959#:~:text=Professional%20Responsibility%20Examination.-,The%20Louisiana%20Supreme%20Court%20issued%20an%20order%20Wednesday%20making%20modification,because%20of%20the%20coronavirus%20pandemic.>

² Maryland State Board of Law Examiners, "To July 2020 Bar Exam Applicants," (Jun. 17, 2020) <https://www.mdcourts.gov/ble>.

³ Faith Karimi, Steve Almasy and Jason Hanna, "California wildfires kill at least 4 people as some evacuees weigh coronavirus risks at shelters," CNN (Aug. 21, 2020) <https://www.cnn.com/2020/08/21/us/california-wildfires/index.html>.

⁴ Debra Kahn and Colby Bermel, "California has first rolling blackouts in 19 years – and everyone faces blame," Politico California (Aug. 18, 2020) <https://www.politico.com/states/california/story/2020/08/18/california-has-first-rolling-blackouts-in-19-years-and-everyone-faces-blame-1309757>.

administer a remote examination and protect the public. However, the conditions of “Diploma Privilege Plus” as laid out in the petition will ensure that all new applicants are ready to practice before they do so on their own.

Bar applicants this year are not asking for sympathy or a “free pass” from the bar examination. I hope to remind you that behind each application there are individual students who have put their entire lives on hold in order to study for this exam. Many of us are eager to join the profession and help our communities. The constantly shifting date and inequitable administration are unnecessary and I urge you to reconsider offering diploma privilege in this time.

Sincerely,

Nandini Ruparel

Class of 2020 | Santa Clara University School of Law

[EXTERNAL] Diploma Privilege

Nicole Hladky <nhladky4479@gmail.com>

Fri 8/21/2020 2:43 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To Whom It May Concern,

I support diploma privilege. After many students have spent time, money, and countless hours studying, they are ready to prove their knowledge.

The exam online has too many security and accessibility issues so students should get diploma privilege instead of taking this online version of the bar.

The bar exam has always been in person over 2 days and I understand because of the pandemic they are doing an online test for the 1st time ever, but there are so many issues and rules that are going to make it impossible for most students. For example, if an animal enters the Web Cam frame you fail. You can't wear earplugs and block out the noise. You can't get up from the computer for 4 hours in the morning and then 4 hours in the afternoon over 2 days even if you have to go the bathroom or if you have a disability or if you're a mother whose breast feeding or you fail because they will watch through a Webcam.

I have concerns about losing Internet and/or losing power and they're not making any exceptions if you fail for those reasons. They are saying the facial recognition software does not recognize dark skinned people. It's just a mess so we want them to waive students in without the test which has been done before so it's not that far out of an idea.

Please reconsider your decision and allow Diploma Privilege.

Thank you in advance,

Sent from my iPhone

[EXTERNAL] Bar Exam

Thomas Stone <tbstone305@gmail.com>

Fri 8/21/2020 3:04 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Certainly makes sense to me! Tom Stone 301-807-1236
Sent from my iPhone

[EXTERNAL] EmergencyPetition for Temporary Suspension of UBE Requirement and Order GrantingEmergency Diploma Privilege Plus

Naomi Shapiro <naomishapiro1@gmail.com>

Fri 8/21/2020 3:11 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Naomi Shapiro

naomishapiro1@gmail.com

August 21, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Naomi Shapiro, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Naomi Shapiro

Jonetta Chichester
Chichester.jade@gmail.com

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Jonetta Chichester, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who may need to seek advice on signing mortgage contracts would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Jonetta Chichester

[EXTERNAL] Diploma Privilege

Akeem Swann <akeemswann90@gmail.com>

Fri 8/21/2020 3:26 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To whom it may concern,

It is my understanding that the decision for diploma privilege may possibly be granted. My insight on this would be that this would be a great decision if granted during this time where we are all dealing with the unprecedented times of COVID-19 that has taken over many of our lives. The pandemic has affected us all in many different ways. Test performance is the ability to perform our best under certain conditions and during this time it is hard for anyone to take a test with the result of their full potential when many people are facing many deviations such as losing love ones, becoming ill with COVID-19, working full-time jobs and being full-time caretakers of elders and/or children with no time to study to reach their full potential to take an exam. Many entities are also being the sole provider for their families during a time where many are being laid off from their place of employment due to the pandemic. This can cause lots of pressure on individuals. Granting diploma privileges would be very helpful, and under these circumstances it would only be fair to those who are all facing these unprecedented times. We don't know when this pandemic and trying times will end and everyone is trying to keep their heads above water. We are all in this fight together I support the decision to grant Diploma privilege 100%

Thanks for your time.
Respectfully,

Akeem Swann

[EXTERNAL] Bar Exam Update

Kate Masterton <kmasterton@verizon.net>

Fri 8/21/2020 3:38 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I full support the position of the Board as stated in its August 18, 2020 "Update" regarding remote bar exam administration. I wholeheartedly oppose any effort to allow unqualified [people—that is, persons who have not passed the Md. Bar Exam—to practice law in Md.

Kate Masterton

Law Office of Kathleen J. Masterton, P.C.

Wills, Trusts and Estates--Business/Commercial Law

Equine/Agriculture Law---Land Use/Preservation

PLEASE NOTE NEW OFFICE ADDRESS:

15336 Manor Road

Monkton, MD 21111 Office 410.339.7111 kmasterton@verizon.net

www.mastertonlaw.com

A-V Rated by Martindale-Hubbell

"We make a living by what we get, but we make a life by what we give." -Winston Churchill

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[EXTERNAL] Public Comment on the bar exam

Chris Flohr <cflohr@bflawmd.com>

Fri 8/21/2020 3:50 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To Whom It May Concern:

I join in the opinion of our Maryland State Law School Deans as well as twenty-five Maryland Legislators in seeking that you reconsider your decision to administer the bar exam.

I have been practicing law for nearly thirty years. I have been an Adjunct Professor at The University of Maryland King Carey School of law for well over a decade. I saw first hand this past semester when we switched from in person classes to virtual how disparate the impact was to our students. Given the huge financial commitment for today's law school education, many had to leave their housing to move back in with family. This is concerning in terms of providing proper internet speed and a quiet place to study.

The Deans propose a reasonable alternative during this pandemic. I strongly disagree with those that would assert failure to have a bar exam will lessen the public confidence. Our profession should have moved to an apprentice model long ago. Instead, we hold up an exam which rewards memorization which no competent lawyer depends on. Beginner or seasoned advocate, lawyers need to research and work collaboratively with other lawyers to provide the best representation possible. These are skills the bar exam does not test for.

Thank you for seeking our collective input.

Peace, Love and Understanding,

Chris Flohr

Blackford & Flohr, LLC
513 Benfield Road, Suite 302
Severna Park, MD 21146
410-647-6677 (office)
410-647-8007 (fax)
443-838-1811 (cell)
cflohr@bflawmd.com
<http://www.bflawmd.com>

"All glory comes from daring to begin."
Eugene F. Ware

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[EXTERNAL] Comment in Support of Diploma Privilege

Zach Bader <zbader1201@gmail.com>

Fri 8/21/2020 4:51 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Zachary Bader, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I currently live with a bar applicant who will be directly impacted by the outcome of this matter, and their job status and salary is dependent on bar admission. This will directly impact our quality of life, especially in these trying times.

I thank the Court for its time and consideration on this urgent matter

Respectfully,
Zachary M. Bader

--

Zachary Bader
zbader1201@gmail.com

[EXTERNAL] Community Member Diploma Privilege Comment

David Finestone <davidfin@acac.com>

Fri 8/21/2020 4:53 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

David R. Finestone
davidfin@acac.com

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, David Finestone, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces legal several issues an newly barred attorney could help me with would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
David R Finestone

David Finestone
General Manager

acac Fitness & Wellness Center
20500 Seneca Meadows Parkway
Germantown, MD 20876

www.acac.com

[EXTERNAL] Comment - State Board of Law Examiners' Update

John Keller <jkeller@umaryland.edu>

Fri 8/21/2020 5:10 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Judges of the Court of Appeals of Maryland,

Thank you for affording us the opportunity to comment on the Diploma Privilege Plus proposal.

My peers, Dean Tobin, Dean Weich, and everyone involved with the proposal, have documented our collective, numerous concerns regarding holding an online, remote Bar Exam. In addition to the concerns they have raised, I would like to add the following:

I would like to point out the fact that we already have a test that measures our competency of *Maryland* law: the Maryland Law Component Test. This test, in combination with meeting ABA educational requirements, passing the Character and Fitness Examination, and attaining a qualifying score on the Multistate Professional Responsibility Examination (MPRE), should constitute more than sufficient assurances that we are qualified to enter the practice of law in the state of Maryland.

I would also like to point out the fact that the traditional Bar Exam is an ineffective way of measuring one's competency to practice law. In actual practice, an attorney is instructed with consulting with his/her fellow partners, sifting through the legal code, and/or researching court cases to ascertain the correct answer to his/her client's legal problem. In doing so, the attorney probably should be spending more than 1.8 minutes (the amount of time we are given per question on the Uniform Bar Exam) before attempting to draft a petition to a court or rendering legal advice to a client. Ironically, if we do any of these things on the Bar Exam, we fail; but, in actual practice, if we do not do these things, we very well could be the subject of a malpractice claim.

Moreover, the thirteen subject Bar Exam – which covers a wide range but very shallow depth of legal topics – is largely obsolete in today's world. That is because the practice of law has become increasingly specialized and niche. Most attorneys no longer identify as "general practice attorneys," but rather focus their practice in a couple practice areas, many of which are *wholly untested* on the Bar Exam. For example, after attaining my attorney licensure, I am hoping to practice copyright, trademark, unfair competition, and trade secrets law. Applicants such as myself would be better off honing in on our respective practice areas rather than studying for months on end (in fact, five months this year, as the Bar Exam continues to be unnecessarily delayed) areas of law we do not seek to practice in our careers.

The public will need our assistance more than ever after this pandemic, and restricting entry based upon passing an ineffective and obsolete exam is a disservice and inequity to all. I respectfully request the Court do the equitable thing and grant Diploma Privilege for 2020 Maryland Bar applicants.

Thank you for your time and consideration in this matter.

Respectfully,

John Keller, Jr.
2020 Maryland Bar Applicant

[EXTERNAL] Re: Comment - State Board of Law Examiners' Update

John Keller <jkeller@umaryland.edu>

Sat 8/22/2020 1:56 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Cc: State Board of Law Examiners <sble@mdcourts.gov>

1 attachments (3 MB)

IMG_20200821_171708.jpg;

Following up to the comment I sent yesterday, I neglected to include this true story that happened as I was drafting my comment from Chandler Court, Waldorf, Maryland (across from the Taco Bell on Smallwood Drive).

I was drafting my comment and all of a sudden I heard this big boom. And, the power and internet goes off. (I thought it was a bomb or something with how loud it was). It turns out the people working across the street on the new shopping center ran their dump truck into the power lines cutting off power and internet to the city of Waldorf, Maryland. This happened at around 2PM and power/internet was not even restored until after 5PM (when I was able to send out my comment via email to you). You can see the picture I took of the accident, attached.

Now, what if that happened during the day of the actual online exam??? I would have failed the test (since I would not have been able to submit it on-time with out access to the internet) and my career would be on hold, all because a negligent construction worker drove his dump truck into power lines. These are the kinds of valid concerns we have with a remote, online Exam.

Again, thank you for the time and consideration.

Sincerely,
John Keller, Jr.

On Fri, Aug 21, 2020, 5:10 PM John Keller <jkeller@umaryland.edu> wrote:

Dear Judges of the Court of Appeals of Maryland,

Thank you for affording us the opportunity to comment on the Diploma Privilege Plus proposal.

My peers, Dean Tobin, Dean Weich, and everyone involved with the proposal, have documented our collective, numerous concerns regarding holding an online, remote Bar Exam. In addition to the concerns they have raised, I would like to add the following:

I would like to point out the fact that we already have a test that measures our competency of *Maryland* law: the Maryland Law Component Test. This test, in combination with meeting ABA educational requirements, passing the Character and Fitness Examination, and attaining a qualifying score on the Multistate Professional Responsibility Examination (MPRE), should constitute more than sufficient assurances that we are qualified to enter the practice of law in the state of Maryland.

I would also like to point out the fact that the traditional Bar Exam is an ineffective way of measuring one's competency to practice law. In actual practice, an attorney is instructed with consulting with his/her fellow partners, sifting through the legal code, and/or researching court cases to ascertain the correct answer to his/her client's legal problem. In doing so, the attorney probably should be spending more than 1.8 minutes (the amount of time we are given per question on the Uniform Bar Exam) before attempting to draft a petition to a court or rendering legal advice to a client. Ironically, if we do any of these things on the Bar Exam, we fail; but, in actual practice, if we do not do these things, we very well could be the subject of a malpractice claim.

Moreover, the thirteen subject Bar Exam – which covers a wide range but very shallow depth of legal topics – is largely obsolete in today's world. That is because the practice of law has become increasingly specialized and niche. Most attorneys no longer identify as "general practice attorneys," but rather focus their practice in a couple practice areas, many of which are *wholly untested* on the Bar Exam. For example, after attaining my attorney licensure, I am hoping to practice copyright, trademark, unfair competition, and trade secrets law. Applicants such as myself would be better off honing in on our respective practice areas rather than studying for months on end (in fact, five months this year, as the Bar Exam continues to be unnecessarily delayed) areas of law we do not seek to practice in our careers.

The public will need our assistance more than ever after this pandemic, and restricting entry based upon passing an ineffective and obsolete exam is a disservice and inequity to all. I respectfully request the Court do the equitable thing and grant Diploma Privilege for 2020 Maryland Bar applicants.

Thank you for your time and consideration in this matter.

Respectfully,

John Keller, Jr.
2020 Maryland Bar Applicant

[EXTERNAL] Comment on Diploma Privilege

John Keller <jlkeh13@gmail.com>

Sat 8/22/2020 5:22 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

The President/CEO of the National Conference of Bar Examiners (NCBE), Ms. Judith Gundersen, never took the Bar Exam prior to entering the practice of law in Wisconsin. The same holds true for her predecessor, Ms. Erica Moeser. They both were Diploma Privilege-ed into practicing law in the state.

This fact is well documented:

- <https://www.law.com/2020/08/13/i-understand-the-anxiety-and-the-anger-says-top-bar-exam-official/?slreturn=20200722170011>
- <https://abovethelaw.com/2020/04/the-nations-top-defender-of-the-bar-exam-knows-exactly-how-to-value-diploma-privilege-systems/>
- <http://ipsnews.net/business/2020/06/03/ncbe-offers-online-bar-exam-sort-of-not-really/>

How do we know whether **they** are competent to practice law themselves; or, for that matter administer the examination that determines who gets to practice law? Under their own rationale, their competency to practice law has not yet been tested. But they can still oversee and direct the examination? Huh?

The buffoonery is endless!

Krishan Zaveri
krishan.zaveri@gmail.com

August 22, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAclerkofthecourt@mdcourts.gov

Re: Against the Adoption of Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges,

My name is Krishan Zaveri and I recently graduated from the University of Baltimore School of Law with honors. This has been a very unusual year for everyone, and despite the challenges we face I firmly believe – at the risk of being ostracized by my peers - that it is in the best interest of our profession and the general community to *not* grant Diploma Privilege Plus (“DP+”) to the class of 2020. My reasons are as follows:

First, DP+ would force the class of 2020 to obtain employment in a volatile legal market until we are considered to be full members of the Bar. However, I am one of the few graduates who intends to start a law practice immediately upon joining the Maryland Bar. The granting of DP+ would deny me the privilege of owning my own firm and would instead force me to rely on the charity of a law firm that would be willing to take on a clerk in an unsteady legal market. I would much rather take the Bar exam and have the freedom to establish my own practice. Granting DP+ would infringe on my freedom to do so.

Second, my peers that advocate for DP+ do so based on claims of extraordinary hardships in administering a remote Bar exam. The simple fact is that SBLE’s proposed exam does not create extraordinary hardships that are not present during a normal in-person exam. For example, parents make arrangements for babysitters during the normal in-person exam. They can do so for a remote exam as well. This exam can be taken anywhere, a hotel room, an empty conference room, a friend’s spare bedroom...it is surprising that Juris Doctors claim to not be able to innovate and adapt. If I may be completely candid, I believe the push for DP+ is rooted in a general desire to avoid taking the Bar. No one enjoys it. No one wants to do it. Covid-19 seems to provide a convenient reason to advocate for not having to do it. This is *not* a good reason to grant DP+.

Third, and lastly, the Bar exam is a rite of passage into our chosen profession. It is a shared hardship that unites attorneys and provides a foundation for professional respect. Despite the outcries of my peers, I believe they are short sighted in their desire to be waived into the profession. Waiving us into the profession will invariably create a stigma around the class of 2020 in which our competence to practice may be continuously questioned. As we all know, a lawyer’s reputation is everything. I am concerned about a stigma being associated such that when cases are won, the community attributes it to luck and when they are lost it is deemed proof of a lack of competence.

Of course, this may be a very pessimistic view of human psychology, but experience has shown that it is not entirely false.

To be fair, I understand that there are technical difficulties in administering this remote exam and that these difficulties may not be resolved by the October exam date. Diploma Privilege would be superior to DP+ in that case because we would be able to practice immediately, despite the risk of an associated stigma as mentioned above.

Thank you for taking the time to hear us.

Respectfully,

Krishan Zaveri

[EXTERNAL] Comment on emergency petition

Kevin Dunne <kadunnelaw@gmail.com>

Fri 8/21/2020 5:25 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To the Honorable Judges of the Maryland Court of Appeals:

I oppose the request to waive the bar exam for 2020 law graduates due to the Covid pandemic.

While some states may permit graduates of their state university law school to be immediately admitted to practice, presumably the faculty and curriculum administrators are aware of that practice and act accordingly.

The Bar Exam represents a hurdle that all other law grads must leap. It tests black letter law and analysis. It tests some knowledge of Maryland law.

The reasons advanced for opposing a safely administered bar exam in October are insufficient. Other government agencies have established safe protocols for meetings and live events. OAH is conducting live hearings. The Board of Bar Examiners believes that it can safely and securely conduct the exam.

Obtaining a law license is an important step in a lawyer's career. To be vaulted there without establishing your bona fides seems unnecessary when an exam can be safely administered.

It is claimed that many citizens need access to Maryland attorneys due to Covid, and we will solve that 'shortage' with newbies? Please explain how recent law graduates can fill that niche.

Delaware has put into place a short term solution which avoids any short term bar exam issues but protects the public from unprepared professionals. That proposal would be far more palatable than a waiver.

Please keep the bar exam as a measure of knowledge and competence for practicing law in Maryland.

Respectfully,

Kevin A. Dunne, Esquire
Law Offices of Kevin A. Dunne
720 Morningside Dr.
Towson, Maryland 21204

410.807.0308

'kadunnelaw@gmail.com'

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[EXTERNAL] Emergency diploma privilege for 2020 bar applicants

Emma Ragon <ragonemma@gmail.com>

Fri 8/21/2020 6:15 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear The Honorable Chief Judge Barbera and Associate Judges:

My name is Emma Ragon and I am a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who is struggling during this pandemic, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Emma Ragon

August 23, 2020

Chief Judge Barbera and Associate Judges of the Court of Appeals of Maryland:

I am writing to support Diploma Privilege Plus as a JD with a background in Education. SBLE appears to have failed to inform the Court that the vendor that backed out of the October remote exam, Extegrity, was very clear in the pedagogical impropriety of this exam format at this current juncture.

Extegrity told SBLE nearly a full month ago “[f]or remote bar exams to be part of the future, the pedagogy will need to shift to match what can work technologically. Whether it may include randomized multiple-choice questions, more-but-shorter essays, open-book components, or other innovations, success will require exam creators, administrators and technologists to work closely together, and regularly consult all stakeholders, right from the start.”

SBLE, NCBE, and ExamSoft have instead puzzingly doubled down on an exam format that is entirely unaligned with the 3-year, 6-figure ABA-accredited legal education examinees received and the bar prep courses examinees have spent thousands of dollars and 4-5 months on, which are expressly designed to teach “exam hacks” and techniques – not actually legal competence. To be frank, only the MPT section of the exam is even reflective of legal practice and NCBE has cut that portion of the exam in half. It is also baffling why any examination format would be closed-book, when practicing law without consulting legal resources would constitute malpractice.

NCBE has also communicated to SBLE that it is unprepared and/or unwilling to scale and score the October exam, leaving SBLE to suddenly not only learn how to determine whether examinees have passed or failed, but also how their determinations would be portable to other jurisdictions.

As a former teacher, my heart breaks for July 2020 bar applicants. As a fellow JD, I am outraged by the inefficiency, lack of transparency, and untruthfulness SBLE has displayed. For these reasons, I respectfully request that the Court grant Diploma Privilege Plus.

Thank you,

/s/ Anna Bilbrough Skamarakas

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

My name is Tiara Ford and I am a MD Bar taker. I recently graduated from Barry University in Florida, and originally planned to take the Florida Bar. I was forced to take the MD Bar first (I planned to take it in February or later in 2021) because of COVID-19. When Florida announced that they would not be pushing the date back, I knew I had to change my plan since both my son (1 years old) and I are high risk; my son was recently hospitalized for respiratory issues and I am a chronic asthmatic. Since moving back home to MD, I am fortunate to have a room at my parents' home. Unfortunately, it has not been the best area to study.

Since everything surrounding me is closed, I have been forced to study in my parents basement. It is hard because my son, understandably, is very attached to me. So when he sees me walk downstairs and close the door he screams for at least 20-30 mins for me. And then throughout my study time I can hear every little move they make, every TV show, and song from Cocomelon (YouTube baby show) and it is very distracting. Also, my mother and I have a very strange relationship, so I don't want to burden her, so she watches my son 2 hours a day, and then he naps; and then I get a chance to study at night when my son is sleep. I don't have any other family members I trust to watch my son, so this is my only option. Some days, my mother has to run to the store and unfortunately it runs into my study time, so I don't always get those full 2 hours. And my son don't always take a full nap so instead of being an additional 2.5 hours its more like 1.5 hour and most times he wakes up and I have to put him back to sleep which breaks my concentration; overall it don't always give me enough time to fully understand the material.

Also, recently there was mold found in my parents basement so I had to relocate because the mold started triggering my asthma, and is unsafe to breath generally. I was forced to study outside, which was fine for the first 20 minutes or so. But it gets very hot which makes it hard to focus. There is no shade, and so many bugs. Every 5 seconds I am shoo-ing away mosquitos, and crushing ants, all while trying to write out my notes on my lap. I honestly never realized how important a desk was until I had to write on my lap, it puts such a strain on my back; especially after having a rough pregnancy, it makes it hard to focus and sit still, constantly having to get up for breaks. Not to mention, when it rains. Because there is no covering, I cannot study most times when it rains, unless I go sit in my car. Which isn't always an option because I cannot

leave the air running so it is also hot in there, and sometimes my dad needs my car for work. Overall trying to fight the elements is tough. Not to mention, being distracted by anything that is going on outside. I feel like I cannot be too focused because I also have to watch my surroundings just in case someone and something is coming to harm me. Also, there is always something happening in my neighborhood, good or bad. This week, there was a scene where 4 police officers pulled on the street to deal with a hit and run situation that took place elsewhere and things got heated; the ambulance came, they were yelling. It was very messy, and distracting – to say the least. It is all very hard.

Recently, the struggle has been trying to find a location to take the bar. Some bar takers are renting hotel rooms for those days, or renting office space. Because of COVID-19 and being a high risk, I do not want to take any chances going to a public place. I asked my brother if I could use his apartment, but he also has a family, so that would mean inconveniences them for 4 hours for two days during a pandemic which everyone should be inside their homes, safe. They are welcome to come to our parents but it is not very big, especially with the people already living there. Also, to cut back on bills I was informed that my brother's family has scheduled to remove the internet after September and use a cheaper source – hotspot or another source I am unfamiliar with. This is an issue because now I have to contact my cell phone provider to see how much it will cost, because hotspot is only free for 2 hours a month. I am not sure what other options to turn.

Further, I am a single mother, trying to provide a better life for my son. But because of COVID-19 every law firm is looking for an employee NOW. So even after I apply, and receive phone interviews, no one is willing to wait until October because they too are faced with aftermath pandemic struggles and need assistance. Logically, I am just too worried that something else will happen and I will need to study something additional and will not have time because I am working a case, so I have asked to forego employment until after the bar, but I am missing out on the chance at employment. As I understand, another option is allowing for employment in September, under a CLI format, which I don't think logically for the reasons I mentioned – bar takers wanting to focus and not have to worry about messing up someone's case.

When I first heard about the Diploma Privilege I was not for it, because I did not want the law community to prejudge me and my capabilities as a future attorney. But after dealing with the reality of the pandemic, it is the right choice. As a 2020 graduate, we had to deal with a scary thought of wondering did we contract the virus in class. Then once that settled, we had to go through learning how to have class on-line, and there were so many technology issues it made it hard to really get any information. Then studying for weeks, and then told that the bar would be pushed back. Then a couple weeks, told it would be pushed back again. Then told that it would be online. Mentally this whole process has been draining. On top of that not having the proper study area, has put a huge strain on me, but I'm sure my situation is not unique.

This is why we, the graduating class of 2020, respectfully ask that you grant the Diploma Privilege for this one time only occurrence, because of the unprecedented times we faced.

Tiara Ford

[EXTERNAL] ATTENTION REQUIRED

Rachel Feldman <rachelfeldman95@gmail.com>

Fri 8/21/2020 10:42 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

RACHEL FELDMAN

JENNER LAW FIRM

RACHELFELDMAN95@GMAIL.COM

August 21, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Rachel Feldman, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community

members such as myself. I, as a member of the community who faces legal issues with my landlord and our lease agreement would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Rachel Feldman

[EXTERNAL] Invited Comment on Diploma Privilege Petition

Paul Mark Sandler <pmsandler1@icloud.com>

Sat 8/22/2020 9:48 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I am familiar with the Petition, and the facts stated therein, As a practicing trial lawyer in the State of Maryland for 48 years, I support Emergency Diploma Privilege to the 2020 graduates. The recent Editorial on the subject in the Maryland Daily Record articulated well the case for granting Diploma Privilege, which is in accord with my views.

Paul Mark Sandler

Attorney at Law

pms@shapirosheer.com

250 West Pratt Street

Suite 2000

Baltimore, MD 21201

P 410.385.4272

F 410.539.7611



SHAPIRO SHER

Shapiro Sher Guinot & Sandler

[EXTERNAL] Bar exam

Cindy Motsko <cmotsko@gmail.com>

Sat 8/22/2020 12:03 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I am writing to express my grave concern about the recent suggestion that law graduates be admitted to the bar without taking and passing the bar exam. Every year there are a large percentage of graduates who do not pass the exam. Allowing them to practice law without taking or passing the exam denigrates the quality of the attorney pool and poses risks to the public from unqualified practitioners. If the Court considers this, at the very least, any license to practice granted must be provisional, and those granted provisional licenses should be required to make their clients aware of that status. Once the pandemic is under control, provisional attorneys should be required to take and pass the exam to continue practicing.

In terms of conducting a remote exam, there should be instituted safeguards to prevent cheating. There should be biometric controls. There should be remote locations in every county sufficient to accommodate, in a socially distanced way, the numbers of graduates planning to take these exams, using classrooms with proctors who check-in the test takers to verify their identification. Remote testing from homes should be avoided except in special circumstances (eg ADA issues). I myself took the LSATs while living in Sweden in 1975. I was in a classroom with a proctor and just me.

Thank you for the opportunity to comment on these important matters.

M Lucinda Motsko
106 Archwood Ave
Annapolis MD 21401
410-216-7128

[EXTERNAL] Comment on Diploma Privilege

Alexis Bosilovic <46bosilovic@cua.edu>

Sat 8/22/2020 12:54 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good Afternoon,

My name is Alexis Bosilovic and I am a recent law school graduate who is taking the Maryland bar exam on October 5th and 6th. I want to address a few issues within the recently released SBLE reply to this court's order. First, the SBLE stated that students will be able to opt in to having the exam password sent to us by text message. However, in the rules for the exam, the SBLE stated that cellphones will not be permitted in the room during the exam. This was the only recommendation supplied by the SBLE in response to the password accessibility issues experienced by other states using online platforms for their bar exams. Second, the SBLE stated that students are permitted to take the exam in a library, but are only able to do so if in an individual room. This measure seems inadequate given that libraries only have limited space where this would be possible. Next, the SBLE stated that there was not sufficient evidence of disparate impact because students had not submitted e-mails expressing a difficulty in finding a testing location that will meet the requirements of the exam rules. Students should not be required to e-mail the SBLE for the organization to recognize that access to testing locations in conformity with testing rules will undoubtedly be difficult for students. Specifically, many libraries will be closed and many locations do not allow entry for extended periods of time due to the pandemic. Moreover, some test-takers have children, have lost their jobs due to the pandemic, and cannot afford child care, an experience that in conjunction with the pandemic itself is unimaginable. What the SBLE has demonstrated in their reply is that an impact on a number of students is not significant enough unless it is a majority of students. The students that will be impacted by the racial, economic, and pandemic related disparities related to the exam will not be accounted for simply because they may not be the majority or simply because they failed to send an e-mail to the SBLE. Thank you for the opportunity to comment. I hope that Diploma Privilege will be considered because the impacted students, after three years of hard work, deserve the opportunity to demonstrate their knowledge and accomplishments as certified lawyers.

Best,

Alexis Bosilovic

[EXTERNAL] Comment Regarding the Bar Exam

Kimberly Andrews <kimberly.andrews@ubalt.edu>

Sat 8/22/2020 1:29 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good Afternoon,

I am registered to take the online October bar exam in Maryland. I am writing to share my concerns and anxieties about the test being conducted online.

I live in West Baltimore City. My block is very noisy. Several times during studying for the bar I have lost concentration due to car alarms, people fighting, and competing car stereo systems on blast for hours at a time. We are precluded from wearing earplugs during the exam. I will not be able to get up from my seat to ask a neighbor to quiet down. I also do not have an alternative location at which I can take the test. The law school is not open or available. I have inquired. Libraries are also closed.

I also have concerns regarding power and internet. The power on my block has gone out for hours at a time three times since June. These are documented on the BGE website. That will cause me to lose internet connection. SBLE has also suggested we stay plugged in the whole time due to glitches with the software when working off of battery power alone. I do not have a generator in the event of power loss.

I also have concerns regarding the security of the software and the waiver we are required to sign. Usually there would be tech people to help us, but the software company is waiving any and all liability in the event of a software problem.

For these reasons, I support diploma privilege. In lieu of diploma privilege, I support an exam like Indiana where we can take the exam open book without software and technological concerns.

Thank you,

Kimberly E. Andrews
kimberly.andrews@ubalt.edu

[EXTERNAL] Re: Comment Regarding the Bar Exam

Kimberly Andrews <kimberly.andrews@ubalt.edu>

Sat 8/22/2020 2:20 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I forgot to also include that the laptop I planned to use for the bar does not have a built-in webcam. I need to purchase a webcam to take the online test which is an additional unexpected cost.

We have not been refunded our fees we paid when the test was going to be in the convention center and required more overhead expenses. I have not heard whether they will be refunded or not.

From: Kimberly Andrews

Sent: Saturday, August 22, 2020 1:29 PM

To: coaclerkofthecourt@mdcourts.gov <coaclerkofthecourt@mdcourts.gov>

Subject: Comment Regarding the Bar Exam

Good Afternoon,

I am registered to take the online October bar exam in Maryland. I am writing to share my concerns and anxieties about the test being conducted online.

I live in West Baltimore City. My block is very noisy. Several times during studying for the bar I have lost concentration due to car alarms, people fighting, and competing car stereo systems on blast for hours at a time. We are precluded from wearing earplugs during the exam. I will not be able to get up from my seat to ask a neighbor to quiet down. I also do not have an alternative location at which I can take the test. The law school is not open or available. I have inquired. Libraries are also closed.

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I also have concerns regarding the security of the software and the waiver we are required to sign. Usually there would be tech people to help us, but the software company is waiving any and all liability in the event of a software problem.

For these reasons, I support diploma privilege. In lieu of diploma privilege, I support an exam like Indiana where we can take the exam open book without software and technological concerns.

Thank you,

Kimberly E. Andrews
kimberly.andrews@ubalt.edu

[EXTERNAL] Comment In Support of Diploma Privilege

L. Andrew Hartwig <laurence.hartwig@gmail.com>

Sat 8/22/2020 1:36 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I am a Maryland resident writing in support of granting diploma privilege for graduates of ABA accredited schools here in Maryland.

Maryland has two law schools, both of which perform well. I trust that graduates of these schools have been properly educated, tested, and are ready to practice law. If they are not, and everything depends on bar passage, perhaps the problem lies with the schools themselves.

Nevertheless, my trust in lawyers would not suffer if students were granted diploma privilege which other states allow, such as Wisconsin. The head of the NCBE herself was granted diploma privilege.

The economy is suffering because of Covid. These students should not have to suffer without pay any longer. They have offers and are ready to work. Denying them that right hurts the overall economy further.

The online test has been a debacle in other states from what has been reported. It is painful to watch these states make the same mistakes over and over. Prolonging the uncertainty is wreaking havoc for these students, bar prep providers, and the legal community as a whole. Thank you for your time.

HUDSON L. MILLER

913 Morton Street Apt 1 - Baltimore, MD 21202

443-980-6647 HUDSON.LEE.MILLER@gmail.com

August 22nd, 2020

Comment on Diploma Privilege + in Maryland

Dear Your Honors,

Thank you for allowing me and my fellow applicants the opportunity to voice our opinion on the Diploma Privilege + option being considered by the Court for Maryland. I do not support Diploma Privilege +, and I would respectfully request that the Court not waive the requirement to pass the Bar.

The applicants who organized and signed the petition for Diploma Privilege (DP applicants) do not represent all of the applicants in Maryland. The DP applicants surmise that an electronic bar exam will be a test of resources. They exaggerate this claim, indeed there are still a person who does not have internet access, or a computer can take the exam. I know that my law school has opened its doors to students who need to use the computer lab to take the exam, and I know that even though you can't stay on campus you can still rent a laptop from the library. In truth, it will be the Diploma Privilege + option that puts some applicants at a disadvantage via others as many applicants have not yet secured employment. Those applicants who already have clerkships lined up can easily transition into a supervisory period, while those without such an opportunity will struggle in finding attorneys who will willingly pay us and supervise out admission into practice.

Similarly, there are those of us who come to rely on passing the Bar exam and becoming fully licensed to obtain employment; as such and period of continuing legal education would not only stunt career growth for the unemployed, but also pose a financial difficulties that might deter seeking licensure. I know that in my case, I have borrowed close to the limit I am available for student loans and have not secured employment in a role as a clerk. Therefore, a continuing legal education requirement would make it extremely difficult to become licensed.

Simply put, a Diploma Privilege + would put those of us who have not yet obtained clerkships at a disadvantage and create additional hurdles to becoming fully licensed that would make difficult the search for employment.

However, should the Court consider simply waiving the requirement and not substituting it with a CLE or supervisory period requirement I would support that option. A Diploma Privilege rather a Diploma Privilege + path to licensure presents less of the financial and career hurdles earlier discussed.

Again, please allow me thank Your Honors for the opportunity to voice my opinion, and I look forward to being licensed to practice law in Maryland soon.

Warmest Regards,



Hudson L. Miller

J.D. | Class of 2020

University of Baltimore School of Law

HUDSON.LEE.MILLER@gmail.com

(443)-980-6647

[EXTERNAL] Diploma Privilege Comment

Bar Applicant <mdbarapplicant@gmail.com>

Sat 8/22/2020 4:25 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Chief Judge Barbera,

I am a 2020 Law School graduate and 2020 'July' Bar Exam Applicant who has recently moved to the Eastern Shore for employment. Due to the nature of my current job I am unable to use my name in this comment for fear of having my opinions held against me by my employer. Nonetheless, I felt compelled to offer my perspective which will hopefully assist the Court in making a decision regarding Diploma Privilege.

I moved to Maryland in May after securing employment in the state in early 2020. I have been studying diligently since my graduation from law school. Two weeks ago, I started my new job. My new job is great, the people I work with are friendly, helpful, and welcoming. At the same time, my job is challenging and demanding, but in a way that I enjoy and get fulfillment from.

Due to the demanding nature of my job, I often have to stay late, sometimes til 8 or 9:30 at night (I nominally work from 8-5). While I am happy and eager to do this, it makes studying extremely difficult. I try to put in at least 3 hours every week night after work, and I study for 8-10 hours on Saturday and Sunday. Because I got a head start on studying, I have so far been able to manage the balance of work and study.

I am not complaining about the demanding nature of my job. I tell you all of this because I think the unique circumstances that the class of 2020 deserve consideration by the Court in making their decision. I realize the Bar Exam is a right of passage, and that it arguably has an important role in maintaining the confidence the public has in lawyers generally. That said, no other class of law graduates has had a more difficult time than the class of 2020. Our exam has been pushed back twice, resulting in me having to push my job start date back by a month and a half for the first postponement. Due to financial considerations, I couldn't push my start date back any further and now find myself in a situation where I work between 12 and 16 hours a day, 5 days a week and 8-10 hours a day on the weekends.

I have had to shirk other responsibilities in my life to make this work. My relationships are strained, I get very little sleep, and due to the amount of focus I must commit towards my job and the Bar exam, certain personal aspects of my life have been left in disarray.

I do not say these things to garner any pity from the Court. I am a hardworking, dedicated individual who will do what he must in order to satisfy the requirements and preconditions to practice law in the state of Maryland. I simply want to highlight for the Court the circumstances that I, and countless other 2020 graduates face during this unprecedented time.

I accept that the Bar is an important rite of passage for young lawyers. That said, it is important to point out that the class of 2020 is doing things no other class has ever done. We are being asked to study and work at the same time when possible, to await the few and far between communications from the SBLE regarding the particulars of the exam, and risk our privacy by being subjected to a unproven exam technology medium on the most consequential exam of our lives.

The waivers that Examsoft has made other jurisdiction's applicants sign are simply unconscionable. They basically disclaim all liability if something goes wrong on exam day, leaving the class of 2020 with no legal recourse in the event that a third party's negligence affects our ability to perform well on this exam. I ask the Court, how is it fair that the 2020 class of MD Bar applicants are effectively guinea pigs for a brand new method of administering the exam? This new technology is being tested during the most consequential exam of our lives.

2020 applicants have been through enough, we should not be asked to be responsible for making sure our testing conditions are up to par. The whole point of the exam is to test competency on a *level* playing field. A remote exam is inherently unequal because the class of 2020 is made up of people from all socioeconomic backgrounds. Using a remote exam favors people with higher economic status. This is simply a fact. Those applicants who have less money, live in smaller homes with more family members and possibly faulty internet have the odds stacked against them.

I ask the Court to take these circumstances into account when making the decision regarding the October remote exam. Many current practitioners and influential people in the legal field feel that the class of 2020 would be "getting off easy" if diploma privilege was granted. I understand those concerns fully. Those criticisms do not however take into account how much more difficult the class of 2020's bar preparation process has been. In the interest of justice, I believe that the Court should cut the class of 2020 some slack. Some equitable solutions would be to grant diploma privilege with some kind of attorney-supervised practice before being admitted, an email based exam like some of the others being administered around the country, or granting a probationary period where 2020 applicants can practice under supervision, and become full members of the bar once they have demonstrated competency.

I thank the Court for taking the time to hear our concerns and make a decision for us.

Best,

2020 MD Bar Applicant

[EXTERNAL] Comment on State Board of Law Examiner's update regarding remote bar examination

Johanna Carr <johanna.carr@umaryland.edu>

Sat 8/22/2020 4:37 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Johanna Carr

[Johanna.carr@umaryland.edu](mailto:johanna.carr@umaryland.edu)

August 22, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Johanna Carr, recent graduate from the University of Maryland Frances King Carey School of Law, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

The remote bar exam is problematic for me and a large number of my fellow law graduates from Maryland Law School. I can only attest to my experience, but I have yet to hear from a single peer that would not be disadvantaged without diploma privileges.

I have ADHD and am not a great test taker. The idea that I cannot fidget or scratch my arm or touch my face without risking a score cancellation for perceived cheating is scary to me. In addition, there is a substantial chance I will do worse on this exam regardless of how much studying I do if I cannot take handwritten notes during the exam. I am a kinesthetic learner and therefore my study style is tactile. I learn by writing the information out by hand. I will be significantly disadvantaged if I cannot take handwritten notes on paper. Many of my peers have expressed to me the same concerns about the prohibition on handwritten notes. If I must wait for the pandemic to end in order to take an in person bar exam, then I risk losing months of potential wages and numerous opportunities for gainful employment.

Furthermore, this Maryland graduating class would be an excellent group for diploma privileges consideration. I personally have spent my entire law school career dedicated to representing indigent clients in Baltimore City District Court, Baltimore City Circuit Court, and the Federal District Court of Maryland. I spent three summers and a semester working for the Office of the Public Defender and was a student attorney in the Criminal Defense Clinic here in Baltimore City. Not only do I have sufficient practical work experience and interest in public interest work, but also, each one of my fellow Maryland Law graduates have worked at least 100 hours representing local low income people in various fields. Please see Maryland's clinic website for more details:

<https://www.law.umaryland.edu/Programs-and-Impact/Clinical-Law/>

I can personally attest to the fact that a large number of our best students plan to go into public interest work and, generally, I believe our class has more practical experience than the average law school graduate.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Johanna Carr

August 22, 2020

Dear Honorable Chief Judge Barbera, Associate Judges, and esteemed members of the State Board of Law Examiners:

I want to express my sincere gratitude for the Court's willingness to open this issue to public comment to the State Board of Law Examiners for their diligent efforts. I am a 2020 graduate of the University of Baltimore School of Law and am writing to express support for granting the 2020 October Bar applicants emergency diploma privilege. This request stems from a combination of currently existing, as well as credible future consequences of the decision to offer the remote Bar Examination.

Since graduating from law school in May of this year, I have been studying for the Bar Examination full-time. We received notice of the decision to administer the exam remotely on June 17, 2020. At the time, this decision appeared to be the most reasonable and rational response, in light of the on-going pandemic. However, over the past several months, the adjustment to an online exam has resulted in a variety of significant challenges with respect to exam preparation. Under the traditional rules, the Bar Exam permitted applicants to write directly on the exam and use scratch paper. The Board of Law Examiners has graciously provided answers to frequently asked questions ("FAQ"). In response to questions about the applicant's use of scratch paper, the FAQ explained that physical scratch paper is prohibited but that digital scratch paper would be available. Additionally, the FAQ said that applicants would have some ability to highlight the test materials. Neither the availability of digital scratch paper nor the ability to highlight provide applicants with a reasonable alternative. With respect to scratch paper, applicants are denied the benefits of physical scratch paper due to the inherent functional limitations of digital scratch paper. The use of physical scratch paper affords the ability to map out a problem and diagram its answer quickly and effectively, which can be accomplished by quick annotations and lines. This same capability does not exist with digital scratch paper, which requires a substantial amount of input to achieve the same result. The time expenditure required to input and diagram on digital scratch paper outweighs its benefit to applicants. Under the traditional rules, an applicant's ability to write directly on the exam benefits them in various ways, including making simple annotations for quick reference, crossing out items, and linking essential terms. The ability to highlight the remote exam is not equivalent to the benefits of directly marking on the exam, and the same input delays associated with digital scratch paper prevent it from providing an adequate substitute. I am using Barbri to prepare for the exam, which counsels (and in many cases implores) test-takers to use both scratch paper and direct markings on the exam. After learning about the prohibition against these practices, no serious solution has been provided. Barbri has attempted to provide guidance on how to manage this challenge but ultimately suggests taking solace in the fact that a majority of the other examinees will also fail to answer identical questions requiring such strategies correctly. This is not to say Barbri has failed its users but rather that they, like myself, are left with few options to augment preparations given the unprecedented situation. In light of these inequities, the remote exam clearly fails to provide applicants with the same or even comparable capabilities that they would otherwise have at their disposal.

I have serious concerns about Examsoft's ability to administer this exam adequately. This concern is based both on its recent failures and the fact that its software is untested in real-time conditions. The issues encountered during both of its prior demonstrations resulted in considerable problems for applicants. While I acknowledge that such issues may have resulted from a DDOS attack, I find it difficult to imagine such attacks would not occur again, as the investigation is on-going, and the source remains unidentified. Additionally, these problems occurred while Examsoft was administering the exam for a single state. Out of the three technology providers, Examsoft is the only remaining provider and has become the default choice for all states. During the October administration, multiple states will be tested simultaneously (in October, it will be responsible for administering the exam to 30,000 applicants compared to only 8,000 applicants in Michigan). If an issue does occur (DDOS or otherwise), Examsoft has not demonstrated that it is capable of managing the problem or that applicants will have access to critical tech support? As it attempts to resolve issues, applicants are compelled to assume the role of test subjects in this unfortunate experiment. Examsoft and the NCBE claim there is nothing to worry about, but despite their unsubstantiated assurances, the evidence suggests otherwise. This exam is a vital component to our ability to gain employment, which makes the idea of subjecting it to such significant risk, highly objectionable.

The testing conditions required for the remote exam is also a matter of grave concern. I live in a multimembered household, including my dog. As such, there will undoubtedly be difficult-to-avoid family interactions inside, as well as noise pollution coming from the streets. The combination of unpredictable noise sources makes it impossible to ensure that any number of distractions will not occur during the exam. While this may not impact the software's AI, it will impact an applicant's ability to focus during the exam, which would not occur under standard testing conditions. The other concerning matter is the requirement for internet access. In an effort to mitigate potential issues that may occur during the remote exam, I contacted my internet provider to ensure that I have reliable access on test day. During this discussion, my provider explained that regular internet updates occur during the daytime hours, which will prevent internet access, and they could not guarantee I would have internet access during the exam. Over the past two weeks alone, I have experienced three internet outages occurring at various times and intervals, all of which occurred during the planned examination period. Additionally, we lost power for three hours during one of the most recent bouts of rain. Without the ability to guarantee reliable internet access or power, I am left with the prospect that my failure of the Bar Exam could be based entirely on random happenstance and not the merits of my ability. I, like many other applicants, am unable to afford a hotel room to take this exam. My alma mater, University of Baltimore ("UB"), has contemplated making space available for the exam but has yet to offer or suggest they would be capable of providing such assistance. During a recent video conference with UB, the Director of Bar Success informed students that such assistance is unlikely due to concerns about the spread of Covid-19. The testing conditions present a significant burden on applicants who would not otherwise be shouldered with the responsibility of ensuring strict compliance with such conditions. If applicants are unable to comply with these conditions, they are unjustly penalized without regard to fault and held accountable for circumstances outside of their control.

I am an Active Duty Army Veteran with multiple deployments as a member of U.S. Special Operations, and sending this letter is extremely difficult. I have spent years developing

inner fortitude and training myself to resist any thought of defeat. As I write this letter, I am left with great frustration that all of my efforts will be for naught merely due to the loss of power or internet, or because an unproven tech company fails to provide adequate services. I am advocating for admission by Diploma Privilege because I am ready to work! If there is a standard for admitting students via this route and I fail to meet that requirement, then I only have myself to blame. If the Board of Law Examiners believes the standards set by other states are unfair, change the standard to one that is fair. The concerns raised about the Bar Exam's public safety function are warranted. However, there is no evidence supporting the idea that the Bar Exam has any impact on the reliability of services provided by applicants. The Bar Exam does not resolve issues related to improper attorney action, and the available remedies for such problems (legal action and ethical sanctions) will be available even if an attorney practices under Diploma Privilege. In sum, I believe this is an opportunity for Maryland to be a standard-bearer, and when such opportunities arise, there is no other profession more qualified to demonstrate what "right" looks like.

I am grateful for your time, effort, and consideration. Regardless of the decision, I will respect the outcome and look forward to coming before the Court as a licensed member of the Maryland Bar.

Respectfully yours,

Sean Thomas Keene
J.D. 2020
seantkeene@gmail.com

[EXTERNAL] Bar exam petition

Laura Cohen <lhcohen9@gmail.com>

Sat 8/22/2020 8:41 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Laura Cohen

lhcohen9@gmail.com

August 21, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Laura Cohen, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Laura Cohen

August 22, 2020

Re: Diploma Privilege Petition

Chief Judge Barbera and Associate Judges of the Court of Appeals of Maryland:

For the reasons discussed herein, I respectfully request that the Court waive the UBE portion of the bar admission process for July 2020 examinees and grant Diploma Privilege Plus. I would defer to the Court's judgment as to whether CLEs or supervised practice for the first year of admission would be required as an appropriate replacement for the UBE component.

I am a nontraditional 2020 graduate of Carey Law. I worked through most of my law degree while raising two children. I returned to law school after several years in the work force. I am not a stranger to the realities of the work force, life, or struggle. I say this because I want to make it very clear that I am not writing today, as some might have you believe, as a petulant child demanding I receive a trophy just for showing up to the game. I am requesting that the Court treat me and my colleagues with respect. Aside from the Class of 2019, we have already been tested twice the amount other members of the Maryland Bar have.

I am requesting that the Court extend to prospective members of the Bar the same flexibility it showed Judiciary employees and practicing attorneys during this pandemic. Judiciary employees and attorneys have been shown compassion while they try to balance homeschooling, child care, care of high risk family members, and work. They have been allowed creative license in scheduling and conducting work duties and hearings.

I am requesting that the Court view us not as "law students," as critics have referred to us, but as Juris Doctors and lawyers of other jurisdictions – fully grown adults capable of identifying unfairness, injustice, and treatment frankly bordering on emotional abuse when we see it, and who are entitled to demand better as human beings.

SBLE closed its offices to the public in March. Applicants have been instructed not to show up in person or call. Emails have been met with silence. I myself have sent five (5) emails this summer seeking information that have all gone unanswered. That is frankly offensive from an organization that had no problems cashing the \$720 checks each applicant wrote them.

NCBE, ExamSoft, and SBLE have set up an assessment that is (1) technologically questionable at best, (2) puts the personal data and biometric information of over 30,000 people not only at risk, but at the mercy of ExamSoft and its unnamed marketing partners for as long as ExamSoft feels like using it, (3) is not even remotely aligned with the way we were trained to write exams during the three-year, six-figure legal education we received or the bar prep course we have spent thousands of dollars on – which I know I personally have been trying to utilize since April, only to keep having the finish line moved, and (4) which NCBE and SBLE have no plan for even grading. SBLE provided the Court and examinees zero plan, zero answers, and yet again showed how entirely dismissive they are of our concerns. I must again here

reiterate that we are not children inconveniencing SBLE or NCBE with silly antics. We are adults, with doctoral degrees, advocating for common sense solutions to serious problems – as we were trained to do.

NCBE expects the Court to sit idly and quietly by while they place impossible restrictions upon the examination, because they do not want applicants to sign up for the October exam or to pass the October exam, as they have repeatedly communicated – most recently by asking July 2020 in-person examinees whether the 2020 October remote examinees would be more likely to cheat and less likely to be competent to practice law. They administered an MPRE to each and every one of us, demanding we prove our ethical character, and then turned around and said we are so likely to cheat on this exam that we cannot look away from our computers, take notes, print any materials, take a sip of water, stretch, or go to the bathroom. We do not even place these kinds of demands upon incarcerated individuals. NCBE is asking the Court to allow it to treat lawyers and members of the public in this manner.

This Court only weeks ago showed great sensitivity to the social issues currently plaguing the nation. Bar applicants are rightly baffled by the way the proposed exam format would only serve to highlight and exacerbate gatekeeping in the legal profession which would have a disparate impact on BIPOC and female applicants. SBLE responded by telling the Court they only received a few emails, so this is not a serious issue. First, any communication showing SBLE the inequality of the admissions process to this profession should be of the utmost concern to SBLE. Second, this is tantamount to gaslighting and emotionally abusive behavior. SBLE has conditioned applicants not to seek help from them, because they will be met only with indifferent silence. Third, this only serves to highlight the sheer lack of qualification of SBLE leadership to manage an organization and interface with the public. As any basic business course or customer service training would have taught Mr. Azrael, one email from a concerned stakeholder is the equivalent of 25 stakeholders voicing concern.

Finally, I ask that the Court simply recognize that we are fellow human beings struggling with the realities 2020 has shoved upon us. We are the children and caretakers of high risk individuals and high risk individuals ourselves. We are job hunting in unprecedented conditions and facing a looming recession. We are losing job offers and health insurance. We are struggling financially with delay after delay (October is exam date number three, format number two, and wildly restrictive beyond what any other group of examinees would be subjected to endure). We are caretakers of children who will be home with us during the exam. We are roommates, family members, and spouses of other people who will be working from home while we take the exam. This format is not only apparently technologically improbable, but logistically impossible.

I therefore ask the Court to grant the relief requested in the Diploma Privilege Plus petition and thank the Court for its time.

Respectfully submitted,
/s/ Brighid S. Tracy

Brittney Leyva
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Washington D.C., 20015
323-369-9471
BI9509a@student.american.edu

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

My name is Brittney Leyva and I currently reside in the District of Columbia. I am a recent graduate of the American University Washington College of Law, and an applicant for the California state bar writing to express my support in granting the 2020 October Maryland bar applicants emergency diploma privilege. I would like to thank the court for opening this public comment period, and for listening to the concerns bar applicants have about the licensure process this year. COVID-19 has had a devastating effect on our country and our city, and that effect has caused massive upheaval in the bar admissions process. I urge the court to approve emergency diploma privilege as an alternative path to full licensure in response to the COVID-19 pandemic. I would like to shed some light on the experience of California applicants, namely the extreme disrespect and outright disregard of our situation that the state bar of California has expressed to us. I share this in the hope that my colleagues in Maryland are not subject to the same treatment and that the court adopt the most equitable solution—Diploma Privilege.

On July 7, 2020, the State Bar of California held a hearing for public comment, where hundreds of students spoke and advocated for diploma privilege. We were met with extreme disrespect by one of the trustees who kept his eyes closed for a majority of the session, seemingly [disinterested](#) in the housing displacement and struggles of some bar applicants. Despite all of the [California law school Deans advocacy](#) in favor of Diploma Privilege and the hardships that will face bar applicants in California,¹ the California Supreme Court pushed back the bar exam to October and kept its remote format.² Myself and the rest of my law firm class are not only stressed about the bar, but also about the unpredictability of the COVID-19 pandemic, and the continuing protests met with violence in each of our current cities. Studying for the bar has proven challenging for all of us, especially when the exam [now requires](#) a stable internet connection for eight of the login sessions, with only a ten-minute window allotted. Should the applicant fail to log-in within the 10-minute window, the applicant fails the exam. This format creates extreme inequity for those without stable internet or the necessary space at home to efficiently take the bar exam.

¹ Diploma Privilege for All, Impact Survey, <https://twitter.com/DiplomaPriv4All/status/1280715456538488832?s=20> (Impact survey collecting data from 1,600 California bar applicants)

² Cal. Order RE: Bar Exam (July 16, 2020) https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20206/SB_BOT_7162020_FINAL.pdf

As you consider the many comments you have doubtless received these past two weeks, I ask that you consider the following key issues affecting bar applicants:

1. There will be over 30,000 applicants taking the online bar exam simultaneously in October. All of the smaller scale online exam attempts have either failed or experienced significant technical difficulties over the past several weeks, thus we cannot expect that the technology will work for 30,000.
2. Extegrity withdrew itself from the list of software companies administering the October exam. That leaves ILG Technologies and ExamSoft. ILG has experienced numerous, debilitating technical problems in Indiana, Nevada, and, most recently, Florida.³
3. Public libraries, coffee shops, law schools, and other public spaces remain closed in many areas in Maryland and in communities across the country where applicants may reside. Applicants without quiet, private living spaces cannot adequately prepare for the exam as they would have been able to under normal circumstances when these public spaces are open and available.
4. Many applicants live in small, crowded, noisy spaces with family or roommates. Many applicants lack reliable internet connection. Many applicants lack the financial means to remedy these issues. Such an environment is not conducive to an in-home, online exam.
5. The online bar exam does not allow the use of physical scratch paper or a test booklet. We have paid thousands in bar prep course funds to be taught how to use diagrams and other physical markings to deduce the correct answer and properly plan our essays. The online bar exam strips us of these tools. These critical tools are not only used for exam purposes, but also mimic real world problem solving in practice.
6. The pandemic has forced many to work from home. School districts are now moving to completely online classes in the fall. Applicants with young children must care for and supervise their children at home while studying for and taking the online bar exam.
7. A significant number of recent graduates have not yet secured employment. Those still looking for jobs, particularly in the public sector, are at a disadvantage because those jobs require proof of bar membership.
8. It may be difficult to adequately accommodate applicants with disabilities in an online exam. But requiring applicants eligible for disability accommodations, many of whom may be immunocompromised, to take the exam in-person to receive those accommodations unreasonably endangers their health.
9. Temporary licensure is not an adequate substitute for diploma privilege. Temporary licensure renders applicants ineligible for most public sector jobs. It also requires private sector employers to “take a chance” on an applicant that will have to take significant time off at a later date to study for and take the bar exam.
10. Delays in licensure have exacerbated the already precarious economic situation of 2020 bar applicants. The delay to October has already led to prolonged unemployment, job insecurity, and lapses in health insurance coverage. With student loan payments looming, healthcare costs ballooning, and a growing need to provide for themselves and their families, applicants need the opportunity to work right away.

³ See generally *October Exam Headed for Technological Disaster*, DP4DC (Aug. 6, 2020), <https://dp4dc.org/2020/08/06/october-exam-headed-for-technological-disaster> (providing background on the technical difficulties caused by ExamSoft and ILG, published before Florida’s failed live trial); Joe Patrice, *Florida Cancels Test Of Online Bar Exam Because, You Know, ‘Issues’*, Above the Law (Aug. 10, 2020), <https://abovethelaw.com/2020/08/florida-cancels-test-of-online-bar-exam-because-you-know-issues> (describing the issues with Florida’s bar exam).

The uncertainties created by delaying the bar exam to October, along with the clear inequities and unpredictability of conducting a massive online bar exam, uniquely and substantially harms 2020 bar applicants. Many of my colleagues, as a result of both the pandemic and the uncertainties of the bar exam, have had their employment offers both revoked or postponed indefinitely. We need a solution grounded in fact, equity, and compassion. That solution is emergency diploma privilege.

Respectfully,

Sincerely,

Britteny Leyva

[EXTERNAL] The MD Court of Appeals is seeking comments from the public regarding diploma privilege.

Thomas Blair <tmblairbvi@gmail.com>

Sun 8/23/2020 12:28 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

THOMAS M. BLAIR

NATIONAL SECURITY AGENCY, DEPT. OF DEFENSE, FORT MEADE, MD

tmblairbvi@gmail.com

August 22, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Thomas M. Blair, a 1976 graduate of the University of Baltimore (Evening) Law School; a retired U.S. Naval Officer; a retired member of the Pennsylvania Bar (27243); an active member of the District of Columbia Bar (448979), and a longtime resident of Baltimore County, MD, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege.

Because of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the very real operational concerns regarding the feasibility, effectiveness and safety of Examsoft, (the software the State Board of Law Examiners has adopted for Maryland's bar exam administration), the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

I write this message to urge the Maryland State Board of Law Examiners (SBLE) to adapt to the current crisis brought on by the COVID-19 pandemic by revising the state licensing system in Maryland to ensure that the legal needs of our communities are met during this uncertain time.

Specifically, I request that the Board enact an emergency diploma privilege for all May 2020 graduates registered to take the bar exam. An emergency diploma privilege would best address the inequities that would result from the already twice delayed and now modified administration of the July 2020 Bar Exam.

Emergency diploma privilege grants a license to practice law in Maryland to each student graduating from an accredited law school in May 2020. A group of legal scholars with expertise in law licensing recently suggested this approach as a viable and effective strategy, I support and recommend their working paper on the topic of alternatives to the July 2020 Bar Examination to you for your

[\[1\]](#)
review.

I fully support the analysis contained in that working paper. I believe and completely endorse the proposal that an emergency diploma privilege would best rectify any COVID-19 related inequities in the administration of the bar exam for the class of 2020, without compromising the quality of attorneys licensed in Maryland. The suggested emergency diploma privilege would remove the deep uncertainty and alleviate much of the stress brought on by COVID19 in a way that other alternatives cannot.

I am personally witnessing the deep personal concerns of 2020 bar examination candidates who are experiencing substantial financial and family difficulties being caused by the uncertainty of the exam software and uncertain accommodations for special needs candidates. Those students requiring additional approved accommodations have been seemingly ignored. Expressed statements from the August 18, 2020 letter from the SBLE states "Exam day procedures will prohibit the use of physical scratch paper ...and will not be permitted in the examination space." Scratch paper support is absolutely necessary for certain approved classes of examination candidates with special accommodation needs who have difficulty directly interacting with computer screens.

The online administration of the bar exam will certainly disadvantage those students who lack access to adequate internet connections, access to approved accommodations or quiet, distraction-free spaces conducive to taking the Bar exam. In addition, administration of the exam in small groups would still put them and their families at needless risk of exposure to COVID-19. The emergency diploma privilege would best rectify the inequities brought about by COVID-19, particularly for those students who have been forced to deal with COVID-19 over the summer.

As a reasonable alternative, however, Maryland might adopt what the legal scholars call an "emergency diploma-privilege plus" approach. Graduates could use their time to take online courses or CLEs designed to impart the same

[\[2\]](#)
knowledge tested on the bar exam.

An emergency diploma privilege with or without additional requirements would not compromise the quality of representation in Maryland. Setting aside the current debates over whether the bar examination accurately tests for the minimum competencies required in the legal profession, Maryland has a very high bar pass rate. In July 2019, approximately 81% of first-time bar examinees

^[3] passed the exam. Therefore, data suggests that most graduates are prepared to start practicing.

As a member of the legal and civic communities, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent is sufficient to ensure the quality of the profession for these prospective bar applicants. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public.

The stated requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a retired Naval Officer and soon to be retired National Security Officer, would greatly benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and favorable consideration on this urgent matter.

Respectively,

Thomas M. Blair
NSA Senior Fellow
Attorney at Law
CAPTAIN, USNR (Ret.)

^[1] Claudio Angelos et al., The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action (Ohio State Univ., Moritz Coll. of Law, Ctr. for Interdisciplinary Law & Policy Studies, Legal Studies Working Paper Series No. 537, Mar. 22, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3559060.

^[2] See Angelos et al., *supra* note 1.

^[3] <https://www.mdcourts.gov/sites/default/files/import/ble/pdfs/passfailstats.pdf>

Chinenyenwa Mpamaugo, MD MPH
Csm35@uw.edu

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Dr. Mpamaugo, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who has seen and worked with many youth as a pediatrician, understands the complexity of working with children in the legal system. I have personally seen the need for lawyers of all backgrounds and ethnicities who can bring to the practice the compassion needed to represent my patients. On a personal note this year has been a trying time for my brother who is currently studying for the bar exam. Covid has personally effect our family as it has hospitalized our mother and we have lost close family friends. Now more than ever, I feel is time for a Court order granting emergency diploma privilege to bar applicants and I would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Chinenyenwa Mpamaugo, MD

[EXTERNAL] Diploma Privilege

Liz Yarsky <eyarsky@comcast.net>

Sun 8/23/2020 1:21 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Elizabeth N. Yarsky

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August 22, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Elizabeth Yarsky, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam

administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members who would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Elizabeth Yarsky

Paul Sheehy Moe
Cryptologic Warfare Officer, United States Navy
moe.paul@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Paul Moe, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the spectrum of detrimental issues 2020 bar applicants are facing, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination. As a Naval Officer with significant experience in cyber security I am familiar with the technical requirements needed to administer a successful bar exam for thousands of participants. As such, I have little to no confidence in Examsoft's ability to administer the exam. Furthermore, due to the strict rules referenced in the SBLE's Frequently Asked Questions document, I have even less confidence that I will be able to be successful in an exam that does not allow scratch paper, something I have relied upon throughout my academic and professional career.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces significant hardship regarding stable internet, quiet location to take the exam, and inability to use scratch paper during the exam would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully submitted,

Paul Sheehy Moe
LCDR, USN

Lisa Kovacs
lisamariekovacs@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Lisa Kovacs, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces money being stolen from them, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Lisa Kovacs

[EXTERNAL] Comment on State Board of Law Examiners' Update on Remote Bar Exam

Abigail Cohen <cohen.abigail@gmail.com>

Sun 8/23/2020 2:10 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Thank you for soliciting comments on this important issue. As a Maryland resident and member of the Maryland bar since 1995, I am writing to urge the Court of Appeals to accept the Board of Law Examiners' plan and require applicants to the bar to take the bar exam if they wish to be admitted to practice law in Maryland. A remote exam balances safety concerns due to COVID-19 with the need to insure a high degree of professional competence for all attorneys admitted to practice law in the state.

The concerns about facial recognition software and possible hacking raised by the petitioners who requested a temporary waiver of the bar exam are valid and the Board of Law Examiners should take care to address them. However, these concerns are not a reason to allow applicants to practice law in Maryland without passing the bar exam.

Thank you for considering my views.

Respectfully submitted,

Abigail F. Cohen

Ms. Jenna Elizabeth Russo
jr2601a@student.american.edu

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Jenna Elizabeth Russo, 2020 graduate of American University Washington College of Law and bar applicant interested in being licensed in both Maryland and the District of Columbia, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I also advocate for reciprocity agreements between any states that ultimately decide to grant emergency diploma privilege.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Ms. Jenna Elizabeth Russo

[EXTERNAL] IMPORTANT: Diploma Privilege Comment

Frederick Edwards <frederick.edwards@student.american.edu>

Sun 8/23/2020 2:19 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To the Maryland Court of Appeals,

Diploma privilege is the most equitable certification process for the practice of law. This is the case in ordinary times, and more so now that a global pandemic runs rampant threatening the lives and livelihoods of every would-be lawyer.

The bar exam is said to be a test of minimum competency designed to protect the public from legal malpractice. The reality, however, tells a different story. Its original purpose is rooted in racism, and it measurably fails to protect the public. In practice, the bar exam serves to weed out those with fewer resources and less privilege, who need to begin working when student loans run out.

It makes sense that there should be some test for licensing. Unfortunately, the subjects to be tested are poorly connected to what a lawyer should know to be “minimally competent.” Some basic understanding of the court system, procedure, and professional ethics would make sense for the test. However, many other topics are entirely unnecessary. For example, many lawyers study property and domestic relations law to pass the bar and then never use that knowledge afterwards. It is analogous to requiring a football player to know the rulebook to 16 different sports, and on the test to be licensed to play football, they might see a question about football.

Further, anything a prospective lawyer should know should be and is taught in law school. If three years of law school can't teach prospective lawyers what they need to know, then two months of bar prep *certainly* can't. By passing the classes which every law school requires, such as civil procedure, professional ethics, and legal rhetoric, prospective lawyers have already proven their competency in important areas of the law.

Again, it *does* make sense to put prospective lawyers to the test before licensing them to practice, but law school does just that. The bar exam effectively puts prospective lawyers in double jeopardy, having passed their law school classes only to be tested again. The only difference is that law classes have more opportunity to better simulate the practice of law, and therefore properly test competence, whereas the bar exam is all about memory – which no good lawyer would rely on in lieu of double checking with research and rereading the law when relevant.

Bar prep service providers will no doubt lobby hard against diploma privilege. After all, they are highly interested parties who profit from the fear and desperation that arise at the mere mention of the bar exam. Additionally, those who came before may argue to

maintain the bar exam, out of a feeling that because they had to endure the hazing ritual that is the bar exam, so should future generations. True justice demands that such greed and jealousy be ignored to allow reason and fairness to win the day.

There is not a single strong, good faith, argument supported by evidence to maintain the bar exam. Not one. Any seemingly good argument or concern in favor of maintaining the bar exam would be far better addressed by looking at law school curriculums. A decision to listen favorably to arguments against diploma privilege would overlook the overwhelming weight of determinative evidence proving that diploma privilege is the only just path forward.

This pandemic has illuminated the bar exam's many problems, and created an incredible opportunity for bar certification officials to rectify them. This is the right time to do the right thing, to end the injustices brought on by the bar exam, and establish diploma privilege. Anyone who has graduated law school has proven themselves just as much as anyone who has passed the arbitrary post-graduation bar exam, and these people all deserve the license to practice law.

Do the right thing. License all who have graduated law school to practice law, unconditionally.

Sincerely,

Fred Edwards

Founder of the Political Law Society at the Washington College of Law

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Boulevard
Annapolis, Maryland 21401
COAClerkoftheCourt@mdcourts.gov

RE: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I write to urge the Maryland Court of Appeals to adopt diploma privilege plus for all registered bar exam applicants for the Maryland online bar exam scheduled for October 5-6, 2020. Adopting a diploma privilege plus to all current bar exam applicants would remove inequitable barriers and access to the practice of law given the unprecedented times we all face in light of the COVID-19 public health emergency. An online bar exam not scored by the National Conference of Bar Examiners would produce test scores that are unreliable. The unreliable test scores would impact people of color and other marginalized groups as a barrier to the legal profession. Additionally, states implementing online bar exams are experiencing technological complications suggesting that a high-stakes exam such as the bar exam is not the appropriate forum to handle such testing.

Besides, the bar exam is not the adequate testing measure for competency of the law. The bar exam measures one's ability to memorize for a three-month study period. After such memorization, the test is timed which does not provide a level playing field for those test takers who are not able to memorize, have a disability, or do not have the privilege to take time off from work to memorize the rules given their life demands and self-sufficiency mandates. This also disproportionately impacts people of color who are not able to sacrifice the necessities of life to take an inadequate measure of competency for the law.

The real practice of law requires lawyers to understand a set of facts, research the applicable law, and write a legal analysis without timed conditions with often multiple revisions. To force bar takers to sit for a bar exam under timed conditions and apply it to the practice of law would be grounds for malpractice. And, to perform an online bar exam during the COVID-19 pandemic and systemic racism for equal treatment in 2020 truly defines what bar takers in Maryland must face. Further, an online bar exam is not equitable for those without high-speed internet, a quiet study space, children at home who are in a virtual at-home learning environment, unemployment, high student loan debt, and many other issues that bar takers undergo during this pandemic.

Since no vaccine is in sight, temporary licensure does not make sense. For example, to temporarily license bar applicants then require them to sit for a bar exam only

to presume their license seem to highlight the need and/or value in the bar exam. Under the circumstances, practicing law comes with experience and from working under the supervision of a seasoned lawyer. That's the requirement for good lawyering and not the bar exam. Just think, no one highlights the bar exam in their professional highlights more so than the experience received since obtaining the Juris Doctor degree—the ultimate qualifier for the minimum competency of law. Those involved in the practice of law with a temporary license would be forced to withdraw their representation which would harm and endanger clients to include the most vulnerable.

Diploma privilege in Maryland should be made available to all current bar applicants as seen with diploma privilege in Washington State, Utah, and Oregon. Limiting the diploma privilege to 2020 graduates creates a disparity for those graduates of ABA-accredited law schools who graduated prior to 2020. A number of circumstances could have prevented their licensure to date. But, that's not on this Court to make that determination. But, one thing is for certain, no one knew that we would be in the worst public health emergency in 100 years and the worst economic times since the Great Depression. That said, all current bar applicants registered for the October 5-6, 2020 online exam should receive equal treatment with respect to diploma privilege. Since every bar applicant would be taking the same exam.

The Maryland Court of Appeals should consider the following:

- Diploma privilege for all current Maryland bar applicants for the October 5-6, 2020 online bar exam.
- Maryland law school graduates should qualify for diploma privilege.
- Bar passage rate of the ABA-accredited law school for diploma privilege.
- Current law clerks in the capacity of a judicial clerkship at all levels (state and federal) should qualify for diploma privilege.
- Supervised practice hours required under a licensed attorney, state and/or federal Judge if the bar applicant is a current law clerk in a judicial capacity.
- Passage of the MPRE with a scaled score of 75. If unable to sit for the MPRE in-person due to the COVID-19 pandemic then implement an ethics online course where bar applicants can satisfy at their leisure.
- Create a Maryland Educational Component Test of federal common law. This testing component can be completed at the bar applicant's leisure. Upon complete, bar applicant's can upload their course certification.

Current bar applicants registered for the Maryland online bar exam in October 5-6, 2020 have undergone tremendous obstacles during these challenges. Many have lost loved ones because of the pandemic, experienced virtual funerals, lost their jobs, are unemployed, been in quarantine while figuring out a plan for their children. I, personally, lost a loved one during the pandemic. Experiencing their funeral over a streaming service was extremely emotional on top of a pandemic while battling systemic racism. These circumstances would make studying for a bar exam extremely challenging and unrealistic. This advocacy to grant diploma privilege for all current bar applicants registered for the

online bar exam is good and necessary trouble as the late civil rights icon, Congressman John Lewis so rightfully proclaimed. This country is so racially divided and it's time for Maryland to become the beacon of light for the country when it comes to the licensing of lawyers in 2020.

Therefore, I urge the Maryland Court of Appeals to grant diploma privilege plus to all bar applicants registered for the October 5-6, 2020 bar exam. I further urge that the Maryland Court of Appeals oppose any form of temporary diploma privilege. Thank you for considering my views and for the efforts the Maryland Court of Appeals has taken to address these unprecedented times.

Respectfully yours,

/s/

[EXTERNAL] Adoption of Diploma Privileges

Sarah Fraenkel <sarah.fraenkel@student.american.edu>

Sun 8/23/2020 2:45 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To the Maryland Board of Bar Examiners,

I am a member of the 2020 graduating class from American University Washington College of Law and an applicant for the Maryland Bar. I am writing to express my fervent support for the adoption of diploma privileges.

As a recent graduate, I had hoped to graduate in May, take the bar exam in July, begin working in August and in due time receive my results and move forward accordingly. However, that is not the world that any of us find ourselves in. I am incredibly lucky to be one of the graduates that is still employed in the legal field, and who's employment is not dependent on bar passage nor been rescinded due to the ongoing pandemic. However, the uncertainty and the anxiety that has come from this process has created a great sense of unease amongst the legal community.

When the bar was initially postponed from July to September, I was not sure how I would be able to pay for the extra months of unemployment. Without any income and with loans, rent, car payments and with insurance lapsing, I began to think about the ways in which I would have to make up for the time gap. Should I take on a job that puts me in potential contact with Covid? The risk there is that if I should contract the virus, would I be able to study? Would I not know I was infected and subsequently be denied admission to the actual bar examination? What if I get severely ill and am unable to study?

However, once it was announced that the exam would be postponed until October and would no longer be UBE, it was no longer worth the risk. I made the decision that I would not dedicate the same amount of time as a full bar exam, pay the same amount of money as the full bar exam to come out with a non-transferrable score. For many of us, myself included, this does not make financial sense as we attempt to navigate the bar examination and the costs associated with it. While it was announced a full month later that there would be reciprocity, for many, they had already withdrawn. Or in my case, I had already informed my job when I would be able to begin working, and therefore unable to study to the extent necessary. Further, as other jurisdictions have moved forward with the bar examination online, the process has been plagued with technical and systematic failures that I am sure you are all aware of and need not delve into.

While not all will agree for full diploma privileges, it is the only way to ensure that everyone, regardless of socio-economic status is able to move forward in this profession. Not everyone has the ability to be in a quiet room for two or three days without interruption. Not everyone has a secure internet connection in their home. Our profession seeks to help those who are less fortunate and we should not punish those who are attempting to join our ranks but are still in a lower financial sphere. The safeguards that many fear will fail are still available to us. Having the bar exam does not change the process of sanctioning attorneys. Any attorney who is found to be unethical, break the law or act in a way that is not in line with the standards we have imposed on ourselves is still subject to the sanctions process.

I ask that the board of examiners consider the whiplash and the serious impact that the changes in the bar exam have left on the 2020 graduates. While I ask from a relative place of privilege, I am still economically impacted by being paid at a similar rate to that of which I was paid as a paralegal before taking on three years of law school debt, because I am unable to sit for the bar exam. I would strongly request that the great state of Maryland consider diploma privileges as a necessary measure during these new and extraordinary times.

Sincerely,

Sarah Fraenkel

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Boulevard
Annapolis, Maryland 21401
COAClerkoftheCourt@mdcourts.gov

RE: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

As a current District of Columbia registrant with a disability, I recognize the devastating effects the COVID-19 pandemic has had on our country. More specifically, I recognize the distressing effects it has had upon *all* bar applicants registered for the District of Columbia bar exam and upon those in our community who most need access to justice. Those registered to take the Maryland Bar exam is no different. There is no doubt these are unprecedented times. I therefore urge the Maryland Court of Appeals to grant diploma privilege for *all* bar applicants registered for the Maryland bar exam. The time is now to adopt an alternative pathway to permanent bar licensure in the Maryland given the COVID-19 pandemic.

The COVID-19 pandemic has created enormous anxiety and major disruptions to every facet of life for those registered to take the bar exam. As Chief Justice for the Maryland Court of Appeals, could you imagine studying and taking a bar exam during a pandemic that has taken the lives of over 173,000 Americans to date and during a time where anti-blackness and systemic racism is an overlapping pandemic? COVID-19 and racial unrest are having a disproportionate impact on people of color not only in Maryland but also throughout the country.

The following responses answer your specific questions:

I. What specific needs of prospective lawyers, clients, and employers would be addressed by granting a diploma privilege or expanding the scope of temporary practice? What specific concerns would be raised by taking either step?

As a current bar registrant with a disability, I am concerned with the technological complications those states have witnessed that are using the online bar exam (e.g. Michigan, Indiana, Nevada, and Florida). On July 29, 2020, Chief Justice Bridget M. McCormack of the Michigan Supreme Court wrote a letter to online bar exam registrants to address the online bar exam technical complications that stated, "Under normal conditions, the bar exam is a life event most recall as an ordeal. But yesterday's examination issues made the experience harder, and I am so sorry for that. While this may not be consolation, be assured that we will find out exactly what went wrong and address it for those affected and for future applicants." Chief Justice McCormack further stated, "There are larger questions about the Bar Exam that should be discussed, too, such as: (1) Is the bar exam the best way to measure competency; (2) Does the bar exam create

unnecessary and unfair barriers to the practice of law; and (3) As we think about increasing access to the justice system, are there ways to fundamentally change how lawyers are trained, licensed, and regulated.” As stated above, there are serious issues with taking a high-stakes exam such as the bar exam online particularly with a rapid technological patchwork to make it happen. While the Maryland Court of Appeals is commended for moving forward with an online bar exam instead of an in-person bar exam in the midst of a pandemic, bar registrants need to be licensed immediately to provide legal services to those impacted by the COVID-19 pandemic in Maryland. Also, granting the permanent bar license would assist with landing employment today given the economic impacts of COVID-19. Therefore, diploma privilege is the only viable solution under these circumstances.

For those students with disabilities, an online bar exam is inequitable because of the prohibition on physical scratch paper as some are not able to write coherently on just a screen when outlining the MPT, MEE, and even mapping out MBE questions. Even bar exam registrants without a disability need physical scratch paper to outline their MPT, MEE, and MBE questions. This is analogous to a basketball player in a championship game, but the basketball player is prohibited from using his or her legs to make shots. Or, what about those disabled students who are flagged for moving given the proctoring software? Besides, the real practice of law requires weeks if not months to research legal issues based on a set of facts, write a sound legal memo or motion, and make countless edits of the attorney’s work product before submission. A bar exam doesn’t teach these important practical skills, so the bar exam is not the best way to measure “minimum” competency. A condensed version of an online bar exam with so many limitations during a pandemic only amplify these inequities. Not having a quiet space to take an online bar exam yet alone having access to the internet are other issues that are certain to impact current bar exam registrants generally but more so among people of color who are frequently marginalized.

The proposed rules and requirements for an online bar exam are unreasonable and will disproportionately impact low-income individuals, Black, Indigenous, and People of Color. Also, Juris Doctor degree holders with disabilities will be negatively impacted by a field that has had systemic barriers to access. The facial recognition technology required for the online administration of a high-stakes online bar exam presents its own issues in light of a pending presidential election in November 2020 (*the election date is nearly a month apart from the October 2020 online bar exam in Maryland*) with respect to privacy issues, artificial intelligence concerns, racial bias, cyber-attacks, and technological glitches. Therefore, the Maryland Court of Appeals granting diploma privilege to *all* current bar registrants is the only equitable solution to address these unprecedented times in the midst of the COVID-19 pandemic.

Granting diploma privilege would certainly put bar exam registrants to work immediately given the high student loan debt acquired over the course of obtaining their Juris Doctor degrees. I can attest personally to this fact after attending law school in the District of Columbia, Maryland, and Northern Virginia area where the cost of housing is overly expensive as well as the exorbitant cost of law school attendance. Earning the Juris Doctor degree is the “minimum” competency that’s needed for bar licensure. Bar registrants have successfully graduated law school, held various legal internships, externships, clinics, and some have clerked at the state and federal level all without taking a bar exam. I can further attest after graduating from a District of Columbia law school that I received a quality legal education, held nearly 10 legal placements, took part in a

480+ hour legal services clinic under the supervision of a clinical attorney, managed the case load for 6 indigent clients, and completed law coursework that adequately prepared me for as well as augmented the practice of law by the nation's top legal experts. Without a doubt, these experiences have prepared me for the minimum competency of the law. Those registered to take the bar exam in Maryland are no different.

Therefore, I urge Maryland to follow the lead of states such as Oregon, Utah, and Washington State in creating diploma privilege, allowing *all* current bar registrants in Maryland to be admitted to practice law without the bar exam as a requirement. The diploma privilege option would apply to those *all* current bar registrants in the Maryland who meet the moral character requirements to qualify for admission to the bar.

II. What limits or conditions should be imposed on any diploma privilege or expanded practice?

Bar registrants granted diploma privilege in Maryland should receive a passing score on the MPRE to ensure that new lawyers are aware of their ethical obligations. However, if the MPRE is not technological feasible to be offered online due to COVID-19, professional ethics can be offered through an online course certification to be completed at the bar registrants' convenience. For years, the State of Maryland did not require the MPRE for bar admission to practice law. Given the COVID-19 pandemic, similarly, argued with the online bar exam, alternative pathways to fulfilling the MPRE should be considered under these circumstances.

Second, Maryland can implement an online federal common law component such as a Maryland Educational Component Test and the continuation of CLE requirements for newly minted attorneys to stay abreast of the forever changing landscape.

Third, current bar registrants in Maryland granted diploma privilege should certify their supervision under a licensed attorney for a specified period of time (e.g. the 360 hours of legal work under the supervision of an experienced attorney or judge). The certification should be notarized and/or confirmed with a reference check.

Fourth, current bar registrants in Maryland can satisfy the supervision requirements by legal placements with State and Federal Courts, Legal Aid, in-house legal departments, law firms, and other legal clinics in the Maryland area and other federal agencies.

Fifth, the Maryland Court of Appeals can require its members to the bar to complete at least 100 pro bono hours a year to demonstrate the commitment to marginalized and underserved communities.

Lastly, when weighing the decision to grant diploma privilege, the Maryland Court of Appeals should take into consideration *all* Juris Doctor graduates of a Maryland law school given the high-quality legal education these law schools historically offer, their direct access to clinical/internship placements in the nation's capital, their national reputation, and the Court's familiarity with not only these law schools but also their law graduates. In addition, the bar passage

rate of ABA-accredited law schools. An 86% threshold has been placed on diploma privilege for some jurisdictions under these circumstances.

III. What role can or should law schools and the Bar play in addressing these issues?

Maryland law schools provide high-quality legal education suitable for minimum competency to practice law. Establishing a clinic and/or pro bono requirement conditioned upon graduation requirements of the Juris Doctor degree would provide law students the opportunity to acquire and work towards their “supervised practiced” hours for bar admission even before graduating law school.

IV. Conclusion

Therefore, I urge the Maryland Court of Appeals to grant diploma privilege for *all* current bar registrants. An online bar exam would not ensure fairness and equity among those currently registered given the varied socio-economic impacts that an in-person bar exam would offer in normal circumstances. This is even more so in light of the current public health emergency and the technological complications experienced by online exam vendors thus far. These unprecedented times demand an alternative pathway to permanently license *all* current bar registrants to practice law in Maryland.

Thank you for considering my concerns and views. Also, thank you for your attention to support access to the legal profession during these challenging times. If I can provide more information, please let me know.

Respectfully,

/s/

A Concerned District of Columbia Bar Exam Registrant in support of neighboring Maryland Bar Exam Registrants

dcbarexamregistrant@gmail.com

[EXTERNAL] Maryland Bar

Pamela Merani <pamelamerani@yahoo.com>

Sun 8/23/2020 3:06 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I am writing to this Honorable Court to respectfully request Diploma Privilege be granted to the Class of 2020 law school graduates.

My son graduated from the University of Baltimore School of Law this past May, 2020. Since then he has been working and studying for the bar exam. I am extremely proud of my son, who was able to complete law school during these unprecedented times.

My son still lives with me so he can focus on work and the bar exam. In order to advance in his career, he must pass the bar exam. My concern is that he is being required to take the exam on line. I am worried about the stability of the internet service here in our home, particularly now that my daughter has been told by her University that she must take her courses on line as well.

I worked 2 jobs for years to ensure that my children would not have any loans from their undergrad studies, but my son is completely paying for his law school loans on his own. As I've already mentioned, in order to further his career at the States Attorney's Office, he must pass the Bar Exam.

I understand the challenges the Court faces in administering the Bar Exam in person, and due to COVID19, that may not happen in the foreseeable future. I ask you to please take into consideration the challenges my son and his classmates face in taking the Bar Exam on line, and ask that the Honorable Court grant Diploma Privilege to the Class of 2020.

Sincerely,
Pamela Merani

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Blasey, Kimberly <blasey.k@law.wlu.edu>

Sun 8/23/2020 3:32 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges:

There is nothing wrong with taking an unprecedented measure during unprecedented times. Preparing for the bar exam is an immensely stressful process during regular times, but the class of 2020 has faced incredibly severe obstacles which have rendered the process entirely unfair. At this point, the October exam will only be a test of wealth, rather than of competency. Those who have the resources to pay for the additional costs of this exam will pass and those who do not will fail. I have heard from many people already who have spent upwards of \$250 to enhance their wifi and computers to take this exam. Others are paying to rent out quiet office space to take the test. The SBLE claimed that these expenses are not necessary, as examinees can take the test in a public library. However, they also told us that we would fail if another person enters the room while we are taking the test, which seems highly likely in a public library. Access to a private, quiet space is a privilege that many people cannot afford—especially people who have roommates, children or pets. In such trying times where many have already lost their jobs amidst a pandemic, these additional expenses to take an exam become extremely burdensome.

Additionally, the software that examinees are supposed to use is currently under an FBI investigation. It is manifestly unfair to ask thousands of examinees to use a software that is under a federal investigation for a cyber attack. Now, we are not only expected to incur the additional expenses to take this exam, but also to give up our rights to privacy on our computers. It is reasonable—and probable—that ExamSoft will be hacked again, especially considering the fact that the SBLE stated the reason for the hack in Michigan was caused by an influx of internet traffic to a certain site at the same time. In October, there will be 38 times the amount of test takers using the ExamSoft software than there were during Michigan's test. SBLE responded that instead of accessing that certain site, they would text us the passwords we needed. However, they also told us that we would automatically fail if we had a cellphone in the room. Therefore, it seems likely that the thousands of applicants will need to access the ExamSoft hacked site to reach our passwords. Greg Sarab, the founder of Extegrity, believes

the software is not adequate or safe to use in a large scale remote testing format. Importantly, he also co-founded ExamSoft. A hack during the October test is more than likely. Assuming that risk is an unfair ask of the 2020 examinees.

There are various other concerns with the October test. Many people have lost their school-sponsored health insurance and have been forced to incur substantial healthcare costs because they cannot obtain health insurance through their postponed jobs yet. Other people may have disabilities or health situations such as pregnancy that will prevent them from staying in view of the camera frame during the lengthy exam segments. Others with learning disabilities will struggle due to the “no scratch paper” rule. Failing the test for one of these reasons does not show legal incompetence, but rather is a sign of lack of privilege.

The October 2020 examinees are not asking for a free pass—in fact, quite the opposite. We have already faced obstacles that no other class has faced. In addition to those mentioned, we have persisted through the emotional stress of a pandemic, watching friends and family members become ill, having our jobs delayed or rescinded, and having the exam postponed not once, but twice. Diploma privilege for this class would be anything but a “privilege.” It is the only fair and equitable response to the unorganized and chaotic plan for October.

Temporary licensure would not solve any of the above-mentioned problems. Requiring us to take the exam a few years from now would be incredibly disruptive to our careers. Employers would be reluctant to hire anyone who will later have to take months off to study. Instead, granting diploma privilege with additional CLE requirements and a passing MPRE and Maryland law competent score would ensure that this group is competent. We ask that you respond with fairness to this unprecedented situation during a global pandemic.

Respectfully,
Kimberly Blasey

[EXTERNAL] Comments About MD Diploma Privilege

Addison Chappell <addisonchappell@yahoo.com>

Sun 8/23/2020 3:46 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Court of Appeals and Staff:

The COVID-19 pandemic has presented many issues, and I understand you all are in a difficult position. I want to start by thanking you all for allowing us to send our thoughts about diploma privilege. I am in favor of taking the bar exam in October if the software is safe. If the Court of Appeals ("COA") determines that administering the bar exam this October is not possible, then I would like to add my voice to those advocating for permanent diploma privilege. I am, however, resolutely against temporary diploma privilege. This is because temporary diploma privilege will be detrimental to my overall career, and I must pass a bar exam or get diploma privilege before continuing my career in the legal field.

Overall, my goal is to take the bar exam this October. I believe that the bar exists for an important reason to educate new lawyers. Moreover, I also want to transfer my bar score to several states without having to take multiple bar exams. Although I fully support taking the bar this October, I am concerned with the recent failures in Indiana, Michigan and Florida when those states attempted to administer an online bar exam. Unless the COA can guarantee no issues will arise on exam day, it makes sense for the COA to grant permanent diploma privilege.

I am, however, resoundingly opposed to cancelling the bar exam and undergoing temporary diploma privilege on a 1-3 year basis. Three years into the future is a highly inappropriate time to begin studying for the bar exam because I would be in the middle of my career and dealing with other post-education life difficulties. Such a delay, notwithstanding the delays we have already been through, would add more unnecessary uncertainty at a horrible time where the legal market is hemorrhaging jobs and the COVID-19 virus is wreaking unstoppable havoc. Temporary bar admission will lead to more roadblocks in my legal career, and I believe that permanent diploma privilege would alleviate most of these concerns and add a much-needed level of stability to this already uncertain future.

Thank you for taking the time to read this short message. I sincerely appreciate all of the time and energy you all have put into deciding this issue.

Thank you,

Addison Chappell

ELLEN HUANG, MS
ERHUANG15@GMAIL.COM

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Ellen Huang, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces racial and gender discrimination and issues would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Ellen Huang

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Emily Collinson <emilybcollinson@gmail.com>

Sun 8/23/2020 4:32 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Emily Collinson, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces an upcoming lawsuit filed against my former employer would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Emily Collinson

Sent from my iPhone

To Chief Judge Barbera,

I seek to address the Court in support of diploma privilege and comment on my reservations for the Maryland 2020 Remote Bar Exam. Recently the State Board of Law Examiners responded to a petition filed on behalf of applicants such as myself requesting a waiver for the UBE requirement for admittance to the bar for July 2020 applicants.

The State Board of Law Examiners (SBLE) efforts in seeking to administer a test cannot be understated, and I am grateful they chose to forgo an in-person exam considering the dangers of COVID-19. However, their response did not address all of our concerns as applicants; specifically the disproportionate impact the test would have.

The SBLE commented on portability and advocated that the remote exam would give applicants flexibility in that regard¹. While this is true, I am not concerned about portability as an applicant. I am concerned about the inequity of the exam, which was not even remotely addressed to a suitable extent by the SBLE in their response. To the portability argument, which has also been utilized by the NCBE² to argue against diploma privilege, I say that I am a graduate from the University of Baltimore School of Law, and I have plans to practice within Maryland. At most, regarding portability I would wish to practice in D.C and while diploma privilege would not grant me that right away, pursuant to the District of Columbia State Rules Section 46(e)(3)(A) after five years of practicing law in the state of Maryland I could gain admittance to the D.C. Bar. Diploma privilege provides a way for those of us eager to begin our legal careers and seeking to pay off our large student loan debts; I have approximately \$50,000 of debt, a way to practice in the field sooner despite regardless of any delay in portability. Many have already lost opportunities because of the delay in the administration of the exam.

No remote bar exam has never gone off without problems. While it is comforting that the ILG's software is not the one to be used, Examsoft has not had a successful application of the bar. Examsoft has sought to rectify the problems that lead to the denial of service attack in Michigan, which crippled their ability to give a test. Yet additional technological concerns remain, such as the possibility that our test answers could be lost. Over 140 applicants' answers for the LSAT were lost, forcing those applicants to have to retake the exam.³

As to the SBLE's response regarding the bar exam becoming a test of resources rather than competency, their response is inadequate. They do not address the disparate impact that the Maryland Deans spoke of in their letter to the Court. Nor did the SBLE address that the ABA 10G20A found in a " recent survey....that a majority of bar applicants do not believe they have reliable internet access, and that white applicants are about 71 percent more likely to have such

¹ October 2020 Remote Bar Exam Update, Md. State Board of Law Examiners, <https://mdcourts.gov/sites/default/files/import/coappeals/pdfs/remotebarexamreport202008.pdf>

²Stephanie Francis Ward, Bar exam does little to ensure attorney competence, say lawyers in diploma privilege state, ABA Journal, <https://www.abajournal.com/web/article/bar-exam-does-little-to-ensure-attorney-competence-say-lawyers-in-diploma-privilege-state>

³ Caroline Spiezio, LSAT maker says it lost about 140 online test takers' scores, Reuters Westlaw News, <https://www.reuters.com/article/lawyer-lsat-scores/lsat-maker-says-it-lost-about-140-online-test-takers-scores-idUSL2N2F12WE>

access when compared to black applicants. The same survey found that most applicants do not have access to a quiet space to take a remote bar examination, with white applicants again being substantially more likely to have access to a quiet place than an applicant of color.”⁴ The SBLE seeks to use the fact that there have been no emails directed at them regarding the disparate impact applicants are facing to argue that the problem is not as far-reaching in Maryland as DP4MD believes. Yet they have never attempted to survey applicants, asking them how a remote exam may impact them.

The SBLE faults applicants for not reaching out when they just as easily could have reached out to us considering the character and fitness application; they required us to provide contains nearly every detail about our lives. Not to mention when applicants do reach out to the SBLE with questions, we receive no response. In June, I asked SBLE how the exam's scoring would be impacted based on the shortened exam, and they never responded.

Additionally, SBLE tries to mention that the law schools may provide a testing area for their alumni. The SBLE says that they “expect” law schools to make arrangements to help their alumni is not addressing the disparate impact question. Expecting something to happen does not mean it will happen or that they have even arranged it so that it will happen as a means of addressing the disparate impact. Their answer is just a means of passing off the burden of administering a test fairly to other organizations.

Finally, the SBLE’s made comments about diploma privilege requirements in other states and sought to use those requirements as a means of devaluing the benefit of diploma privilege. However, there is nothing to suggest Maryland has to follow what other states have set out. The NCBE, which has a financial stake in this as they make the exam we are advocating to avoid, has also utilized the argument proffered by the SBLE as a means to strike back against diploma privilege stating it “would create inconsistency in the qualifications of new lawyers (dependent on which school they attended) and introduce subjectivity into the standards for minimal competence to serve the public”⁵ However, this ignores the fact that there is little to no empirical data suggesting that even the bar exam, which the SBLE and NCBE advocate strongly for, can measure the competency of applicants.⁶ The bar exam is a discriminatory gatekeeping mechanism⁷ Continued adherence and dedication to it only prevents us from forging a new, more equitable path with diploma privilege.

Respectfully,

Isabelle Ferraro

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⁴ Nesha R. Christian-Hendrickson, Esq., 10G 20A ABA Resolution, ABA, <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/10g-annual-2020.pdf>

⁵ Stephanie Francis Ward, Bar exam does little to ensure attorney competence, say lawyers in diploma privilege state, ABA Journal, <https://www.abajournal.com/web/article/bar-exam-does-little-to-ensure-attorney-competence-say-lawyers-in-diploma-privilege-state>

⁶ Valerie Strauss, Why this pandemic is a good time to stop forcing prospective lawyers to take bar exams, Washington Post, <https://www.washingtonpost.com/education/2020/07/13/why-this-pandemic-is-good-time-stop-forcing-prospective-lawyers-take-bar-exams/>

⁷ Id.

Talia Cowen
Teacher of the Deaf, Arizona
talicowen@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Talia Cowen, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community facing the tumultuous challenges and risks of being a teacher during this pandemic would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Talia Cowen

Dear Your Honors,

I am a recent graduate from the University of Baltimore, School of Law and an applicant for the upcoming Maryland bar exam. I write to the Court today in hopes that the Court will step in to ensure that the bar exam does not go forward as planned. In fact, there should be no bar exam at all, at least for this class of graduates. Alternatively, if the exam is given, it must be redesigned to ensure a level playing field. While I understand that no graduates want to take the bar exam, there is no dispute that this is a unique situation deserving of unique analysis. Please review the following in support of my stance.

The State Board of Law Examiners Has Not Attempted to Provide a Just Option

As a threshold matter, I'd like to be very clear about something: I am genuinely disgusted and insulted by the way this has been handled by the State Board of Law Examiners ("SBLE"). The use of such extreme language is not something generally appropriate for legal writing, but this situation calls for it. SBLE's brief to the court, especially the allegation of a "paucity of emails," has really shown how little it is concerned for the applicants and the legal profession as a whole. If SBLE were concerned about ensuring it considers all options for the exam, it would have requested input, had a public forum, sent out surveys, or one of the many other ways to obtain information. To sit around waiting for emails is unprofessional and left wanting, and it is juvenile and factually inaccurate for SBLE to assert that the alleged "paucity of emails" indicates that applicants have little concern for the current plan. I know a number of applicants who have emailed SBLE and received non-responses. I know a number of applicants who are aware of the non-responses and chose not to email out of futility. (I am one of those people.)

I also know that SBLE has blown deadlines to provide information to applicants and released information at 4:35pm on a Friday (when SBLE offices close at 4:30) in an effort to avoid dealing with feedback until the following Monday. We are not dumb. We are not naive. It is very clear that SBLE has put little effort into considering the concerns of applicants and has done little to ease our minds in light of an unprecedented situation that has everyone (rightfully) concerned for the future. To claim otherwise is irrational and insulting. Consider this, SBLE has presented the applicants as whiny, yet suggests that applicants should have sent more emails; that makes no sense. Is SBLE suggesting that if we "whined" more, then it would act differently? I

doubt it. But I am happy to point out some of the many issues with the exam as currently planned.

Having This Bar Exam is a Terrible Idea and Will Be Detrimental to the Legal Community

First, the bar prep process itself has been compromised. As Your Honors know, even with the technological changes in bar prep courses over the past few years, the bar prep process has been effectively the same for decades. It is something that law school graduates can count on, and applicants are comforted knowing that many others before us have gone through the same thing. Well none of the applicants before us have gone through this. Since graduation, we have been advised multiple times to pause our bar prep and start again closer to the exam. This is based on the bar prep programs being designed such that applicants “peak” at the exam time. But our trajectory has been all over the place, far from the standardized situation experienced by the vast majority of previous graduates.

Second, applicants with jobs have been put in a difficult position. I work full-time and did so throughout my entire law school career. I worked very hard. I sacrificed a lot. And there was an expectation that I could focus on my career once the exam was given in July, but that has not been the case. Now I am not blaming SBLE for the situation we are in. Obviously COVID is out of everyone’s control. But my employer was aware that my studies would be complete by the end of July. We purposefully postponed certain projects until that time. Now, I am stuck in a position where I am expected to complete these projects that demand 50 hours a week of work, while also doing bar prep until October. This is an experience shared by many applicants. Aside from the time allocation issues, the stress alone – constantly feeling like I’m failing at my job and bar prep due to being spread too thin – sets me up for failure on the exam, despite efforts to be prepared. This is a detriment to the applicants individually and the legal community collectively.

Third, the extreme stress I am experiencing comes from knowing that the exam is setup for failure as currently designed, specifically due to the SBLE cutting the exam in half. By cutting it in half, SBLE has made each item effectively double in value, which increases the variance. If a student does decently on most of the exam and botches a single essay, it could lead to a failure. How is that fair? If anything, the design should be restructured to make things less difficult, given the current landscape. Why are we making it more difficult to pass? The consensus

among applicants (and those in the legal profession to who I have spoken) is that this change is most likely to benefit the graders who will have less time to grade everything by November. Maybe this is unwise of me to admit, but, to be perfectly frank, I am not concerned with the graders workload. Let's all be professionals here. We are paying a lot of money for bar prep and the exam itself; we expect top notch service. If my boss asks me to do a job and suddenly we realize that it requires twice as much research, I would never even consider saying "well I'll just do half." I would ask for assistance or state that I am not capable. Similarly, if SBLE is unable to provide such services, it should say so; it should not change the structure for its own benefit.

Fourth, the artificial intelligence ("AI") software as currently planned is going to cause so much more discomfort, well beyond the acceptable amount of discomfort that generally comes with the bar exam. I have to stare at the screen the entire time? Are you joking me? That is absurd. We are not robots. For example, when I read a convoluted question involving multiple parties/issues and start getting confused, I look up, down, or into the distance. It is similar to turning down one's radio when arriving trying to see the numbers on the houses at one's destination. The extra stimulus makes it difficult to focus. It's the same with this – staring at the screen is an extra stimulus, so I stare away from it. This may last 5, 10, 15 seconds. This is an exam technique I have used since high school, and it is engrained in me. Now I have to avoid doing it (which will be impossible) or run the risk of the AI software flagging it and SBLE determining that I was cheating by looking at notes hung up somewhere? Sounds unrealistic to me. Add to this the fact that we cannot have scratch paper because of possible cheating. Well scratch paper has been a tool on this exam forever, and we are taught throughout law school how to diagram things to make sense of them. SBLE stated that we get virtual scratch paper, to which I literally chuckled out loud. Using a pen/pencil to draw diagrams with the parties to a case and making margin notes while synthesizing a case is not a skill transferrable to virtual scratch paper when we have been doing it a certain way for years now. We aren't working on tablets here. So, again, SBLE's solution is to make things harder on the applicants in an effort to make it easier on SBLE, in this case to identify alleged cheating.

Fifth, I am actually of the opinion that the AI software will make the playing field more uneven, as opposed to leveling it out. Let's stipulate for a moment that SBLE is correct in assuming that

applicants are going to attempt to cheat. Isn't the AI software actually going to reward those who take more time and effort to find a way to cheat successfully? Or is SBLE so arrogant as to think they will eliminate cheating? Let's be rational here. Yes, the software will likely catch some cheaters. But the AI software has unintended consequences that will ultimately penalize the majority of applicants at the benefit of a minority. I can think of a number of ways to cheat and get away with it by beating the software. Will I use them? No. But many will, and we are increasing the odds that the immoral become a part of the legal community and the moral have to retake the exam in February. We should be leveling the playing field, not increasing variance.

In the end, I could go on and on about all the issues with the exam as planned and how it does not ultimately benefit the legal community, which, at its core, is the point. I could include facts about the other states who have already had bad experiences, last second cancellations, security breaches, software companies refusing to do the bar exam, etc. However, I'm confident that the Court is already aware of these situations; we are all well aware of the bar exam failures in 2020. Yet, the plan is to march on despite little data to support that this is a good idea? Again, let's be rational here; this exam is a terrible idea and will be a detriment to the legal community by keeping out worthy, moral applicants.

If We Are Going to Have the Exam, It Must Be Redesigned

Alternatively, if the Court determines that a waiver is not the best solution, the exam must be redesigned based on the obvious flaws previously discussed. I will not rehash the points I've made, rather provide suggestions for improvements.

First and foremost, just make the exam open note. Seriously, what are we doing here? We're giving an archaic exam that mostly tests one's ability to memorize and regurgitate, a skill that is seldom useful in the legal community. Especially when (as we all know) applicants will forget 80% of the substantive law within six months of taking the bar exam. Let's focus on the legal analysis. We have the opportunity to revamp an outdated exercise that does not truly test the likelihood of one's success in the legal community. In this world of specialized practitioners, vastly different from the typical general practices of previous generations, why worry about one's ability to memorize the elements of manslaughter for an applicant that will be working in transactional law? It's absurd. Even if the exam is open note, we will still need to study all of the material. And, by making it open note, applicants can focus on the legal analysis involved in

answering questions and writing essays, not focusing on memorizing mnemonics so that they don't forget to cover possible defenses to formation on a contracts exam. Please encourage applicants to understand how the law works together and how to analyze a fact pattern; that's the test of a good lawyer.

Second, keep the AI software focused on eliminating an applicant's ability to use the "Phone-a-Friend" or "Ask the Audience" lifelines: having someone else in the room, having someone on the phone, having someone on a video chat, etc. This goes hand in hand with the open-note suggestion. Applicants should not be worried about where they are accidentally glancing or how long they've been staring off into space as they try to remember some nuanced rule exception. Applicants also should not be worried about how other applicants are going to find a way to cheat. During an exam, applicants should be focused on the exam. And trust me, even the most focused people are going to have a problem with the format. I get zero test anxiety. I have zero attention issues. I've been blessed in that area; I am always calm and relaxed before and during an exam. Yet even I am stressed out about the AI software aspect (especially in light of the lack of appeal process, which I will address later). If the test is open note and we focus the AI software on ensuring that the applicant is the only one taking the exam, we will have leveled the playing field. There will be no issues of cheating. There will be no issues of worrying about eye movement. Everyone will be in the same position.

Third, give applicants more time to complete each item. The reason behind the extreme time crunch has always alluded me. I mean I guess it could simulate being in a courtroom and needing to think on your feet, but only a small percentage of applicants will ever be in that position. In their jobs, most applicants will have weeks to come up with responses, comments, client advice, etc. So, as a practical matter, the time constraints should be generally reevaluated. Nonetheless, in this specific situation, the time restraints certainly ought to be relaxed. This will account for technological issues and unexpected distractions, two things that are strongly controlled for under the normal bar exam conditions yet will be heavily prevalent in this year's virtual exam. This seems like a no-brainer to me. Obviously it will be most effective in conjunction with the other suggestions, so as to allow applicants an opportunity to provide more thorough and thoughtful responses, but, even on its own, it will create a more reasonable exam experience.

Fourth, make the MPTs (the closed universe essays) of higher value. This is based on the same logic as my first point regarding it being an open note exam. The MPTs are the best barometer for measuring one's ability to add value to the legal community. The MPTs do not care which area of law you best memorized, which area of law you have experience in, nor which area of law you most enjoy. It tests lawyering: understanding black letter law, interpreting it in light of case law, applying that to a fact pattern, and advocating for your client based on the analysis. That's lawyering. That's an advocate. That's who I want in the legal community. I am 32 and have worked in law firms since the age of 14; I have never heard of any client coming in and asking a multiple choice question that has one correct answer. Nor have I heard of a lawyer needing to know all of the relevant substantive law in a given area and having to regurgitate it without knowing in advance the context in which it will be used. In fact, in the field of law, you will look silly if you mindlessly regurgitate law and there is never a correct answer. It always depends. So let's focus the exam on some real skills.

Last, there must be an appeal process in place for applicants whose outcome is impacted by the results of an AI inquiry. Maybe I have just missed it, but I have heard no plans of an appeal process. There are legitimate reasons other than cheating to look off screen. There are distractions, test-taking techniques, and bathroom emergencies, to name a few. I shudder at the idea that I could not pass the exam because of innocent actions that are misinterpreted, and I would be provided no formal appeal process. This also seems like a no-brainer, especially when we're talking about the legal field that, at its core, relies on the tenet of appeal rights.

Conclusion

I understand that the bar exam has been given a certain way for years and current lawyers want prospective lawyers to go through the same experience. I get it – I really do. And yet, that's a terrible reason to keep plowing forward without pausing to consider the bigger picture. Through this chaotic situation, we've been given a ripe opportunity to reconsider, redesign, and improve. Our entire society has had to rethink things in light of COVID. Everyone has had to adapt, and, in my opinion, those most suffering are those unable and/or unwilling to adapt. Why add us to that list? We have worked very hard to get to this point; please do not penalize us for being the unlucky ones who graduated in this strange time. If the Court determines that a waiver is not

appropriate, please, at the very least, administer a fair exam that considers the current state of affairs.

With that said, I think that the just decision is to grant a waiver based on applicants having earned a degree. Our professors taught us legal skills, and those skills were reflected in the exams that we had to pass. Our employers will hone those legal skills, and those skills will be reflected in the advocacy of our clients. And those of us who are deserving will stick around, while others will not. The bar exam will change none of that. I am sure you have seen colleagues pass the bar exam, just to be upended due to a lack of commitment to field. Similarly, I am sure you have seen colleagues not pass the bar exam, despite being as equally able and committed as you.

I understand that practicing lawyers view the bar exam as a necessity. I respectfully disagree, but I see why it has become such a concrete aspect of the journey to become a practicing lawyer. While I could write an equally compelling comment on the need to scrap this silly exercise generally, that is not the purpose of this correspondence. In light of COVID, the most just decision is to grant a waiver. In fact, I think such a decision will show us your belief in our law school education and our intention to add value to the legal community.

Ultimately, I am confident that administering this bar exam will do little to improve the legal community. We will rely on one another for that as we learn on the job and attend continued education, just as Your Honors had to. If the Court determines that applicants who get a waiver should be assigned additional continued education in the years to follow, I will happily comply. But giving this exam will do more to penalize us, which will cause detriment to the legal community.

In the end, those of us who belong in this community will remain in this community despite the absence of a bar exam. The truth is permanent – everything else will fall by the wayside.

Respectfully,

Chris Thibeault

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Gracie Bader <gracie.bader@gmail.com>

Sun 8/23/2020 5:26 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Gracie Bader

gracie.bader@gmail.com

August 23, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

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COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Gracie Bader, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing

score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces personal struggles a newly barred attorney could with, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Gracie Bader

[EXTERNAL] Support of Diploma Privelege

Maria Ferraro <mrs.ferraro@verizon.net>

Sun 8/23/2020 5:46 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Maria Ferraro
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August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privelege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Maria Ferraro, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination. In addition, the new format of the exam has not been properly validated and therefore is inappropriate to assess the true knowledge of the students. Also, an unvalidated exam maybe biased to a certain group of students and effect the overall pass rate of students taking the examinations. This also impacts their ability then to begin employment that will enable them to begin to payoff their tremendous student loan debt.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community know many students that are financially already impacted by the bar exam being postponed. The students would benefit from a Court order granting emergency diploma privilege to bar applicants as that would begin to set them on their way financially and allow them the ability to begin to pay off student loans, automobile loans and everyday living expenses because they would be able to become employed sooner. With the exorbitant unemployment rates in the country, this would be extremely beneficial to the students.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Maria Ferraro

Paul W. Grimm
3091 Newington Drive
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August 22, 2020

The Honorable Judges of the
Court of Appeals of Maryland
361 Rowe Boulevard
Annapolis, Maryland 21401

Re: Administration of the October 2020 Remote Bar Exam

The Maryland Court of Appeals has invited public comment regarding the scheduled October on-line administration of the Uniform Bar Examination. I write to express my thoughts on this topic from the perspective of a member of the Maryland Bar since 1976, an adjunct professor at the University of Maryland Carey School of Law and former adjunct professor at the University of Baltimore School of Law, an instructor for more than 10 years at a highly regarded Maryland Bar Examination Preparation Course, and the father of a 2020 graduate of the University of Maryland Carey School of Law. The views I express are entirely my own. At the outset, I thank and commend the Court of Appeals for soliciting comments about the scheduled bar examination.

The Court of Appeals is charged with setting standards for admission to the Bar of this state, and all agree that the paramount goal for bar admission should be demonstration of competence to practice law, for the protection of the public. Proper requirements include graduation from an ABA accredited law school, knowledge of fundamental concepts of substantive and procedural law, and knowledge of the rules of Professional Responsibility. When I took the bar exam in 1976, it consisted of a one-day session on Maryland law, and a one day session devoted to the MultiState exam, and that is how things have remained until very recently. But the requirements that most of Maryland's licensed attorneys and I had to meet have changed over time. Today, applicants must (1) graduate from an accredited law school, (2) pass the MPRE (demonstrating understanding of the rules of professional responsibility), (3) pass a separate examination on Maryland Law (demonstrating knowledge of Maryland substantive and procedural law), (4) demonstrate good moral character and fitness to practice law, and (4) since only 2019, pass the Uniform Bar Exam. For as long as any attorney admitted to the Maryland Bar can remember, the bar exam has been administered in person, and the applicants have been able to underline the exam questions and outline their answers before writing them, as the bar review courses routinely recommend that they do. And until this summer, it would have been considered ludicrous to require applicants for admission to agree to take the exam without moving their upper bodies, touching their faces, fidgeting with their hair, looking sideways, or otherwise behaving as any normal human being would behave when taking a long examination under stressful conditions.

The unprecedented COVID 19 pandemic has upended the traditional method of taking the bar examination. While the State Board of Law Examiners (SBLE) and the Court of Appeals quite properly decided that an in-person bar examination would not be safe to administer, the

decision has been made to substitute a two-day, on-line examination. This, of course, has never before been done in Maryland, but the experience of other states that have attempted without success to administer an on-line bar exam, as well as similar examinations for medical school graduates, cautions against adopting an on-line exam without careful consideration of the stability and security of the software used to administer it, consideration of feasibility of the restrictions to be imposed on the movement of those taking the exam, the handicap that they will face if not allowed to take notes and outline the questions before answering, whether all the applicants who will take the exam have access to reliable internet connections and a sufficiently quiet place to take the exam (especially considering child care obligations, and living conditions where many have no choice except to live in a home with others who are competing for the same quiet space and internet access).

Basic concepts of fairness that are foundational to the law dictate that dramatic changes to the type of bar exam and manner of its administration should not be made without input from the applicants to provide the facts upon which a reasoned and fair decision can be made. Further, any vendor considered to administer an on-line examination should be required to verifiably demonstrate its ability to administer the examination without experiencing the many failures and shortcomings that other states that have tried such examinations this summer have experienced. And they should be required to do so transparently, in a manner that allows verification to determine whether their representations are reliable.

The Emergency Petition for Temporary Suspension of the UBE Requirement and Order Granting Emergency Diploma Privilege Plus (Emergency Petition) filed on behalf of the current applicants to take the October on-line examination, outlines in painstaking detail (supported by voluminous citation to source material) the myriad challenges to the successful and fair administration of this examination—the first of its kind ever undertaken in Maryland. It further includes detailed descriptions of the significant hardships that many of the applicants will face if the current plan goes into effect (impacting their employment, eligibility for health insurance, ability to fulfill family obligations, and mental health).

The Court of Appeals commendably asked the SBLE to address the concerns raised in the Emergency Petition. The SBLE did so on August 18, 2020 (SBLE Response). In its response, the SBLE identified the vendor it intends to use to administer the October UBE in Maryland. It noted that the National Conference of Bar Examiners (NCBE) had announced in June, 2020 that it would provide exam materials for a remotely administered bar exam to be given by Maryland and many other states on October 5-6, 2020 (SBLE Response at p. 1).

This exam will be administered in many other states at the same time it is given in Maryland (Id. at 1-2). That means that the software vendor that the SBLE has selected must have the capacity to support a population of exam takers vastly greater than the 1,100 bar applicants that will take the exam in Maryland. The SBLE states that the vendor that it has selected for the Maryland remote exam was used by California to administer that state's "Baby Bar" to approximately 350 candidates, and that the state bar of California was "generally satisfied" with how the software performed (despite applicant access problems and delays in the administration of the exam). (Id. at p. 4). It also advised that the same vendor had been used by Michigan to administer its one-day remote bar exam to about 500 examinees. (Id.). That exam did not fare so well, as the website was the target of a cyber attack that delayed the exam, and the Michigan bar officials and the vendor had to resort to email and social media to deliver the

password to the applicants. (Id.) But the fact that the vendor selected by the SBLE has managed to deliver a remote bar exam to a population of no more than 500 applicants, albeit with technical difficulties, provides scant assurance that it will be able to simultaneously administer it to 1,100 Maryland applicants as well as thousands of others in the states that will administer the exam during the same time. Unless the software is tested and performs successfully under the conditions in which it will be administered in October, there is no assurance that there will not be similar, or worse, technical difficulties.

The SBLE Response also raises many unanswered questions about the October remote exam that it intends to administer in Maryland. For example:

- The SBLE and the other jurisdictions “are planning for a multilayered system of distributing start-up passwords to applicants” . . . which are “expected to mitigate the risk” of technical difficulties in administering the exam. (Id. at 5). But this concedes that these mitigating measures have yet to be tested to confirm that they will work, and the October exam is less than 45 days away.
- The SBLE Response states that it has decided to use “record and review” computer proctoring of the October Maryland exam, in which artificial intelligence (AI) algorithms flag “unusual or suspicious examinee behavior” for subsequent review by a human proctor to determine whether to disqualify the applicant. (Id. at 2). But AI technology is only as reliable as its underlying programming, and it does not appear that it has been shown to have been tested (and most certainly not at the scale to which it will be administered in October) to verify that it can reliably detect human behavior that truly is evidence of improper exam conduct. The SBLE states that it “expects to gain more insight into the review of proctoring videos through discussions with officials in Michigan and California as they move through that process following their prior exams.” (Id. at 7). But the Maryland exam is less than 45 days away. When are they planning to do so? This is concerning.
- The SBLE states that it plans to hold “at least” two ‘mock exams’” to confirm the ability of the Maryland applicants to access the exam software. (Id. at 6). Yet it does not say when it will do so, and, as noted, the exam is less than 45 days away.
- The SBLE states that the October on-line examination will “prohibit the use of physical scratch paper” during the examination. (Id. at 7). It acknowledges, however, that the traditional “in-person” exam would have allowed the applicants to take notes on the test questions themselves. (Id.) Every bar exam review course stresses the importance of underlining key facts in an exam question and making marginal outline notes of issues to be addressed in the answer. This will be impossible for the October exam, meaning that the applicants are going to be tested in an environment that places them at a significant disadvantage when taking the exam as it deprives them of the very tool stressed by bar review courses as a means of successfully completing the exam. This is concerning.
- The SBLE states that Maryland applicants who lack access to a quiet environment or reliable internet access may be able to take the exam at appropriate locations in law firms, at Maryland’s law schools, or provided by the MSBA. (Id. at 7). But it does not say where these locations are, or how the applicants who might want to use them should arrange to do so, or whether these locations will be available when it administers its “two or more mock exams”, so the applicants will have the assurance

of knowing that the sites they select to take the exam will be adequate for the task. With the exam less than 45 days away, this is concerning.

In short, it is apparent that the October remote exam the SBLE is planning to administer has many untested and unproven features, and that there are many more steps that need to be taken to design a test that will not fail for the same reasons that the software of the selected vendor and similar software have failed earlier this summer in other states. The SBLE cannot be blamed for having to develop an on-line exam on the fly, it could no more have predicted the pandemic than anyone else. But there are too many unproven assumptions and untested procedures associated with what they plan to administer, and the time to do so is very short. This is concerning.

The Emergency Petition asks the Court of Appeals to adopt what they refer to as “Diploma Privilege Plus”. Their proposal would assure the competency of the 2020 applicants by requiring them to take and pass the MPRE (assuring knowledge of professional responsibility obligations), take and pass the Maryland Law Component of the application process (assuring knowledge of substantive and procedural law), graduate from an ABA approved law school, pass the character and fitness evaluation, and complete CLE requirements and or supervised practice hours as well. Emergency Petition at p. 5. The Deans of both of Maryland’s fine law schools support such a proposal.

In recent memory, the bar exam has been the traditional method of testing competency for admission to the Maryland bar. In the more distant past, there was no bar exam, aspirants became lawyers by “clerking” in an established firm. It is an unproven assumption that passing the bar exam is a valid test of competency. But whatever the value of the bar exam, it is no guarantee of competency or ethical behavior. If it were, there would be no need for the Attorney Grievance Commission, there would be no malpractice claims brought against attorneys, and judges would never have to impose sanctions against licensed attorneys for litigation misconduct.

The COVID 19 pandemic has upended the lives and occupations of all Americans. It has disrupted the operation of businesses and courts. The 2020 law school graduates have felt this in ways that no currently licensed member of the Maryland bar has had to endure. They are being asked to take the most stressful exam of their lives under conditions that no currently licensed member of the bar would want to suffer through. There is a professional, emotional, and financial toll to what they have had to go through. This needs to be acknowledged, and the decision as to how they will be admitted to the practice of the profession that they have worked hard to join needs to recognize and respond to their experience.

This is not a time to try to cobble together an on-line examination using as-yet untested and unproven software, administered under conditions that place the applicants at a substantial disadvantage in successfully completing the examination. The Emergency Petition identifies an alternative that protects the public, responds to the unprecedented circumstances the applicants face, and has the support of the Deans of our two excellent law schools. I urge the Court of Appeals to consider it favorably.

Respectfully, Paul W. Grimm

[EXTERNAL] Diploma Privilege

James Trautwein <jgtrautwein@gmail.com>

Sun 8/23/2020 6:06 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Sir or Madam:

This email is in reply to the solicitation of comments regarding diploma privilege during the COVID-19 pandemic. Thank you for your kind consideration.

I unreservedly support a temporary diploma privilege with supervision under a barred attorney required for the practice of law. This privilege should extend to such time as the public health experts, untainted by political influence, can assure the public that the pandemic has ended and that community spread is well-controlled, quarantined, and contact traced.

The barriers that the pandemic erects to bar passage (under some onerous rules for disadvantaged candidates) have no bearing on professional and competent legal practice. Hair twirling, pet interruptions, internet connectivity issues, etc., do not speak to the qualities of the legal representation from those who would be under appropriate attorney supervision.

These rules are undoubtedly intended to ensure fairness in the exam by eliminating cheating. However, they only illustrate how unworkable it is to force an entire graduating class of our essential profession to meet hasty, ad hoc, and unintentionally discriminatory rules (or in some cases, to risk serious illness and death for in person exams).

In short, the bar exam under these circumstances does not fairly further its purpose and leads inevitably to discrimination that would scar the profession for years to come.

Please enact diploma privilege. Thank you. Wishing everyone good health and safety!

James G. Trautwein, 3L at University of Baltimore, School of Law

Kimberly Creech, J.D.
Emily Abell, J.D.
Terrell Parker, J.D

August 23, 2020

Suzanne C. Johnson
Clerk of Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

RE: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges,

We, the above listed names, are a part of the Class of 2020 Law School graduates and current examinees for the Maryland Bar Exam which is slated to be held in October 2020. First, we want to sincerely thank you for providing the opportunity to comment on the recent Petition for Emergency Diploma Privilege Plus. As examinees, we are directly affected by the decisions made during this venture and would like to express our thoughts and concerns.

The State Board of Law Examiners (SBLE) has been very progressive in their adaptability to changes to ensure safety of all examinees during this tumultuous period. The SBLE has properly moved the Bar Exam from July to September, and from in-person to remote due to safety concerns. We thank them for making those decisions. However, with the remote bar exam approaching and failed attempts of other jurisdictions to administer the exam, we are concerned that the remote exam is no longer a viable option.

The concerns about the remote bar exam are numerous and worth merit. Some of the concerns we have are outlined below.

The Technology

Since the remote testing began, several jurisdictions have had trouble using the remote exam software. These issues were put on full display in Florida when its Board of Law Examiners had to delay the Bar Exam in its entirety until a—currently unknown—date in October. In its response to the Emergency Petition, of which the Court has a copy, the SBLE made it clear that the Bar Exam will be proctored and administered using ExamSoft technology. It is worth noting that Florida used a company called ILG. The SBLE distinguishes the issues found in the Florida administration of the Bar Exam from what will occur in Maryland by stating that the technology companies used will be different. Although that may be true, the companies are not the concern here, the technology is. We want to bring to the Court's attention the recent comments made by the Chief Executive Officer (CEO) of a company called Extegrity, another Bar Exam test administrator. The CEO was quoted in an article published by the American Bar

Association (ABA) stating that the company “talked to experts, and the clear message was that for an ‘event’ type of exam, which the bar exam is, that wasn’t what remote proctoring was envisioned for.” The CEO went on to say that “If you’re recording a video, that uses quite a lot of system resources. The software running on the machine, the power of the machine, the quality of the broadband connection, all these would impact the ability of the computer to handle the workload and upload a file.” Essentially, if Maryland were to continue with the remote exam, material harm could be done to examinees because they could fail, not due to their inability to take the test effectively, but due to technical glitches in a system and was never designed for this type of test. That would be a foreseeable harm that we think this Court should strongly consider.

ExamSoft specifically has had issues with the administration of this year’s Bar Exam. Michigan’s exam was disrupted with technical issues in the middle of the exam. After the administration of that exam, ExamSoft released a statement citing a “sophisticated hack” that disrupted the system that eventually was thwarted. ExamSoft also noted that the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) are involved in an investigation into the source of this attack. That is concerning to us. If one hack already occurred, what is being done to ensure that another hack will not going to occur? We, the examinees, have no assurances of that. As an aside, ExamSoft regularly administers Law School exams and has been known to freeze, crash, and not work during those exams due the number of students taking the test simultaneously. The current administration of the October 2020 Bar Exam is expected to be given to 30,000 or more applicants. We do not have any concrete assurances that there will be little to no material technological impacts that would affect an examinee’s performance. We ask that ExamSoft provide a “stress test” for all applicants that are set to take the exam beforehand so that any material issues may be addressed early. Additionally, there is the concern of addressing any technical issues. The SBLE produced a Frequently Asked Questions (FAQs) memo which lists some “dos and don’ts.” Having a cellular device present during the exam is a “don’t.” It has not been made clear how we address issues if we could get flagged for review and investigation during the test while trying to address those issues.

The lack of scratch paper is also a concern for us. In the FAQs provided by the SBLE, we were informed that we could not have scratch paper but instead use “virtual scrap paper.” In attempts to compete practice Multistate Essay Exam questions (MEEs) and Multistate Performance Tests (MPTs) for our respective Bar Prep Programs, using “virtual scrap paper,” we have all found it extremely difficult. The average laptop computer screen is 13 inches. Using “virtual scrap paper” cuts that visibility of any given MEE or MPT to 6.5 inches on the screen. This often ends up opening the door for missed issues that would not ordinarily be missed simply because the screen size is small.

Reciprocity and Scoring

We, the examinees, have yet to receive any information about how the test this year is being scored. We were informed by the SBLE that the October 2020 remote exam will be a smaller exam—and we thank them for that—but we still have no specific details. There is some chatter that the National Conference of Bar Examiners (NCBE), who are the drafters of the Uniform Bar Exam (UBE), will not provide to state more than the raw score of any given test

and will leave it up to the states to provide a scaled score for each applicant. We still have no confirmation of how that process will work which further adds to the anxiety of taking this test.

As far reciprocity goes, we thank the SBLE for its quick and concerted efforts in obtaining reciprocity as the NCBE has stated that this year's examination will not result in a UBE score. However, we are still unaware of the scores needed for reciprocity and would like clarification on that.

Impact of Waiting to Take the Bar Exam

There are a number of issues that have impacted us while we wait to take this year's Bar Exam. Namely, two of us have had to begin jobs full time, to pay bills. In addition to taking on employment, the elongated study regimen has exacerbated burnout. The average study schedule for any given Bar Exam is no more than 10 weeks. We have an added extra 4 weeks. That may appear as though we just have extra study time, but there is a reason why no one person should study for this amount of time. Burnout will occur and for us it has already. We are sure we are not the only ones.

The mental and financial toll of taking the Bar Exam over, in event that we fail not on our own accord, but the result of a technical glitch is a lot to think about. We simply cannot imagine doing this again and with only a short time to prepare for a Bar Exam in February.

The inability to pay our student loans when it comes due is of great concern. The two of us working while studying for this Bar Exam, but this is rare. The majority of examinees are not working and will not be able to begin employment until after the Bar Exam is held in October. For examinees whose employment is contingent upon passing the Bar Exam, that wait could be longer should they not be successful. Student loans will be due come January whether examinees are employed or not which further causes a divide in the ability to pay.

Lastly, the ultimate concern, contracting the COVID-19 virus. The entire reason the Bar Exam had to be adjusted a number of times. One of us has already contracted the virus once, the ability to study during that time period was non-existent. We are sure that they are not the only one. The longer we wait to take this exam, the more likely that more examinees will contract this virus and that is extremely dangerous our mental and physical health.

What Can be Done Instead of the Bar

Despite popular opinion, the Bar Exam is not the only way to test competency of any given attorney. It is just the one the legal field is used to. As stated in the Emergency Petition that was filed, to obtain a license to practice law in Maryland, any given prospective member—in addition to taking and passing the Bar Exam—must: (1) Take and pass the Multistate Professional Responsibility Examination (MPRE) with a minimum score of 85; (2) take and pass a Maryland state specific examination; and (3) be recommended for licensure by having the requisite Character and Fitness as determined by the SBLE. Despite the sentiment that diploma privilege would be applicants simply graduating from law school, there are quite a few steps. It truly is, as phrased in the Emergency Petition, Diploma Privilege Plus.

If the Court still does not believe that is enough to ensure minimum competency, there could be more requirements added to the list of requirements. Requiring a certain number of pro bono hours to be completed is a reasonable time frame in order to maintain a license or requiring certain Continuing Legal Education (CLEs) classes to be completed are just a few options that could be available.

Should the Court decide that the Bar Exam is the best path to travel, we simply ask for three things: (2) that the Court and the SBLE ensure that a “stress test” from the ExamSoft system be done far in advance and that “stress test” include all applicants from all jurisdictions; (2) that the Court and the SBLE have a contingency plan in the event that there are failures (i.e. Florida, and Michigan); and (3) that the Court and the SBLE strongly consider having a non-proctored version of the test ready and rearing to go (i.e. Indiana, Nevada, and Louisiana).

As one final note, it is likely that this Court has, and will, hear from quite a few people who are opposed to the idea of Diploma Privilege Plus. Most will likely cite that the Bar Exam is in place to “protect the public” from bad lawyers. But as previously stated, that Bar Exam is not the only way to accomplish this goal. In fact, in this particular climate, waiting to take and pass the Bar Exam is actually hindering the public. The COVID-19 pandemic has exposed a lot of legal issues that incoming attorneys could help with. Housing and rental issues, domestic and familial issues, and employment issues are all on the rise. Those issues need more attorneys than are currently available. This is where new attorneys could step in. With pro bono requirements, we could work with our local and state Bar Associations to help those that have the most pressing needs, but do not have the resources to afford the legal help required. We are more than ready and prepared to join the legal profession; we just need the chance.

Thank you again for providing the ability to comment.

Respectfully Submitted,

Kimberly Creech, J.D.

Emily Abell, J.D.

Terrell Parker, J.D.

[EXTERNAL] Re: Granting Emergency Diploma Privilege for 2020 Bar Applicants

Marc Quint <mquint410@yahoo.com>

Sun 8/23/2020 7:16 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To The Honorable Chief Judge Barbera and Associate Judges:

My daughter is a recent graduate of University of Baltimore Law School, and I have been following her journey over the past few months through the pandemic, graduation and bar exam prep.

It has been an extraordinary stressful time for her dealing with the unknowns of the last few months, including the decision to cancel the in-person bar exam and replace it with an online exam. A good decision for safety, but one that left more questions for her and her classmates.

I have learned about all the feasibility and safety concerns in regards to Examsoft, the software the State Board of Law Examiners has adopted, and I can't imagine with this, and all the other challenges these 2020 bar applicants have had to deal with, especially in regards to financial and housing insecurity, how it could be that those wishing to still administer the October exam can think they have fairly supported and prepared these applicants to take an exam that could affect the rest of their lives. It is just not the year to mess with their futures.

I understand they would all still require a passing score on the Multistate Professional Responsibility Exam (MPRE), and a passing score on the Maryland Law Component qualifies graduates as competent. The additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in me for sure.

Based on the above, as a father of a Bar applicant, and a citizen of the State of Maryland it is my belief and recommendation that the Court should enact emergency diploma privilege (as other states have done) for all applicants scheduled to take the October 2020 bar examination.

Thank you for your consideration, Marc Quint

Emily Borkowski
Emilytborkowski@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

Bar prep is typically a 10-week course. Come October, July bar applicants will have been studying for 5 months straight, with many of us being forced to go back to work. I planned my finances in such a way that permitted me to be out of work until the completion of the July 2020 bar exam. My means of success, my structure which allowed me to study full-time, was ruined. I had to begin working August 12th. My finances did not permit otherwise. I think I speak for most bar applicants when I say our mental and emotional health has taken a real beating.

Panic attacks and anxiety are the disabilities that led me to require testing accommodations. These accommodations typically include a quiet space, which allows me uninterrupted thinking, and additional time. As a student requiring such accommodations, studying is even more challenging. As indicated, I am working full-time now. Thus, I am limited to study only in my free time, which is marginal. I must acknowledge that I also do not have a quiet study space. I live with three other individuals and two dogs. Background chatter and barking mixed with the fact that my bar prep is frequently interrupted by the instability of my internet shows for a very disruptive environment. So far, this is only my bar prep being repeatedly disturbed. Come test day, I cannot even fathom the panic that an internet drop will send me into. I have been completely left in the dark as to what the bar exam will look like for me as far as accommodations go. I have not been contacted since my accommodations were first approved, which indicated what my accommodations would look like for the full test which was to occur in July. I've just been left in the dark.

The SBLE indicated that the law schools in Maryland "might" make testing space available for their alumni, as well as random law firms. However, I live with three at risk individuals, two of which are over the age of 75. Any sort of location holding that many people creates a high-risk situation. It jeopardizes the life of my family members. So, I am left with option of a noisy house with unreliable resources or a high-risk, potentially life threatening, means which provides me with a quiet space and internet stability.

As I sit at home in my bedroom studying, while my family talks amongst themselves outside my door and my dogs bark to go outside, I hear the Barbri lecturer acknowledge the importance of handwriting notes. How important it is that we notate, highlight, write out the dates, draw out the

conveyances given we have minimal time for each question. However, we are no longer permitted to have paper of any kind. No physical test. Not even scratch paper. This puts us at an utter disadvantage. My two-thousand-dollar bar prep course, an expense I chose to invest in given its bar passage rate, told me that my success essentially depends on how well I get through the facts on the first read through, notating and mapping as I go. How are we to be deprived of one of the most beneficial and fundamental exam taking strategies and still be expected to succeed just the same?

For people like myself, this exam is no longer a test of competency. It is a test of recourses. Even with my limited resources and lack of quiet space, my situation is still better than others by leaps and bounds.

Please consider granting Emergency Diploma Privilege. It truly is the only equitable option.

Respectfully,
Emily Borkowski

[EXTERNAL] Public Comments for Emergency Petition

Purnell Summers <summerspurnell@yahoo.com>

Sun 8/23/2020 8:06 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Purnell Summers
purnelljsummers@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Purnell Summers, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination. As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces injustices caused by a system of law that has a tendency to over prosecute and commit injustices without sufficient evidence, based on race, social status, and lack of resources, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me. I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Purnell Summers

Gail Ann Parker
Gparker@whcampbell.com
August 22, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Gail Ann Parker, a member of the general public, am writing to express my support in granting the 2020 October bar applicant's emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Exam soft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces Personal issues a newly barred attorney could help with would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Gail Ann Parker

Sudipta Das
sudiptadas@umaryland.edu

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Sudipta Das, a member of the general public and recent law school graduate, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the legal community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. I worked nearly all throughout my time in law school—I have been a legal research assistant, a student attorney representing clients in front of the IRS, and as a law clerk at two different firms who allowed me to work on client matters. All these entities had full faith in me to do my legal work competently and correctly as a junior student attorney without even a J.D. I can only imagine they would have even more faith in me to do my job now that I have fully achieved that degree. If I had a legal issue I needed to solve for my client, I would not rely on any bar examination material I crammed in a few months; instead I would use the legal research skills I learned in my three years of law school to help that client.

I wish to explain how this pandemic has disrupted every modicum of ordinary life for me. This pandemic has been terrifying. I personally suffer from immunodeficiency due to a disease I have, so I try to stay as isolated as possible, and have even gotten tested and have had family members tested before I visit them. Additionally, most of my family members work in the medical field. My father regularly treats COVID patients and my sister's hospital is currently considering putting her on a COVID-patient task force. Every day the number of new cases in the U.S. is alarming, and every day they put their lives on the line, putting me in a constant state of apprehension. I know I am not the only one dealing with such fears. These situations add an

incredible amount of emotional, physical and mental stress to an already stressful and elongated study period due to fear of myself or my loved ones contracting COVID-19.

While many firms and organizations have moved to working remote structures, we are blocked from being able to work and move forward in our careers. As of right now, this test feels more like a test of access rather than a test of my legal competency. I do not have months' worth of money saved up to pay for my rent, my bills, my groceries, my internet, and my medications. My finances are slowly being dwindled and I am not even sure I will have proper internet access for this exam. I am worried I will have to spend hundreds I do not have just to rent a hotel room to take this exam in quiet and with secure internet access. These financial insecurities do not enable me to simply sit at home and study peacefully. Additionally, I had originally planned to study at the law school library—this is not even an option anymore and a quiet, secure place to study has been all but eliminated for me. What was once supposed to be a fair test evenly administered amongst most states has now become discombobulated; every state seems to have a new variation of the bar exam, and some even have made theirs open book. I do not want three years of hard work to go to waste simply because I could not study in peace during a once in a lifetime disastrous pandemic due to health and economic concerns. I humbly request that diploma privilege be granted in this instance, as it is a fair and equitable response to our country's current state.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Sudipta Das

Alexandra Pritchard, J.D.
Alexandra.pritchard@umaryland.edu

August 22, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges:

I am a 2020 graduate of the University of Maryland Francis King Carey School of Law. But more importantly, I am a mother, a partner, a caretaker, and an advocate for those who do not have the means to advocate for themselves.

I have been working diligently to earn my juris doctorate for the entirety of the last three years, since my child was just one year old, while simultaneously caring for my elderly mother with health issues. Nonetheless, I completed law school and graduated this May, having earned my degree and accepting multiple awards. Given the current state of this country and the pandemic continuing to ravage our state, I knew the bar exam would have to undergo some changes in order to accommodate the pressing safety needs of myself and my fellow graduates. I was even amenable to a remotely proctored bar exam, given that it appears, at first, to be an equitable solution to an inequitable situation. However, throughout this process I have witnessed the mounting failures of the Board of Law Examiners (“Board”), and NCBE to adapt to this situation, and have grown confident that a remote bar examination not only provides no fair route to licensure in this state, but promotes inequity among those who lack financial resources, have atypical living situations, raise families, have disabilities, and come from any situation other than those of the “typical” law student.

Despite the circumstances and the mounting pressure from my colleagues to adopt Diploma Privilege Plus (“DPP”), or offer an equitable solution to accommodate graduates in these pressing times, the Board has not been able to articulate clearly any opposition to DPP, and has not offered any coherent guidance as it relates to their proposed remote bar examination.

More specifically, the Board’s recent response to DPP advocates’ petition begins with a timeline of postponement events, and leads into the “benefits” that the Board has graciously offered my colleagues and myself. The benefits outlined in the Board’s response include portability and that “the SBLE will pay the software fee.” Absent in this response, significantly, is that the purported benefits conferred do not even begin to address the concrete issues conveyed by the DPP petition. For example, how is portability of an atypical exam among a handful of states advantageous to an applicant who lacks the resources to delay working until

October, and so must take on full-time employment and extensive exam preparation in tandem? How does portability address an applicant's physical or mental disabilities that would raise flags for an applicant's involuntary movements? How does paying one's newly necessitated software fee even the playing field for those who lack the access to a stable internet connection, whose aged computer and operating system will not withstand the touted "AI software" required to sit for the bar exam, and who lacks the financial means to purchase a brand-new computer for this one, unknown exam?

Here, the Board's response "clarifying" remote administration of the proposed October bar examination presents far more questions than it provides clarification or answers. I find it abhorrent that the Board defends ExamSoft's remote administration protocol without proof that it is in any way capable of accommodating 30,000+ examinations simultaneously, and minimizes failures in administration by both blaming test takers for not reading closely enough to extrapolate access password locations, and by noting that failures in Michigan's recent administration of the bar examination caused "a maximum delay of about 40 minutes," which, for all intents and purposes, may as well have stated "no big deal." In reality, even a 40-minute delay between exam sessions can have catastrophic consequences for examinees. Nowhere in the Board's narration is an acknowledgement that anxiety compounded by the type of delay they describe could mean the difference between passing and failing the examination. Petitioners' frustration with the Board stems not only from a lack of transparency, but from a lack of humanity.

Financial inequality likewise was minimized by the Board. The Board used statistics from a survey in California to note that *almost* everyone has a computer to take the bar. Apparently, the minority of would-be test takers who do not have access to extensive resources—even in California—are not worth the effort it would take to level the playing field. Nonetheless, the Board wrote off potentially causing devastation to a smaller number of human beings as the cost of doing business. Likewise, the inability to use scratch paper, on which a great number of lawyers rely, received mention but no explanation, as did examinees with disabilities being flagged for cheating and the attendant consequences, and those mental health concerns noted by Petitioners, which the Board continues to exacerbate.

Finally, the Board's administrative response provided no answers about the content for which examinees must prepare, the proposed "mock examinations," timelines for anything at all—despite the dates set for the bar examination being approximately one month away. If test takers are expected to prepare for this exam, giving them little to no idea for what they are responsible, and little to no time to actually accomplish that monumental task is woefully inadequate, at best.

As an applicant for the Maryland Bar Examination, I am appalled by the Board's response to a request for a reasonable solution to licensure during one of the worst public health crises in history. And still, there is no answer to the most pressing question: how will this mysterious, undetermined, pared-down examination provide any "assurance that successful candidates are competent to practice law in Maryland," when we do not even know when or how the exam will be administered this close to the proposed exam date?

In sum, I am a mother of a four-year-old, and caretaker of an elderly person. I am unable to entertain the notion of in-person examination because of the risk in which it would place my family. While the online exam that SBLE proposed appears superficially promising, it is only so for those considered "traditional" law school graduates with an abundance of time and resources at their disposal, with no financial, health, time, or other constraints on their lives. The reality is that the Board has given me no choice but to attempt to prepare for an uncertain exam, for an uncertain period, in an uncertain and often chaotic environment. I must effectively choose between caring for myself and my family, and preparing for what is likely the most crucial obstacle in my adult professional life. To add insult to injury, prolonging the period in which I cannot practice as an attorney, while simultaneously asking this graduate to repay loans that I had to use to finance my way through law school, is an emotional hurdle I have yet to overcome, and an economic hurdle I am terrified to face; my livelihood depends in large part on my ability to earn in a field I worked so long and hard to join.

I am not requesting the Court favor 2020 graduating first-time test takers over those in any other situation. I am simply trusting the Court to give 2020 graduates a fighting chance in the first place.

Respectfully,

Alexandra Pritchard, J.D.

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

In my eighth-grade yearbook, we all had our own personal blurb where we identified our favorite middle school memories, songs, music artists as well as where we shared our career aspirations. Last year, my younger sister found my eighth-grade yearbook where I had written that my career goal was to “be a lawyer.” My dream has not changed since I was 13 but rather has only become more defined. As a child, I wanted to become a lawyer to help people and, in many ways, my goal remains the same—which is why I am so passionate about the diploma privilege movement.

I graduated from college and went “straight-through” to law school. I came to law school with only some experience working in a mid-sized firm in Towson as an undergraduate student. Other than that, I had spent my summers working at California Tortilla and as a summer camp counselor. I had no other legal experience whatsoever. Graduating from law school is one of my major life accomplishments. It also marks the first time that someone in my family has graduated from a professional school. I am the first person in my family to become a lawyer.

I purchased my bar prep program in October 2019 because it was on “sale” and I could not otherwise afford it as the prices rose. Even though, my bar prep program has been helpful in preparing me for the UBE, what alarms me the most is that my program sent me a whole book for completing MBE and MPT questions. I have yet to open either one of those books as the exam is now online. I have taken 2 simulated exams—both completely online. The inability to use scratch paper is not only difficult for property problems but also for damages questions and civil procedure questions. I am a visual learner who also learns by writing things down. I have tried for the last two months to keep property fact patterns straight in my head but somehow, they all still run together. I have tried to use my fingers but now I worry that may be flagged as cheating.

I always knew the bar exam was something that I would have to take. It is my final step in reaching my goal of becoming the first person in my family to become an attorney. I even recall as the clock turned to midnight on January 1, 2020, thinking to myself, “Wow this is it. This is the year that I will become an attorney.” COVID-19 was not part of anyone’s 2020 plan but it has become our collective responsibility to formulate the appropriate response to it. While the State Board of Law Examiners has acknowledged that the most equitable solution is the

implementation of the remote exam, as someone who attended both public and private schools as well as attended law school as a first-generation student, I know that an online exam is a measure of privilege and access. Access to quiet spaces and reliable internet is not as common as many of us have been accustomed to thinking.

My partner and I have been living and working from a small one-bedroom apartment since March. My partner is a software developer and spends his days conducting software use training for his clients. I no longer have a quiet space to study. We live in an apartment building where we are subject to fire alarms randomly going off, construction, and dogs barking. I am fortunate that I can study at my parents' home but even there I am subject to a loud but friendly golden retriever barking at everything and a playful kitten who thinks laptops are the most fascinating thing in the world. My parents live in a neighborhood with plenty of trees and in the last week, the power surged at least four times resulting in a loss of internet connectivity.

On exam day, I fear the internet going out because of a windstorm or other similar surge. My mom is working from home and my younger sister is attending Towson University online. A common exam tip is to sit near the router and ensure that no one else is using the internet. On exam day, my little sister has classes to attend that she cannot miss. My mom may be able to take off but even still that means both my sister and I will be relying on online platforms that both use a significant amount of internet power which could result in problems for either one of us. My partner also cannot take off and leave the apartment for the day as we are reliant on his financial income until I can start working.

I am younger than some of my peers. I did not take a couple of years off to work. I do not have a family of my own. I am still on my family's health insurance. I have family support. Many of my peers are wondering how they will teach their children this fall while studying for and taking the bar. Many of my peers have lost health insurance while others have struggled with compromised immune systems throughout the pandemic. I have peers who do not know where they will be able to take the exam because they live in a small studio apartment with a partner. This is why I am advocating for diploma privilege. I am advocating for a more equitable system because of all the challenges that exist for every single bar applicant this year.

We are not all in the same boat. We are all preparing for and taking the exam under vastly different and inherently unequal conditions. Many of us do not have the luxury of postponing until February. I have uttered the phrase "I just want to take a normal bar exam in July" more times than I can count this summer. The shift to an online bar exam is not an equitable solution.

I ask the Court to please consider adopting diploma privilege plus. The circumstances faced by the 2020 applicants are unlike any other. Adopting diploma privilege plus enables us to begin working with clients and advocating for Marylanders who have been struggling in the face of the coronavirus pandemic.

Thank you for your time and consideration to this urgent matter.

Respectfully,

Lauren Fash, J.D.
University of Maryland Francis King Carey School of Law

Aggie and John Haslup
962 Cherryfield Ave
Columbus Oh 43235

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

We, Aggie and John Haslup, are parents of Sienna Haslup, a May 2020 American University Washington College of Law (WCL) graduate. We are writing to express our support in granting the 2020 October bar applicants emergency diploma privilege.

Since elementary school, Sienna's dream has been to become a lawyer. She had a plan, which she executed over her twenty years of education, with sheer grit, determination, hard work, and overcoming many obstacles. At WCL, while working, having five internships, holding leadership positions, and completing community service hours, Sienna earned her J.D. in May 2020. She quickly commenced her bar prep regimen to take the Maryland in-person exam in July 2020.

As you are aware, due to COVID-19, the Maryland in-person exam was postponed and then cancelled. An online exam was scheduled for September and then moved to October. Each of these changes, coupled with the serious problems other states have encountered with administering an online exam, have caused Sienna a lot of anxiety and stress—numerous changes to her study plan, loss of job opportunities, housing instability, supplemental health insurance, and how to not get the virus so she can stay healthy to continue to study and take the exam.

Through the strong academic program and professors at WCL, Sienna has developed a strong and compassionate social conscience which she wants to immediately put into practice. Any potential job opportunity is contingent on her passing the Maryland exam.

We have been forced to continue to financially support Sienna due to the postponements of the bar. We are both retirees on a fixed income. We had projected Sienna (the youngest of four children) to be financially independent mid-year 2020. We now have to continue pay for her rent, food, health insurance, and other necessities as she has not been able to start working in the legal field.

As the Maryland bar applicants watch other states struggle and fail to provide a reliable online exam our daughter is faced with a very uncertain future. Will Maryland have success with offering Examsoft? Or will applicants struggle to retrieve their passwords as many did with the Michigan bar? Or will there be another situation like Florida's when the test was postponed three days before the exam date? Software failures and data breaches associated with remote software platforms are unacceptable.

We plea with the Court to enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As seasoned business professionals, we firmly believe Sienna has demonstrated her command of what is necessary to practice law—graduation from an ABA accredited law school and a passing score on the Multistate Professional Responsibility Exam (MPRE). We agree that the additional requirements of a passing score on the Maryland Law Component and passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members

We are grateful to the Court for its consideration of our request.

Respectfully,

The block contains two handwritten signatures in cursive. The first signature on the left is 'Aggie Haslup' and the second signature on the right is 'John Haslup'. Both signatures are written in dark ink.

Aggie and John Haslup

Helene Genovese
Helenejgenovese@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am a student who wrote all my exams by hand during law school and graduated with honors. The lack of a handwriting option for the 2020 October bar will impact my performance significantly. As an older student I am able to think and write much more clearly using this method. The current options will not even allow me to write down my answers on scrap paper and transcribe them to the computer.

In addition, each one of us has their own unique challenges related to COVID 19 that puts us at disadvantage when preparing for this exam. My challenges relate to child care and the care for older relatives.

I thank the Court for its time and consideration on this matter.

Respectfully,
Helene J. Genovese

[EXTERNAL] Diploma Privilege

Lichtenbaum, Peter <plichtenbaum@cov.com>

Sun 8/23/2020 10:26 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Honorable Chief Judge Barbera and Associate Judges,

I am a practicing lawyer in DC (barred in DC) and support granting diploma privilege on an exceptional basis given the challenges presented by the COVID pandemic and the uncertainties involved in remote testing at this time, as well as the ongoing recession. Graduating from an ABA accredited law school, a passing score on the MPRE, and a passing score on the Maryland Law Component qualifies graduates as competent.

Thank you,

Peter Lichtenbaum

Maggie Friel
mfriel18@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Maggie Friel, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Maggie

Erin E. Cullinan
University of Baltimore School of Law, Class of 2020
July 2020 Maryland Bar Applicant
eecullinan@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

To The Honorable Chief Judge Barbera and Associate Judges:

First, I would like to thank you for giving July 2020 bar applicants and the community the opportunity to be heard through the comment process. This has been an extremely difficult time for many of us, and I appreciate that the petition for diploma privilege is being taken seriously.

I have invested nearly \$3,000 in a bar preparation course and nearly \$1000 in my application to the Maryland Bar under the impression that I would be taking the UBE in July 2020. I also extended the lease on my apartment in the city so I would be able to be close to my law school for bar preparation and studying and would also be in walking distance of convention center for the bar exam. I am now heavily financially invested in an exam that is not the same as the one I signed up for, and in addition to the stress the delays to the exam has costed me, I am also now stressed about trying to figure out how I am going to account for two additional months of living expenses while not being able to work full time to allow myself the ability to study for the bar.

I really do not even care about diploma privilege anymore. At this point, I am more considered about the logistics of this being held in light of what happened in Florida. There is a huge possibility that come exam day, there will be technological problems that result from having over 20,000 bar examinees across the country trying to utilize the same software to take the same test at the same time. As of right now, I do not think our SBLE or those of other states, or Examsoft, have truly addressed this. The only way to really “test” this software and the efficacy of the October exam would be to have all October examinees take a practice test or some type of trial run of the software **at the same time**. Testing state by state is not enough and would not be a true example of what test day would be like. While I understand they were utilizing a different software, it was very evident that the software company was not confident that even a trial run would work for just 3,000 bar examinees. This led to their exam being cancelled less than 72 hours before it was meant to be held. To the Court and the SBLE – I urge you to not allow the same to happen to us. The fear of this truly keeps me up at night and I truly do not know what type of reaction there would be if this were to happen. Unless Examsoft can prove as soon as possible that it would be able to efficiently run an exam of this size by conducting a suitable trial

run, I don't even know why we're even having this conversation. It would be doing these examinees, the SBLE, and the Maryland legal community a huge disservice if this exam were to be cancelled days before due to technological impossibility.

The SBLE's statement provided "inconsistent testing conditions" as a primary reason to shift from offering the in-person September UBE to offering the online October Maryland exam. I think it's pretty outrageous to think that having hundreds of students testing remotely provides for more consistent testing conditions than the September UBE would have. There are so many independent variables effecting each Maryland Bar applicant that no impact survey or comment period will ever be able to account for. Each applicant is so very different, from how COVID-19 has affected them, to how their bar preparation has changed, and to how their testing conditions will be on the day of the examinations. These hardships can't be quantified and there is no way that you can justify holding hundreds of applicants all in very different situations right now by the same rigorous standards and expectations that preparing for the Bar exam and taking this online exam will require.

Even if the software can hold an exam of this size, there are too many scenarios in which an applicant could fail this exam on a technicality. Whether it be an internet or submission problem, or an unexpected interruption, these applicants are already experiencing so much stress right now that it would be absolutely insane to invest this much time, money, and emotional/mental/physical exertion into an exam that could potentially be failed in this way.

Ultimately though, it's just the lack of necessity during these trying times to hold a Bar examination. Class of 2020 graduates have already experienced such great negative impact due to the final semester of law school switching to remote learning, and from the constant changes to the Bar exam, on top of all the other hardships brought by COVID-19. I think that everyone would be able to take a big sigh of relief - both the applicants and the SBLE - if Diploma Privilege were to be granted. The fees related to the application and the exam have already been collected. The SBLE/Maryland examination practitioners would save the money they would otherwise have to spend on examination software and remote proctoring services. There would be far less of a headache dealing with complaints during and after the examination, and there would be no fear of dealing with the wrath of applicants if something were to seriously go wrong on the software end on a mass scale. Further, the legal community in Maryland is small, and it's devastating to think that an entire class of bar applicants are entering their profession feeling like they have not been met with much in terms of empathy or transparency on the part of the SBLE during this process. I think we'd all feel a lot better if Diploma Privilege were granted.

Above all, I am tired of all the back and forth. I am tired of Maryland Bar members saying, "we had to take it, so you should too." The circumstances right now are truly unprecedented and no set of examinees in recent years has had to prepare under like conditions. Further, I cannot recall another time where the Bar exam has been pushed back not once but twice, and even then, still had a level of uncertainty as to whether it would be held at all. If the October Bar exam is going to go forward, that is perfectly fine with me as long as I am given clear information as to how it is going to be held and that proof is given that the technology/software can handle an exam of this scale. Just tell us what it will be. Give us some level of certainty one way or another during these otherwise very uncertain times. So many people are experiencing so many other hardships

right now as they study – don't make the efficacy of the exam and the possibility of it being cancelled on a technicality days before another thing they have to think about. If you're going to make us take this test – despite how many senators, law school officials, bar members, and community members have advocated against it, then just tell us so we can move on from this.

I thank the Court for its time and consideration of this urgent matter.

Sincerely,

A handwritten signature in black ink, featuring a large, stylized 'E' and 'C' that are interconnected, with a long horizontal stroke extending to the right.

Erin E. Cullinan

VIA EMAIL: coaclerkofthecourt@mdcourts.gov
Maryland Court of Appeals Clerk's Office
361 Rowe Boulevard
Annapolis, MD 21401

Re: Emergency Diploma Privilege Plus

Dear Honorable Judges of the Maryland Court of Appeals:

My name is Jacob Lichtenbaum. I graduated from the University of Maryland Francis King Carey School of Law in May and I am currently registered to take Maryland's remote bar examination in October. I implore you to please grant the Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus that was recently filed for the Court's consideration.

You have all, no doubt, read and digested myriad arguments against the Maryland bar's administration in 2020 and for emergency diploma privilege plus: a pervasive lack of quiet study spaces, the competency already guaranteed by our graduation from a law school with stringent academic requirements and strong experiential learning programs, the risk of perpetuating and deepening existing racial and socioeconomic inequities in the profession, and more. I wholeheartedly endorse those arguments, but since they have already been artfully and painstakingly articulated by my colleagues in their July 31 petition, I would like to address a different matter in this letter: the reasons behind my deep, personal opposition to the remote administration of Maryland's bar exam in October.

I have generalized anxiety disorder. My anxiety most commonly manifests as a debilitating, unceasing fear of the unknown, especially as it relates to my health. Ever since I underwent major, invasive surgery to remove a brain tumor several years ago, I have struggled immensely with the uncertainty and danger my own body poses to me. My anxiety has been terribly exacerbated by the ongoing pandemic. I speak constantly with my therapist and take powerful psychotropic drugs in order to control my anxiety and function with some degree of normalcy, but the pandemic has made it nearly impossible to do so. I live in daily dread of a virus that could, at any moment, appear in my body and forcibly separate me from my loved ones—perhaps forever—and preclude me from realizing my dream of advocating for undocumented immigrants as they seek asylum. This fear often makes it extremely difficult for me to maintain my focus as I study for the bar exam. Oftentimes, I must stop studying entirely in order to stave off panic attacks.

Though I might be more afraid of the coronavirus than most, we—bar applicants everywhere—are all afraid of it. It is a universal, well-founded fear, the likes of which has not been seen since the 1918 influenza pandemic. It is a constant, deep fear that no bar applicant before now has ever had to endure while they study for the bar. Changing the format of the bar reduces the risk that bar applicants will contract the coronavirus as they take the examination, but it does not protect us from the fear that we all experience unceasingly as a result of the virus. In light of the extraordinary, all-encompassing nature of this virus, efforts to date to account for its impact on the bar examination have been insufficient. Granting 2020 graduates emergency diploma privilege plus will allay a massive source of consternation in a time where our collective daily existence is pervaded by fear. For that reason alone, it behooves the Court to grant emergency diploma privilege plus. Please do us this massive, deserved kindness so that we can make our way in this strange, new, dangerous world with less weight on our shoulders and a greater ability to assist others with the tools of our sacred profession.

Thank you very much for taking the time to read this letter and consider my personal experience in your deliberations. I have the utmost faith that the Court will reach a just result.

Sincerely,



Jacob Lichtenbaum

Blaine Boyd
1201 Kenyon Street NW, Apartment 2
Washington, DC 20010
blaineallenboyd@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Boulevard
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Comment on State Board of Law Examiners' Update Regarding Remote Bar Examination

Dear Chief Judge Barbera and Associate Judges:

My name is Blaine Boyd; I am a 2020 graduate of the University of Maryland Francis King Carey School of Law; and I plan to take Maryland's bar exam for the first time in October 2020.

I write today—in solidarity with my classmates and fellow applicants—in support of an order granting emergency diploma privilege plus, as outlined in the Emergency Petition filed July 31, 2020.

In January 2020, my wife and I welcomed our first child to the world. While having the opportunity to spend more time with our young son has been a silver lining through the COVID-19 pandemic, maintaining safe child care has become a serious stress point as the bar exam schedule has shifted. In early April 2020, the week that I completed my last law school exam, my wife's maternity leave ended, and she returned to work. So, I assumed the role of providing full-time child care. It was an easy decision—not only was it financially prudent for our family to save money in an uncertain economy, but also it was health-conscious for our family to follow the advice of experts and limit our contact with individuals outside our home. For months, my wife and I were able to put the health of our son and our family first. But in July 2020, providing full-time child care for a 6-month-old was not feasible while also trying to study for the bar exam. My wife and I attempted to tag-team child care during the day between her work and my bar preparation, but it was clear that our attention was not as focused on these tasks as it needed to be—caring for our son was obviously taking priority. So, in order to meet the demands of our jobs, it became necessary for our family to find a safe, alternative child care solution—one that, fortunately, we are able to afford for now. Though we have taken precautions, this alternative child care certainly exposes our son to many more individuals and adds financial burden.

Later this week, I will start a clerkship in the Montgomery County Circuit Court, which means that studying for the bar exam will occur mostly now at nights and on weekends. While I recognize that I am lucky to be employed during the pandemic, my wife's job also requires her to work long nights and on weekends—again putting our family in a child care bind. We will again

have to make difficult sacrifices in deciding how to prioritize our health, our employment, and our child care—on top of bar prep.

Adding to the stress and concern are the news reports cited in the Emergency Petition, as well as in the State Board of Law Examiners' response, regarding failures in other jurisdictions' administrations of online bar exams. Whether it is last-minute changes to the bar exam format, additional delays in the bar exam schedule, or technology failure on the day of the bar exam, expending additional time and resources on bar preparation surely increases the stress on my family—as well as exposure to additional health risks.

Emergency diploma privilege plus would resolve some of that stress and finally allow for my family to set a firm plan for path forward.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Blaine Boyd

Juan D. Parceró
Juris Doctor, Class of 2020
jparcero@umaryland.edu

August 24th, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Juan D. Parceró, a member of the general public, graduate of the University of Maryland Francis King Carey School of Law, and current bar applicant in another East Coast jurisdiction, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity the current pandemic-induced recession has had on 2020 bar applicants, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. The current uncertainty regarding the administration of the bar exam has caused all of my friends who are seeking admission to the Maryland bar an unreasonable amount of stress. Many of these friends have family situations that have been exacerbated to the point of preventing them from effectively studying for the exam, particularly after the exam was postponed almost a month and a half. Many of these friends are immunocompromised, meaning that they are unable to leave the safety of their homes in order to seek a quiet space where they can focus on studying for the exam. The difficulty of their situations is greatly magnified by the fact that many of them do not have reliable internet access, meaning that taking a fully online exam will be incredibly difficult for them. Furthermore, while the State Board of Law Examiners provided some examples of "successful" administration of a remote bar examination in Michigan, it is critical to take into account the scalability of Examsoft's software: while the Michigan test was administered to about 730 individuals, about 30,000 applicants are expected to simultaneously take the remote bar examination scheduled for October 5th and 6th, including thousands of applicants using Examsoft

in California, New Jersey, and New York.¹ I beg that you do not make the same mistake that the Florida Board of Law Examiners made by stringing along applicants in communicating that a remote proctored exam was a certainty, only to cancel the exam a mere 72 hours before it was scheduled. There are simply too many question marks surrounding the feasibility of the remote bar examination as is. Continuing down this path will only guarantee a grossly inequitable result. I implore that you do the right thing, remove a huge source of uncertainty from bar applicants' lives, and create a clear and certain path to licensure via granting emergency diploma privilege plus.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Juan D. Parcero

¹ See Sam Skolnik, "October Online Bar Exams Spark Technology, Privacy Concerns" *Bloomberg Law* (August 18, 2020), <https://news.bloomberglaw.com/us-law-week/october-online-bar-exams-spark-technology-privacy-concerns>

[EXTERNAL] Petition by 2020 Law School Graduates

Ronald Canter <rcanter@roncanterllc.com>

Mon 8/24/2020 7:36 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I respectfully request that this Court grant the Petition, coupled with an exhortation to the Maryland Bar to redouble their efforts to fulfill the mentorship standards in Appendix 19-B.

Ronald S. Canter, Esquire (MD, FL, PA, DC, VA)

The Law Offices of Ronald S. Canter, LLC

200 A Monroe Street

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Rockville, MD 20850

301-424-7490

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Bedard Law Group, P.C.

(Bedard Law Group, P.C. has Attorneys

Licensed in GA, NC, LA, TN)

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*** * * Important Confidentiality Notice * * ***

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[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Sophia Brennan <sibrenn@g.clemson.edu>

Mon 8/24/2020 7:40 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Sophie Brennan, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Sophie Brennan

--

Sophie Brennan

City & Regional Planning Graduate Student

sibrenn@g.clemson.edu

Morgan Celistan
Morgancelistan@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Morgan Celistan, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who routinely serves underrepresented members of the community, often in need of legal assistance, fully understand the necessity for a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me and other community members I serve.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Morgan Celistan, DMD

Harvard University School of Dental Medicine
Endodontic Resident

Molly Prindle
1753 U Street, NW
Washington, DC 20009
352-359-2595
molly.c.prindle@gmail.com

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

August 24, 2020

In re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges,

My name is Molly Prindle, and I am a recent graduate of the American University Washington College of Law. I would like to thank the Court for opening this public comment period and for listening to the concerns bar applicants have about the licensure process this year. While I am not a Maryland bar applicant as I plan to sit for the D.C. bar, I stand in solidarity with my colleagues advocating for diploma privilege in Maryland. The COVID-19 global pandemic has had a devastating effect on our country and our city, and that effect has caused massive upheaval in the bar admissions process. I urge the Court to approve emergency diploma privilege as an alternative path to full licensure in response to the COVID-19 pandemic.

I, alongside my colleagues who are Maryland bar applicants, have followed the recent developments regarding the online bar exam and other online aptitude tests attempted this summer with grave concern. We are experiencing an extraordinary amount of stress and anxiety as we try to prepare for the most important exam of our lives. We understand that, for some, the online exam offers an opportunity to practice in other jurisdictions, but many of us need an alternative. I write to share my perspective as a fellow 2020 law graduate advocating for diploma privilege in the District of Columbia. I was fortunate enough to secure employment for the next three years following graduation. While I am one of the lucky individuals who is not facing the immediate anxiety and inequity of job insecurity resulting from the pandemic, I have faced unique anxieties and stress heightened and exacerbated by the decision to administer an October online bar exam. Following the Committee on Admissions' decision, I had to start my first federal clerkship while continuing to study for the bar. The looming uncertainty regarding whether an online bar exam can be administered fairly and glitch-free alongside the necessity that I continue to prepare for the exam outside of work hours has strained my ability to embrace in full my new role as a clerk. These stresses have deprived me of the opportunity to join the legal profession with as much gusto, excitement, and enthusiasm that I once dreamt about as a first-year law student. Finally, I have watched colleagues of mine struggle to secure employment without licensure, struggle to make ends meet without a job, and struggle to find time to study while parenting young children.

In this time, the playing field that serves as our entry to the profession is far from fair. It has been filled with constantly changing rules, moving goalposts, and countless factors outside our control. An online exam only exacerbates these inequities, with a disproportionate impact on minorities and people of color. An online exam amid this pandemic will further hinder diversity and inclusion efforts within our profession. The unique and unprecedented world that greeted 2020 law graduates, and those planning to sit for the 2020 bar examination, has been unforgiving. Countless items exceed our control amid this pandemic. The bar exam, however, is not one of them. Diploma privilege is the most equitable

response to an unprecedented moment in our history, and I respectfully ask the Court to consider the following key issues as it reevaluates diploma privilege:

1. There will be over 30,000 applicants taking the online bar exam simultaneously in October. All of the smaller scale online exam attempts have either failed or experienced significant technical difficulties over the past several weeks, thus we cannot expect that the technology will work for 30,000.
2. Extegrity withdrew itself from the list of software companies administering the October exam. That leaves ILG Technologies and ExamSoft. ILG has experienced numerous, debilitating technical problems in Indiana, Nevada, and, most recently, Florida.¹
3. Public libraries, coffee shops, law schools, and other public spaces remain closed in D.C. and in communities across the country where applicants may reside. Applicants without quiet, private living spaces cannot adequately prepare for the exam as they would have been able to under normal circumstances when these public spaces are open and available.
4. Many applicants live in small, crowded, noisy spaces with family or roommates. Many applicants lack reliable internet connection. Many applicants lack the financial means to remedy these issues. Such an environment is not conducive to an in-home, online exam.
5. The online bar exam does not allow the use of physical scratch paper or a test booklet. We have paid thousands in bar prep course funds to be taught how to use diagrams and other physical markings to deduce the correct answer and properly plan our essays. The online bar exam strips us of these tools. These critical tools are not only used for exam purposes, but also mimic real world problem solving in practice.
6. The pandemic has forced many to work from home. School districts are now moving to completely online classes in the fall. Applicants with young children must care for and supervise their children at home while studying for and taking the online bar exam.
7. A significant number of recent graduates have not yet secured employment. Those still looking for jobs, particularly in the public sector, are at a disadvantage because those jobs require proof of bar membership.
8. It may be difficult to adequately accommodate applicants with disabilities in an online exam. But requiring applicants eligible for disability accommodations, many of whom may be immunocompromised, to take the exam in-person to receive those accommodations unreasonably endangers their health.
9. Temporary licensure is not an adequate substitute for diploma privilege. Temporary licensure renders applicants ineligible for most public sector jobs. It also requires private sector employers to “take a chance” on an applicant that will have to take significant time off at a later date to study for and take the bar exam. I do not support any version of temporary licensure.
10. Delays in licensure have exacerbated the already precarious economic situation of 2020 bar applicants. The delay to October has already led to prolonged unemployment, job insecurity, and lapses in health insurance coverage. With student loan payments looming, healthcare costs ballooning, and a growing need to provide for themselves and their families, applicants need the opportunity to work right away.

The uncertainties created by delaying the bar exam to October, along with the clear inequities and unpredictability of conducting a massive online bar exam, uniquely and substantially harms 2020

¹ See generally *October Exam Headed for Technological Disaster*, DP4DC (Aug. 6, 2020), <https://dp4dc.org/2020/08/06/october-exam-headed-for-technological-disaster> (providing background on the technical difficulties caused by ExamSoft and ILG, published before Florida’s failed live trial); Joe Patrice, *Florida Cancels Test Of Online Bar Exam Because, You Know, ‘Issues’*, Above the Law (Aug. 10, 2020), <https://abovethelaw.com/2020/08/florida-cancels-test-of-online-bar-exam-because-you-know-issues> (describing the issues with Florida’s bar exam).

bar applicants. We need a solution grounded in fact, equity, and compassion. That solution is emergency diploma privilege. Thank you for giving us the opportunity and platform to raise these concerns.

Respectfully,

Molly Prindle

Chris Elliott
cke4000@comcast.net

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Chris Elliott, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Chris Elliott

David H. Bader
6421 Enchanted Solitude Place
Columbia, MD 21044
dbader@dhbader.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges,

I, David Bader, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. Considering the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces personal and professional legal issues that a newly barred attorney could help with would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

David H. Bader

August 24, 2020

By Electronic Submission

The Judges of the
Court of Appeals of Maryland
361 Rowe Blvd.
Annapolis, Md. 21401

COACLERKOFTHECOURT@MDCOURTS.GOV

Re: Comments in Support of Diploma Privilege Option

Your Honors:

What do Supreme Court Justice Benjamin Cardozo, Secretary of State Hillary Clinton, President Franklin D. Roosevelt, Stanford Law Dean Kathleen Sullivan, and First Lady Michelle Obama have in common? They all failed the bar exam.¹ Supreme Court Justice (and lead Nuremberg prosecutor) Robert Jackson—widely considered among the finest legal minds of the Twentieth Century—never took a bar exam.²

My point is not to make light of the situation, but to underscore what is widely known, if rarely spoken, in our profession: the bar exam is, at best, an imperfect instrument for measuring one's competence and fitness to practice law, and far from the only way to become a great lawyer. I am writing to provide my views (which are mine alone), as a member of the Maryland Bar and brother of a 2020 law school graduate, on the importance of adopting Diploma Privilege, with appropriate safeguards. I understand that some practitioners are opposed to eliminating the bar exam as a requirement to admission, even under the current emergency situation. I wish to offer my strong contrary view.

I have been a member of the Maryland Bar since 2011, and my professional experience has afforded me a broad snapshot of our State's Bar. I have worked as a circuit court law clerk, as a public defender, in the Attorney General's office, and in private practice. My current practice includes criminal defense and professional responsibility—two areas where attorney competence is an especially acute concern. I have also had the opportunity to work with a number of young prospective attorneys who have not passed the bar, including law-school interns, summer associates, and junior associates awaiting their bar results.

Based on my professional experience, I am entirely comfortable with allowing young lawyers who have demonstrated the competence necessary to complete a rigorous three-year J.D. program—as any bar applicant has done—to be admitted without additionally passing the bar exam. Obtaining a law degree in 2020 requires years of diligence starting with the discipline required to get a good LSAT score. Law school graduates have taken a core curriculum covering

¹ https://www.lextalk.com/b/lextalk_blog/archive/2014/06/06/10-famous-bar-exam-failures.aspx.

² <https://www.mtsu.edu/first-amendment/article/1339/robert-jackson>.

August 24, 2020

Page 2

most basic areas of the law, passed a course on professional responsibility, demonstrated their competence at legal writing, and in many cases already stood up in court representing real clients under supervision. In my view, it is this intensive three-year formative experience, more than the three months of cramming for the bar exam, that produces competent lawyers.

I am more concerned that online test being proposed will interfere with competent lawyers being admitted than I am worried about unfit lawyers slipping through under a Diploma Privilege regime. To the extent the Court feels additional protections are warranted, I believe a rule requiring admittees to associate with a more-senior attorney for a certain period of time would suffice. But even brand-new lawyers who have passed the bar exam often work under supervision.

This year's law school graduates have demonstrated a tenacity and ingenuity that few of their predecessors have had to possess. The fact that they have come this far makes me confident that they will become valued colleagues, and I respectfully urge the Court to seriously consider the Diploma Privilege option.

Respectfully submitted,

/s/ John R. Grimm

John R. Grimm (CPF No. 1112130385)

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am writing today as a member of the public and as a friend of a 2020 applicant to urge you to consider implementing some form of diploma privilege for the 2020 applicants. These individuals have worked for the last three years in anticipation of taking the bar exam, but this year's pandemic has thwarted their plans. For many of them, this has resulted in delayed employment, loss of health insurance, and loss of a quiet space to study.

By completing three years of law school combined with the requirements to participate in internships and clinical programs, these individuals have already made numerous contributions to the Maryland legal community in their capacity as student attorneys. They have demonstrated their competency and demonstrated that they are more than capable to begin representing the needs of Marylanders who are most in need.

One of my closest friends attended the University of Maryland. She has worked tirelessly for the last three years in preparation for the bar exam and even graduated *cum laude*. Her dedication to the legal profession is unwavering. She started law school with the goal of helping the public through policy reform and not once did her goal ever change, despite knowing she will likely have to take on several years of debt. She considers it worthwhile if it means she can help someone and change someone's life. At a time when Maryland is facing so much turmoil over the coronavirus pandemic, we need people like my friend who can inspire change and who can dedicate themselves to ensuring that voices are heard, and people are supported.

Currently, I am watching her suffer as she has lived in the limbo since May wondering when the bar exam will happen and now, she is wondering if the software program will even work. She has delayed her start date and has lost income for the next two months to study for the bar. My friend and every other 2020 bar applicant has now been studying for a minimum of four months for the bar exam. These individuals have demonstrated their competency, resiliency and passion for the law through the completion of three years of law school, internships and clinical programs.

Furthermore, the SBLE has not yet demonstrated how they plan to even give a remote exam, let alone how they will score it. I am not sure how an unvalidated and unscaled test that has never been used before can even serve to determine the competency of this year's bar applicants. This

is only adding to the stress of the bar applicants. These individuals are competent and ready to practice.

I urge the Court to please consider some form of diploma privilege, similar to Louisiana, because our community needs these applicants. As a member of the public, I am fully confident in the ability of the class of 2020 to represent me in any action, if need be, regardless of whether they took the bar.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Alison Chandler

Nick Clarkson
Web Editor, InvestorPlace.com
Clarkson.nickandrew@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Nick Clarkson, a member of the general public and Maryland resident, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces housing and utility insecurities would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Nick Clarkson

[EXTERNAL] Comment on Diploma Privilege

Carley B <carmegbeck@gmail.com>

Mon 8/24/2020 9:23 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear The Honorable Chief Judge Barbera and
Associate Judges:

I am 2020 graduate from the University of Maryland Francis King Carey School of Law, and I am submitting this email as my comment in support of diploma privilege for October (formerly September, formerly July) 2020 Bar Applicants.

The Bar is meant to test applicants' competency, but an exam is not the only way to do that. Law graduates have completed three years of school, often completed internships, externships, or clinics, and have often worked in some capacity before or during school. We have to pass the Maryland exam component, an intensive character and fitness review, and the MPRE ethics exam. These experiences confirm our competency more than any exam that requires us to spend weeks memorizing black letter law ever could, and the Bar exam during a pandemic creates a multitude of concerns. Thus, in light of concerns regarding proctoring software and financial insecurity, among others, I request that the Court of Appeals enacts diploma privilege.

From each angle, the software used to administer an online exam remains problematic. Of the three original software vendors (Extegrity, ILG, and ExamSoft), only one remains (ExamSoft). Extegrity decided not to offer the technology because, after "diligent consultation with leading remote proctoring advisors," it came to the conclusion that "remote proctoring carries undue risk for the October exam." @BarExamTracker, Twitter (Aug. 6, 2020, 4:59pm), <https://twitter.com/BarExamTracker/status/1291478956055629824?s=20> (posting copy of Extegrity's statement). ILG failed as a viable option after multiple failed tests led Florida to cancel its bar exam days before it was due to be administered.

Haley Lerner, *Online Florida Bar exam canceled days before scheduled test date. What happens next?*, Miami Herald, Aug. 17, 2020, <https://www.miamiherald.com/news/local/article245011010.html>. Maryland's State Board of Law Examiners ("SBLE"), in its update to this Court, noted that the third and only remaining software option, ExamSoft, has provided performance in other exams that "generally satisfied" examiners. Jonathan A. Azrael and Jeffrey C. Shipley, October 2020 Remote Bar Examination Update (Aug. 18, 2020), 4, <https://mdcourts.gov/sites/default/files/import/coappeals/pdfs/remotebarexamreport202008.pdf>. This "satisfaction" was followed by reports of delayed start times and, in Michigan, a DDOS cyberattack. *Id.*

In response to Diploma Privilege for Maryland's ("DP4MD") concerns regarding hacking of the Bar, Maryland's SBLE notes that in the DDOS attack on the Michigan Bar exam, "[t]he integrity of the exam questions and applicant answers [were] not compromised." *Id.* at 5. However, SBLE's perspective on what makes an exam successful fails to consider the perspective of the test takers. The Bar is a stressful enough exam for applicants without concern that their software will crash during the test. A proctoring service ought to ensure that not only is the integrity of the exam maintained but that applicants' testing environment is maintained. A hacking delay during the test is an undue burden on applicants who are already facing extreme stress as they take an exam that can make or break the start of their careers. Further, SBLE's insistence that no data was actually compromised in the hack is not comforting, as it fails to consider that more people will be taking the bar across the US at the same time in October than in Michigan in August, making the Bar a bigger target to the same or other hackers, and another hack may be more successful. *Id.*

I am already stressed enough without the worry that my test will crash during the exam. In addition to the expected stress during the Bar study period (which is already an intense process), I have the added stressors of not having a quiet place to study and concerns over where to comfortably and quietly take

the exam. While the law school has generously offered its library as a space for recent graduates to use to help mitigate these concerns, the library is not opening until September 8, less than a month before the exam, meaning that a good chunk of study will already need to be completed in subpar spaces first. I am also incredibly frustrated that I had to pay over \$2,000 for a Bar exam prep course that I am supposed to rely on for most if not all of my studying, when a huge portion of the test-taking tips are for a written exam format and for an exam with twice as much material (meaning the data the company uses to source its tips will be from very different tests than what we are currently supposed to face). All of this stress about the exam itself is in addition to the concerns of: the health and safety of my family, friends, and self from the pandemic; my upcoming clerkship's delayed start date; entering a job market after my clerkship that will be coming off of a massive recession; my family's stress about financial security during the pandemic; my soon-to-be-due student debt; and the normal day-to-day stress that we all face. Nor am I capable of relieving this stress in my go-to ways, such as relaxing with family or friends, reading a cozy library book, or going to the gym, as leaving the house carries a risk of contracting COVID-19.

Finally, a continually postponed exam is a barrier to entering the practice of law at a time when lawyers are needed most. Should technological issues delay the exam (such as in Florida) or cause otherwise-passing applicants to fail, the legal field will have that many fewer attorneys entering the legal field.

Through my work at Civil Justice, Inc., a Maryland non-profit that provides low-bono attorney referrals to the most vulnerable communities, I have heard countless stories of how COVID-19 has impacted individuals and their families. They have various issues, ranging from wrongful death actions to illegal evictions. The stories that I have heard as I try to connect callers with attorneys who can assist them are a small sampling of what our state, and the US, is facing. This is not a time to turn lawyers away, but rather to embrace them into the community—and put them to work.

For all these reasons, along with those described in DP4MD's Petition and the others that I'm sure additional comments mention, the Bar exam is not feasible at this time. Law school quickly teaches us to prepare for the foreseeable—and to appropriately cope with the unexpected. We are currently facing the unexpected, and the most reasonable solution is to enact diploma privilege.

Thank you for your time and consideration on this matter.

Sincerely,

Carley Becker, J.D.
University of Maryland, Francis King Carey School of
Law, Class of 2020

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Alexandra Shapiro <alexandra.j.shapiro@gmail.com>

Mon 8/24/2020 9:25 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Alexandra Shapiro
100 Shawan Rd Unit 38
Cockeysville, MD 21030

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Alexandra Shapiro, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community have heard about the struggles of many recent graduates who have worked so hard in law school to have secured a job with the intention of taking an in-person bar exam and think it's terrible that they can lose their job opportunities due to the inconsistencies proven with technical difficulties of an online bar exam. Alana Quint, J.D. is an example of someone who would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Alexandra Shapiro

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August 23, 2020

The Honorable Chief Judge Barbera,
The Judges of the Court of Appeals of Maryland
361 Rowe Boulevard
Annapolis, MD 21401

Dear Honorable Chief Judge Barbera and Associate Judges:

As a member of the class of 2020, I would like to sincerely thank the Court for presenting the community with the opportunity to offer comments regarding the remote administration of the bar exam. From the inception of the pandemic, the Court has clearly prioritized the health and safety of the incoming class of applicants, and your consideration is greatly appreciated. Because I am immunocompromised, the decision to cancel the July examination provided great relief. Before the cancellation, daily, I weighed the risk of taking the bar against the risk of losing my employment if I failed to take it when offered.

I originally believed the remote exam was the best and most feasible alternative to an in-person bar exam. The remote administration would still afford applicants the opportunity to demonstrate our competency; however, after learning of all the modifications to the test (i.e. cutting the exam in half), the unfair burden on the state in having to grade the test on its own¹, and the cybersecurity attacks on the software the SBLE selected,² I believe that remote administration is neither feasible nor secure. The mounting uncertainty regarding the scoring,³ testing procedures, and privacy, less than 42 days from the intended administration of the exam, highlights the overall impracticability of a remote administration.

¹See Kate Lisa, *Lawmakers Seek Diploma Privilege for Law Grads Amid Looming Virtual Bar Exam*, THE DAILY NEWS ONLINE (Aug. 19, 2020), https://www.thedailynewsonline.com/news/lawmakers-seek-diploma-privilege-for-law-grads-amid-looming-virtual-bar-exam/article_b5b3c6a4-761e-5b30-8b08-b1ceec57f8ba.html; see also NATIONAL CONFERENCE OF BAR EXAMINERS, <https://www.ncbex.org/ncbe-covid-19-updates/faqs/> (last visited Aug. 23, 2020).

² Stephanie Francis Ward, *Software Provider Pulls Out of Remotely Proctored Bar Exams Because of Technology Concerns*, ABA Journal (Aug. 18, 2020, 2:41 PM), <https://www.abajournal.com/web/article/due-to-technology-concerns-software-provider-pulls-out-of-remotely-proctored-bar-exams> (“Greg Sarab, the founder and chief executive officer of Extegrity, says his primary concerns about a bar exam with remote proctoring include reliable internet connections being required for live remote proctored exams, and that the requirement of simultaneous start times comes with significant technological and procedural burdens. He also says there hasn’t been sufficient development time or product testing for the technology.”). In addition to being the president and CEO of Extegrity, Mr. Sarab co-founded Examsoft, and therefore presumably speaks with some understanding regarding Examsoft’s software limitations when stating that a remote administration is impossible. *Id.*

³See *supra* note 1.

There are many unanswered questions that make it difficult for applicants to know how to prepare and properly study. First, the NCBE has unfairly shifted the burden of scoring a new bar exam to the states; therefore, when studying, applicants no longer know what constitutes a passing score, how the MBE questions will be scored, or how the essay scores will ultimately impact the overall exam score. As a result, applicants do not know how best to prepare. The SBLE has not released the test day procedures and as a result, applicants cannot tailor their studying habits or practice unlearning habitual tics that could result in the cancellation of their scores. Combining the lack of testing procedures with the fact that students can no longer diagram answers or create outlines for MPTs (as taught in law school and all commercial bar prep courses), this year's applicants are severely disadvantaged as compared to past applicants. Finally, the SBLE's lack of formal procedures, makes it impossible for students who lack a quiet study space or sufficient internet connection to find a new testing location. For example, as mentioned in the SBLE's response letter to the Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus, the University of Maryland has offered *limited* space to students to take the bar exam at school.⁴ If a student is fortunate to be allowed to take the bar in the law school, the SBLE offers no guidance on how that would be possible with the procedures that are currently in place. Based on the instructions in the letter, a student would not be permitted to take the exam in the law school library because of the presence of books.⁵

I understand the bar exam is a time-honored tradition that is designed to protect the community-at-large. The test creates confidence in a new class of attorneys and as a result, confidence within the profession. The test allows aspiring lawyers to demonstrate their writing and analytical skills, as well as other critical skills such as time-management and endurance. However, the rigorous requirements of law school, are sufficient to allow for confidence in applicants' competence and fitness to practice. Between successfully completing core courses tested on UBE, completing over 500 hours of work in my mandatory clinical class (while maintaining a full schedule, with extracurriculars) and completing legal internships, I, and the majority of candidates, have the proper legal foundation and practical experience to succeed, even without taking the bar exam. In combination with the safeguards discussed below, the community will be assured of the new class of applicants' experience.

With all of these considerations, I would humbly ask the Court allow a one-time, emergency, diploma privilege as the avenue to full licensure. In addition to successfully completing the MPRE, the Maryland Law Component, and the Character and Fitness Investigation process, 2020 applicants should be required to complete the number of supervised practice hours the Court of Appeals deems appropriate, as well as CLE requirements for the time period deemed appropriate by the Court.

⁴ Response to Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus at p. 7.

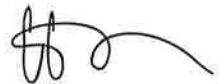
⁵ *Id.*

Anything less than full diploma privilege during this unprecedented time is untenable. Remote administration is fraught with difficulty, as addressed above.⁶ Tabling the examination until February is an unsuitable alternative. First, there is no indication as to when the pandemic will be under control and there is also no indication as to when a vaccine will be available, if ever. Next, the burden to both employers and applicants is mounting. It bears repeating that many members of the class of 2020 have already lost employment opportunities. Those of us who are fortunate enough to still have our offers on the table are now unable to work. An open question is whether applicants would be able to take leave for a February examination or even study effectively for a February examination. Amid a recession, 2020 applicants are anxious to begin employment. Delaying the bar and delaying employment any further will have a detrimental economic impact on 2020 bar applicants and the greater Maryland community.

Should the Court decide the exam is necessary, perhaps it will consider implementing an open-book exam similar to the exams offered in Indiana and Louisiana. An open book examination protects applicants' privacy and ensures that none of the applicants fails the bar exam solely due to circumstances beyond the scope of their control, such as software failures, internet overload, or uncontrollable, unconscious, innocuous behaviors.

Again, I would like to thank the Court for its careful time and consideration on this important matter.

Respectfully,



Cymone B. Gosnell, J.D.
University of Maryland Francis King Carey School of Law
Class of 2020

⁶ One concern I have not seen mentioned is the ability of Examsoft to handle the volume of calls and support requests should another cybersecurity attack or system failure occur. Many Michigan test-takers reported an inability to contact customer or technical support when the DDOS attack occurred during the state's remote administration. Kim Kozlowski, *Michigan Bar Exam Crashes Online; Company Points to Cyberattack*, The Detroit News, (Jul. 28, 2020, 6:32 PM), <https://www.detroitnews.com/story/news/local/michigan/2020/07/28/michigan-bar-exam-crashes-online-company-cites-cyberattack/5527628002/> ("Martin called the ExamSoft Worldwide hotline, but it was busy. He eventually got the password and began taking the second module of the test 30 minutes late. But he completed the exam on time."). If the company, despite its best efforts, cannot support 733 applicants, the team cannot support 30,000 students.

Patrick Short
patrickallanshort@gmail.com

August 24, 2020

Suzanne C. Johnson
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361 Rowe Blvd
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COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Patrick Short, a 2020 October bar applicant, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In addition, I am writing to address comments made by the Maryland State Board of Law Examiners (“SBLE”) in its letter that was delivered to this Honorable Court on August 18, 2020.

VIABILITY OF THE EXAM

The SBLE has provided us with accounts of only two jurisdictions that have utilized ExamSoft: California and Michigan. In California’s case, “the State Bar of California administered the California First Year Law Student’s Exam to approximately 350 examinees using ExamSoft’s remote proctoring option”¹ with the only reported issue being a delay in commencing and completing the examination due to examinees failing to locate the start-up password prior to commencement.² In Michigan’s case, the website that displayed the start-up password for the approximately 500 examinees of the July 28, 2020 Michigan State Bar Exam suffered a distributed denial of service (DDOS) attack that prevented examinees from accessing the password; this resulted in examinees having to take to social media to obtain the passwords as ExamSoft was unable to provide that information to the examinees.

The SBLE has responded, particularly to the Michigan State Bar Exam’s DDOS incident, with the following solution:

“The cyber-attack that impacted the Michigan exam was directed at disrupting the website where applicants were to retrieve the start-up password for the second session of the exam. The SBLE along with the other jurisdictions giving the October remote exam are planning for a multilayered system of distributing the start-up passwords to applicants, including simultaneous or near simultaneous distribution of passwords on ExamSoft web pages and Maryland Judiciary web pages, and by separate emails sent by ExamSoft and by the SBLE. Applicants may be able to opt-in to also receiving the passwords by text message. ExamSoft’s technical support staff and the SBLE’s office

¹ SBLE Remote Bar Exam Report 2020, Page 4

² SBLE Remote Bar Exam Report 2020, Page 4

staff will also have the passwords to be provided by telephone. These steps are expected to mitigate the risk that any one avenue for retrieving the exam password would be compromised or that any examinee's access to the exam would be delayed or denied.”³

There are several issues with the SBLE's assurance as to the viability of an online and remote bar examination. The SBLE states that examinees may opt to receive the passwords to the examination by text and that both ExamSoft's technical support staff and the SBLE will have passwords to be provided by telephone; in an email⁴ sent from Jeffrey Shiply to examinees on August 7, 2020, the SBLE has stated that one of the “testing conditions” will not allow examinees to have a phone present in the room. As a result of this restriction, examinees will not be able to retrieve the password from their phones nor be able to call the SBLE or ExamSoft's technical support staff for assistance if a problem were to occur for fear of an exam cancellation. The SBLE also fails to acknowledge that if a DDOS attack were to occur on the ExamSoft and/or the SBLE servers, passwords may not function or be sent out, resulting in further delays of an examination.

DATA PRIVACY

The SBLE purports that examinee data, privacy, and personal information is not at risk for three reasons: (1) that because “there was no attempt, much less any successful attempt, to penetrate, corrupt, or destroy the exam delivery and proctoring software or ExamSoft's database system ... there appears to be no credible threat that use of ExamSoft's platform to remotely deliver the October 2020 bar exam to applicants presents any greater risk of compromise to applicants' personal data than any other online transaction in which those applicants might engage”⁵ (2) that ExamSoft's data collection will consist of “identifying data provided to ExamSoft by the SBLE for purposes of registering the applicant to use the exam software, including each applicants' name, email address, examination seat number, and internal bar admissions registration number”⁶ and that “the SBLE does not provide ExamSoft with the applicant's address, phone number, date of birth, or any portion of the applicant's Social Security Number,”⁷ (3) and that the SBLE is paying the software licensing fees so that credit card information will not be collected or compromised.⁸

With regard to the first reason, the SBLE is merely stating, without more, that because an attempt to hack ExamSoft's database has not occurred in the past, that it will simply not occur in the future. This does not provide any confidence or reassurance whatsoever in examinees that our data, privacy, and personal information will not be subject to any risk.

As to the second reason, the SBLE states that simply because the SBLE or the examinees do not provide certain information to ExamSoft, that ExamSoft will not have access to that particular information. In ExamSoft's privacy policy (effective 5/15/2020), the following is stated:

³ SBLE Remote Bar Exam Report 2020, Page 5

⁴ “FAQs for October 2020 Remote Bar Exam”

⁵ SBLE Remote Bar Exam Report 2020, Page 5-6

⁶ SBLE Remote Bar Exam Report 2020, Page 6

⁷ SBLE Remote Bar Exam Report 2020, Page 6

⁸ SBLE Remote Bar Exam Report 2020, Page 6

“Certain products in our solution require that, prior to an assessment, each exam taker’s device must be secured. Therefore, in order to secure the exam taker’s device, *ExamSoft must access and, in some instances, modify device system files*. By using our products, you understand and consent to this action” and “ExamSoft takes reasonable precautions to protect your personal data from loss, misuse and unauthorized access, disclosure, alteration, and destruction. *No method of transmission over the Internet, or method of electronic storage is 100% secure, however. Therefore, ExamSoft cannot guarantee its absolute security.*”⁹ (emphasis added).

Examsoft’s privacy policy is inapposite to the SBLE’s outlook of security in utilizing ExamSoft. Examinees are required to permit ExamSoft to be able to access and modify device system files; in doing so, this grants ExamSoft administrative access to the computer on which the software is installed. If a hack to ExamSoft’s servers and database were to occur, this data may become accessible, even if the examinees do not expressly hand it over to the SBLE or ExamSoft; there is no limitation as to what, if any, data will be accessible through the system files access and modification, or how long that data will be held available for ExamSoft.

And with regard to the third reason, as stated above, the mere fact that the SBLE is paying the software licensing does not render examinee data, privacy, or personal information, to include credit card information, immune from a hack of ExamSoft’s database.

If ExamSoft cannot guarantee absolute security with regard to data storage and collection or from being compromised, then why can the SBLE make that assurance to examinees on behalf of ExamSoft?

ACCESS TO STUDYING & TEST-TAKING SPACES

“The SBLE believes that applicants have adequate opportunity to secure a quiet space to prepare for and take the on-line exam.”¹⁰

The SBLE is of the belief that because the October 2020 bar examination will be remote and online, that the ongoing effects that the COVID-19 pandemic has had, and continues to have, on Petitioners have vanished and cease to exist in any way or form. The COVID-19 pandemic does not permit examinees to drop their obligations for an extended period of time to adequately prepare for the exam or to find a suitable location for the exam. Examinees, and Americans across the nation, have transitioned to work-from-home environments where traditional childcare programs are unavailable, spouses, roommates, or family members are also present at home, and where public spaces are limited; coupled with those that are high-risk, or living with others that are high-risk, finding a quiet space to prepare for and to take the bar examination is next to impossible.

Both the University of Baltimore and University of Maryland Deans of the Law Schools, and other law offices, have offered to open their facilities for the purpose of taking the examination. Pursuant to an email¹¹ sent from Jeffrey Shiply to examinees on August 7, 2020, the SBLE has stated that one of the “testing conditions” is a limitation as to only the examinee being present in the room with no one else; this places a significant burden on the very limited number of locations available to test takers as it prevents a law library, capable of hosting hundreds of test takers, to

⁹ <https://examsoft.com/privacy-policy>

¹⁰ SBLE Remote Bar Exam Report 2020, Page 7-8

¹¹ “FAQs for October 2020 Remote Bar Exam”

only hosting a single test taker on a first-come-first-served basis, with no guarantee that an unrelated person will not wander into the frame or make any noise.

ENSURING COMPETENCY & PROTECTING THE PUBLIC

The SBLE is of the belief that “administering the October 2020 remote bar exam using *material supplied by the NCBE*” will provide “assurance that successful candidates are *competent* to practice law in Maryland.”¹² (emphasis added).

In an interview with the NCBE’s President and CEO, Judith Gundersen told the ABA journal the following:

“Remote testing is a significant departure from the conditions under which the [UBE] is administered, and *scores earned on the remote test are therefore not comparable to those earned on a standard in-person administration of the UBE.*”¹³ (emphasis added).

It is by this language, that the NCBE is advocating that scores resulting from the online administration of the 2020 October bar examination, when compared to scores from those jurisdictions that opted for in-person examinations in 2020, will be viewed as less representative and not a true measure of competency to practice law. The SBLE is relying on the use of an examination with material supplied by the NCBE to ensure competency to practice law in the state of Maryland where the NCBE is unable to say that the remote examination will maintain, or guarantee, the same standard of competency as an in-person bar examination traditionally does.

CONCLUSION

The administration of a remote and online bar examination for October 2020 by the SBLE’s assurances is not feasible. Neither the SBLE nor ExamSoft have provided adequate measures of protection or reassurance with regard to the October 2020 remote and online bar examination. Graduation from an ABA accredit law school, a passing score on the Multistate Professional Responsibility Exam, a passing score on the Maryland Law Component, and passing the character & fitness examination renders examinees competent and assures that the public is adequately protected.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Patrick Short, JD

¹² SBLE Remote Bar Exam Report 2020, Page 9

¹³ https://www.abajournal.com/web/article/in-lieu-of-an-in-person-ube-some-jurisdictions-with-online-bar-have-reciprocity-agreements?fbclid=IwAR3Y6bjqvWDsNMck8rEcnl81ac92IouCb_PB2QeaMid6ZtMuONJzBJCR6Pk

Victoria Dohler, J.D.
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August 24, 2020

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Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the feasibility concerns with ExamSoft, coupled with the difficulties an online exam during a global pandemic brings, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

First, since the bar exam was pushed back twice, I had no other choice than to start working while I was studying for the bar. Originally, I had planned to not work and begin employment immediately after the bar. Given the financial insecurity a delayed bar exam has presented, I was unable to stick to my original plan. I have had to work full-time, on top of caring for an immune compromised parent, as well as study for the bar. These are additional circumstances that I would not have faced if the bar exam was not given during a global pandemic.

Second, I had signed up for an in-person bar prep course, Shemer, because that type of learning works best for me. Given the novel coronavirus, my in-person bar prep course company went under as a company and I had to scramble to find another bar prep course. There are no other in-person bar prep courses, so I was forced to take an online course, even though I don't learn as well this way. If the bar exam was not administered during a global pandemic, I would not have had to depart for my ideal learning style.

Third, many students, including myself, had planned to use coffee shops and the law school library for a quiet place to study with access to consistent internet. Given the pandemic, all of these locations that typical law school graduates would have access to for studying were taken away from us. Therefore, I have been forced to study at home, where it is not quiet, and my internet connection cuts out at least once a day.

Fourth, Bar examinees are at a significant disadvantage than previous year test-takers with an online exam. The State Board of Law Examiners announced that bar examinees will not have access to physical scrap paper. However, SBLE has announced that there will be virtual scrap

paper for the essays and MPT. While I can appreciate SBLE's attempt to rectify the ban of scrap paper, virtual scrap paper and physical scrap paper are not created equal. Virtual scrap paper will not be of any help when needing to draw out a family tree of 12 people for a trusts and estates or property essay. Additionally, Examinees will have to scroll through a 50+ page MPT without the ability to highlight on it or write in the margin notes.

Lastly, ExamSoft software has proven that it cannot adequately administer a bar exam. In July, Michigan administered a bar exam with roughly 500 examinees using ExamSoft software. During the exam, the website displaying the start-up password for the exam experienced a cyberattack and applicants were delayed during their exam. On page 5 of the SBLE's October 2020 Remote Bar Examination Update, the SBLE responded to how they would avoid this during their administration: "Applicants may be able to opt-in to also receiving the passwords by text message. ExamSoft's technical support staff and the SBLE's office staff will also have the passwords to be provided by telephone." However, in the "FAQs Related to the October 2020 Remote Bar Exam in Maryland" sent out by the SBLE on August 7, the SBLE noted "Examinees must not have a phone in the room." It is unclear how we are supposed to receive passwords via cell-phone but also cannot have our cell-phones in the room where we test.

Additionally, the July Michigan bar exam was administered to only 500 Michigan bar examinees in July. In October, ExamSoft is providing the software for Maryland bar examinees, as well as many other jurisdictions. ExamSoft and the SBLE has failed to communicate how they can successfully administer the bar exam to this volume of examinees without problems.

I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Victoria Dohler, J.D.

Carlos Andino
Equal Justice Works Fellow
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August 24, 2020

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Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Carlos Andino, an applicant for the Maryland bar exam in 2020, am writing to express my support in granting 2020 October bar applicants emergency diploma privileges. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

I am a first-generation lawyer of color, recently graduating from Emory University School of Law in May 2020. In addition to this, I was raised, and still live, within a working-poor class family. My father did not graduate from high school, and my mother has not received gainful employment since the Great Recession. For those similar to me, this means a lack of direct guidance on how to be a successful bar examinee and places an increased burden on us to identify the necessary skills to be held competent by a Board of Law Examiners. Further, as all bar applicants are well aware, preparation for the bar exam is a large financial burdensome. This burdensomeness has only been strengthened by the Corona-Virus crisis.

Upon graduating from law school amid of the Corona-Virus crisis, I quickly realized that I would be unable to support myself financially until the completion of the bar exam. While blessed to have post-graduate employment lined up, my public interest work would be unable to offer me any type of financial assistance until my fellowship began in September 2020. Which meant I would have to rely on my gracious parents and their hospitality till then.

However, unlike many of my privileged colleagues, moving back home meant living in a space with ample distractions. Due to the economic fallout of the Corona-Virus crisis, my parents were evicted from their home for the past eight years. Not only this, but my grandmother and one of my aunts had recently been evicted from their homes as well. Thankfully, my gracious parents offered to house these extended family members within their recently acquired three bedroom apartments.

In regards to my presence in these circumstances, this meant I would be coming home to a full house. With the understanding that my bar exam would still be in July 2020, at this point, I would spend the next several months sleeping on an air mattress in my parent's living room. Because of the arrangements, I would have no quiet places to study. Bar prep would entail me sneaking into another's empty bedrooms, in order to escape the distractions caused by seven people living in one small apartment. While my family members were respectful and encouraging of my studies, they of course did not understand the pressures that came with bar exam preparation. For myself, and all Maryland applicants, these pressures only grew upon each postponement of the exam.

With each delay of the bar exam, uncertainty has risen around when my full-time legal employment could begin. Throughout of the summer, I have dealt with significant bursts of anxiety regarding when I may be able to earn an income to support myself. Which has only raised pressures to seek part-time employment while continuing my studies for the bar exam. A reality many do not have to face while preparing for the bar exam, as bar preparation is often described as a full-time commitment in itself. Now with an October bar exam, it is guaranteed that next month I will have to begin working a full-time job and studying for the Maryland bar exam simultaneously.

The purpose of my attempt to become a first-generation attorney is to help others. When licensed as an attorney, I am already committed to public-interest work. Specifically, I have designed a fellowship which will allow me to represent, pro bono, Black and Brown residents of Maryland in claims of excessive force by police officers. In a time when our nation is consumed in a conversation around the need for greater police accountability, the demand for qualified attorneys to represent marginalized and indigent members of our community has never been greater. I strive to help reach this demand and improve the lives of all Maryland residents.

However, the uncertainty surrounding the Maryland bar exam places this all-in jeopardy. Not only have I and others experienced increased hardships due to exam postponements, we now live with the uncertainty that we will receive a reliable and just examination. First, many of us are uneasy about the use of the untested ExamSoft software on a day when over 30,000 bar applicants plan to take the exam. In addition to this, many of us are still unsure whether we will have reliable internet connection in a distraction free environment. Second, we are all fearful of what further delays of the bar exam, due to software or other issues, will mean for our employment opportunities. I am already having to exist with the reality of essentially having two full-time commitments prior to the October exam. Lastly, we are concerned that the uneven footing the Corona-Virus has placed all of us on will lead to Maryland residents not having access to the legal representation their demands deserve. Most notably, those who cannot afford adequate legal representation will be affected the most by this.

In conclusion, I ask the Court to consider granting diploma privileges to all Maryland bar applicants who successfully complete the Board of Law Examiners character and fitness requirements. I hope that a view into my circumstances over the last several months leads all to a better understanding of the adversity bar applicants face today. With the underlying understanding that we seek to join the legal profession to advance justice, I am optimistic that the Court will see how granting diploma privileges will lead to the mutual benefit of all Maryland residents. As well as understanding there are other means, then an unusually burdensome bar exam amid a pandemic, to protect the public from malpractice throughout an attorney's career.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Carlos Andino

[EXTERNAL] Public Comment on SBLE Remote Bar Examination

Alex Thierer <athierer11@gmail.com>

Mon 8/24/2020 10:09 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To the Maryland Court of Appeals,

In one of my favorite episodes of the West Wing Toby Ziegler and Josh Lyman miss the motorcade and are stuck in Indiana. They meet a man who is visiting Notre Dame with his daughter who is incredibly excited and all he can think about is how he is going to pay for it. He talks about how he likes that it's hard, that he wants it to be hard, that it should be hard, but for all his preparation he is faced with the prospect of disappointing his daughter. Whenever I think about the bar exam, I think about that scene. Becoming a lawyer should be hard, I like that it is hard and I am proud of my recent accomplishment graduating from law school. I was one of the few of my friends who, at the start of this pandemic, wanted the bar exam to go forward because as a first generation law student I wanted the experience of buckling down for two months, preparing, and then feeling the relief after it was over. I was prepared for the ten week grind. But as the COVID crisis continued and ten weeks turned into five months my feelings shifted.

I was proud when the SBLE announced they were postponing the exam to September. I was proud when they postponed it to October, and going on-line, I initially thought, was a great plan. Then I heard about Indiana and Michigan and the troubles they ran into. When I applied for admission I decided to take the test by hand for the exact concerns that plagued test takers in those states. I live in an area with a lot of thunderstorms and power has cut out - how would that affect my exam? What about those who don't have access to reliable internet for any number of reasons ranging from rural areas to poverty? There are numerous concerns that can be raised about the exam in 2020, and a limited diploma privilege seems to be the best solution.

I do not want diploma privilege to come without strings. I think instituting mandatory CLE trainings for 2020 graduates, or supervised practice under licensed attorneys could provide the same security that detractors of diploma privilege claim the bar exam provides. After all, does a county prosecutor focused on criminal and family law protect their clients by being tested on secured transactions and corporations? Is a mergers and acquisitions attorney better able to protect their clients by being tested on torts and criminal procedure? There seems to be some disconnect between the bar exam and law school - neither seems to trust the other. Law school prepared me for practice in the areas I am interested in - I confess I did not take corporations, wills and decedents, trusts or secured transactions. The bar exam is preparing me for a two day exam on ten, seemingly random, subjects.

I went to law school because I want to serve people. Law school is hard, being a lawyer is hard and it should be hard. But I have yet to hear a compelling reason that a two day exam should outweigh my three years of study when evaluating my ability to practice.

Regardless of what the court of appeals decides I am excited to join this profession. I am proud of my accomplishments graduating from law school. I am honored to be considered for admission to the Maryland Bar regardless of the circumstances, and I will continue studying as if the bar was still it's normal length, and these were not such dire times. Some applicants may not have that luxury, and I hope the Court gives them due consideration.

Thank you for your time, and please feel free to reach out to me with any questions or concerns you might have.

Sincerely,
Alex Thierer

Alex Oyston
University of Baltimore School of Law, Class of 2022
alexandra.oyston@ubalt.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Alex Oyston, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces legal issues pertaining to housing among other things, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Alex Oyston

Elysia Glasscock
12315 Oak Creek Lane Apt. 1602
Fairfax, VA 22033
919-943-7976
Em4110a@student.american.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

My name is Elysia Glasscock. I am a *Cum Laude* graduate of American University Washington College of Law.

I recognize the devastating effects the COVID-19 pandemic has had on our country. More specifically, I recognize the distressing effects it has had upon the 2020 DC bar applicants and upon those in our community who most need access to justice. I therefore strongly support the petition before the Court of Appeals, advocating for emergency diploma privilege.

I was fully prepared for taking two months to dedicate myself to studying and passing the DC bar exam. I was not prepared for a pandemic that would have devastating effects on me and all around the United States. While I applaud the court for being proactive and being one of the first jurisdictions to cancel an in-person bar exam and come up with an alternative, that alternative is not an equitable one. For me personally, while I have a supportive system in place, the unknowns of the bar exam have created increased anxiety in myself and my peers.

This is an exam that has never been administered before. Bar prep courses that we have devoted substantial money to cannot adequately prepare us. For example, there is no scratch paper on the online exam, yet the bar prep courses essentially tell you to take notes on the side of problems and diagram things out in order to solve questions. Additionally, recently Michigan tried to administer the bar exam online and the exam crashed in the middle of it. Creating anxiety and frustration in its applicants. Indiana and Nevada also had test runs with their software for the exam and was unable to get it up and running properly. They are also now considering diploma privilege as an alternative.

An online exam only benefits those that can afford to focus on studying for the exam during a pandemic. Personally, I have had multiple family members that have been diagnosed with COVID-19 and it has been incredibly difficult to think of anything other than the high possibility of them dying. I have watched colleagues had to deal with their once healthy parents, siblings, and grandparents passing away due to this virus. How can anyone focus on anything else at a time like this?

Diploma privilege puts new attorneys to work NOW and is permanent. Clients will get the benefit, and public interest organizations get to hire, train and onboard full-time employees. New attorneys can start their careers, get health insurance and other benefits and begin paying back their student loans with their income. Diploma privilege is the only equitable path to licensure.

Lastly, temporary licensure is not the solution. Temporary licensure allows new attorneys to practice law for a prescribed period of time without taking the bar exam but requires passage of the bar exam at a later date. This does not solve the problem of helping unemployed grads get jobs. Potential employers are less likely to hire a new attorney, knowing that they will have to take considerable time off to study for and take the bar exam. Without employment, these attorneys face financial challenges, including lack of health insurance and student loan repayment. Additionally, this would negatively affect our clients. Clients are real people with real issues. Legal matters can last several months to years. It is disruptive to the delivery of legal services to our clients if new lawyers operating under temporary licensure have to excuse themselves from client representation to study for and take the bar exam.

I understand your concern with wanting to ensure that newly licensed lawyers are competent to practice law. However, an online bar exam is not an equitable solution. There are other requirements that show the competency of a new attorney. If this court were to grant Diploma Privilege, I believe that they should limit it to those that have already applied to take the 2020 bar exam. By doing so ensures that floodgates are not opened and that the privilege of a license is restricted to those that want to practice in the Washington D.C. area and have shown a commitment to do so by applying for the bar exam. You should also require that applicants pass the MPRE to ensure that new lawyers are aware of their ethical obligations and require that they satisfy the character and fitness requirement.

Other additional criteria to be considered is increasing the number of CLE requirements, including making CLE courses accessible to applicants before formal swearing in, would be of great benefit to all applicants during this time of transition. Additionally, specific requirements to work with Legal Aid, DC Court, or other legal clinics in the DC area would be a beneficial way to reinforce the court's and DC bar's commitment to the underserved community.

Pro bono requirements could be achieved for 2020 applicants by allowing applicants to submit letters of certification from their law school showing clinic or other pro bono legal work completed on behalf of a legal aid clinic, law school affiliated legal clinic, or other legal non-profit. Additionally, the DC Bar could facilitate additional CLE courses that bar applicants would be required to complete. Finally, applicants without supporting documentation for pro bono, can meet the requirement by completing a court-prescribed number of pro bono hours within a reasonable time after licensure.

Thank you for listening to my concerns.

Respectfully,

Elysia Glasscock

Matthew Lounsbury
telecomguym1@gmail.com

August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Matthew Lounsbury, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Matthew Lounsbury

LAW OFFICE OF RALPH G. BLASEY, III

2 Wisconsin Circle, Suite 700
Chevy Chase, Maryland 20815
ralph@blaseylaw.com
(240) 235-6030

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Granting Emergency Diploma Privilege

Dear Chief Judge Barbera and Associate Judges:

I have been a member of the Maryland bar for the more than the last 25 years. I am a former partner with the national law firm of Baker & Hostetler and the former general counsel of Allied Capital, a Maryland publicly traded company. I have hired, trained and mentored many Maryland lawyers over the years. I am writing to express my strong support in granting the applicants for 2020 October Maryland bar exam emergency diploma privilege.

The understandable decision to postpone, and ultimately cancel, an in-person bar exam has had unfortunate consequences. There has been job loss, financial insecurity, and housing insecurity on the 2020 bar applicants in the midst of a recession. In addition, the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, is unlikely and has already caused extreme uncertainty for the integrity of the proposed online examination. Other states have had severe problems relating to an online examination. In order to minimize any additional harm, the Court should enact emergency diploma privilege for well-qualified applicants scheduled to take the October 2020 bar examination.

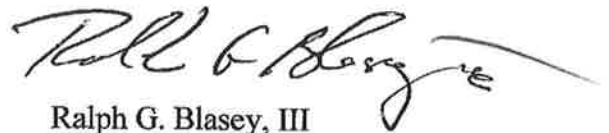
There are many other data points the Court can use to grant diploma privilege and be assured that applicants are qualified to practice law in Maryland. Graduation from an ABA accredited law school, historical bar passage rate from those law schools, law school grade point average, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component are just a few of the objectively determined factors. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. For example, an applicant from an ABA accredited school with a Maryland bar passage rate of 85% or better, a 3.0 GPA and certain minimum scores on the MPRE and Maryland law component would undoubtedly be qualified to practice law in the state. Using a variety of objective data points is perhaps an even better indication of fitness to practice law than reliance solely on a somewhat arbitrary score on the UBE multistate examination, particularly at a time when the integrity of the examination is in question. Those who do not meet

the objective criteria could sit for an exam, which would dramatically decrease the number of exam applicants and make the examination easier to administer.

The Court should also act in accordance with the best interests of the profession. It is not helpful to have incurred a delay, which is costing the applicants and law firms economic damages. Firms are losing money since they cannot hire the applicants and put them to work on legal matters. Applicants are losing money since they cannot begin their employment and have continuing expenses such as housing costs. Many have also had their health insurance jeopardized, since they are typically over the age of 26 and unable to obtain coverage other than through their school plans. As a practical matter, their employer sponsored coverage cannot begin until they have passed the bar and are able to practice law. It is in the best interests of the profession to grant diploma privilege to well-qualified applicants.

One of the criticisms of the legal profession is that it is often not efficient and is focused on creating problems, rather than solving them. This is an opportunity for the Court to act otherwise and solve a problem during a once in a lifetime crisis caused by extremely unusual circumstances.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph G. Blasey, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ralph G. Blasey, III

Joshua Wade
Fratus Law Group, LLC
joshua.wade@ubalt.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Joshua Wade, a member of the general public and a 2L at University of Baltimore School of Law, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community and as a law student who faces the prospect of sitting for the BAR exam in 2 short years but also as a close colleague and mentee of students who have prepared to take the BAR but have been unable to do so, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Joshua Wade

Spencer Wagner
National League of Cities
spencer.wagner95@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Spencer Wagner, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces potential familial disputes would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Spencer Wagner

[EXTERNAL] Remote bar examination

Christopher Soloway <christopher.soloway@ubalt.edu>

Mon 8/24/2020 10:34 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Chris Soloway

christopher.soloway@ubalt.edu

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Chris Soloway, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces issues with testing anxiety would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Chris Soloway

Chris A. Soloway

J.D. Candidate, 2022 | University of Baltimore School of Law

christopher.soloway@ubalt.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges:

My name is Abigail Burman. I am an applicant for the Maryland Bar. I graduated for the University of California, Berkeley, School of Law in May. Beginning in October, I will be a Justice Catalyst/Public Rights Project fellow with the Baltimore City Law Department, focusing on expanding access to reproductive health care and other health care issues.

I would like to thank the court for opening this public comment period, and for genuinely listening to the concerns bar applicants have about the licensure process this year. COVID-19 has had a devastating effect on our country and our city, and that effect has caused upheaval in the admissions process. I urge the court to approve emergency diploma privilege as an alternative path to full licensure in response to the COVID-19 pandemic.

In the interest of brevity, I will focus my comment on the SBLE's contention that lack of adequate testing space will not be an issue for anyone taking the October exam. I am sure that other comments will touch on the many concerning aspects of the SBLE's current plan for administering the bar, particularly the lack of evidence that the exam can be conducted without any software failures, the fact that the SBLE does not appear to have seriously engaged with and planned for the possibility of software failures, the SBLE's silence on how bar applicants with disabilities will be accommodated, and the enormous financial hardship that the delay and uncertainty surround the bar exam have caused current bar applicants.

While I deeply appreciate the SBLE's efforts to be communicative with bar applicants and to be an early leader both in recognizing that an in-person exam was not possible and entering into reciprocity agreements with other states, the SBLE's insistence on maintaining the bar exam as the sole path to full licensure, even as concerns about the online exam continue to mount, undercuts the goodwill built by its earlier actions. It is clear from their August 18, 2020 update to the court that the SBLE's goal is not hold a successful bar exam or to hold an equitable bar exam, but simply to hold any bar exam at all. The SBLE still has not explained how they will ensure access to the exam or respond to any failures in the software. Given this lack of clarity, and the deep inequity of administering an online exam, the only feasible option – as well as the only option that upholds the Maryland legal community's commitment to building an equitable and just legal system – is full licensure via diploma privilege.

In particular, I was troubled by the fact that in their update to the court the SBLE dismissed evidence gathered by advocates that a number of bar applicants would have difficulty securing the private, quiet space and stable wifi connection needed to take the exam. To justify this dismissal, the

SBLE pointed to the fact that “the SBLE has received only a handful of emails from applicants expressing concerns over exam space and access to technology.” What this statement elides is that the SBLE has never *asked* examinees if they have concerns about exam space and access to technology. If the SBLE had asked, this is what I would have written.

I am a bar applicant who is unsure if I can meet the space and technology requirements. I have excellent, expensive internet that nonetheless randomly cuts out for an hour a couple of times each week. I also live in an area that is frequently hit by hurricanes, with the attendant risk of power outages.¹ While I am lucky enough to not have numerous roommates, pets, or family members that require care, my house has almost no doors. If I take the test in my house, my girlfriend will lose access to either the bathroom or the kitchen for the duration of the test.

The SBLE has suggested that I can instead take the test at “work/office, law school, library, or another location of [my] choice.” None of these options are feasible. I am not currently working, so I do not have an office. I did not attend law school in Maryland, so I cannot take it at my law school. Moreover, all of the law schools in Baltimore are currently closed. The entire Baltimore City library system is, likewise, closed.

These suggestions are also at odds with the SBLE’s original, and admirable, decision to not hold an in person-bar exam. If it is not safe to be in a closed space with other people while taking an in-person bar exam, it is not safe to be in a closed space with other people taking an online bar exam. My girlfriend and I both have health conditions that make us particularly vulnerable to COVID-19. Given how COVID-19 spreads, entering any indoor space, especially for hours at a time, is extraordinarily risky.² This risk is further heightened when buildings are sealed off from outside air and AC is used.³ Needless to say, every building in Maryland is air conditioned well into the fall. My home is the only space where I can be safely indoors for long periods of time. In presenting the use of testing locations outside applicants’ homes as a simple, straightforward option – a choice without consequences, the SBLE ignores the fact that going to another location, for hours at a time, carries with it a very real possibility of death or long-term, debilitating illness.⁴

¹ See <https://patch.com/maryland/baltimore/isaias-drenches-md-600k-without-power-east-coast-1-nc-death> (explaining that 29,518 Marylanders lost power in the wake of Tropical Storm Isaias at the beginning of August).

² See <https://www.theatlantic.com/health/archive/2020/07/why-arent-we-talking-more-about-airborne-transmission/614737/> (“surfaces aren’t efficient transmitters, but [] shared air pockets can be, almost regardless of distance”).

³ See <https://www.npr.org/sections/goatsandsoda/2020/08/15/897147164/can-air-conditioners-spread-covid-19> (“When you shut the doors and windows to keep the hot air outside, you are essentially eliminating the flow of fresh air so everyone in the room is breathing and rebreathing the same air. If someone in the room is infected with COVID-19, then they are breathing out the virus, which can linger in airborne droplets and be inhaled by another person, potentially causing infection.”); <https://www.theatlantic.com/health/archive/2020/07/why-arent-we-talking-more-about-airborne-transmission/614737/> (“Most super-spreader events occur at an indoor venue, especially a poorly ventilated one (meaning air is not being exchanged, diluted, or filtered)”)

⁴ See <https://www.theatlantic.com/health/archive/2020/08/long-haulers-covid-19-recognition-support-groups-symptoms/615382/> (“As many as 1 in 3 patients recovering from Covid-19 could experience neurological or psychological after-effects of their infections, experts told STAT, reflecting a growing consensus that the disease can have lasting impact on the brain. Beyond the fatigue felt by “long haulers” as they heal post-Covid, these neuropsychological problems range from headache, dizziness, and lingering loss

These are the stakes of going ahead with the October bar, even online. The SBLE is not only asking applicants to take an online exam using software that has never been tested at this scale, with no clear contingency plan should the software malfunction, it is suggesting that some applicants shoulder the risk of both contracting COVID-19 and further spreading COVID-19 within their communities.

I have wanted to be lawyer since I was three years old. I have taken on nearly 200 thousand dollars of debt and attended three years of law school so that I can be a lawyer. I have spent months studying for the bar so that I can be lawyer. I am so excited to be able to serve my community, working to build a more just Baltimore where accessing health care is not contingent on income, as a lawyer. However, I will not risk my life and the lives of my loved ones to be a lawyer. What location, that is currently open, will allow me to safely take the exam?

Concerningly, the SBLE further attempts to minimize the inequity of holding an online exam by stating that “only 261 of approximately 12,000 California applicants (2%) reported inability to meet the required conditions.” This statistic is not publicly available, so it is not possible to know how many people responded to the survey, and thus is not possible to know whether 261 out of 12,000 applicants or 261 out of a much smaller sample of applicants reported inability to meet the required conditions. “Inability” is also not defined and so could exclude people who could meet the required traditions but only at tremendous financial cost and/or risks to their health. But even the most generous possible interpretation of this number should in no way assuage concerns about the equity of an online bar exam. If even one person is unable to sit the exam because they cannot afford a quiet, private space and reliable internet, it is an indictment of our entire profession.

Attorneys cannot be “caretakers for the system of justice”⁵ or committed to “avoid[ing] all forms of wrongful discrimination in all of his or her activities, including discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, with equality and fairness as the goals”⁶ if we write off low-income people as statistically insignificant. Those 261 California applicants and all Maryland applicants facing similar barriers are our classmates and our colleagues. They are members of our legal community, and their membership is not diminished just because they cannot afford strong internet or a specific type of housing.

In light of the above concerns, I urge the court to adopt diploma privilege October 2020 bar applicants.

Respectfully,
Abigail Burman

of smell or taste to mood disorders and deeper cognitive impairment. Dating to early reports from China and Europe, clinicians have seen people suffer from depression and anxiety. Muscle weakness and nerve damage sometimes mean they can’t walk.”).

⁵ MD Rules Attorneys, Appendix 19-B.

⁶ *Id.*

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

August 24, 2020

Re: Comment on the State Board of Law Examiner's Remote Bar Examination Administration Plan

Dear Chief Judge Barbera and Associate Judges:

I've known that I was going to be a lawyer since I was in middle school. If you ask my family or friends, they'll say they knew way before then. Growing up, my parents taught me right from wrong—they taught me that you should always advocate for others and strive to make the world a more just, fair, and equitable place. That is why I am writing to you advocating for Diploma Privilege Plus.

No one could have predicted a pandemic would cause such devastation this year and preclude the in-person administration of the July 2020 bar exam. Once the pandemic hit, decisions were made that have impacted and will continue to impact the lives of over 1,000 Marylanders. Unprecedented obstacles call for innovative and flexible solutions. In late May, the Court made prudent decision to postpone the exam to September and eventually October. Initially, a remote examination seemed like the right innovative and flexible solution to this unprecedented pandemic.

However, a remote examination is proving more impossible as the days pass. We are currently 42 days from the bar exam—the most important exam of an aspiring attorneys' life—and there is no evidence to suggest the exam can be administered successfully and securely. ExamSoft will be the sole provider for the exam and will simultaneously administer the exam to over 30,000 applicants all over the United States. ExamSoft has not given any bar exam that mirrors the October structure and the bar exams that ExamSoft has administered have not been without devastating faults.

My clerkship has been postponed by two months, thus delaying my access to health insurance. I have been studying for the bar exam since May. I live in a household with two dogs and three adults who are all at high risk for developing COVID-19. My Grandma, who lives with me, has the beginning stages of dementia and requires 24/7 care. A member of my family was admitted to the hospital a few weeks ago—she was placed on a ventilator and is now on oxygen, remains unconscious, and is fed via a feeding tube. We are not allowed to visit because of COVID-19 hospital protocols. I do not have access to consistent Internet because I live in a wooded area. As a result, I booked an AirBnb to take the October 5th and 6th bar exam—which cost me an additional \$350. I am now learning from software experts that I may need to purchase a “burner” computer to protect my data at an additional \$600-\$2,000.

I tell you this not to garner your sympathy but rather to garner empathy. Sympathy is the ability to take part in someone else's feelings by feeling sorrowful about their misfortune. Empathy is the ability to understand other people's feelings as if you were having them yourself. I am asking that this Court steps into our shoes—we are a class of practitioners entering the field in the middle of a global pandemic with no current cure and during a recession where job offers have been postponed and rescinded.

We are not attempting to evade the bar exam. We all knew of this requirement when beginning law school. In a perfect world, the October bar exam is administered faultlessly. However, we do not live in a perfect world. There is no evidence to suggest the October exam will be successful. Examinees cannot wait any longer—we have loans and bills to pay, we have family we need to provide for, we need to secure health insurance, and we have clients waiting for us.

If Diploma Privilege Plus is adopted, examinees will still be required to have: (1) completed the pre-legal education requirements for admission to a law school approved by the American Bar Association; (2) graduated with a juris doctor or equivalent degree from a law school located in a state and approved by the ABA; (3) achieved a qualifying MPRE score; (4) successfully completed the Maryland Law Component of the admission requirements; and (5) established good moral character and fitness for admission to the Bar. Md. Rule 19-201(a)(3).

Examinees are ready to enter into practice. I am ready to enter practice. The innovative and flexible solution to the inability to administer the bar exam in-person is to temporarily waive Md. Rule 19-201(a)(3), the UBE requirement, for July 2020 bar applicants.

Thank you for giving me this opportunity to provide a comment on the SBLE's exam administration plan and Diploma Privilege Plus. I urge this Court to join Louisiana, Utah, Oregon, and Washington and adopt Diploma Privilege Plus. Diploma Privilege Plus is the solution this pandemic demands.

Respectfully submitted,

Virginia Grimm

Katie DeLuca
Law Clerk – The Killian Law Group
katie.deluca@ubalt.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, KATIE DELUCA, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces financial difficulties would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
KATIE DELUCA

[EXTERNAL] Diploma Privilege for Maryland Graduates

Corrine Ellis <chellis0830@gmail.com>

Mon 8/24/2020 10:44 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To the Clerk of Court,

I write today in reference to the Court reviewing whether or not to enact diploma privilege for its 2020 Law School Graduates. In my earnest opinion, diploma privilege should be granted, for an array of reasons. Firstly, the Bar has historically been used as a barrier between incompetent students and the legal profession. This is what we are taught from day one: "If you are minimally comptant, you will pass the Bar." My peers said the same about the LSAT: "If you are competent, you will get a good score."

The LSAT has historically been used to predict how students will do in their first year. This prediction seemed total, until I went through my first year of law school. I had, by all means, a good LSAT score. I, by scientific definition, should have received good grades. However, my first semester of law school was challenging, with personal troubles along the way, and I found myself with mostly C's and B's.

In turn, my friend who had scored much lower than I on the LSAT got all A's, and found herself in the top 10% of our class. As Einstein once said, if you grade a fish on its ability to climb a tree, that fish will fail. While it is a funny scenario to imagine, his reasoning extends to all of us throughout our lives. Some individuals outshine exams, and some thrive on the ability to be judged on their acute memorization skills.

Some of the greatest attorneys I have ever met struggled, and even failed, the Bar exam. Further, there are some law professionals who are barred in the State of Maryland who do not exhibit the professionalism to be in the legal field. Yet such an arbitrary test purely concocted on memorizing an array of topics is what defines us as worthy or not of practicing law.

I would like to note that I understand the public interest the Courts have in testing law school graduates and regulating the legal profession. Although the traditional ten weeks is the hardest, most gruelling time of law school graduates' lives, the reward is worth it. This has all changed since March of this year, when the pandemic occurred.

We, as well as most others, are stuck at home with an array of issues arising from Covid-19. Poverty, inability to make payments due to unemployment, spouses and partners being let go from their jobs. But most of all, **the expectation that we are to take the most important exam of our careers at home.**

What will we do when or if our internet goes down? What will we do if our laptops, which aren't state of the art or even relatively new, crashes? What will we do if this happens during

the exam? What will happen if I live in a one bedroom apartment with a spouse or partner who cannot afford to take off work and vacate the house for a day? If my child is sick, and crying? If my neighbor decides to mow their lawn that day? What about BGE, who is currently repaving roads right outside my window?

The Bar was already overly burdensome, even when we had a quiet law school to study in, and a silent building to take the test. The Court, by all things released thus far, is attempting to make this equitable and fair for all students, but what about the proven discriminatory function of the AI? What about the fact that I cannot read questions without underlining them by hand (which is now impossible) or reading them aloud? But if I read them aloud, I will fail because I could be cheating? What about my severe anxiety? If I have a panic attack or need to excuse myself due to a medical reason, I am to fail?

Most of us bar applicants have taken the MPRE and passed, or are expecting to take it soon. We recognize the ethical aspects of the field of law. Most of us already have worked in firms, Clinics, and have experience. No test will make us feel more or less ready to practice law. When I remember asking attorneys from various jobs and social functions during my years of law school whether the Bar made them feel able to practice law, most said no. No one is prepared, or even ready to practice law. We must enter the field and learn ourselves, Bar exam or not.

I suggest diploma privilege be granted, immediately, so that our lives may continue amidst this global crisis. However, I strongly urge Maryland to pioneer their own version, since the versions proposed in various states are inequitable. Maryland should adopt a privilege that allows students with a degree from an ABA recognized school (both University of Maryland and University of Baltimore), a passing MPRE score, a passing score from the Maryland specific online exam, and a pass from Character and Fitness.

The method of requiring x amount of hours by December 31st, 2020 should not be enforced, unless the end date is extended. Already it is impossible to find a position, and as someone who was let go due to the pandemic, I worry about finding a position should this method be implemented. Further, following the 86% or more passage rate is unequitable, since there are only 2 law schools in Maryland and both do not adhere to this standard, making diploma privilege per school with a certain rate the wrong remedy.

During times of uncertainty, we have the ability to rise above and care for our fellow humans. Law students, like so many, are suffering right now. Some have lost their jobs, had to move back in with family, or are suffering financial hardship and finding themselves having to support families while studying for an exam that has little to no bearing on their actual intelligence or ability to practice the law.

I kindly submit this letter, as well as my intent to fully support diploma privilege being granted to Maryland 2020 law school graduates.

Thank you,

Corrine H. Ellis,
U.B of Law Grad of May 2020

Comment on SBLE Update re: Remote Bar Examination

Coderre, Carol A. <cacoderre@co.pg.md.us>

Mon 8/24/2020 10:53 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

First, I want to thank all who have been working so hard to find a way for our future brothers and sisters at the Bar to take their Bar Exam. When I read through the SBLE recommendations I was in awe of all that has been done to find a safe and secure way to accomplish this monumental task.

Second, I think that Maryland should follow the SBLE recommendations for a remote exam through the vendor they have recommended. I have no doubt that the live proctoring with other vendors would be entirely too difficult and I have confidence that the AI review and flagging of any potential Exam violations would be effective. Frankly I imagine that it will be more thorough than live proctoring. I understand the concern for any Exam takers who might have difficulty securing an appropriate Exam space, and more likely, a source of internet connection, and think that the call to current Bar members to volunteer appropriate space would address the possibility of any individuals not having necessary resources. To that end, I have asked our County Attorney if there is any possibility of our Office offering space and am waiting for an answer...I think the hindrance might be that County government buildings are not yet open to the public and I'm not sure if the plan is for them to be accessible by the proposed Exam dates. I hope that we can offer space to one or two people in need.

Thank you very much again for all the work that the Court and Court-related Offices have done through this unusual time and I hope all are remaining safe and healthy.

Carol Coderre
9612170188

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August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am writing to you in support of granting diploma privilege plus. As a bar applicant, and recent law graduate from the University of Baltimore School of Law, I wanted to tell a personal story about how the changes to the bar exam and the COVID-19 pandemic have affected me.

Turmoil and Uncertainty at the Beginning of the COVID-19 Pandemic

In mid-March the world shut down and panic ensued. It was impossible to determine the extent of the pandemic at that point, but within the following weeks it became clear we would not be leaving our houses anytime soon. I immediately became anxious about the bar exam. When the bar prep company I signed up with, Shemer, announced it would be shutting down immediately, I had to scramble to get a refund and find a new bar prep company. It was stressful and I panicked, but I handled it and moved on with grace.

As I completed my Character and Fitness forms and Notice of Intent to take the Maryland bar exam, I did not know what the circumstances of the bar exam would be. I regularly called the Maryland State Board of Law Examiners (SBLE) to ask when a decision would be made regarding the bar exam and they repeated "it will be announced on our website by May 22, 2020." The SBLE refused to provide more information than that.

Having to go through the extensive steps to complete Character and Fitness, file a Notice of Intent, and pay a whopping \$750 by May 20, 2020 became daunting. This was not daunting because I did not want to complete these steps, but it was because I did not know the circumstances of the exam I would be taking. Would I have to risk my life to take an in-person exam? Would the exam be held in July? If the exam is delayed, will there be a scheme of temporary licensure? All of these questions remained unanswered, but I had slight peace-of-mind in knowing I'd have an announcement by May 22, 2020.

Finally, the day we had all been waiting for came around: May 22, 2020. Although I was hoping to find out a little earlier than that date, I rejoiced in knowing the date had finally come. I spent all day refreshing the SBLE website and calling my friends to determine if they've heard any news. Then, May 22 came and went with no announcement. Not only would this announcement have given me peace-of-mind, but I was supposed to start studying for the July bar exam on May 26. In fact, I had repeatedly told my employer that I did not know when my leave for the bar exam would begin, but I will know by May 22.

Instead of being given answers about the bar exam on May 22, bar applicants were given radio silence. It was not until intense pressure and a heavy emailing campaign to the SBLE that on May 23, 2020 we received an announcement the bar was delayed to September. I was frustrated by the delayed announcement, but I quickly felt relief that I could start scheduling the rest of my life. I notified my employer of the change to the bar exam and advised them of my time off schedule.

The Second Postponement of the Bar Exam and Impact on Employment

After I had finally received the new date for the bar exam, I promptly notified my employer and requested time off. Before the bar exam was postponed, I was supposed to take unpaid time off and return to work in August as a salaried employee. I allocated my money accordingly. Then, the bar was postponed by about six weeks. I had to reconfigure my budget and switch from part-time work to full-time work at my job. Because I was working full-time, I knew I would not also be able to study for the bar exam full-time. Working part-time was an option, but I was already worried about an inability to focus on studying at home, so I decided to take unpaid leave to study for the bar. I worked as many hours as I could before I was scheduled to start studying for the exam on June 20, 2020 and I budgeted my funds accordingly. Then, a few days before I was to begin unpaid leave to study for the bar exam, the exam was abruptly postponed another month, and this time the exam would be remote. I panicked. I had already formally submitted my time-off requests with my employer, and I didn't know if I could change this on such short notice. After all, I would have to continue working as many hours as possible if I were to have enough money to last through October. Luckily, my employer was flexible, and I was able to continue working until I planned to start studying for the exam.

Although I have a full-time job at a place where I was already working, my salary and benefits very much depend on if I am a licensed attorney. I have been a student my entire life. I have never taken time off of school to work full-time. I paid for both law school and undergrad myself with loans, scholarships, and part-time work. Despite going to public, in-state universities for both law school and undergrad, along with receiving substantial scholarships, I still accrued over \$100,000 in loans. I want to earn a salary as soon as possible, since I never have before. I want to pay off my student loans as fast as possible, so the interest does not get unbearably high. I am so lucky that I am 24 years old and I have the opportunity to stay on my parents' health insurance for a little bit longer. But, the truth of the matter is, I need money and I need it as soon as possible.

July 2020 MD Bar Applicants are the First People in History Forced to Take Bar Prep Online

I have never been the type of person who is able to study and work at home for long periods of time. I live in a one-bedroom apartment and don't have the best set-up to learn and study. In fact, prior to the pandemic, I almost exclusively did all of my work at the law school. Because I knew I have trouble focusing at home and learning from a computer, I purposefully signed up for an in-person bar prep course. Obviously, all in-person bar prep courses were moved online. I don't think the obvious has been stated which is that July 2020 bar applicants are the first people in history to have to prepare for the bar exam **entirely online**. This is an extremely difficult task for people like me who have trouble learning online and have difficulties focusing at home. Not only do I have to study entirely online, but it became even more difficult because I could not go to a library or coffee shop in hopes of being able to focus on my studying even more. The only place I could safely study for the bar exam is in my one-bedroom apartment which I share with my boyfriend who works full-time from home and is frequently in meetings or taking phone calls. Further, the

building I live in is old and frequently requires intense maintenance. In fact, one weekend while I was studying for the bar exam, the air conditioning and water had to be turned off for maintenance. It was impossible to study in a warm environment with no water. What if this happens one or both days of the bar exam? I have nowhere else to go to take the exam. Further, my building has 20 floors and hundreds of occupants and they cannot make an accommodation just for me. Plus, emergency maintenance typically cannot be postponed.

Difficulties of Taking the Bar Exam Remotely

I used student loan money to buy a new computer in order to take the bar exam. My old computer would not have been able to handle a two-day, remote exam. I was fortunate that I was able to use my student loan money to do this, but I assume not all applicants are as fortunate. Further, there are many circumstances out of my control when it comes to taking the bar exam. As stated above, my apartment is old and frequently requires maintenance. There could be loud construction, a water outage, or someone in my apartment actively working on a maintenance issue. Unfortunately, this is not just speculation, all of these things have happened to me over the past few months while I've been studying for the exam. I have no way of knowing if any of these things will happen on October 5 or October 6. I live in Baltimore city on a busy street. There is frequently street noise and traffic. Unfortunately, I live next to two intersections where car accidents frequently occur. Finally, I worry about my internet connection. My internet has gone out several times while trying to study for the bar exam. It also seems, because most people are working from home, my internet can be slow and less functional than it was prior to the pandemic.

I worry about the prohibition of using the bathroom during the exam. If the exam were in person, I would be able to use the bathroom during the test if I needed to, even though it could cut into the time allotted to take the exam. For me, that is crucial. I have a gastrointestinal disease called colitis and I could have a sudden, immediate urge to use the bathroom in a moment's notice. I have never had to request an accommodation on an exam because of my condition, because I have always been given permission to use the bathroom during an exam, but I am now considering seeking one.

Perhaps the most unavoidable problem of taking my exam remotely is the fact that I share a small space with someone who must work from home on October 5 and October 6. I worry that my score will be thrown out if my boyfriend is heard talking in the background, since he frequently answers the phone for his company or has company meetings. Not only that, but I worry his talking and moving around the apartment will distract me.

Let me be clear- I have to take the exam in my apartment. I don't have an office to go to. I can't take my exam at my alma mater. I don't have the financial means to take my exam in a hotel. If I go to a friend or family member's home to take the exam, I risk their life and my life in doing so. There is no way to ensure proper exam-taking conditions in my apartment because this is an apartment, not a school or a testing center.

Delay to Enter the Legal Field

The SBLE claims, despite the over two-month postponement of the exam, the results will be published around the same time it would have if there was no delay. I hate to be so pessimistic, but I have trouble believing the SBLE will actually have the results by November 25, 2020. The SBLE has provided virtually no information about the bar exam that I am supposed to take in a

month and a half. Further, the SBLE has consistently been inefficient, incompetent, and delayed (i.e. the inability to provide answers about the bar exam over the phone, the delayed announcement of the postponement of the bar exam). Further, my character and fitness investigation just began last week. It is so hard for me to fathom the SBLE's ability to complete grading and extensive background checks in a month and a half when it typically takes them about 3 months. This is not just based on gut-feeling I have; it is because the SBLE claims it can grade an exam in a month and a half, but they still have not released information on how this exam will be graded. The NCBE is not controlling the grading scales of the remote exam, it is entirely in the hands of the state. It takes three months to grade an exam that already had a grading scheme in place, how long will it take to grade an exam that still does not have a grading scheme in place?

The SBLE has offered no proof that we will be on the same timeline as we would have assuming no delays to the bar exam. All they have offered is their intentions. Their intentions have not been backed up by their actions or by any information provided to bar applicants. I need to start earning a salary as soon as possible, my legal career cannot be delayed.

No Scheme for Temporary Licensure in Maryland

It is disappointing to me that for two-years of law school I was able to practice law under the supervision of an attorney. However, upon graduation, I no longer had that ability. Why should a law student be able to practice under the supervision of an attorney, but a Juris Doctorate cannot? If a scheme for temporary licensure was in place, I would be able to start earning my salary and I would not be so anxious about delays to licensure.

Conclusion

Honestly, I did not express all my concerns in this letter. These are just the biggest, most impactful concerns I have. I had to take several breaks from writing this letter because of how upset it made me to rehash the entire process and to think about the numerous concerns I have regarding a remote bar exam. This is not a plea to cancel the bar exam because I don't feel like taking it or because I worry I will fail; this is a plea of desperation. This is a plea due to real obstacles I have faced because of the pandemic and its effects on the bar exam. I spend 8-10 hours each day studying for the bar exam. As a part of the DP4MD advocacy group, I spend the rest of my time advocating against that same exam. This is the irony and difficulty of my life right now. This advocacy for diploma privilege plus is not born out of laziness; this is born out of true concerns.

I am not asking the Court for sympathy; I am asking the Court for practicability, empathy, and compassion. Please grant diploma privilege plus.

Respectfully,

Alana Quint, J.D.

Jesse Young
Young.jesserae@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Jesse Young, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who, like many of us, faces the unique challenges during this time would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Jesse Young

Katharine Milbradt
knilbradt@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Katharine Milbradt, a member of the general public from Anne Arundel County, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

The fact is, the bar exam causes an immeasurable financial and psychological burden on law graduates any year, but this year especially. My partner, a diverse, first-generation law student with a financially insecure background and massive student loan debt accrued, is desperate to start work so he can pay rent next month but cannot begin until he takes the exam. He has been studying every day since April, most days averaging more than 5 hours a day. It is clear he has the knowledge and the competency to pass the exam. As an attorney he is pursuing a career in public service tackling some of the pervasive issues and inequalities in our society that have only become more blatant in the face of a global pandemic and a time of racial reckoning. Maryland residents need lawyers like him and they cannot wait.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Katharine Milbradt

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Sarah Rubin <sarahelyserubin@gmail.com>

Mon 8/24/2020 11:09 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Sarah Rubin

sarahelyserubin@gmail.com

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Sarah Rubin, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Sarah Rubin

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

August 24, 2020

Re: *Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus*

Dear The Honorable Chief Judge Barbera and Associate Judges:

My name is Aubrey Salamin, and I am a 2020 graduate from The Catholic University of America Columbus School of Law. I write in response to the State Board of Law Examiners' update dated August 18, 2020, regarding the October 2020 Remote Bar Examination. I write today to urge the Court to approve emergency diploma privilege as expressed in the *Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus* as an alternative path to full licensure in response to the COVID-19 pandemic.

First, I would like to sincerely thank the Court for opening a door for public comments and concerns about this Remote Bar Examination. Second, I would like to express my serious doubts that an October exam, for tens-of-thousands of test takers, can be administered successfully. I would urge this Court to look at other attempts of online bar exams this year. All of the smaller scale online exam attempts have either failed or experienced significant technical difficulties over the past several weeks. Lastly, I would like to use the remainder of this letter to discuss both my particular challenges in preparing for and taking this Remote Bar Examination, as well as generally applicable challenges to other 2020 law graduates. I hope that the information below will help to both humanize and situate the challenges that many of us have faced in preparing for this exam.

When I entered law school, I understood that passing the bar exam would be my final step in becoming an attorney. However, we could have never anticipated these circumstances that call into question the very equity and value of this exam. I personally do not believe that the October Remote Bar Examination will adequately measure competence. I believe it will measure resources. Even ignoring my primary concern that there will be a severe technological failure of the October exam, preparation for the exam this year draws distinct socio-economic lines. Those with an apartment of their own, those without children, and those with a quiet area to study will all fare better in their preparation. I do not say this to gain sympathy; my fellow law graduates and I are a determined group and we have all been doing our absolute best to prepare for this exam. Many of us have been preparing for months in less than ideal conditions. For example, I live in a small one bedroom apartment in the DC area. My roommate has been working from home this summer, and her work has included hours of Zoom Meetings that have made it difficult to schedule a time to simulate exam-like conditions. My initial plan before COVID-19 was to participate in-person in Catholic's bar preparation program and spend most of my study time in the law library, as I had done throughout law school. Unfortunately, this is not an option and has not been an option as a result of COVID-19.

Further, in addition to the difficulties in preparing for the exam this year, a remote exam does not aid in leveling the playing field in the same manner as an in person/live exam. My roommate will still be working from home in October, so I will need to find alternate accommodations to take the exam. I understand that the State Board of Law Examiner's does not believe this to be a widespread problem. As listed in their update, they indicated that they have only received a handful of emails and letters from individuals who say they are lacking a quiet space to take the exam. I, however, believe that if the State Board of Law Examiner's were to send out information inquiring into this, that they would find that this situation is rather widespread. Additionally, I do not think that any "quiet place of my choice" will fulfill the requirements for testing as listed by the SBLE on the *FAQs Related to the October 2020 Remote Bar Exam in Maryland*. Further, I would like to point out that with ExamID or ExamMonitor enabled, as it will need to be for this exam, there are additional minimum computer system requirements that would not be required if this were a live exam.

I believe that my fellow law graduates and I, who are scheduled to take this October Remote Bar Examination, have potentially insurmountable challenges that place us at a disadvantage compared to those who have taken the bar exam in previous years. This Remote Bar Examination is unlike any other bar exam in history. First, this exam is an abbreviated version of a traditional in-person bar exam. While this doesn't necessarily change study habits, it does change the scaling of the exam, which individual states will be required to do on their own. Second, this remote bar exam tests in a manner that law students have not been tested in. It does not allow the use of physical scratch paper or paper materials. We have paid thousands in bar prep courses to be taught how to use diagrams and other physical markings to deduce the correct answer and properly plan our essays. We have gone to law school, where we had use of physical scratch paper on our examinations. The online bar exam strips us of these tools. These critical tools are not only necessary for exam purposes, but they also mimic real world problem solving in practice.

The uncertainties created by delaying the bar exam to October, along with the clear inequities and unpredictability of conducting a massive online bar exam, uniquely and substantially harms 2020 bar applicants. We need a solution grounded in fact, equity, and empathy. That solution is emergency diploma privilege as expressed in the *Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus* as an alternative path to full licensure in response to the COVID-19 pandemic. Thank you for your time and consideration.

Sincerely,

Aubrey Salamin, J.D.

The Catholic University of America Columbus School of Law

August 24, 2020

Erin Donohue Brooks
2020 J.D. Graduate, University of Baltimore School of Law
July 2020 Bar Exam Applicant
Law Clerk, Business & Technology Law Group
Email: ebrooks@btlg.us

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Erin Donohue Brooks, am a recent graduate from the University of Baltimore School of Law and an applicant for the July 2020 bar exam. When attending law school, I worked full-time and attended school in the evening. I am a member of the Royal Shannonhouse Honor Society, was a Contracts I Law Scholar for Professor Charles Tiefer, and the Managing Editor of the *University of Baltimore Law Forum*. I was a student who worked extremely hard throughout school to not only be a good student, but to also fully engage with the law school community as a whole.

For four years, myself and my fellow evening student classmates worked tirelessly to balance our work, school and personal lives, all with the end goal of graduating law school and having the honor to sit for the bar exam. This year, however, that honor is being held at arm's length due to an unprecedented global pandemic. The work and sacrifices that I made over the past four years were all to become a member of the Maryland Bar.

On almost a weekly basis, we get updates with minimal information regarding the October exam, most notably that there is still no guarantee that the exam will be administered successfully or even administered at all. The SBLE has yet to give us a definitive bright light at the end of the tunnel. Instead, as other jurisdictions fail to administer an online exam, those of us waiting to take the exam anxiously watch as our fellow applicants throughout the nation are unfairly used as guinea pigs. After years of studying, then two months of all encompassing, life altering studying, applicants are being thrown to the whim of extrinsic sources that have absolutely nothing to do with their intelligence, competence, and ability to be a successful attorney. Rather, applicants are being subjected to these questions: Do you have a quiet space? Do you have a laptop? Do you have an adequate internet connection? Do you have the resources to pay for childcare the day of the exam? Can your children afford to miss out on schooling so you can take the exam, since your household only has one computer? If you answer no to any of

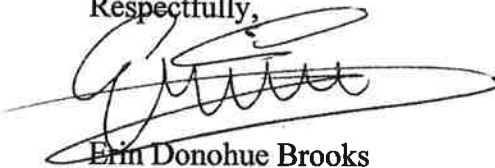
these questions, then your chances of being admitted to the Maryland Bar are also, undoubtedly, a no.

Considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As an applicant, and an individual who has worked as a law clerk for five years, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

I thank the Court for providing myself, my fellow applicants, the legal community, and the community as a whole the opportunity to advocate for ourselves and voice our concerns. I further thank the Court for its time and consideration of this urgent matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Erin Donohue Brooks', written over a horizontal line.

Erin Donohue Brooks
July 2020 Bar Exam Applicant

August 23, 2020

Re: State Board of Law Examiners' Update Regarding Remote Bar Examination

Dear Chief Judge Barbera and Associate Judges:

I am an expert on legal education and licensing and, as part of that expertise, am familiar with the psychometric principles that govern high-stakes testing; the national standards governing those tests; and the knowledge and skills that new lawyers need to represent clients competently during their first year of practice. Among other work, I recently completed a nationwide study of new-lawyer competence. A report on that research, conducted in partnership with IAALS (the Institute for the Advancement of the American Legal System), will appear this fall.¹

I read the recent update from the State Board of Law Examiners' (SBLE) against that background. SBLE's update is undoubtedly the most thoughtful, informative report I have read from any board of law examiners this year. I commend SBLE for its lucid explanations and the care it is exercising. Licensing, however, is complex and the update overlooks four serious problems with administering the remote exam. I wish to explain those to the Court.

First, the online exam will be significantly harder to pass than the same exam administered in-person. For the multiple-choice part of the exam (the MBE), test-takers will not be able to annotate questions or diagram answers, as they are taught to do; they will only be able to highlight and cross out, functions that are often clunky on a video screen. When answering questions rapidly, as the MBE requires, this is a significant change in testing conditions. As someone who has studied the literature about exams administered online, and who is familiar with the ways in which test-takers currently answer MBE questions, I can confidently predict that test-takers will receive lower scores on an online MBE than if they answered the same questions on paper.

A similar problem affects answers to essay questions and the performance test. Test-takers will be able to split their screens between the test questions and their responses, but that provides little assistance on contemporary laptops, which have very small screens. Reading screens this way is far different from spreading out paper materials on a desk and working directly with them. Similarly, the ability to write on digital scratch paper is very different from the ability to annotate essay questions or performance test materials directly. Law students, exam takers, and lawyers analyze by annotating; that ability is especially important on a high-stakes exam that requires rapid answers. Once again, based on my familiarity with the testing literature, the bar exam, and the manner in which law students and graduates analyze material, I can confidently predict that answers to the essay questions and performance test on the online exam will be poorer than if the same test-takers answered the same questions in the usual in-person format.

The National Conference of Bar Examiners (NCBE) has implicitly recognized that performance on the remote exam will not be the same as on an in-person exam with paper questions; that is why NCBE will not scale the remote exam.² Scaling requires equivalent exams, and the remote exam will not be

¹ For a summary of the research method, see <https://iaals.du.edu/projects/building-a-better-bar>.

² See NCBE Update, <https://www.ncbex.org/ncbe-covid-19-updates/> (June 1, 2020) ("Without further research, scores from an abbreviated version of the MBE administered by remote testing cannot be considered comparable

equivalent to previous exams administered with paper questions. It may be tempting to assume that the online format will be easier, because most bar candidates are digital natives, but that is a mistake. The rapid, rigorous analysis demanded by the bar exam depends upon fluid handling of paper materials and the ability to annotate those materials. Simply put, the remote exam will fail more candidates than the same exam administered on paper.

Second, Maryland's cut score of 266 is not valid for this online exam. There are two reasons for this. First, the cut score was chosen based on candidates' performance on exams administered in a paper format. As explained above, a candidate with knowledge and skills producing a 266 in response to paper-based questions is unlikely to score 266 on the online exam. The candidate's knowledge and skills will be the same, but the testing conditions will lower the candidate's ability to demonstrate that knowledge and skills. Once again, NCBE has implicitly recognized this by refusing to scale the online exam.

Equally important, Maryland's cut score is based on the scaled scores that NCBE traditionally reports, not on the raw scores that will be reported this year. There is no psychometrically defensible way for SBLE to convert those raw scores to the scaled scores that the current cut score demands. Doing so would require access to NCBE's historical databases, MBE results for this exam from across the country, and NCBE's algorithms for scaling. In other words, it would require SBLE to do the scaling that NCBE says is inappropriate.

The only way to create a defensible, reliable cut score for the remote exam is to conduct a cut-score study specifically for that exam. Even this, however, would be difficult given the first-time nature of this online exam. Panels of licensed attorneys would have difficulty judging the competence of answers produced under conditions different from those when they took the exam. SBLE might be able to recruit a few dozen licensed attorneys to take the remote bar exam and then use the lowest of those scores (presumptively demonstrating at least minimal competence) to set a cut score for this year's candidates.³ But this approach would also be imperfect and probably difficult to implement.

As NCBE's psychometricians have explained, a valid cut score is a "critical component of ensuring the testing program's public protection function."⁴ To avoid the "inherent arbitrariness" of cut scores, jurisdictions must set them according to established, rigorous practices.⁵ Those practices do not allow jurisdictions to transfer a cut score from one context (scaled scores drawn from a paper-based exam) to a very different one (raw scores drawn from a computerized exam).

Third, even with some of these adjustments, the exam will not provide a reliable measure of minimum competence. NCBE has repeatedly stressed the need for a two-day, 12-hour exam to provide reliable results.⁶ The remote exam will be half that length, significantly reducing its reliability. Since scores cluster

to the standard, paper-based, full-length MBE administration, such comparability being an essential requirement for equating and scaling.").

³ An average of scores earned by licensed attorneys would not be appropriate because, due to their practice experience, they would have improved their competence. Even the lowest score among these attorneys might be too high to mark truly minimum competence.

⁴ Michael T. Kane & Joanne Kane, *Standard Setting 101: Background and Basics for the Bar Admissions Community*, THE BAR EXAMINER, Fall 2018, <https://thebarexaminer.org/article/fall-2018/standard-setting-101-background-and-basics-for-the-bar-admissions-community/>.

⁵ *Id.*

⁶ See, e.g., Joanne E. Kane & Andrew A. Mroch, *The Testing Column: Testing Basics: What You Cannot Afford Not to Know*, THE BAR EXAMINER, Sept. 2017, <https://thebarexaminer.org/article/september-2017/the-testing-column-testing-basics-what-you-cannot-afford-not-to-know-2/> ("in general, longer tests are preferred to shorter ones from the perspectives of both reliability (i.e., score stability) and validity (i.e., content coverage). There is thus a reason

around the cut score in many states, this will noticeably reduce both fairness to test-takers and protection of the public. Candidates who would have passed a longer exam will fail this shorter one, while those who would have failed a longer exam will pass this one.

The reliability of this exam will be further compromised through the absence of scaling, the significant change in test conditions, and the application of a cut score derived from a different type of exam. In administering this exam, SBLE will be able to rank order candidates by score, but will be unable to say with any confidence which candidates are minimally competent and which ones are not. The exam may offer the appearance of determining competence, but not the reality.

Finally, the remote exam fails the fundamental requirement of fairness that governs all high-stakes exams. The *Standards for Educational and Psychological Testing*, promulgated by the American Educational Research Association (AERA) and other authorities, is the “Bible” for testing organizations in the United States.⁷ NCBE adheres to the AERA *Standards*, and state bar examiners do as well. Standard 3.4 directs: “Test-takers should receive comparable treatment during the test administration and scoring process.”⁸ Comments to that standard make clear that differences in test conditions (such as noise or other distractions) compromise the fairness of a test. With respect to technology, AERA states specifically:

Computerized and other forms of technology-based testing add extra concerns for standardization in administration and scoring. Examinees must have access to technology so that aspects of the technology itself do not influence scores.⁹

Where technology is involved, it is important . . . that the equipment provided to all test takers be of similar processing speed and provide similar clarity and size for images and other media.¹⁰

Assuring fairness in testing, including comparable technology and testing conditions, is the responsibility of test-makers and administrators, not test-takers. SBLE, like bar examiners in some other states, has suggested that test-takers will be able to secure quiet places, high quality computers, and adequate internet connections to take the remote exam—or that law schools and law firms will step forward to provide those resources. Candidates, law schools, and some law firms are working to provide those conditions—but that is not their responsibility. It is the responsibility of NCBE, the Court, and SBLE.

It is inevitable, moreover, that test-takers will take this remote exam in varying conditions, with differing computers and internet access. It is foreseeable that test-takers from wealthier backgrounds will enjoy quieter conditions, higher-speed computers, and better internet connections. Those test-takers also enjoy advantages in preparing for the bar exam, but the remote exam will aggravate those distinctions. During an in-person exam (or one administered online at testing centers) candidates take the exam under comparable conditions. That will not be true for the remotely administered exam.

that the bar examination is as long as it is; both high reliability and adequate content coverage are crucial.”); Susan M. Case, *The Testing Column: What Everyone Needs to Know about Testing, Whether They Like It or Not*, THE BAR EXAMINER, June 2012, https://thebarexaminer.org/wp-content/uploads/PDFs/810212_be_TestingColumn.pdf (“all else being equal, the more questions you ask, the higher the reliability. . . . If more questions provide greater reliability, it follows that reliability is reduced when fewer questions are used.”).

⁷ AMERICAN EDUCATIONAL RESEARCH ASSOCIATION, AMERICAN PSYCHOLOGICAL ASSOCIATION & NATIONAL COUNCIL ON MEASUREMENT IN EDUCATION, *STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING* (2014).

⁸ *Id.* at 65.

⁹ *Id.*

¹⁰ *Id.* at 51.

* * *

SBLE, in sum, is preparing to administer an exam that will be harder to pass than exams administered to previous exam-takers; lacks a valid cut score; will produce unreliable results; and will favor candidates from economically advantaged backgrounds. I am confident that they chose this course in all good faith, pressured into this position by a once-in-a-century pandemic. They, like law examiners in other states, may be thinking: “This is the very best we can do. The remote exam is far from perfect, but it’s the best we can do under the circumstances. A remote exam is better for both candidates and the public than no exam at all.”

That, however, is a false dichotomy. The choice is not between a remote exam and no exam. It is between (1) an unreliable exam that will subject this year’s test-takers to a higher bar than the one faced by previous candidates, and will disproportionately disadvantage test-takers from low-income backgrounds; and (2) a variety of other licensing alternatives including licensing based on supervised practice, clinical experience in law school, completion of three years of rigorous JD education, or some combination of those alternatives (plus, in each case, successful completion of the MPRE, character & fitness review, and the Maryland law component).

Under these circumstances, one of the latter alternatives is preferable for both protecting the public and ensuring fairness to candidates. As NCBE repeatedly stresses, an unreliable exam does not protect the public.¹¹ Neither does one that favors economically advantaged candidates. NCBE’s Testing Task Force, moreover, has already recognized that the current bar exam does not measure some essential components of minimum competence: It is exploring the addition of research skills, negotiation, and client counseling to future editions of the exam, while reducing the number of subjects in which candidates must memorize legal rules.¹²

Law school clinics measure all of these competencies; so would supervised practice. The Court and SBLE could create pathways to licensure based on either or both of these alternatives, combined with successful completion of the MPRE, character & fitness review, and Maryland law component; detailed models for these approaches are available.¹³ A JD from an ABA-accredited law school, similarly, would better measure minimum competence (when combined with successful completion of the MPRE, character & fitness review, and the Maryland law component) than the remote exam.¹⁴

¹¹ See, e.g., Kane & Mroch, *supra* note 6 (“To ensure public protection . . . bar examination scores must have equivalent meaning over time.”); Case, *supra* note 6, at 31 (The pass/fail standard is set at a level that is believed to protect the public from applicants who lack the requisite knowledge and skills to be licensed to practice. Scores that are unreliable cannot be valid.”).

¹² See NCBE Testing Task Force, *Filling in the Details*, <https://testingtaskforce.org/2020/08/filling-in-the-details/>. Although NCBE has not finalized these recommendations, and it is appropriate to administer the current version of the test while preparing an updated version, it is also appropriate to consider the flaws in the current test when weighing options for licensing this fall.

¹³ See, e.g., Claudia Angelos, Andrea A. Curcio, Marsha Griggs & Deborah Jones Merritt, *Clinical Education—A Safe and Sure Pathway to Law Licensure*, BLOOMBERG LAW (July 8, 2020); Claudia Angelos, Eileen Kaufman, Deborah Jones Merritt & Patricia Salkin, *New York’s Bar Exam Changes Are Misguided—Here’s a New Proposal*, BLOOMBERG LAW (May 7, 2020); Deborah Jones Merritt, Marsha Griggs and Patricia Salkin, *Courts Should Look To 3 Bar Exam Alternatives During Crisis*, LAW 360 (Apr. 23, 2020); Claudia Angelos, et al., *The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action* (Mar. 23, 2020); see generally [Barcovid19.org](https://barcovid19.org) (website offering details on numerous alternatives for licensing during the pandemic).

¹⁴ See e.g., Merritt et al., *supra* note 13; Angelos et al., *supra* note 13. Current ABA accreditation standards provide substantial assurance that JD graduates possess the minimum competence needed to practice law. See AMERICAN

In closing, I stress that my characterization of the remote exam as harder to pass, unreliable, lacking a valid cut score, and unfair is not hyperbole: I use each of those each of those terms as test-makers and the AERA *Standards* use them. If administered as planned, the October remote exam will yield lower than usual pass rates—especially among candidates from low-income backgrounds. These facts will be visible to the public, and the Court will have to defend an exam that predictably led to those results. Our profession, similarly, will have to explain why—as a profession that declares its commitment to inclusiveness—we tolerated these barriers during a pandemic that has already burdened so heavily our less privileged communities.

Thank you for your attention and willingness to consider these comments. If I can provide more information, please let me know.

Sincerely yours,



Deborah Jones Merritt
Distinguished University Professor
John Deaver Drinko/Baker & Hostetler
Chair in Law

BAR ASSOCIATION, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, 2020-2021, at 17 https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-for-approval-of-law-schools.pdf (Standard 302 requires schools to establish learning outcomes that include competency in “(a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.”); *id.* at 25 (Standard 315 requires “ongoing evaluation” of success in attaining these outcomes and curricular changes to improve success); *id.* at 18 (Standard 303 requires specific coursework in Professional Responsibility, writing, and experiential practice). In ordinary times, these requirements on their own might not provide sufficient assurance of minimum competence. In these extraordinary times, however, they provide more straightforward assurance of competence (when combined with the other elements specified above) than a remote exam with the flaws in reliability and fairness I have identified.

Anne Bundy
Subject Matter Expert, Social Security Administration
aebundy@live.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Anne Bundy, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces an impending divorce with asset distribution and custody issues, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Anne Bundy

Sienna Haslup
3000 Connecticut Ave. N.W., Apt #107
Washington, D.C. 20008
614-915-9017
shaslup@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

My name is Sienna Haslup, and I am a 2020 graduate of American University Washington College of Law. I am registered to take the 2020 October Maryland Bar Exam with plans to waive into D.C..

I recognize the devastating effects the COVID-19 pandemic has had on our country. More specifically, I recognize the distressing effects it has had upon the 2020 D.C. and Maryland law school graduates and upon those in our community who most need access to justice. I therefore strongly support the petition before the Court of Appeals, advocating for permanent emergency diploma privilege, for Maryland bar applicants.

I would like to respectfully ask this honorable Court to consider granting diploma privilege to both Maryland bar applicants. As a 2020 graduate of American University Washington College of Law and citizen of D.C., I made the decision to apply for the Maryland bar exam because I had a job prospect in Maryland and held numerous internships in Maryland throughout my law school career. Due to the economic effects of COVID, the small firm is no longer sure they have the money and ability to hire a new associate. Due to these unexpectant global circumstances, the only equitable resolution for bar applicants and 2020 law school graduates is diploma privilege.

Studying for the Bar Exam in a COVID World

While I am extremely grateful there will not be an in-person bar exam for Maryland, an online bar exam is not the solution. An online bar exam raises privacy concerns, resource concerns, and cannot be fairly and equitably implemented. This is evidenced by the states who have already tried to administer exams this way.

Personally, I live in an apartment with a roommate who is also taking the exam. We don't know how the exam software will affect our connectivity and whether any technical issues will arise during the exam such as power outages or Wi-Fi outages or if the software can handle multiple people using it on the same Wi-Fi network. These are simply unpredictable factors that could cost us greatly. Further, I live on the first floor of my building where loud noises such as gardening and garbage trucks are frequently occurring outside my window and they are sounds I cannot escape. My building also has fire alarms going off, without exaggeration, multiple times a week. In one day of studying, the fire alarm went off three times. Therefore, I need to use earplugs to work in my environment.

Additionally, it is impossible to focus on studying for the most important test of my life right now when I cannot easily leave my apartment, am following the social justice movements across the country that directly impact the legal field, and am trying to stay healthy and keep those around me safe and healthy. Never in my wildest dreams did I imagine I would have to take the most important test of my life from my home, and I simply cannot afford to rent a space to take the exam elsewhere. The pandemic has caused significant financial hardship for me as I had budgeted enough money to last me through the original exam, and with the delay of the exam I have had to reach out to family for money. I am now completely financially dependent on my retired parents. I have been searching for non-legal jobs in the meantime due to all of the uncertainty.

Offering an online exam has created extra stress and anxiety in my life. I frequently worry if my Wi-Fi will work the day of the exam, an ongoing issue I face in my apartment building. I have been trying to practice taking multiple choice questions without scratch paper and my results suffer without the ability to chart out my answers. Watching LSAT scores go missing affected my productivity because what is to say the same thing will not happen to us? Granting diploma privilege for 2020 Maryland bar applicants would allow our class to successfully look for legal jobs as a world of opportunities would open from gaining bar licensure in Maryland.

Attempts at an Online Bar Exam

Indiana and Nevada have tested the bar exam software and their tests with students have failed. Michigan used the bar exam software and had major issues during the actual exam due to a system attack, that the FBI is investigating. Though they said the issues were resolved by the end of the day, the students taking the exam had to deal with a chaotic system which interrupted their exam and took them out of focus of the exam. Imagine taking the bar exam and having to completely stop to figure out technical issues with your computer and the software. That is simply not fair. As a result, Indiana determined the more equitable solution is to email out the exam. Law students have spent their academic careers working to get to this exam and risk losing everything they worked for due to the problems like this that would not arise during normal circumstances.

More recently, Florida cancelled their bar exam three days before the exam was to be offered. This is the same software Maryland has contracted to use. The extreme stress and anxiety this must have caused is unimaginable. The same software service could not function for the state of

Florida, why should I trust it will not fail again with more graduates (approximately 30,000) using the program across the country in October?

Furthermore, being forced to sign a waiver that ExamSoft is circulating is unconscionable. How am I suppose to agree to the fact that my computer may never turn on again? An issue that has been seen other times this service was used. How can I protect my private medical and personal information on my computer when the service will have complete access to all of my documents? Moreover, there are significant AI concerns, however, I am not an expert in the field so I request that you consider the arguments against the usage of AI technology.

Temporary Licensure

Diploma privilege is the only equitable solution for 2020 Maryland bar applicants. Temporary licensure is not an equitable solution. Temporary licensure is a band-aid that will disadvantage lawyers who will be practicing and working and will have to stop their work for months again to study down the line. At that point they will be in the field working and learning and that is far more beneficial anyways than an actual exam. If the Court wants to grant licensure, it should not be temporary. Temporary licensure in fact creates more problems then solutions.

What limits or conditions should be imposed on any diploma privilege or expanded practice?

- Passing the MPRE to ensure that new lawyers are aware of their ethical obligations.
- Satisfying Character & Fitness requirements.
- CLE requirements, including making CLE courses accessible to applicants before formal swearing in, would be of great benefit to all applicants during this time of transition.
- Passing the Maryland Bar component.

In conclusion, extraordinary times call for extraordinary measures. The class of 2020 could not have predicted they would be taking the bar during a global pandemic. Frankly, no one could have predicted a global pandemic. It has affected the lives of so many people around the world and has caused extreme hardship for so many people. Granting diploma privilege is the only equitable solution for Maryland bar applicants and this would allow these graduates to begin their lives in this extraordinary profession. Thank you for listening to my concerns.

I humbly and respectfully ask the Court to consider granting diploma privilege to all 2020 Maryland bar applicants.

Please let me know if there are any additional questions I can answer or if I can provide any clarification. I hope you and your loved ones are staying safe and healthy in these unprecedented times.

Respectfully,
Sienna Haslup

[EXTERNAL] Comments to CoA, Regarding Diploma Privilege

michael_destefano@yahoo.com <michael_destefano@yahoo.com>

Mon 8/24/2020 11:43 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good morning,

I am a UB Law School graduate, Class of 2020. I am also registered to take the October remote bar exam. My concern is not with the SBLE's ability to execute the remote bar exam. In fact, I have every confidence that the remote bar exam will occur exactly as the SBLE claims it will. I also have the ability to remotely take the exam in a secured, connected space for the requisite six hours.

What I am most concerned with is what should have been a 10-week long study schedule for the original July exam date has now nearly doubled into an 18-week study schedule. Burnout is real, and I often wonder if other states were able to administer a remote exam by the July date, why could not have Maryland? The initial push back of the July exam to September was disheartening enough, but for a second push back to October was flat out demoralizing. Many of the bar applicants, including myself, have jobs to start. I can no longer wait until October to start my career, so now I am forced to work fulltime and study fulltime until October 5th.

Now, working fulltime and going on my third straight month of studying online – approximately 4-5 hours daily, including weekends) – I am mentally drained. I cannot focus on my work, and although my employer is aware and sympathetic to my situation, it is still not fair to them or me to continue to be forced to burn both ends of the candle because the SBLE could not substitute an in-person exam with a remote one in a timely fashion.

I believe this was handled poorly. My law school immediately adjusted – much like every other educational institution in the state – to an online format in a matter of days. Why could not the SBLE adjust in a similar fashion? Their failure to timely and safely administer the exam has forced all bar applicants to plow through and maintain a study schedule 2+ months past the originally designed schedule. There have been no breaks for us – Barbri, the bar prep service I am using, recommended we do not break at all and continue our lectures, practice questions and practice essays up until the (originally rescheduled) September exam date and then again to the second rescheduled October date. This has been a rough summer – much rougher than necessary because the SBLE did not act quickly enough, and now it is going to continue on into the fall.

I wholeheartedly back the option of temporary diploma privilege – not because I am unready for the bar exam, but because I have complete faith & confidence in the law education I received by the University of Baltimore. 4+ months of straight bar review is an abuse I would wish on no one.

Respectfully,

Michael J. DeStefano
J.D., Class of 2020
University of Baltimore, School of Law

[EXTERNAL] Comment on Remote Bar Exam

Adrianne C. Blake <jaredandadri@gmail.com>

Mon 8/24/2020 11:52 AM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

 2 attachments (2 MB)

AUDIO FILE FOR SBLE + MD COA.mp3; AUDIO FILE TRANSCRIPT FOR SBLE + MD COA.docx;

To Whom It May Concern:

Attached, please find an audio file and accompanying typed transcript, provided in response to the Court's invitation to comment on the Maryland State Board of Law Examiners' update regarding the October 2020 Remote Bar Examination. In addition to the attached audio file and typed transcript, I provide the following written comment:

Thank you for your time and the opportunity to be heard. While I will wholeheartedly respect and honor any decision made by the Maryland State Board of Law Examiners ("MD SBLE"), as endorsed by this Honorable Court, I lean more towards supporting Diploma Privilege Plus (DPP) than not, provided the decision results in full licensure to first-time applicants who graduated from an ABA-accredited law school and are currently registered for the October 2020 administration of the Maryland bar exam. The approach I support is most similar to Louisiana's recent decision to grant a diploma privilege (https://www.nola.com/news/courts/article_411d4088-cb94-11ea-88cd-c74f58da6f9f.html). Additional continuing legal education requirements, in addition to completing the Maryland component and passing the MPRE, would certainly be justified under these conditions. I believe that this would be the fairest approach for the majority of qualifying applicants and those who have an interest in maintaining the integrity of the legal profession.

The uncertainty of the evolving global pandemic and whether the exam will be administered without a hitch is what tips the scale towards my support for DPP. I recognize that if DPP is granted, score portability, generally, is no longer an option. But for numerous applicants to the Maryland bar, initial licensure is the first and crucial step. Also, overarching UBE portability was no longer an option the moment the MD SBLE announced that the remote exam they planned to administer was only a partial exam. Ultimately, licensure in one state is better than licensure in no state. That said, the MD SBLE's efforts to enter into reciprocity agreements with numerous other jurisdictions, in the event the October remote exam moves forward as scheduled, are much appreciated.

The value of a bar exam is not lost on me, and its integrity is important. But when it is administered in any format other than in a controlled in-person environment, as

administered in years past, its integrity is automatically called into question. Moreover, under normal conditions, I know that an exam rightfully prevents incompetent applicants from practicing law. However, I suspect that any exam given in October will not show the true ability of numerous test-takers as compared to a traditional test administration because of COVID-19-related stressors and the exam being strung out over an unusually-extended period of time. The pandemic's effects have not been doled out equally amongst all applicants, and the test's inherent curve may not properly account for those disparities.

Additionally, it would be devastating to have another testing delay announced. One of the most important aspects of test preparation is having a healthy and positive mindset. That is understandably hard to do considering the exam has now been pushed back twice for the majority of applicants, and three times for those who deferred taking the February 2020 exam owing to personal or medical reasons. Other concerns surrounding the bar exam run rampant amongst applicants, including technology (connectivity, bandwidth, software provisioning, hacking, Artificial Intelligence bias, and inequality); exam integrity (cheating and potential inequitable treatment of AI variances, including MD SBLE's own disclosure that "[t]he mere fact that a sound or behavior generates a flag does not necessarily mean that SBLE will formally investigate or take action against an applicant for exam misconduct"); heightened testing anxiety (noise and distractions, lack of physical scratch paper [particularly for those applicants who, like myself, hand-wrote lecture notes and case briefs during law school], inability to move/look away from the screen). Meanwhile, many applicants are still trying to get a grip on "new normals," including navigating financial woes (student loan debt, lack of employment, rescinded job offers or lack of promotion on account of delayed licensure) and balancing new full-time clerkships/employment with studying--that was not expected to last this long--all while also attempting to maintain physical fitness and some semblance of good mental health.

Lastly, the software vendor will presumably waive all liability for any technical failures or glitches, rendering October test-takers who have technical difficulties both unlicensed and without recourse if the software fails to perform as it should. Applicants are expected to set aside all privacy concerns related to granting heightened remote access to their computers (via camera recording equipment and audio/recording devices) and thus, stored private data. This is above and beyond anything previously required during traditional law school exams. While the MD SBLE cites that private information is not collected by the remote testing software, granting remote access to any person or program opens up the door for a data breach. For the simple fact that there is evidence of data being compromised during other exam administrations shows that these privacy concerns are valid. Moreover, these concerns existed prior to MD SBLE's decision to administer a remote exam and align with the sentiments of numerous Americans, according to recent research from Pew Research Center (<https://www.pewresearch.org/fact-tank/2020/04/14/half-of->

americans-have-decided-not-to-use-a-product-or-service-because-of-privacy-concerns/). Under the current measures offered by the MD SBLE, the decision to opt-out of the remote exam forfeits an applicant's ability to become licensed, which effectively equates to no choice at all.

As the MD SBLE has noted, these are "extraordinary circumstances." Extraordinary circumstances beget extraordinary measures. DPP is an extraordinary measure that can account for the fact that first-time applicants are weathering the same storm but are not all sitting in the same boat. A one-size-fits-all approach will not satisfy all interested parties. However, I lend my support to endorse DPP that results in full licensure for first-time applicants who graduated from an ABA-accredited law school and are currently registered for the October 2020 administration of the Maryland bar exam. It is a viable option that may simply be the best way forward to satisfy the majority of current applicants.

Thank you for your kind attention to this matter.

Very respectfully,
Adrianne C. Blake

TRANSCRIPT OF AUDIO FILE:

Good morning! It is about 9:40[AM] on Friday, August 21, 2020. I am a Maryland bar applicant. I reside in a busy downtown location in a city that is not Baltimore, Maryland. I thought that the best way to show the court some of my concerns would actually be to record an audio clip [*noise of construction drilling, bus driving by, work trucks backing up in background*]. So, in full disclosure, my window is cracked—it is not all the way open, but it is cracked—to give you a full picture of what is going on outside of my apartment. I obviously have no control over what happens outside of it.

But as a result, I am actually contemplating—as I shut my window [*noise of shutting window in background and reduction in outside noise*—contemplating renting a hotel room, on the inside of the building so that I have a quiet location to take the test and so that there is stable internet because, for example, the entire power grid went out two weeks back during lunch hour between 11[AM] and 1[PM]. They did quickly [*noise of cat meowing in background*] get it back on board but my internet was out. You may also have just heard my cat meow, so that's a distraction that I need to get away from. But I say that with full acknowledgement that several of my colleagues are not in the same financial position as I am. They are not similarly situated to be able to pay and afford to rent a hotel room while taking the exam. And so, to [sic] them, I feel upset, and I hope that they are able to do what they can do to best situate themselves for a strong performance.

I know that I will do whatever is needed to be done. I will be prepared and ready for the exam. But I do hope that others are mindful of the fact that this isn't a normal situation, there are factors outside of our control that we are unable to resolve on our own, and I would just ask the Court and others to be cognizant of that and to—perhaps—acknowledge that those difficulties are happening outside of, um, of their own spheres [*noise of cat meowing in background*]. Thank you!

[EXTERNAL] Diploma Privilege

Robin Rubin <RRubin@sfandc.com>

Mon 8/24/2020 12:06 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

As a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. There are numerous reasons as to why the 2020 graduates of the ABA accredited, University of Baltimore and University of Maryland Law School, graduates should be extended Emergency Diploma Privilege effective immediately. First and foremost, using the ExamSoft software has already shown it's ineffectiveness and detriment to the students who have used the system. How is a student expected to truly be able to concentrate without truly knowing if the answers that they are giving will be the answers that are recorded? This has shown to be a persistent problem....right there alone is reason enough. In addition, the risk that these students run by using this software, opens them up to potential Identity Theft (as has been seen) as well as system crashes and system hackings. How can a system like this be used effectively and protectively? It cannot. Students are being asked to alter their surroundings so that they "cannot move" from the screen, cannot use the bathroom, cannot use scratch paper...all of these, to some extent, would be allowed during a normal Bar Exam. Unfortunately, this puts the bar examinees at unfair playing fields. These students have already dealt with numerous setbacks and to potentially add additional setbacks during their exam, whether it is a poor internet connection, or surprise construction in the neighborhood, it should not be an undertaking for any student while taking their exam. There is nothing normal about taking a Bar Exam during a pandemic. How can you possibly ask a student to sign a waiver for the biggest exam of their career signing away potentially their lives?

This is the most important test that these students will be taking, and they are taking it under enormous amounts of unprecedented pressure. These 2 law schools have taught the students well and prepared them to succeed outside of the classroom. They have gone through trial teams, journals, externships even clinical training not to mention the numerous final exams and written pages upon pages of papers over the course of 3 years. A test under these circumstances will not show competence. Just as SAT and ACT exams are being taken away from some Universities because they don't truly measure knowledge, taking a Bar Exam during an overwhelmingly stressful, once in a lifetime pandemic will surely have negative effects on Bar scores.

As a community we should be here to assist these young professionals in the start of their career, I cannot imagine what they have gone through the past couple of months. I am completely behind granting emergency Diploma Privilege to the State of Maryland Bar applicants for 2020.

Robin R. Rubin

[EXTERNAL] Diploma Privilege Comment

Charlotte Dobson <cdobson@stattonney.org>

Mon 8/24/2020 12:07 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Court of Appeals.

My name is Charlotte Dobson and I am an applicant for the bar in October. I have wanted to be a lawyer for as long as I can remember. I have worked my entire life to get to this point, much like many of the other bar applicants. As we all know these are unprecedented times and bar applicants are facing difficulties like no bar applicants that have come before us. Many bar applicants are facing the uncertainty about employment, a deadly pandemic with no real end in sight, an economy on the brink of collapse, uncertainty about the security and fairness of the remote bar exam, and the regular anxieties that come along with studying for the biggest and hardest test of our lives.

Applicants are also dealing with the reality that taking the remote bar exam is even more expensive than it regularly is because of the conditions in which we have to take it. I, just like many of my fellow applicants, cannot take the exam at my home. I do not have a quiet place to take the exam which means that I will have to pay for a hotel to take it in for two nights. This is something that puts a lot of us in a precarious economic situation. I know that the SBLE mentioned taking it at a library but there are numerous issues in regards to that. For one most libraries are not open because of COVID, also other people are in the library therefore we wouldn't be taking it alone.

My fellow applicants have gone through seven years of rigorous schooling in order to get to this point. Three of those years included a singular focus of law. I understand that the decision to grant diploma privilege is a serious one however I believe that it is the best solution and with things in place such as the Maryland component, the MPRE, the character and fitness interviews, and mentored lawyering we will be more than competent attorneys and be able to help this state the best we can.

Sincerely,

Charlotte Dobson

Head Law Clerk- Homicide Division
Office of the State's Attorney for Baltimore City
120 E. Baltimore Street, 10th Floor
Baltimore, MD 21202
Work: (443) 984-6039
Cell: (973) 865-5758

[EXTERNAL] In Support of Diploma Privilege

Michael Silber <michaelsilber2@gmail.com>

Mon 8/24/2020 12:24 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Chief Judge Barbera and Associate Judges,

My name is Michael Silber and I am a life-long Maryland resident. I am writing regarding SBLE's update. I am a registered applicant for Maryland's October bar exam, and **I strongly urge the Court of Appeals to adopt Diploma Privilege** for all registered bar applicants, or at the very least, **for all first-time test takers**.

A 2019 law school graduate from an out-of-state law school, I spent much of the past year working a JD-advantage job before unfortunately being laid off due to COVID. As a result, I have decided to sit for the bar exam for the first time as I pursue a career change. I hope any Diploma Privilege solution this Court reaches will not discriminate against someone in my position since I attended an out-of-state school and chose not to take the bar right away because I needed to get a job.

While I'm sure the many apparent issues this online exam imposes have been stated ad nauseum (i.e. technical feasibility, financial strain, discriminatory effect of AI, etc.), I want to highlight some of the issues/concerns I feel have been understated:

- **Scratch paper:** The SBLE completely blew over this subject. The bar prep courses many applicants have spent thousands of dollars on preach the importance of diagramming complex problems. When told the bar would be held with only "virtual scratch paper," Barbri's initial response was "that's impossible" and their follow-up has been for applicants to "use our hands to draw things in our mind." When speaking to past test-takers, the importance of drawing out problems has also been abundantly clear. With an online exam this is no longer an option and virtual scratch paper is in no way an equal substitute.

- **Practicing with the software:** We are only a mere six weeks away from the date of the exam, yet we are currently unable to practice taking the exam under the conditions we will face on test day. This is unacceptable for a test of this magnitude. I have spent weeks studying and doing practice problems, and not a single one has been under the same, unknown conditions I will face on October 5th and 6th. Even if the software is released tomorrow, I still will not have access to practice tests in this format.

- **Length of the exam:** The test has been cut in half for the first time ever, and a test of this length is completely unproven in terms of measuring "competence." An untested experiment should not be used to determine applicants' ability to practice law. In contrast, diploma privilege has proven successful in Wisconsin for decades.

- **Foreseeability:** This point has been stated frequently but I believe cannot be overstated. Not a single online bar exam has gone smoothly. Now the SBLE is entrusting a company that has yet to successfully administer the exam to do so without a hitch to 30,000+ applicants simultaneously throughout the country. To expect this to happen without

(career-altering) problems is ludicrous. I had a phone call with the SBLE this week and was told that ExamSoft is "different" from other companies because they regularly administer the New York Law Exam. I have taken that exam. It is a non-proctored, multiple choice test with zero features. The bar exam is a proctored, multifaceted exam. The difference in the amount of data to be collected is exorbitant.

Thanks for hearing me (and everyone else) out.

Sincerely,
Michael Silber

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege

Rebecca Corona <rebecca.corona94@gmail.com>

Mon 8/24/2020 12:28 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Rebecca Corona, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who lives in Baltimore and witnesses first hand the amount of crime and urgency to prosecute would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Rebecca Corona

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

My name is Lauren Petrin and I am a 2020 law school graduate from the University of Maryland Francis King Carey School of Law. I am writing this comment to express my belief that permanent diploma privilege is the only equitable and viable solution for any successful 2020 bar administration.

The bar exam is touted as a necessary measure to protect the public from lawyers who would provide incompetent representation to members of the public and to serve as a check on the legal profession. But the success that Wisconsin has had with diploma privilege provides reliable data demonstrating that legal education without the bar can protect the public from harm. Members of the public in Wisconsin do not suffer harm from lawyer incompetence at a rate higher than jurisdictions that administer a bar examination. While many attorneys have argued that law schools are not an adequate measure of minimum competency, I would argue that the ABA, who accredits these law schools, might disagree. What is the effect of this accreditation if not to prove competent and comprehensive legal education?

After reading the comments from practicing legal professionals from the D.C. Court of Appeals Diploma Privilege comment period, it seemed that their only argument was that the bar exam was the only way to measure legal competency and legal education itself was not enough. The “I had to do it, so you have to do it” argument not only furthers the gross patriarchal system the legal profession was founded on, but it also shows a lack of care and ignorance toward the applicants and their current hardships. All we are asking for is respect and professionalism. I hope to go a step further than these comments by addressing the lack of viability in administering a remote bar examination for this year as well as the highlighting the unequal access to studying and test taking environments for applicants attempting to take the 2020 bar examination.

The online bar exams that have administered this year in other states have already shown to be complete failures. Indiana had to cancel their bar at the last minute because the software program simply would not work. Students were asked to switch at the last minute to send in bar answers via email through an open-book bar examination. Certainly a test that claims to protect the integrity of the profession would have more safeguards than an open-book email submission bar exam. Michigan also failed to administer an online version of the bar due to an organized cyber attack. It would be foolish to believe that jurisdictions planning to administer a bar only 1 month from now would be able to protect students from this type of attack by then. Rushing to implement a test that has no assurance of actually working, let alone fairly testing students' legal capabilities is exactly what bar associations should be avoiding.

Aside from the clearly inadequate testing capabilities and gross disparate impacts the online bar will have on applicants, students have faced many personal hardships due to the Maryland Court of Appeals decision to delay the bar. Personally, my job has delayed my start date until January because of the continual push back of the test dates. That is four months of lost pay that I needed to pay for rent, student loan payments, and basic necessities. I will lose health care coverage due to the delayed start date. I have had to keep my high-risk job working at a gym in order to make ends meet because I would have lost any unemployment benefits.

My experience is not an isolated event and is certainly not one of the most severe due to the delay of the bar in its online format. I have classmates who initially relied on childcare for the summer, which has since been cancelled due to Covid-19, and now have to study from home while parenting full time. Additionally, not all students have equal internet access for studying, let alone hours of consistent access needed to actually take the bar exam. Other classmates do not have the option of “merely” pushing back their test date by two months and will have to work full-time jobs while they study due to financial necessity. I personally do not know anyone that could live without pay for the next four months.

We must face the fact that permanent diploma privilege is the only fair and viable solution for a successful administration of the bar this year. Temporary privilege would simply push back this same problem for another day. Employers are not hiring students that will have to eventually take months off to study for the bar at a later date. Those that do not have the option of taking off work to study will be similarly disadvantaged. I would argue that allowing students to practice temporarily without having taken the bar, in and of itself demonstrates that holding a bar right now is arbitrary.

I urge you to take the only logical decision and to allow for permanent diploma privilege for the class of 2020. Administration of the online bar remains impracticable at this time and perpetuates an already disparate impact on minority and low-income applicants. Students simply do not have the ability to find a comfortable and acceptable location to even take the bar under any proposed on-line guidelines. Four other states have already decided to take this step based the same dismal data we have seen from other states. It is time for the Maryland Court of Appeals to do the same.

Sincerely,

Lauren Petrin, *Juris Doctor*

University of Maryland, Francis King Carey School of Law, Class of 2020

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Lisa Bader <lbader@dhbader.com>

Mon 8/24/2020 12:32 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Lisa Bader

lisa@dhbader.com

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Lisa Bader, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces possible legal issues would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Lisa Bader

Beverly Petersen Jennison, Esq.
13408 Bingham Ct.
Silver Spring, MD 20906

The Honorable Mary Ellen Barbera
Maryland Court of Appeals
361 Rowe Blvd.
Annapolis, MD 21401

August 24, 2020

VIA EMAIL ATTACHMENT

Dear Justice Barbera and Members of the Court:

This letter is written in response to the Court's Order requesting comments regarding a diploma privilege option for bar applicants to the Maryland bar. I am a member (inactive) of the District of Columbia bar (1985) as well as a member (active) of the Maryland bar (1985). I have both practiced law in the District, as well as taught for approximately 25 years at the Catholic University of America Columbus School of Law, the George Washington University School of Law, the University of Baltimore School of Law, and most recently, at the University of Maryland Carey School of Law. I am intimately familiar with the rigor of a law school education, having just retired from UM as a Clinical Associate Professor of Law. As it happens, I am also the parent of an applicant for bar admission in the District of Columbia who is registered for the upcoming remote bar exam on October 5-6, 2020. My son and daughter-in-law are also active members of the Maryland Bar.

I am fully in support of a diploma privilege for those persons who would have been taking the July bar examination in Maryland. In these most unusual circumstances, it is both unfair and unduly stressful to require those bar examinees to have to take a bar examination, even by remote means. My reasons for not supporting the remote bar examination (or any bar examination, for that matter) for this year on an emergency basis are set forth below.

Technical Concerns

Any remote exam must have appropriate safeguards in place sufficiently in advance of the bar exam. Maryland cannot possibly meet this standard, even with an October administration date. As proof of the difficulty of meeting safeguards, both Indiana and Nevada canceled their exams right before administration due to technical problems, and the Michigan bar takers, in the middle of their exam on July 28, faced an exam that crashed, using ExamSoft software.¹ This is untenable, and creates a level of stress for

¹ During the spring 2020 semester, my university used a very well known software provider to accommodate remote teaching. Despite the company's reputation, the software crashed repeatedly because of the volume of persons using that platform. This same problem will follow the Maryland

exam takers that is unnecessary and could be alleviated through use of the diploma privilege.

Disparate Impact Concerns

Taking the bar exam remotely requires access to an appropriate computer with reliable Internet access in a quiet room. It also requires that the exam taker have a web cam. In a resolution recently passed by the ABA House of Delegates, the drafters of that resolution included information supporting the fact that White applicants are about 71% more likely to have such access as opposed to Black applicants. Further, parents of any race who are facing daycare closings may not have a quiet place to take the exam because their children are present – not to mention the already present stress of having to prepare for an exam under such circumstances. This is preventing these folks from not only being able to prepare adequately, but of having a safe and quiet space, with adequate internet access, and a decent computer setup, from taking the exam.

Additionally, multiple articles have surfaced about how artificial intelligence will be used to proctor the exam and look for “cheaters;” the AI platforms, according to various articles, are built on mannerisms of White men and thus could disproportionately disadvantage others if they do something inadvertent that triggers the software. Again, this is absolutely outrageous within the context of a professional exam.

Privacy Concerns

Additionally, there are privacy concerns in using third party vendors. In the past, such vendors, when remotely proctoring exams for colleges, have retained personal information about test takers. This is an invasion of privacy of the test takers, and abhorrent to those of us who value privacy. More and more information is emerging about this point, and I’m not sure of who would want their personal information stored in this way, especially due to having to take an exam that could provide a license to practice.

Test taking content and administration

The remote exam on October 5-6 to be designed by the NCBE will be different in focus and scope than a normal bar exam. It will be one-half the length of a regular bar exam. There has been no identification of what content will be covered, other than a vague reference that it will be “the same” as a normal bar exam covers. But that cannot be so. It will only have 100 rather than 200 multiple-choice questions. It will have fewer essays and MPT questions. Even the NCBE will not do raw scores on these tests. Bar takers have no idea how they will be scored, or what the cut score will be. How will Maryland score this test? No information has been forthcoming. Further, the remote exam will presumably not allow any scratch paper at all; this was in the directions for other jurisdictions that will use the Oct. 5-6 exam. This requires test takers to flip back and forth between screens to figure out their answers to essay and MPT questions. This isn’t testing knowledge -- it’s testing one’s ability to be able to switch back and forth between screens effectively and efficiently. I’m not sure how that helps one to practice law.

remote bar administration because presumably now a number of jurisdictions will be using the same software.

What is the solution?

The solution for at least this year (and perhaps into the future) is to institute a Diploma Privilege. This is the ONLY solution that would provide an immediate and permanent pathway to enable law school graduates to pursue the careers for which they have been trained. Some 2020 graduates already have jobs waiting, and the start dates for these jobs have been pushed back due to the uncertainty of when the bar exam will be held. Some 2020 graduates do not have a job yet, but the uncertainty of the bar exam, the current health crisis, as well the move date on the bar exam, has prevented them from even looking. Many, if not most, 2020 graduates are timing out of their health care plans from their law schools, and may be without healthcare – and what is the solution? That they have now had to wait longer to look for a job that might provide health care insurance? Additionally, this is a generation of law students riddled with extremely high student debt – they need to start making a living in their chosen field of work. Many years ago, we in academia talked about the mortgage without the house as a result of student loans. What is this present situation? Even worse than that. And finally, and certainly not the least of anyone's concerns -- these 202 graduates are needed in the legal profession to improve access to justice, especially in these troubled and uncertain times.

Here is a possible way to craft a diploma privilege:

- Restrict the applicant pool to all applicants who have filed with the Maryland Committee on Admissions by the requisite date;
- Require that all applicants meet the current MD requirement for the MPRE;
- Require that all applicants meet MD's current Character and Fitness requirements;
- Require EITHER that all applicants have graduated from an ABA-accredited law school; OR
- Require that all applicants have a minimum GPA for their law school studies (suggested floor: 2.5) as certified by their law school in the easiest format possible; and
- Require that all applicants complete a short online course on MD practice & ethics, within one year after admission to the Maryland bar.

This is the only fair way to deal with this year's applicants for admission to the MD Bar. Anything less would be unfair, perhaps illegal and discriminatory, and also disrespectful to those applicants who have worked so hard to complete law school and who only seek to practice law in this jurisdiction.

Thank you for your consideration of my comments.

Respectfully,

Beverly Petersen Jennison
Beverly Petersen Jennison

Dear Clerk of the Court,

I believe that there should be an emergency diploma privilege enacted in Maryland. The COVID-19 outbreak has viciously impacted the economy and the ability to gather in large numbers. The Bar Exam was never designed to be taken virtually and it should not be. Diploma privilege should be given to all first-time applicants to the Maryland Bar for this year. This privilege should only last for one year until the test can reasonably be taken. I would urge that the Bar Association reach out to the firms in the State and ask for their patience in understanding for those who are granted privilege for a temporary time and who will certainly have to take off work in order to take the test a year later. In the meantime, the MPRE and the Maryland Law component should still have to be passed in order for an applicant to be granted diploma privilege. I do not think that there should be any restriction on applying for diploma privilege outside of an applicant having to go to an ABA accredited law school. I support diploma privilege if carried out in such a way because at the end of the day we are looking to protect the integrity of the profession but also not be blind to the pandemic that has drastically altered life as we know it.

Best,

Edward S. Shields III, Esq.

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am a 2020 graduate of the University of Baltimore School of Law and am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the Maryland legal community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent to practice law. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community member.

However, as more and more states boards recognize the infeasibility of ILG's system, they are turning towards Examsoft. As a result, Examsoft will be required to support thousands of remote exams around the country throughout the same two days. The risk of any glitch in this untested and unprecedented administration of the bar exam is too great to for Maryland examinees. 2020 graduates will be treated as test subjects to a system that determines the beginnings of their legal careers. As cited to in the DP4MD Comment, examinees in Michigan who took the remote bar exam on Examsoft were forced to resort to self-help on internet forums to receive basic instructions and even the correct passwords for the modules. This compromises the security and integrity of the bar exam, which is antithetical to securing the integrity of the legal profession.

The bar exam is a long-established practice to ensure that the practice of law is only available those that are able to uphold the profession's values of competence and integrity. The administration of the bar exam in this manner directly undercuts the values of competence and integrity. Administering a bar exam with unknown security measures and untested viability of the

software merely highlights the SBLE's commitment to economic stakeholders of the bar exam rather than the values the bar exam was designed to uphold.

The consequence of the continued push to hold the exam without any reasonable compromise was perfectly encapsulated by the board of law examiners in Florida as it represents the worst-case scenario for bar examinees. After dedicating hundreds of hours to studying, just 72 hours prior to the exam, the examinees were informed that the test had been cancelled and postponed to an underdetermined date in October 2020. Each examinee will suffer financial, professional, and emotional hardship as a result of this decision. However, the harm of this decision is not limited to the examinees. Any professional setbacks incurred will harm the broader community as the potential new attorneys will not be able to provide necessary legal services. Especially in a time when those legal services are so heavily sought. Tenants who face eviction as a result of the pandemic caused housing crisis, employees infected with COVID-19 in the course of employment, and criminal defendants unable to receive a timely trial as courts attempt to catch-up on their dockets, will all be limited in their ability to retain legal services as a result of Florida's decision. Maryland graduates and the broader community should not be at risk of suffering a similar outcome.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
A Concerned Bar Applicant



- Industrial, Orthopedic and Sports Rehabilitation
- Physical Therapy, Aquatics, Chiropractic
- Work Conditioning and FCEs

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Neil Cohen, a member of the general public and practicing chiropractor, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from a Maryland ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces a contract dispute would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Neil B. Cohen, D.C.

1308 Eastern Boulevard
Middlesex Shopping Center
Baltimore, Maryland 21221

Phone: 410-686-8400
Fax: 410-686-8993

Hannah Feinberg
Full-Time Graduate Student
Hannah.feinberg@furman.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Hannah Feinberg, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Hannah Feinberg

August 24, 2020
Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

Thank you for creating a space for where concerns regarding the administration of the Bar Exam can be productively expressed. If one year ago someone had told I would not be sitting for the Bar Exam in July 2020, I would have thought they were insane. If someone had told me I would be writing a letter urging the Court to grant Diploma Plus Privilege because of an ongoing global pandemic, I would have laughed and told them that global pandemics only happen in Science Fiction movies. But alas, here we are...

I have wanted to be a lawyer ever since I was a little girl. I was the president of my Mock Trial program in high school, and a Team Captain for my University's program. I was extremely involved in my law school community, juggling my responsibilities as a student with my position as President of the Women's Bar Association. During my third year decided to take a full time job with the State's Attorney's Office and finish school at night. I tell you all of this because I want you to know that I take the duties and responsibilities of being an attorney very seriously. If given the opportunity to take the Bar Exam under normal circumstances, at the convention center with my colleagues, I would do it in a heartbeat. However, for the reasons stated below I do not think that the Bar Exam can be fairly and justly administered as a remote exam.

I. Disparate Impact on Colleagues

I was extremely disappointed while reading the State Board of Law Examiner's response to the DP4MD petition because they categorically failed to address applicants concerns regarding the remote Bar Exam's disparate impact on applicants of color. The bar exam, and the legal profession as a whole, has a well-known history of discrimination. It is unconscionable for the SBLE to ignore this concern when brought to their attention. If the Bar Exam is truly a test of minimum competency, then it can not be administered as a remote exam because it will only serve to test applicants' access to resources.

II. Personal Financial Impact

My office allows their employees unpaid time off to take the bar exam. I initially planned/saved up to take time off to study. Now I do not plan to take more hen a week off of work because I am terrified that I will have used all of my allowed leave and the Bar Exam will be canceled at the last minute as it has been in other states.

My partner and I own our home, and without my income we will drain our limited savings and will not be able to pay our mortgage. I cannot afford to continuously take time off to study for an exam that continues to be pushed back. Even if I had unlimited leave, I cannot afford not to have income. I am worried that I am sabotaging myself and my chances of passing the Bar Exam because I am so worried

about money and trying to make the right economic choices for my household. These concerns are only getting worst as I get closer to the end of my deferment period for my six figure student loan debt.

Pursuing my dream of being an attorney has been expensive. As someone who wants to work in public interest I know that I will not make the kind of pay check that most people associate with the legal profession. I am going to struggle to pay back my student loans, even though I only went to in-state schools and received scholarships for undergrad and law school. The uncertainty of the Bar Exam has only exasperated my financial concerns.

III. Personal Concerns over Internet Access/Security

I do not have a reliable internet connection to take the Bar Exam and I do not have anywhere I can go that has a better connection. I have the fastest/fanciest internet plan that is offered in my zip code. While I have been writing this email, my internet has cut in and out five times. There is no way for me to upgrade my connection. My neighbors have experienced the same problems and our internet provider has told us that outages are a result of our whole neighborhood trying to work from home. I am worried that I will not be able to log on to the exam when I need to and I will be locked out or flagged for cheating or just out right failed.

Additionally, I am extremely concerned about potential security breaches/invasions of privacy from the software that we are required to use to take the exam. I am worried that my personal biometric data will be given to companies without my knowledge. Also, like so many of my colleagues, I have been forced to use my personal computer as a work computer. I am worried that the software will access any of my privileged and confidential work materials. There is no way for us take the Exam without having our data taken and because of what has happened in other states I do not feel confident that our data is secure.

IV. General Exam Concerns

Aside from all of the concerns listed above, I am worried about how to take this exam. Everyday, my bar prep course reminds me that diagraming questions and highlighting key points is the pathway to success. We will not have this option for the remote bar exam. Taking an exam in ExamSoft during our final semester of law school was extremely challenging. My computer froze multiple times while switching back and forth between the question and the answer area. I expressed my concern about this to my professors after the exam and they said that a lot of students had the same experience. I cannot imagine that this will be any different during the Bar Exam.

When we take the Bar Exam we are suppose to be tested on our knowledge of the law. I believe that if the Bar is administered as scheduled the only thing it will test is applicants' access to high speed internet and a quiet room. Thank you again for your time and your consideration. I urge you to remove the UBE requirement and implement the Diploma Privilege Plus plan.

Sincerely,

Kathleen E Godwin

Kathleen Godwin, J.D.

Maryland Bar Applicant

Maryland Court of Appeals

Via email to COACLERKOFTHECOURT@MDCOURTS.GOV

August 24, 2020

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege

Dear Chief Judge Barbera and the Honorable Members of the Maryland Court of Appeals,

I write to add my support for the petition to suspend the UBE requirement and grant diploma privilege to this year's bar applicants. I hope to offer my perspective as a law professor who has prepared students in Maryland to practice law for over a decade *and* as a former public defender who is deeply invested in ensuring that all clients receive capable and qualified representation. It is my belief that granting diploma privilege in the unique circumstances of the global pandemic will further the interests of both of those constituencies—it is the right thing to do for the bar applicants and in the best interests of the clients they will soon serve.

The debate over diploma privilege that has swept across the country has highlighted the bar exam's troubling history as a concerted effort to exclude immigrants, women, and non-white people in the profession. I hope that current events will spark a deeper analysis of the impact of the exam on the diversity of Maryland's bar membership and whether it acts as an effective filter to exclude unqualified candidates while ensuring that qualified applicants are able to enter practice and serve. However, I do not believe one needs to reject the overall efficacy of the exam to conclude that, under the unique circumstances of the global pandemic, the costs of the bar exam far outweigh the benefits.

Under the best of circumstances, the bar exam is an emotionally grueling process that impacts each student differently depending upon the social and financial resources that are available to them. While some students have full financial support, no child care responsibilities, and enjoy the ability to focus solely on the bar exam for two straight months, others are single parents, working fulltime jobs, and are able only to study in the late or early hours of the day between other obligations. These differences, troubling in ordinary times, have been *profoundly* exacerbated by the pandemic.

I have heard countless stories from students of the mental, emotional, and financial toll of the pandemic on their lives and their ability to take the exam. Notably, these stories are from students whom I fundamentally believe, based on their performances in my classes, will be incredibly effective attorneys if granted the ability to practice. I believe there is an enormous danger that qualified students will be unable to successfully complete the bar exam process despite their ability to effectively practice law. As Chief Judge Barbera noted last year, there is a profound need for legal representation in Maryland, and currently volunteer attorneys satisfy only 20% of that need. See Brian Witte, *In State Of Judiciary, Maryland's Chief Judge Cites Gains in Legal Counsel for Unrepresented Litigants in Civil Cases*, *BALT. SUN* (Feb. 6, 2019). It is my deeply held belief that these potential future clients will benefit from, rather than bear the costs of, awarding diploma privilege to this year's bar takers.

I believe other commenters have highlighted many of the concerns with the current proposal to hold a remote exam in October. These issues include concerns about the capacities of the online platform; inequities in technology access including reliable internet; housing and food vulnerability for low income students; difficulties in obtaining quiet study; and test taking locations, and issues surrounding the artificial intelligence used to monitor the exam. I share these concerns but won't belabor those issues that have already been brought to the Court's attention.

I do, however, want to highlight the unusual nature of the current crisis and its impact on bar takers. A student related to me that her fellow graduates have been sharing suicide hotline numbers out of a real concern of the impact that the pandemic and the postponement of the bar exam has had upon their lives. Not only is the human cost of pursuing an exam under these conditions extraordinarily high, it is also hard to imagine that the results of a remote exam under these circumstance will be terribly effective at determining who should or should not be allowed to practice. In short- a bar exam under these circumstances cannot accomplish what the bar exam is intended to do—filter out students who should not practice from those who should. I urge the Court to accept this truth—the bar exam will not do its job this year. Whether or not diploma privilege is justified in the ordinary course of events, it is entirely justified in the midst of a global pandemic.

Finally, I want to relate to you some personal experiences I had this spring and summer as I endeavored to teach law school classes online. While I like to think that my Evidence and Criminal Procedure Classes were largely successful, there was rarely a live class where at least one of my students didn't experience some sort of technical issue. One class took place during a thunderstorm and several students simultaneously disappeared when they lost power. Others faced lost wifi signals requiring them to repeatedly sign back in, a process that usually took less than five minutes but occasionally took longer. Because I used Zoom to conduct my classes and keep attendance, I was able to see that one student had to sign into class five times in a single session. It is one thing to withstand such technical difficulties during a class—it is another thing entirely to grapple with such issues during the single most important exam of your life. While I appreciate the Law Examiners decision to forego a live exam during this unprecedented health crisis, I cannot imagine that a remote exam can be offered in a way that comes close to providing a sufficiently secure and reliable experience for test takers.

In short, while there is no perfect solution, I believe that the costs of holding a bar exam and denying diploma privileges to our successful graduates far outweigh the benefits. I hope the Court will grant the Emergency Petition and welcome this year's applicants into the profession.

Thank you for your consideration,

David Jaros
Professor of Law
University of Baltimore School of Law

Kimiya Gilani
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August 24, 2020

Suzanne C. Johnson
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Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges:

My name is Kimiya Gilani and I am a 2020 graduate of American University Washington College of Law registered to take the 2020 October Maryland Bar Exam.

I recognize the devastating effects the COVID-19 pandemic has had on our country. More specifically, I recognize the distressing effects it has had upon the 2020 Maryland Bar Exam applicants and upon those in our community who most need access to justice. I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies applicants as competent. I therefore strongly support the petition before the Court of Appeals, advocating for emergency diploma privilege for Maryland Bar applicants.

Due to these unexpectant global circumstances, the only equitable resolution for 2020 October bar applicants is diploma privilege. While I am extremely grateful there will not be an in-person bar exam for Maryland, an online bar exam is not the solution. An online bar exam raises privacy concerns, resource concerns, and cannot be fairly and equitably implemented. This is evidenced by the states who have already tried to administer exams this way and have either failed to do so or have encountered many obstacles. I understand the SBLE's distinction explanation between the states that used vendor ILG versus the vendor they chose, ExamSoft, but ExamSoft has also encountered numerous obstacles in its bar exam implementation and was the victim of a DDoS cyberattack, currently being investigated by the FBI. Bar applicants concerns over privacy and feasibility of the exam are warranted when all we have seen have been failures. The SBLE stated in their memorandum to the Court that Michigan (who used ExamSoft) was able to fix their issues and give students extra time once it was resolved, but those student wo encountered technical issues during the exam had to take the time to get out of exam mode in order to deal with technical issues. They had to deal with additional stress outside of their memorization and exam tactics to work on getting their software back running. Imagine taking the bar exam and having to

completely stop to figure out technical issues with your computer and the software. That is simply not fair. Law students have spent their academic careers working to get to this exam and risk losing everything they worked for due to the problems like this that would not arise during normal circumstances. I feel very badly for those students who had to deal with this as in normal times, they would not have had to deal with this.

Personally, I live in an apartment with a roommate who is also taking the exam. We don't know how the exam software will affect our connectivity and whether any technical issues will arise during the exam such as power outages or Wi-Fi outages or if the software can handle multiple people using it on the same Wi-Fi network. These are simply unpredictable factors that could cost us greatly. LSAC released a statement saying that bar examinees should sit as close as they can to the router during the exam. If this is necessary for successful connection for the exam, this would not be feasible for my roommate and I as our router is located in our living room and so we would have to be in the same room for the exam, something that is strictly not allowed. How do we reconcile this? Further, I live on the first floor of my building where loud noises such as gardening and trash trucks are frequently occurring outside my window and they are sounds I cannot escape. My building also has fire alarms going off, without exaggeration, multiple times a week. We are also not allowed to wear earplugs during the exam, something I have had to do while taking online exams during my last semester of law school (Spring 2020) and what I did at the beginning of bar prep but have stopped doing in order to try and adjust to working in a noisy environment for the actual online exam. Never in my wildest dreams did I imagine I would have to take the most important test of my life from my home, and I simply cannot afford to rent a space to take the exam elsewhere.

The pandemic has caused significant financial hardship for me as I had budgeted enough money to last me through the original exam, and with the delay of the exam I have had to reach out to family for money and I have had to take out additional loans that I had not anticipated. I am already greatly in student debt and have had to go deeper in debt due to the delay of the bar exam. I have been applying to non-legal jobs in the meantime due to all of the uncertainty. I am anticipating putting my dreams of a legal career, something I have been working for for years, on hold due to all of the uncertainty and chaos. Granting diploma privilege for 2020 bar exam applicants, subject to requirements such as graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component, would allow our class to successfully look for legal jobs as a world of opportunities would open from gaining bar licensure in Maryland.

The SBLE cited other states which have adopted diploma privilege and argued that even if the Court adopted it that graduates of the University of Baltimore and three of the six law schools in DC would be excluded. That is correct, should the Court adopt the most restrictive versions of diploma privilege which use bar passage as a cut-off of those able to select diploma privilege. We are asking for a form of diploma privilege that is not contingent on a bar passage rate; we are asking for diploma privilege based on graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component. Further, Louisiana implemented additional measures such as a certain number of CLE hours as well as participation in a "transition to practice" program. These additional measures that Louisiana implemented are reasonable and do not place such a heavy restrictive burden on applicants.

Taking an exam such as the bar exam at home causes another obstacle, other than those I have stated in paragraph 3. We are not allowed physical scratch paper during the exam and are not given

any virtual scratch paper during the MBE. Throughout my bar prep course with Barbri, it has been noted numerous times that in order to successfully complete certain questions, you need to mark the question up, highlight them and/or write stuff down. I have been practicing doing certain MBE questions without marking anything up and without writing things down, and have found that I cannot, without exaggeration, successfully complete these questions. During a normal bar exam, we would have test booklets to write all over as well as scratch paper. Here, we are left with none of that and that places us at a disadvantage. As an example, I practiced doing Federal Civil Procedure MBE questions a few days ago as a part of my bar prep program and made sure that I was not using any sort of scratch paper to work through the question. It is extremely difficult trying to figure out jurisdiction questions which involve numerous actors from different states when you cannot organize the information on any sort of paper. This was just one example and it proved to be way more difficult than I ever thought.

Diploma privilege is the only equitable solution for 2020 bar applicants. Temporary licensure is not an equitable solution. Temporary licensure is a band-aid that will disadvantage lawyers who will be practicing and working and will have to stop their work for months again to study down the line. At that point they will be in the field working and learning and that is far more beneficial anyways than an actual exam. If the Court wants to grant licensure, it should not be temporary. The Court should grant diploma privilege, without bar passage restrictions, as it is the only equitable solution.

Extraordinary times call for extraordinary measures. The class of 2020 could not have predicted they would be taking the bar during a global pandemic. Frankly, no one could have predicted a global pandemic. It has affected the lives of so many people around the world and has caused extreme hardship for so many people. Granting diploma privilege is the only equitable solution for 2020 bar applicants, as well as the most compassionate solution, and this would allow these graduates to begin their lives in this extraordinary profession. Thank you for taking the time to allow public comment and for listening to the concerns of the public.

Respectfully,

Kimiya Gilani

[EXTERNAL] Public Comment Bar Exam

Justin Weeks <c5crewdov@yahoo.com>

Mon 8/24/2020 1:14 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Maryland Court of Appeals:

I want to thank the Court for allowing public comment on this issue regarding the 2020 online October bar exam. I am currently slated to take the bar exam in October and would like to make a public comment regarding the exam. I do not object the bar exam being administered online, but also understand the concerns of some test takers that may have difficulty in maintaining a quiet space, reliable internet connection, or the concern of a hacker attack. May I suggest a happy medium of not have a timed test, eliminate the MBE portion, and email questions to applicants. Applicants would then be able, with an open book and no outside help, respond with their answers in email form. This seems to address the internet connection concerns and also is more realistic of the work performed by an attorney, which is to research a legal issue before advocating for their client.

I can also appreciate the argument for diploma privilege, but have concern on the proposed restriction of limiting it to only individuals who attended a law school in Maryland or those who are interested in public interest in Maryland. Like many applicants, I did not attend a Maryland Law School not because of choice, but because of location. I worked full time and supported a family. The only option for me was to attend a law school within my state that was offered at night, which was not in the state of Maryland. I would suggest that If diploma privilege is offered that all applicants be afforded this opportunity. I plan on entering into public interest position in either federal, state, or local government after the conclusion of my judicial clerkship. My state has already cancelled this years bar exam and is not offering any alternative admission Maryland is my last hope. If the diploma privilege is selected and I am not qualified based on where I went to law school I am concerned with the impact of not being barred and how it may hinder my goal in obtaining a public interest position.

I thank the Court for its time and consideration in this matter. Hopefully my comments are useful in the Court's final decision.

Respectfully,

Justin Keith Weeks

Jacob H. Ziff, J.D.
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August 21, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
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COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Jacob H. Ziff, a May 2020 University of Baltimore School of Law graduate and Summer 2020 Maryland Bar Applicant, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a law student, prospective lawyer, and citizen of Maryland, I understand concerns for the practice, including maintaining the bar exam as the last hurdle in our attempt to enter the practice. But, with the stresses of the COVID-19 pandemic, administering a bar exam appears impractical. I maintain the utmost respect for the American Bar Association ("ABA") and the ABA accreditation process. Graduation from an ABA accredited law school and a passing score on the Multistate Professional Responsibility Exam should be sufficient to deem law students competent and should result in Diploma Privilege under the current circumstances.

I am also writing this letter to provide further insight to the Court. Each law student has suffered due to COVID-19. The suffering of the law students has only been exacerbated by unclear and uncertain leadership by the State Board of Law Examiner, various other states law licensing agencies, and the orders of this Court. Obviously, these parties are attempting to deal with great issues that are unlike others experienced. We, the people of the world, are essentially at war with a virus that has killed over seven-hundred-thousand people. Yet, as we face global adversity, many are still intent on seeing new lawyers put through the rigors of the bar exam.

The bar exam is a staple of the legal community, and I truly understand those who wish to keep the bar exam. But, in the great words of Dave Chappelle, "modern problems require modern solutions". Coming from a military background, I appreciate the process of earning entrance into

a community. I entered the ranks as a soldier only after my successful completion of basic training. Understandably, I was ready and (almost) eager to face my final challenge of the bar exam to enter the legal “ranks” as an attorney.

Personally, the constant delays of the bar exam have caused suffering. I am an active member of the West Virginia Army National Guard. As a member of the Guard, I am deployable in the event of National and State emergencies. Throughout almost all of COVID-19, I have had to wait in a ready status, understanding that I could be called up to duty at any time. This constant stress has made preparations for the bar exam troublesome. Additionally, I have been put in a position where I have had to request extended time away from training to prepare for the exam. Due to missed trainings, I have to reschedule this missed time. So, I have had to miss valuable study time to serve.

To be clear, the National Guard did not fund my law school, nor did they fund any part of my education. I enlisted in the National Guard during my last year of undergrad simply to fulfill a call to service. It was my choice to enlist and I support this choice. The chance of me being the only member of the military taking the Maryland Bar Exam in October is very slim. Members of the military often adapt to adversity and keep our heads down while we move forward. The constant changing of the exam and the new format have made this mentality almost impossible. We are planners that are unable to plan due to COVID-19.

Beyond affecting my military service, COVID-19 has complicated my finances. I worked part-time for a law firm throughout law school and saved accordingly to finance full-time studying for the bar exam. Due to delays, I have been barely able to remain financially afloat. The delays have forced bar applicants to push back various start dates and push back any timeline they might have had. The impact is almost too severe to measure and has an impact on my day-to-day life.

I have great concerns regarding the new format of the exam. My house does not have the best internet and is full of distractions. I do not have other options to take the test in a better environment. The only “relief” afforded is to withdraw from the exam and wait until the SBLE or this Court provides a later test. For those with weaker or inconsistent internet and taking the October exam, we are at the mercy of potentially unreliable internet. We must hope and pray that we have a good internet and computer day while taking the bar exam.

The online exam will be administered all over the county, and there is a chance that some people in foreign countries will be taking it. Hopefully Examsoft can handle the usage during the exam. Hopefully no one loses power while taking the exam. Hopefully no one’s computer crashes or updates during the exam. Hopefully all goes according to plan while administering the exam. Evidently, there is a lot of hopefulness and unreliability presented in the October Bar Exam.

There is a global pandemic that continues to impact Maryland, the United States, and the World. Understandably, the Court’s chief concern should not be the bar exam or diploma privilege but should be to continue to serve the State of Maryland and its citizens. This Court should continue to work to ensure the protection of justice and fundamental rights of all. In the interest of justice and the unforeseen challenges of COVID-19 on bar applicants, bar applicants’ families, the legal profession, and the public at large; diploma privilege is wholly appropriate.

In closing, diploma privilege seems to be the most logical answer to these new, yet pervasive, issues. Continued delays are going to create issues in the Maryland Legal Profession and delay law clerks’ starting dates. Administering the online bar exam via Examsoft is ripe for

computer issues, fraud, cheating, and other foul play. In your consideration, I ask you to truly walk in our shoes. Consider the full impact. How would this have impacted your legal career?

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

/s/ Jacob H. Ziff

Jacob H. Ziff, J.D.
University of Baltimore School of Law,
Class of 2020.

[EXTERNAL] Comment on October 2020 Remote Bar Examination Update

himmerdunc@aol.com <himmerdunc@aol.com>

Mon 8/24/2020 1:19 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear sir or madam:

I am writing in strong support of the Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege that was filed for the Court's consideration. I respectfully disagree with the Remote Bar Examination Update's conclusion that the State Board of Law Examiners should administer the October 2020 remote bar examination using the materials supplied by the National Conference of Bar Examiners using the software provided by ExamSoft. I believe that the better, and the only equitable, solution involves the establishment of a procedure to admit Maryland-law-school graduates without requiring them to take and pass a bar exam ("diploma privilege").

As a Maryland-born and -residing member of the D.C. and New York Bars who has been practicing law for 40 years, I have given a great deal of thought to the many Bar-Examination-related problems posed by the COVID pandemic, and have come to the conclusion that the most -- and only -- equitable solution to those problems is for Maryland to adopt the diploma-privilege solution proposed in the Emergency Petition.

While I appreciate the efforts of the Maryland Court of Appeals to create an alternative (i.e., online) examination, such an examination would be inherently unfair and unmanageable for many reasons, a few of which follow:

- The playing field is not level! As the Emergency Petition points out, not all exam-takers have good computers, fast reliable Wi-Fi, or a quiet environment in which to study or take the exam. You say you have no data to support that assertion and have tried to mitigate these circumstances, but you also lack data supporting your assumption that it is not the case, and there is also no assurance that you will be successful in mitigating these circumstances.
- There is a very real possibility of glitches or hacks (as has happened with other online exams recently), and an exam-taker will not know whether the glitch is on their end or on the end of the exam administrators (and will not be able to contact another exam-taker to ask, because a proctor may think they are cheating). As you know, the third potential provider declined to

submit a proposal, saying that they do not believe that a safe reliable online bar exam can be administered in October.

- It is highly likely that some online exam-takers will be penalized for normal habitual behavior such as looking away from the screen or moving their body partly outside the screen area while thinking, or for other noises or conversation in or near the test-taking environment.
- Exam prep courses encourage exam-takers to annotate the exam questions for many sections of the exam, but online administration of the exam makes those techniques impossible (and without those techniques, some sections of the exam, such as the multistate performance test, will be practically impossible to complete successfully).
- There is the very real possibility that an exam-taker's electrical power and Wi-Fi could go out during the exam, due to seasonal storms or other causes (this happens in my home in Montgomery County at least two or three times each year).

Many exam-takers are already being disadvantaged by the exam being delayed (in that the commencement of their employment is being delayed, or the date of a salary increase is being delayed, or their immigration status is being negatively affected), and if the exam were to be cancelled or further postponed (or if they were to have to take the exam again because of a failure of the sort described above), they would be even further disadvantaged, perhaps disastrously so. The equitable solution is to adopt a diploma privilege.

I believe that the granting of the diploma privilege in Maryland would be the equitable solution to the problems outlined above. I recommend that it be extended to all 2020 graduates of accredited law schools located in Maryland. If the Court deems it necessary or advisable, it could impose an additional requirement that a recent graduate work for a brief period of time under the supervision of an attorney who is admitted to any bar, which attorney certifies that the applicant has completed that requirement and recommends them for admission.

I do not believe that any clients or employers would be negatively affected by the adoption of these measures. I have never believed that passing a bar examination ensures that an attorney is competent. While I believe that graduation from an accredited law school is necessary, I believe that it is through actually practicing law that an attorney becomes a proficient practitioner.

I commend you for welcoming comments from interested parties. I hope that my comments have been helpful to you, and that you will decide to

accord diploma privilege to 2020 graduates of accredited Maryland law schools.

Respectfully yours,
Jill M. Himmer
Admitted to NY Bar 1981
Admitted to DC Bar 1987

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I feel guilty typing this letter. I feel the same guilt whenever I become distracted from preparing for the bar exam. From 9 to 6 every weekday, I have been sitting at this very desk watching lectures, reviewing outlines, and tackling sample test problems. Whenever I find myself slipping into a day dream or taking a few extra minutes for a lunch break, I feel guilty. I feel guilty because in those moments I am not taking responsibility for my current station in life: that of a recent law school graduate and state bar applicant. It certainly does not feel like my responsibility to instruct the powers that be on how to equitably administer the Maryland Bar Exam. However, in the throes of a pandemic, our common experiences and interactions are changing. Therefore, I will try to make this brief. I will not be footnoting or doing any additional research. That feels like someone else's job. I will only explain my own circumstances.

My start date at the firm got pushed back to February 2021. I am without income or health insurance until then. Luckily, I worked a lot during law school and had enough savings to live on. Those savings would have been quickly depleted had I stayed in my Baltimore apartment, so I decided to move in with my girlfriend in another state. That helped cut my expenses in half.

However, there are some issues with this apartment that make it a less-than-ideal venue for a remote bar exam. The walls are paper thin and the neighbors' dogs bark at pretty much everything. You can hear conversations happening in other parts of the building. The sirens of emergency vehicles penetrate this apartment from miles away. It's not quiet. There is nothing that can be done about that. It was built in the 30's. It has been noisy for almost 100 years. That doesn't bother me too much. I am concerned about what the proctoring software might make of the background noises, though. I will be very upset if I get locked out of the exam because my neighbors' dogs are barking.

My girlfriend and I have been in a fight with our internet provider. She is a doctor who has been providing telehealth to her patients. Occasionally, the internet will weaken and she will lose her video feed. We do not anticipate fortifying our internet connection before the October exam as our provider has indicated there is nothing more they can provide us in terms

of service level or equipment. I am not confident I can maintain a seamless 8-hour connection while I am taking the exam.

Now, these two concerns could be remedied by finding another space to take the bar exam: one that is quiet and has good internet. I've looked at possibly renting daily office space. However, that option does not come without some risk. I would have absolutely no immediate technical support should I run into an issue. It would also be another significant expense added to an already expensive undertaking.

There are also issues with the testing software that have been made quite obvious over the past 2 months. I have been focused on studying, so I have not read up on the technical difficulties that have been occurring in other jurisdictions. I have heard that the proctoring software requires a lot of bandwidth and processing power in order to operate correctly and without interruption. My computer was built in 2015. It sometimes has trouble loading Reuters news. I do not have a lot of confidence in my computer running a complex program. And while I really don't want to pay for rented office space, I know that I **cannot afford a new computer before October.**

I understand that in the throes of a pandemic, many of our experiences have to change. Typically, it is not a bar applicant's experience to lend any sort of guidance on how the bar exam should be administered. However, given the approach taken by the SBLE this summer, it is clear to me they need all the help and insight they can get. I don't believe it's possible for a bar exam to be administered fairly in October. Not for me or for anybody with less resources than me. I think that emergency diploma privilege plus is the only way to push through this mess. I hope you will give it consideration.

Sincerely,

A Maryland Bar Applicant

[EXTERNAL] Personal Comment - Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Shannon Bliss <sblairone@gmail.com>

Mon 8/24/2020 1:34 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Shannon Bliss

Intelligence Oversight/Compliance Program Manager/National Security Agency

sblairone@gmail.com

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

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Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus – Personal Comment

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Shannon Bliss, a graduating member of the May 2020 class from the University of Baltimore School of Law, am writing to express my support in granting the October 2020 bar applicants emergency diploma privilege.

As a current applicant to the Maryland bar exam that has been postponed twice and now is only offered completely online, I implore you to consider diploma privilege plus for the applicants of the July 2020 bar exam in Maryland.

As a personal note, I nearly killed myself getting through law school in three years instead of four in UB's evening division. Please note, I worked full time (40+hours/wk) for the National Security Agency throughout my three years of night school. I took extra credits when allowed by the ABA, summer and winter classes so that I could do what I was told would be impossible my first semester of law school – graduate a year early. Through sheer willpower, I pulled it off – graduating *cum laude* and with a concentration in International and Comparative Law. I also worked 2 part-time jobs in my last year of school with the State Department's Legislative Affairs Bureau and as a fellow for my law school's Career Development Office to encourage and help other evening students with their career transfers into the legal field. All while being diagnosed with dyslexia. I find that to be an intense personal accomplishment of which I will forever be proud and consider it to show that I am better than just "merely competent" at the law.

I did all of this to obtain the honor of being an attorney. My Dad has been an attorney for over 40 years. I have seen the way an attorney can impact and change the lives of our community for the better. It has been my dream since I was a little girl to be able to do the same. I could not wait to join the profession this summer and was actually excited to start studying for the July 2020 bar exam. It was the culmination of my childhood dream coming true, until, Coronavirus hit. Since then, things have taken a downward spiral and it does not seem to have an ending in sight.

Understandably, when Coronavirus postponed the July bar, I was unhappy – but on the bright side, it would give us applicants more time to study for the exam offered in September. It was not the end of the world. However, when I heard that the bar exam was being postponed again to October, it shook my confidence, being stressed whether I was going to even be able to take the exam.

When I heard that the October bar would now be only offered online, it has created several new personal issues for me, with which I am sure many of my fellow applicants are also attempting to deal. Due to my learning disability, my vision jumps when reading computer screens so while at law school I was provided hard copies of exams to read and mark up before transferring my answers to an online version. Also due to my learning disability, marking on the actual paper is critical in my retention and processing of information skills, which cannot be done with anywhere near the same levels of speed and comprehension if I am required to highlight or mark via a computer screen. The online testing proposal poses unique problems for applicants such as me with the accommodations that are required to put us on the same level playing field as applicants and test-takers without disabilities. These concerns have yet to be addressed by the SBLE, either at a large-scale level or at a personal level with my written personal accommodation requests.

This unprecedented situation leaves me in a state of constant stress and anxiety, not because of the material covered on the bar exam, but because I may be left in a position where I will not do as well as I should due to limited testing conditions and accommodations. This has a deep impact on my every day studying, as well as my mental health surrounding an already high-stress exam. How, may I ask, is this an equitable solution to the July 2020 bar exam?

The software for the computers will be ExamSoft for Maryland, which requires recording the test taker via their own computer while taking the exam since live proctoring would require constant internet connection. However, many students, like myself bought computers that were refurbished and much older so they would be a cheaper solution to class notes than would be a brand-new computer costing many hundreds, if not thousands of dollars. I am unsure if my computer can handle the processing power needed to fully record my accommodated time for testing (time and ½) while also maintaining no impact on the ability to type within the exam. Will this recorded proctoring cause my computer to lag? To freeze? To somehow kick me out of the exam at a critical point of the testing? The exam software has freely admitted to waiving ALL responsibility of software failures – ensuring that an already understandably nervous test taker is now responsible for being her own IT department in the event of a computer issue. If something does go wrong, I am then out the \$750 that I spent to apply to take the bar exam and will have to re-apply in February 2021 with a failing score on my record for something that

would not have been present at the in-person bar exam. Yes, software is needed, but not recorded proctoring processing power. Due to my disability, I would have required the computer during the in-person exam as well but would have had the ability to ask for technical help had something gone wrong with the much less demanding software. SBLE has not addressed this issue either in their comments back to the court or to me personally.

In addition to all of these issues already discussed, as well as the impacts that were mentioned in the numerous contacts with the courts and MD SBLE previous to the request for comments, I would like to say that even now, my school's bar advisor has stated that "by the end of September we should know if the October bar will take place." I am not sure if the consideration of current applicants' self-esteem and drive to study has been considered. I would like to point out that a large majority of test takers shell out thousands of dollars to use Barbri, Themis, and other bar prep courses in the attempt to be a first-time bar passer. However, being continuously told that we only need to show that we are "merely competent" at the law, while also being told that the test we would normally be stressed and anxiety-ridden about has been postponed twice, and may even be postponed a third time (like so many of the States around the country have had to do), is devastating on motivation to stay focused on the prize that has continued to move further away from us rather than closer.

It is a daily struggle to maintain my focus while I diligently study the material to not contemplate – "What if Maryland cancels just days before?" By not granting diploma privilege and allowing current graduates and test applicants to join the profession, we are being told that we are not important enough to the profession to be given the opportunity to prove ourselves without going through additional mental, emotional, and physical anguish that previous test-takers and present attorneys were not asked to face nor forced to go through when they took their bar exam.

This official uncertainty about the bar exam understandably and reasonably disheartens many who have a fire and passion to be the best lawyers they can be as soon as they can. By stating that the worry of malpractice and misrepresentation is a main concern to the profession, we are definitely punishing and hindering the many for the possible future actions of the few.

Throughout law school, students have been taught about equity and fairness of the law – "the law is what it should be." I think it's very misleading that once an opportunity presents itself for Maryland SBLE to show that it could be proving this sentiment - by allowing diploma privilege, by putting the applicants who have been on unsteady and changing ground in regards to the bar exam since April, to then excuse their mistreatment of applicants by saying they are worried about the future actions of attorneys that would be given this ability to begin practicing in their dream profession - is wrong. As an applicant, I feel outraged that there is an implication that test takers are only after an "easy in" to the profession after the amount of uncertainty that has surrounded this bar exam. What we desire and want is an equitable and fair way, a firm and certain way to begin the jobs that we have worked so hard towards over the last three to four years.

Considering the detrimental impact that future job loss, real financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the technical

and operational concerns regarding the feasibility, reliability and safety of Examsoft, the software the SBLE has adopted for Maryland's bar exam administration, in addition to concerns regarding disability accommodations surrounding the online test, the Court should strongly approve and enact the emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the recent May 2020 graduating class from law school, I firmly believe graduation from an ABA-accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members. I, but also the community at large, would benefit from a Court order granting emergency diploma privilege to current bar applicants.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Shannon Bliss

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd.
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

August 24, 2020

Re: Comment on the State Board of Law Examiner's Remote Bar Examination Administration Plan

Dear Chief Judge Barbera and Associate Judges:

I was not a traditional law student, and I imagine that I am also not the typical Maryland bar applicant. I did not go to a Maryland law school, nor did I grow up or study here as an undergraduate. My original plan was to study for the bar in North Carolina and practice there, but, as you all are probably well aware at this point, plans can change.

My own crisis this year began before the pandemic came to the United States. Early in my 3L year, my partner was informed that his employer was not renewing his contract and that he would have to find work before 2020. He was able to settle on a position in Montgomery County, Maryland, and so my questions about where I would practice were answered, but this was not the end of my third-year woes. On February 21st, while I was attending barrister's ball, I got a call from my sister telling me that our father had unexpectedly died at 64. I took three weeks off from classes to fly to Iowa, where he lived, to plan a funeral and manage his affairs. He died with no will and so the probate process became expensive and complicated. Only a few days ago did I finally complete my duties as administrator of his estate.

I never imagined during those three weeks that I would not step foot in my law school again before graduation, but lockdowns began right as I flew back to North Carolina. My school regularly performs distance courses and was probably more prepared than most for the new learning model, so adapting was not terribly difficult. But to be completely honest, school and graduation were subordinate issues in my mind between the global pandemic, dealing with the aforementioned life changes, and trying to figure out how to maintain financial stability. Nevertheless, I was able to graduate with honors and more or less smoothly complete my move to Maryland.

Enter the bar exam. I knew I would have to start studying earlier than most, because my schedule would not allow for the typical ten-hour days for nine weeks, so I started my material as early as I could in May. I covered a lot of ground through the month of June, but paced myself expecting a September delay. Then came the announcement of October and the remote exam. I have

continued at a similar pace of roughly 8 hours a day of study since then. Thus, by October I will have been studying for the bar exam for 5 months.

My goal since returning to school has been to work in legal aid. Prior to law school, I worked in homeless shelters and taught adult basic education. I understand the effects of poverty and crisis on those who have nothing. My advocacy led me back to law school in order to help my students on a different level, and thus I knew my target job to be public interest. I tailored my law school career accordingly and spent all my internships and volunteer time with legal aid organizations. I achieved over 700 hours of pro bono work throughout law school and served dozens of real clients in court under the Third Year Practice Rule.

When I started researching public interest work in the DMV area, I realized quickly that unlike NC, most positions require licensure prior to applying. While I have found some outliers, this means that I will have to wait until I receive some (hopefully) good news in late November. I have been lucky to stretch myself financially to make it to the bar exam, but it is likely that I will have to find some nonlegal work once the exam is over.

It has been hard to largely stand by and watch the pandemic ravage my clients' lives without being able to help in the way I could as a student practitioner. These problems will undoubtedly multiply as government aid lapses and [millions once again face eviction and foreclosure](#). On top of this, civil legal aid organizations are facing their most significant cuts since the 2008 crash. [MSBA reports that Maryland Legal Aid alone will see a funding decline of \\$4.5 million](#). Just when individuals need help the most, public resources are under remarkable strain.

Remarkable times call for remarkable measures. I will not revisit here the dozens of arguments that my colleagues, legal academics, national experts, and commentators have laid out in support of diploma privilege. They have shown quite clearly and objectively that the remote bar exam is an untenable, inequitable, and disproportionately problematic solution to this moment. I will simply add another pragmatic angle that seems overlooked in a lot of these important discussions. This country and the world are suffering quite probably the most significant reckoning of daily life since World War 2. The scale of the economic fallout has not been fully understood, but what is clear is that millions of low-income Americans have been and will be in need of legal services at a time of tremendous shortage. The obvious solution to this is to take steps to remove all unnecessary barriers to licensure that have arisen due to the crisis. The bar recognizes itself that third-year law students are suitable enough to practice law (under the supervision of an attorney). The MPRE and state law components ensure that graduates behave ethically and have important base knowledge regarding their jurisdiction. These measures are sufficient to ensure attorney competence and to safeguard the public from attorney malpractice. The bar exam is well understood by practicing attorneys to be a nuisance to be overcome rather than a necessary step to becoming a 'real attorney.'

With this extraordinary moment and mountains of evidence at hand, I nevertheless expect SBLE to move forward with its remotely administered October exam. While this is disappointing, I will have been studying for this exam for 5 months at that point and expect to pass. Despite my many struggles this year, I still recognize that I am lucky to have the time and resources to make sure I

am successful. Many of my colleagues face worse environments that forced them to defer to a later exam period. Some may face a technology issue that causes them to fail. Others simply may not have the time to get themselves over the edge because they have children or other relatives to care for.

The administration of a remote exam guarantees *only* one thing: we will have less attorneys who have otherwise shown themselves to be competent, ethical, and practice-ready during a time of need not seen in a generation. With these factors in mind, I urge this Court to adopt diploma privilege as the only just, equitable, and pragmatic solution for 2020 law graduates and the people of Maryland.

Respectfully submitted,

Nicholas Patten

FELICIA D. LANGEL

101 Mt. Olivet Blvd. ♦ Frederick, MD 21701 ♦ (301) 765-4368 ♦ FDLANGEL@UMARYLAND.EDU

August 24, 2020

The Honorable, The Judges of the
Court of Appeals of Maryland
361 Rowe Boulevard
Annapolis, MD 21401

Re: October 2020 Remote Bar Examination

I am a 2020 graduate of Maryland Carey Law, and I will sit for the October 2020 Remote Bar Exam. I am submitting this comment because I am concerned about the technological challenges that examinees will face by this 100% virtual exam.

For the past several months, I dedicated myself to preparing for the bar exam using a commercial program designed solely for in-person exams. The program taught me to systematically approach each question by notating and diagramming in the margin of the test booklet to identify the key legal facts and issues. The program, however, did not guide me on how to perform these tasks in a virtual environment.

I am concerned that the testing skills I acquired for law school final exams and now for the bar exam will not translate to a 100% virtual exam. I have no experience using technology as a substitute for writing in an exam booklet, and I have not drilled in this fashion with any exam software. Due to my inability to properly prepare for a virtual exam, I know that my testing efficiency will suffer leaving me with less time to thoughtfully answer each exam question.

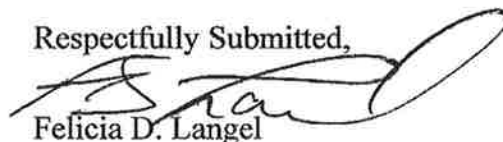
I offer the following modifications to the October 2020 Remote Bar Exam:

- (1) Allow more time for the MBE (multiple choice) and the MEE (essay) sections of the exam. This will give examinees the time they need to notate each question in the exam software.
- (2) Eliminate the MPT (practical exam) section of the exam. The MPT file and library, as currently designed, are too voluminous to notate effectively or efficiently in a virtual environment.

Although all examinees will use the same technology, it is unlikely that all examinees will be challenged equally. Some examinees are more adept at using technology than others, and I do not believe that technological skill is a factor that the SBLE uses to determine who is competent to practice law in Maryland.

In the interest of equity, I ask that the Maryland Court of Appeals approve these or similar modifications to the October 2020 Remote Bar Exam.

Respectfully Submitted,



Felicia D. Langel

*Lynne W. Grimm
3091 Newington Drive
Riva, Maryland 21140*

August 24, 2020

Hon. Suzanne C. Johnson
Clerk
Maryland Court of Appeals
361 Rowe Blvd.
Annapolis, MD 21401
Via email COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of the UBE Requirement and Order Granting Emergency Diploma Privilege

Honorable Judges of the
Maryland Court of Appeals:

I thank the Court of Appeals for hearing my views about the scheduled administration of an on-line version the UBE in Maryland in October, 2020. I am not lawyer, but my husband, brother, and step-son are, and my daughter graduated from the University of Maryland School of Law in May, and will have to take this on-line exam if the Petition is not granted.

You do not need to be a lawyer to know what is fair. The 2020 graduates of law school who are applying for admission to the Maryland Bar have faced unprecedented difficulties and disruptions to their entry to the profession they have worked so hard to join. Instead of studying for eight weeks to take an in-person bar exam in July, they were told that the exam would be rescheduled to September, only to be told in mid-June that it would be moved to October, and would be an on-line exam. They have been forced to study more than twice as long for a bar exam that has changed in nature and date two times, and there is no assurance that it won't be changed yet again. For many this has impacted their employment and eligibility for health insurance under their parents' policies. Many of them do not have a quiet place to study, let alone take an on-line exam, and do not have reliable internet connections. This has caused them to suffer stress and anxiety that far exceeds the normal worries that applicants to the bar face. They also have read many articles about the failures that have taken place this summer when other states tried to administer an on-line bar exam, and they are very worried that the same will happen in Maryland.

The bar exam is supposed to make sure that applicants are qualified to practice law. But the applicants already are required to take and pass an ethics and professionalism exam, a separate exam on Maryland law, graduate from an accredited law school, and be screened for professionalism and fitness. I do not see how suspending the requirement to take the UBE for these graduates who have suffered so much, and replacing it with a requirement to take continuing legal education classes or have their practice monitored by an admitted lawyer for a period of time would not be just as good or even better at making sure that they are competent.

I know that the Maryland Board of Law Examiners had to make decisions about the bar exam in response to the COVID 19 pandemic, and that they have tried to do the best that they can under difficult conditions. But it seems to me that they have had to do so under rushed circumstances, using software that has not been adequately tested, and of uncertain security, and they are still in the process of figuring it out. But the exam is only 42 days away and there are so many steps that still need to be taken, and uncertainties about whether it will work. And it does not seem like there has been any real effort to ask for input from the applicants about how the exam should be given in a way that will take into consideration what they have had to face.

As a member of the public, I strongly feel that if the UBE was suspended for the 2020 graduates, and replaced with required CLE classes or supervised practice, this would be a better way of insuring their competence, when added to the other requirements they must meet to be admitted to practice. For that reason, I ask that you do what is fair, and grant the Emergency Petition for temporary suspension of the UBE requirement, and grant the petitioners' request.

Thank you for considering my letter.

Sincerely,

Lynne W. Grimm

Richard A. Neuman, CPA
9515 Deereco Road Ste. 801
Timonium. MD 21093

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Richard A. Neuman, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who may face personal struggle or issue a newly barred attorney could help with, benefits from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Richard A. Neuman, CPA

Alexandra Rizzo, J.D.
Paralegal at the Law Offices of Dever & Feldstein LLC
ARizzo@DFMLLP.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination. While I am just one of many applicants that has been affected by these changes, I am hopeful Your Honors will my experience and input into consideration prior to making a decision.

I became employed as a paralegal with Dever & Feldstein in April 2015. At that time, I was unsure whether I wanted to pursue a career in law. After working at the firm for a few months, I realized becoming an attorney was the career I wanted. Our firm specializes in plaintiff medical malpractice, nursing home negligence, and personal injury claims. We represent individuals and families who have been catastrophically injured. I have witnessed how life changing our firm's services have been. It has been the most fulfilling experience of my life, which is an understatement.

I attended University of Baltimore School of Law from August 2016 through May of this year. I worked full-time and attended class in the evening, while being actively involved with the Women's Bar Association and acting as the At-Large Student Representative for the Faculty's Student Life Committee. During the Fall of 2019, I was a Rule 19-220 Student Attorney for the Bronfein Family Law Clinic, where I argued in court three separate times. Twice I represented a woman in her efforts to obtain a protective order. My long-term client was woman attempting to maintain full physical custody of her minor child. I spent hours meticulously preparing for trial. After three hours in front of The Honorable Judge Barry Williams, my client left court with the exact result she wanted.

In January 2020, I enrolled in Shemer's in-person class to prepare for the bar exam. I knew it was the best choice for me, as I remain more focused and engaged in a classroom. During March, COVID was progressing substantially. Initially, Shemer indicated they were determined to host an in-person class and would update us accordingly. A few days later, Shemer students were informed that we would be using a remote platform, as University of Baltimore's law building would be closed. Two days after receiving that email, Shemer informed their students they were going out of business and would not be offering a program at all. This was extremely disappointing, as the only alternative prep programs were online and the early

enrollment period had passed, meaning enrollment prices would be inflated. Thankfully, Themis allowed Schemer students to enroll with a discounted price.

I began studying on May 18, 2020 per Themis' suggestion. I studied for one week before stopping due to the bar exam being delayed until September. At that time, we were informed the exam would be administered remotely instead of in-person. Three weeks later, I began studying again. I studied for just over a week before the exam was delayed again, this time until October. Presently, I have been studying at home since July 6, 2020, all while maintaining my full-time schedule at work. I reside with my fiancé and two future step-daughters (ages two and five). As much as I love being around my family, my home is not an environment that permits productive studying. Comcast does not provide internet services to our zip code in Perryville. Our internet services are provided by Atlantic Broadband, which is *extremely* unreliable. Normally, I utilize my iPhone's hotspot for internet connection. With two small children and an inability to rely on the internet at my home, I have determined the best option for me is to stay at a hotel for at least three nights. This was not an expense I anticipated having to incur in addition to the already costly bar application and associated fees.

Outside of my concerns about internet connection and reliability, I am extremely anxious about the logical possibility of actually administering a bar exam via remote software. So far, the State Board of Law Examiners has not informed applicants what options or outcomes would be available should the software crash during the exam. I am assuming if the software crashes and an applicant is unable to finish, they automatically fail and are forced to take the February exam. This is exceptionally risky and stressful, especially to applicants like myself who are absolutely relying upon being sworn in this year in order to begin receiving a salary starting January 1, 2021.

I understand that the ongoing pandemic has affected many other individuals and professions outside of the legal community. However, the legal community has the opportunity to allow bar applicants to move forward with their careers *without jeopardizing the sanctity of the profession*. Nearly six years of practice in a highly specialized area of law and the experiential skills I gained from University of Baltimore are what have prepared me to become a successful attorney.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

Like other law students, I incurred student loans to attend law school. I amassed over \$200,000 in debt to achieve my dream of becoming a lawyer. It is crippling to consider that my payments may become due when I have yet to take the bar exam, be sworn in, or make more than an hourly income. In addition to becoming a lawyer, I also dream of finally getting married, purchasing a home, and having more children. As soon as I am able to practice, I can move toward repaying my debt and achieving my family goals. I simply cannot afford to have this delayed any longer.

For these reasons, I implore Your Honors to consider granting emergency diploma privilege to bar applicants. I am not alone in my concerns about the reliability of ExamSoft, imminent student loan payments, and unproductive study environments. I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Alexandra Rizzo, J.D.

[EXTERNAL] Emergency Diploma Privilege

Brian H. Rubin <brian.rubin@benjaminfedwards.com>

Mon 8/24/2020 1:51 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401

RE: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges,

As you know by now, we are under extremely unique and challenging times. While this pandemic was unforeseeable and unknowable, your actions regarding whether taking a bar exam is the right approach should be met with meaningful and thoughtful consideration. As it relates to recent law school graduates, they have been significantly impacted, like no other. Their spring semester learning experience, subsequent changes and flip flopping the bar exam testing dates, along other state's testing misfortunes has created an inordinate and unusually excessive amount of stress, pressure and anxiety on many if not all the bar exam participants. While I believe in professional licensing exams and credentialing, it must not come at any cost. I would imagine reasonable thought and logic would agree that there are times the call for an exception. This new/different bar exam if taken by those impacted, would likely have skeptical and indeterminate results. The landscape is uneven, less than ideal, and unfair to this group of graduates. Additionally, I believe the results would not accurately reflect their competence and understanding of the exam material. Furthermore, their ability to act in the in the best interest and highest regard as an attorney in the State of MD would see little if any benefit by taking and passing this exam under such extraordinary circumstances.

I call on the MD Court of Appeals to do what is right and allow for immediate diploma privileges. If you deem other measures necessary to appease those who feel entrance to the bar by passing the exam at any price, there are fairer and more appropriate ways to achieve this means to an end.

I trust that you will read my comment along with all the others and realize the overwhelming sense that these unusually unique times call for creative thinking and action. It is not easy to adapt and change long standing processes and procedures but this current state of affairs is calling for it.

Respectfully Submitted,
Brian Rubin

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

August 24, 2020

Dear Chief Judge Barbera and Associate Judges,

I am a D.C. bar applicant and am writing to lend my support for diploma privilege in Maryland.

There will be many comments from Maryland bar applicants, professors, and legal practitioners on the harmful effects of not granting diploma privilege. I urge the Court to consider these comments with an open mind.

In this brief comment, I wanted to emphasize the point that diploma privilege will not diminish the profession. Diploma privilege should be granted. However, if the Court has reservations about a blanket grant, it could consider coupling diploma privilege with some form of required work under the supervision of an attorney or CLE courses.

Many law firms feel that diploma privilege will not affect their liabilities. Law firms “closely supervise the work of their newest associates, limiting against claims of malpractice or unauthorized practice of law.”¹ Michael Frisch, ethics counsel at Georgetown University Law Center, stated, “you probably don’t offer legal advice without someone more senior taking a look [at your work] even when you are admitted [to the bar].”²

In addition, graduating from an ABA accredited law school adequately equips applicants with the necessary skill set to be competent attorneys. The ability to write, research, and put together a coherent argument stem from the three years of law school and not from studying for the bar exam in the span of two months.

I respectfully urge the Court to adopt diploma privilege.

Sincerely,

Andrew Do
ad1573@georgetown.edu

¹ Roy Strom, *Insurers Don’t Really Care if Big Law Lawyers Pass the Bar Exam*, Bloomberg Law (July 23, 2020), <https://news.bloomberglaw.com/business-and-practice/insurers-dont-really-care-if-big-law-lawyers-pass-the-bar-exam>.

² *Id.*

Rebecca Kathleen Schisler, J.D.
rschisler@icloud.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

To The Honorable Chief Judge Barbera and Associate Judges:

As a 2020 graduate from the Catholic University of America Columbus School of Law and an applicant for the Maryland Bar, I am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone and ultimately cancel the in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, and the concern regarding the feasibility and safety of ExamSoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

An online and remote bar examination presents a host of practical struggles in our system of attorney preparation. Under the normal circumstances of an in-person exam, the credibility of the exam is protected by the fact that all test-takers sit for the exam under the same conditions. In an exam that is scored in relation to the performance of other test-takers, it is unfair to ask applicants to sit for an exam under a variety of uncontrolled conditions. Variances in internet connection, quality of computers, and distractions in a home testing environment are legitimate factors that will affect the performance of applicants when taking the exam. I live in a small home with a dog and a partner who has been utilizing our only available office space to work from home. I have done the entirety of my preparation for the bar exam from our kitchen table as it is not safe, nor responsible of me, to study anywhere else and risk my own health and the health of others. At this time, I have no idea where I will be able to go to take the bar exam. I cannot afford a hotel room.

Bar exam applicants are not immune from the financial struggles that many Americans are facing as a result of the pandemic. As with many industries during this pandemic, the legal field has been negatively impacted. If the bar had been conducted in July as scheduled, I would have started a clerkship in the Circuit Court for Anne Arundel County on August 12. Now, in order to give me time to best prepare for the bar exam and to be trained properly for courtroom proceedings, I will not start my clerkship until October 21. This delay exceeding two months has caused extreme and unforeseen financial hardship. Like many of my peers, I did not take out any additional loans, or a "bar loan" going into this summer, as I would not have needed one if the bar

had gone as planned. At this time, I barely have enough money for rent and groceries and am relying completely on my partner's income. These financial struggles are huge impediment and distraction to preparing for the exam.

I recognize that diploma privilege would not entirely solve these financial struggles as we may end up barred weeks into the future after character and fitness proceedings are through. At the same time, lifting the costs of taking the bar exam itself would aid many of us exponentially. If awarded diploma privilege, I may even be able to start my clerkship and begin to financially recover after all, as the time I would have otherwise spent studying can be used for practical training in our legal system.

In addition, I am deeply concerned with the ability of ExamSoft, or any similar software company, to administer this exam properly. I am sure many other comments are addressing the specifics of what has happened in states like Michigan, Florida, and Indiana. On a smaller scale, ExamSoft was used in the administration of exams at my law school. There were countless incidents of the software crashing students' computers in the middle of an exam. Likewise, I am not confident in my own technology's ability to host the software. I bought my laptop during law school after my last computer crashed, an expense I was not prepared for. Needing to make do on short notice, I bought a computer with limited memory and space on the hard drive to save money. If the software causes my computer to malfunction, I cannot at this time afford to invest in another one.

Despite the foregoing, I remain one of the fortunate ones. Though it will be incredibly difficult for me, I am sure that I would find the means to take an online exam. I also know that I have a job waiting for me when this exam is over. Unfortunately, I know that many of my peers are not so lucky. Many will take this exam in their car in a parking lot with free Wi-Fi. Others will do so while praying that their children will not make too much noise. Some will experience internet outages that no one could have predicted, which could ultimately cause them to fail the exam entirely. Many have had job offers revoked already or have been told that the uncertainty of the exam's future and results prevent them from being given a firm start date.

Furthermore, I want to address the argument that the bar exam is necessary because law schools do not adequately prepare students for practice. I find this claim deeply concerning and offensive, and maintain that even if this is the case, the solution to this problem is not the bar exam, but a better accreditation system of law schools. I am immensely proud of my education at Catholic University. Coupled with the practical experience of spending that time in Washington, D.C. and Maryland's suburban areas, the law school encouraged me to think critically and take challenging courses that would enable me to be an effective attorney. Along with my classmates, I took all of the necessary classes in Contracts, Remedies, Conflicts of Law, Criminal Procedure, and many other "bar staple" courses. I applied what I learned to internships in federal court, state circuit courts, GEICO, and the Maryland General Assembly. I know that no amount of studying can prepare me for practice like anxiously awaiting a verdict from a jury after a two-week long trial, drafting a motion on short notice that will determine whether a client's case will be dismissed or go to trial, entering a contract negotiation with employee's livelihoods on the line if things go poorly, and hearing constituents face life's deepest hardships hoping that a representative may show them empathy and fight for their dignity. All of these experiences just scratch the surface of what I have encountered over my past three years of law school.

Many people today are using the phrase that we are living in "unprecedented times." I maintain that this is no longer the case. While this phrase may have been true and even comforting in the first few weeks of this pandemic, it no longer captures what we have learned about ourselves

and our community in the last six months. The last six months give us precedent, and if the last six months tell us anything, it's that our communities need to see radical change so that if we ever see these kinds of hardships in our country again, we can face them without fear of losing a job or loved one, remembering that we are in this together as a community. For these reasons, the time has come to recognize that the bar exam is an unnecessary barrier to practice. Indeed, the bar exam tests my ability to memorize information within the span of 10 weeks and favors those who have the means to financially and emotionally support themselves during that time. Preparation for the bar exam is an already stressful time under normal conditions. Applicants for the 2020 bar exam have had to prepare for this exam with many additional concerns that come with the adversities of a global pandemic. As many of us have been studying for this exam since May, that process of studying is no longer what our colleagues before us faced. If the bar exam was truly an effective gatekeeping mechanism, our profession would not see so many disbarments or ethical violations in front of Your Honors. Attorneys have the duty and privilege to pave the way for a better professional environment for future generations. Facing a profession already ridden with substance abuse and mental illness, it would be immoral for us to stay silent when there is an opportunity to practicably address further unnecessary hardship.

Graduation in 2020 from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as having a solid foundation in the law and legal theory. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. These requirements establish the competence and fitness of 2020 bar applicants for admission to the bar. I respectfully request that the Court grant the petition accordingly.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Rebecca Kathleen Schisler, J.D.

The Catholic University of America Columbus School of Law C' 2020
Mount St. Mary's University C' 2017

Vishal M. Hemnani
vhemnani@umaryland.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Vishal M. Hemnani, a recent graduate of the University of Maryland Francis King Carey School of Law, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact that job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a bar applicant, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies us as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent the community.

I appreciate the court's position in balancing the tradition of the bar exam with the unprecedented circumstances facing our society today. I do not advocate for Diploma Privilege with the intent to diminish the value of the bar exam. From the time I took the LSAT, I knew I would one day have to take the bar. In a normal world I wouldn't have had to write this letter. However, nothing about this year's bar administration is normal. My concern stems from the added stress that will be placed on applicants should a remote administration fail. As is likely echoed in many of the comments you will read, there is no indication that Examsoft has the capability to administer a remote exam to over 30,000 examinees. It worries me that after months of studying, the exam could be deemed void by the unpredictability of technology.

I must admit that I am fortunate. While the delay in administration did affect my employment, I am presently slated to join my firm in the middle of October. Many of my

colleagues had start dates pushed back to 2021. Some of my colleagues have been forced to seek out new employment. I write this letter in support of them. I recognize that the decisions that impact employment opportunities go beyond the administration of the bar exam, however, it's my belief that applicants have worried about the bar for too long.

I support Diploma Privilege Plus because I believe it is an equitable solution that can bring some closure during these trying times.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Vishal M. Hemnani

August 24, 2020

The Honorable Mary Ellen Barbera
Chief Judge
Maryland Court of Appeals
361 Rowe Boulevard
Annapolis, MD 21401

Dear Chief Judge Barbera:

We are all members of the Maryland Bar. On July 31, 2020, law graduates sitting for the upcoming bar exam filed with this Court a petition urging adoption of a “diploma privilege plus” system of admission to the Maryland bar in light of the current global health emergency (the “Petition”). Four states—Washington, Oregon, Utah and Louisiana—have already done so.

Over twenty members of the Maryland state legislature, as well as Dean Donald B. Tobin of the University of Maryland Frances King Carey School of Law, and Dean Ronald Weich of the University of Baltimore have written you urging that the Petition be granted.

We would like to add our voices to the pleas of these legislators and deans. As Delegate Julie Palakovich Carr (D-Montgomery) stated:

“There is no good way to conduct a bar exam during a pandemic. Providing Maryland’s recent law school graduates with diploma privilege is a fair solution that is sensitive to the realities of the ongoing public health emergency.”¹

The Petition, as well as the Deans’ and legislators’ correspondence, highlight the challenges associated with attempting to conduct a fair and equitable bar exam online during the hardships imposed by a global pandemic. These include:

- Uncertainties as to capability of the bar exam online platforms to successfully host an online exam;
- Inequities in technology and internet access;
- Housing and food vulnerability of many recent graduates;
- Inequitable access to quiet study and test taking areas; and
- Potential racial bias in artificial intelligence used to monitor online exams.

This Court, quite appropriately, has already demonstrated flexibility regarding this year’s bar exam. For sound public health reasons, this Court postponed the exam, first from July to September, and then to October, to be administered remotely. While clearly the right thing to do under these extraordinary circumstances, these delays have had the effect of lengthening the period of unemployment for many recent law graduates, as many legal employment opportunities are contingent upon passing the bar.

¹ *Maryland Matters*, August 13, 2020.

These employment challenges are compounded by the fact that the pandemic tightened the legal job market to its worst since at least 2008. An online test in October (assuming the unproven online platforms work) means that applicants may not know their results for weeks and months, perhaps into 2021. For those students who graduated in May, this is an exceedingly long time to wait to be employable.

As this Court is aware, there will still be substantial safeguards in place to ensure the standards of this bar are upheld. Applicants still must graduate from an accredited law school, pass the Multistate Professional Responsibility Exam, and submit to character and fitness screening.

We also recognize that it is incumbent for us, as members of the bar, to do our part. The Maryland Attorneys' Rules of Professional Conduct states at Appendix 19-B (Education, Mentoring, and Excellence):

An attorney should:

... (4) as a senior attorney, accept the role of mentor and teacher, whether through formal education programs or individual mentoring of less experienced attorneys;

We therefore respectfully request that this Court grant the Petition, coupled with an exhortation to the Maryland Bar to redouble their efforts to fulfill the mentorship standards in Appendix 19-B. We have confidence that this bar fulfills its responsibilities to integrate the law school class of 2020 into our ranks.

Thank you for your consideration of our views, and your leadership of our Bar.

Signatories:

1. Daniel L. Adamson
2. Glen K. Allen
3. James Archibald
4. Brooks Amiot
5. Rig Baldwin, Sr.
6. Mayabanza Sylena Bangudi
7. Paul D. Bekman
8. Gregg Bernstein
9. Marvin E. Brave (inactive)
10. Jodie E. Buchman
11. Francis B. Burch
12. Holly Drumheller Butler
13. Anthony Conti
14. Quincy Crawford
15. P. Michael Cunningham
16. The Honorable Andre Davis
17. Paul Day
18. Conrad Deitrick
19. Susan DuMont

20. Joel A. Dewey
21. Juliet A. Eurich
22. Paul A. Fenn
23. Guy Flynn
24. Herb Frerichs
25. Mark Friedman
26. D. Bruce Godfrey
27. Sandra Gohn
28. Sheryl Goldstein
29. Professor Leigh Goodmark
30. Andrew J. Graham
31. Professor David Gray
32. Professor Michael Greenberger
33. Hardy, Kelly T.
34. Marty Himeles
35. Professor Diane E. Hoffman
36. Kenneth Hoffman
37. Professor Kathleen Hoke
38. Dave Irwin
39. Henry D. Kahn
40. T. Brendan Kennedy
41. Diane Krejsa
42. Christine Lambros
43. The Honorable Benson E. Legg
44. Robert J. Leonard
45. John Leppler
46. Brian Levy
47. Kenneth C. Lundeen
48. Melissa L. Mackiewicz
49. Hugh J. Marbury
50. James D. Mathias
51. The Honorable Albert J. Matricciani, Jr.
52. J. Bradford McCullough
53. Anthony Meagher
54. N. Tucker Meneely
55. Professor Michael Millemann
56. Eric B. Miller
57. Giovanna A. Miller
58. Cassie Motz
59. Professor Jane C. Murphy
60. William J. Murphy
61. Paul B. Myers
62. James P. Nolan
63. Jean Noonan
64. Nancy D. O'Neil
65. Meagan Pace

66. Thomas Pilkerton III
67. William L. Reynolds II
68. Charles Scheeler
69. Gene Schleppenbach
70. Ben Schuman
71. James L. Shea
72. G. Daniel Shealer
73. Lee Sheller
74. Bradley S. Shepherd
75. Ellen Ginsburg Simon
76. J. Sedgwick Sollers III
77. Benjamin Smith
78. Cyril V. Smith
79. Alicia D. Stewart
80. Professor Donald Stone*
81. Shale Stiller*
82. Jennifer K. Squillario
83. Professor Maureen A. Sweeney
84. Darryl Louis Tarver*
85. Julianne Jae Kelly Tarver*
86. A. Neill Thupari*
87. Joshua R. Treem
88. Erin Reimer Tripathi
89. Thiru Vignarajah
90. Amee Vora
91. Arnold Weiner
92. Earl S. Wellschlager (inactive)
93. John Wellschlager
94. Keli Isaacson Whitlock
95. The Honorable Alexander Williams
96. Alicia Wilson
97. James Wyda
98. Michael E. Yaggy

***concurs with the Petition only to the extent to provide relief to first time bar applicants from the Class of 2020**

Jonathan Dorsch
Client Relationship Coordinator, T. Rowe Price
finny.dorsch@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Jonathan Dorsch, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. The Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination because it is the *only* equitable solution in a time of unprecedented crisis.

As a member of the general community and as a trusted financial professional, I firmly believe Maryland law students have already done more than enough to qualify as competent attorneys. I have personally taken several financial industry exams so that I may ethically and accurately handle client funds. In this respect, I can appreciate the value of a competency exam in the professional arena. However, these financial industry exams test my knowledge in narrower areas, and I tend to apply this knowledge directly to my daily job duties. The bar exam, in contrast, broadly tests law graduates' knowledge of over *15 different areas of law*, yet no law graduate is expected to apply this breadth of knowledge to their daily job duties. The bar exam's link to attorney competency is diluted by the sheer breadth of the exam. Law graduates are expected to be 'minimally competent' in over 15 different areas of law, meaning that a graduate working in criminal defense firm will only need to be minimally competent in criminal law. At the same time, this graduate illogically also needs to be minimally competent in estates and trusts law. Overall, I question the need to force law graduates, in the midst of a *pandemic*, to take such an exam. At the very least, the exam's tenuous link to competency paired with the obstacles inherent in administering a virtual exam, warrant making an exception for this *one year*.

Furthermore, my significant other is a 2020 graduate of University of Maryland School of Law, and her struggles highlight the need for emergency diploma privilege. She graduated at the top of her class, yet she is acutely experiencing the financial, mental and emotional issues that accompany taking the virtual exam. Her job's start date has been pushed back twice because the bar exam date has been pushed back twice. Her ability to pay rent and cover other expenses is increasingly threatened due to these delays. Moreover, I have personally seen her suffer from increased anxiety attacks due to the stress that COVID-19 uniquely poses; she worries for herself but also for her vulnerable, at-risk family members. This mental toll significantly inhibits her ability to study, which contributes to a vicious cycle of stress and anxiety. Despite graduating at the top of her class in college and in law school, and despite consistently demonstrating intelligence

and competency in all areas of her life, I worry that my significant other may not pass the virtual bar exam given this unprecedented situation. However, I do *not* doubt her or her peers' competency to practice law.

I, as a member of the community and of another trusted profession, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me. They have already done enough to prove themselves worthy.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Jonathan Dorsch

Michael and Robin Dorris
Project Manager/Registered Nurse
mdorris76@comcast.net

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

We, Michael and Robin Dorris, members of the general public, are writing to express our support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impacts of online class instruction, job loss and financial insecurity, has had on 2020 bar applicants in the midst of a recession. We also have great concerns concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration which in the past has had to settle a class action lawsuit (2014/2015) due to "glitches" with their product, and problems with the bar exam this year in Michigan and Florida, the Court should strongly consider and then enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE), and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. We, as members of the community who faces quality of life issues for an aging parent in poor health with chronic illness, plus the medical, safety, legal and financial issues for them, and personally approaching retirement, we would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

We are also parents of a 2020 law school graduate and have concerns for her as the bar exam has experienced delays and uncertainty, while the exam has been delayed until after she has started working requiring her to spend many additional hours in providing the proper amount of

time for work and study. Suffering through the Pandemic and the stress and uncertainty we all are living thorough daily, along with the normal daily duties of life, is a burden for all of us.

I truly thank the Court for its time and consideration on this urgent matter.

Respectfully,

Michael and Robin Dorris

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
August 22, 2020

Chief Judge Barbera and Associate Judges,

I am currently registered to take the October administration of the Bar Exam and am writing to you and the Court in order to share some personal events that have happened in the past few months and to urge the court to grant Diploma Privilege to test takers in the midst of chaos. I am the grandson of an immigrant, a lifelong Marylander, a product of our state's public schools, and a recent graduate from the University of Maryland Francis King Carey School of Law. My undergraduate education took me out of state and I ultimately returned because I realized what I believe to be true my entire life; Maryland is the best state in the country. I came back to this state because I wanted to make it even better, even more just, and even more enviable. However, the way the bar is being administered and the way the State Board of Law Examiners ("SBLE") and the National Conference of Bar Examiners ("NCBE") has been conducting themselves has made me question my career choice and question the wisdom of those in power in my state.

The successful administration of an online exam is impossible. We are using the same software company, ExamSoft, which has had failures in past years and crashed during the administration of the Michigan Bar Exam which had only 800 test takers.¹ I can only imagine what will happen when 30,000 people attempt to start their exams simultaneously. The SBLE's response downplays the crash and states that there is no evidence that the failure was caused by a hack. But the reality remains that ExamSoft *invited the Federal Bureau of Investigations* to scrutinize the failure because it was their belief that the failure was caused by a DDOS attack.² This reality, coupled with the fact that we are forced to sign liability waivers absolving ExamSoft, the SBLE, and the State from all liability, leaves us with no recourse should our identities get stolen and also shows that the SBLE values applicant's money above all else.³

Thus far in my career, I have made no money in the legal business. However, I have spent thousands of dollars for LSAT prep courses, hundreds of thousands of dollars on tuition and living expenses, and, now, thousands of dollars on my Bar application and exam prep. I have worked for free during a summer working for the state government and as a clinic student. I have testified on bills before the General Assembly, managed forty students and I have represented my school nationally at Moot Court competitions. I have pushed myself mentally, emotionally, and physically to become an attorney and

¹ Jonathan H. Adler, *Examsoft's Bar Exam Disaster*, WASH. POST (July 30, 2014 10:19 AM), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/07/30/examsofts-bar-exam-disaster/> (detailing the issues that 2014 test takers had uploading their exams to ExamSoft); Kim Kozlowski, *Michigan Bar Exam Crashes Online; Company Points to Cyberattack*, DET. NEWS (July 28, 2020 6:32 PM), <https://www.detroitnews.com/story/news/local/michigan/2020/07/28/michigan-bar-exam-crashes-online-company-cites-cyberattack/5527628002/> (discussing ExamSoft's failure during the Michigan Bar).

² Kim Kozlowski, *Michigan Bar Exam Crashes Online; Company Points to Cyberattack*, DET. NEWS (July 28, 2020 6:32 PM), <https://www.detroitnews.com/story/news/local/michigan/2020/07/28/michigan-bar-exam-crashes-online-company-cites-cyberattack/5527628002/>.

³ Joe Patrice, *Bar Exams in the Time of COVID: Crashes, Hacks, and (a few) Masks*, ABOVE THE LAW (July 29, 2020 10:24 AM), <https://abovethelaw.com/2020/07/bar-exams-in-the-time-of-covid-crashes-hacks-and-a-few-masks/>.

have dedicated myself to doing so since I was 19 years old. But still, I cannot fulfill my dreams. How much is enough? When will I be accepted? How many more hoops must I jump through?

There are some who will suggest the bar weeds out bad attorneys. An American Bar Association study found that ninety percent of test takers pass within two years of graduation.⁴ This reality exemplifies the idea that the Bar Exam is only another impediment and fails to filter out bad attorneys in the long term and definitively disproves the theory of a properly functioning filter. It seems that most proponents either have a financial stake in the administration of the exam or only want us to take it because they did. Despite this I am heartened by the immense support we have received from our schools, our legislators, and hundreds of practicing attorneys. Please do not fall into this trap, we are competent and we are eager to attack the issues we see in our state and in our nation with all that we have.

Personally, the past six months have been a rollercoaster, as it has for many of us. My final semester did not go as expected, nor did my graduation. But those disappointments paled to the reality of a collapsing labor market, an international pandemic, a dysfunctional federal government, and protests which are unlike any I have ever witnessed in my life. However, the low point of the past six months has been the passing of a grandparent on August 19th and a terminal diagnosis for another who is expected to pass by the time you read this letter. My family will neither be able to grieve nor celebrate their lives through a proper burial. Instead, we will mourn via Zoom and, sadly, I have not been able to detach myself from the Bar. In a time when I am supposed to be there for family and process my own emotions, all I can do is study which has pushed my mental and emotional health as far as it can go. The events of the last year have altered our reality, including the traditions which we hold most sacred. The Court must face reality and alter the licensing process accordingly.

I could go on, but I know that there are other comments which deserve as much attention as mine. But I leave you with this. Our profession preaches justice and progression, yet we are filled with toxicity and draconian measures. This moment is an opportunity for the court and for the SBLE to lead and to live up to the ideals which our profession and institutions so often espouse. I, and thousands of other test takers, are calling on you to do so. I know that we will lose faith in this profession and the people in charge if that call is not heard and I will be withdrawing my application by the 28th if we do not receive a final decision by then. Finally, I am signing this letter anonymously not out of shame but to avoid reprisal from my future colleagues and from the NCBE as was suggested by Judy Gundersen, who, coincidentally, was barred via Diploma Privilege.⁵

Respectfully yours,

Anonymous Test Taker

⁴ Elizabeth Olson, *High Percentage of Grads Pass Bar within 2 Years, ABA says*, BLOOMBERG LAW (Feb. 18, 2020 5:52 PM), <https://news.bloomberglaw.com/us-law-week/high-percentage-of-law-grads-pass-bar-within-two-years-aba-says>.

⁵ Joe Patrice, *NCBE Prez Issues Threat to Tie Up Licenses of Bar Exam Critics*, ABOVE THE LAW (Aug. 6, 2020 11:43 AM), <https://abovethelaw.com/2020/08/ncbe-prez-issues-threat-to-tie-up-licenses-of-bar-exam-critics/>.

Catalina Habeych, J.D.
15 Charles Plaza Apt. 2802
Baltimore, MD 21201

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Chief Judge Barbera and Associate Judges:

I, Catalina Habeych, a May 2020 graduate of the University of Baltimore School of Law, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

This pandemic has negatively affected everyone's lives in different ways. From financial insecurities to stress as a result of fear of becoming ill or having a friend or loved one grow ill. Bar applicants have not been immune from these additional stressors and have had to navigate what should have been one of the most stressful moments in their life, preparing for the bar exam, with these additional stressors and insecurities weighing on their minds.

Although I am fortunate enough to not have to worry about where my next meal will come from, despite my employment start date having been postponed for months, I have not been immune to the fear and uncertainty of not knowing whether your family members and loved ones are safe. Both of my parents, unfortunately, suffer from health issues that make them particularly vulnerable during this pandemic. The constant fear and anxiety of worrying over the health of family members that live in another state has unquestionably affected my ability to concentrate and devote myself entirely to preparing for the bar exam, the way I had hoped I would be able to do. I can only imagine that I am not the lone Bar applicant with similar fears and anxieties during this terrible time.

In addition to the new fears that have grown as a result of this pandemic, I also have many reservations about the feasibility of an online bar exam. In addition to having to take the exam in a different format from the one many Bar Prep companies use, this year's Bar applicants are also having to deal with additional uncertainties that have resulted from an online Bar Exam, including finding and a quiet location to take the exam without interruption. Although I am fortunate enough

to be able to take the exam from the comfort of my home without fear of disturbance or interruption, I am still fearful of encountering other technical issues while taking the exam.

One of my biggest worries is having an internet connection that is strong enough to not be interrupted during the exam. As a result of the increased use of the internet in my building during the pandemic (many people are working from home), I have regularly experienced connectivity issues. It is incredibly stressful to think that I might not pass the Bar Exam and gain my license, not because I am unprepared or unknowledgeable, but because my internet gave out during the exam.

In a perfect world, I would have been happy to sit for the regular in-person Bar Exam, as I am sure many of my colleagues would as well, but this pandemic has disrupted every part of our lives. I am hopeful that the Court will be understanding and compassionate and support adopting Diploma Privilege in Maryland for those students who have graduated from an ABA accredited law school and received a passing score on the Multistate Professional Responsibility Exam.

Respectfully,
Catalina Habeych, J.D.

[EXTERNAL] Temporary Suspension of UBE Requirement

MM Pavento <m.pavento@gmail.com>

Mon 8/24/2020 2:17 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Mary M Pavento

m.pavento@gmail.com

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear the Honorable Chief Judge Barbera and Associate Judges:

I, Mary M. Pavento, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned

requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces issues that a newly barred attorney could help with would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

As a retired educator, I feel that if 2020 bar candidates have successfully completed the requirements stated in the above paragraph, they should not be penalized by delaying employment due to problems caused by the current pandemic. I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Mary M. Pavento

[EXTERNAL] Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Rick Hess <r Hess222@gmail.com>

Mon 8/24/2020 2:20 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Gerald Hess, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, and a computer science graduate from the state of WV, I would like to point out the potential problems with the software (Examsoft), regarding reliability, and potential false positives regarding cheating. The amount of hours needed by someone to review the material (gigs of data) to ensure that a user is not cheating seems to be greater than utilizing resources such as Zoom. Additionally, the potential issues represented with the software could cause students to need to re-take the exam, or be penalized for something that they can't control, or risk their personal information be accessed by a third party (Examsoft or others).

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Gerald Hess

Alba Sanchez Fabelo
Staff Attorney at CAIR Coalition
asanchezfabelo@umaryland.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Alba Sanchez Fabelo, a member of the general public and the legal profession, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the legal community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, recently graduated from the University of Maryland Law School, and my life has been turned upside down due to the stress from the pandemic and the Bar Exam. I have spent eight years of my life studying and working towards my degree so that I could help those in need. I accepted an offer from the CAIR Coalition in January to provide legal services to detained and unaccompanied immigrant children. There is an incredible need for my services that I am unable to provide due to current situation with the Bar Exam. I am eager to start my position and provide these necessary services to one of the most vulnerable groups in our society, and the inability to do this is crippling. This situation has not just affected my professional life, but my personal life, as well. I live in a one-bedroom apartment with my husband and our dog, and the past months of studying have been a living nightmare. My husband works full-time from home since the pandemic broke out due to the nature of his job, and we are forced to study and work with limited space and noise control. Just recently, as I was taking a practice exam, the fire alarm in our apartment building went off, and as we were forced to evacuate, one of my worst fears for the exam days came true. The conditions in which we are being asked to prepare and perform for

this remote administration are unattainable, impractical, and quite frankly, cruel. I fear for the safety of my personal information, I fear that my professional license could depend on an unexpected fire alarm, an internet glitch, a power issue, or a personal one. I also fear for the children I am supposed to be representing. Lastly, I fear for my mental health. Juggling the stress of the Bar Exam, the implications of a global pandemic, and the inability to serve a community in need, has taken a toll on all of us. I understand this is an exceptional ask that we are making, but we are living through exceptional times, and thus an exceptional measure is appropriate. I, as well as many migrant children, would benefit from a Court order granting emergency diploma privilege to bar applicants.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Alba Sanchez Fabelo

[EXTERNAL] Temporary Suspension of UBE Requirement

MM Pavento <m.pavento@gmail.com>

Mon 8/24/2020 2:24 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Cc: Pavento Michael T <mmpavento2@gmail.com>

Michael T. Pavento

mmpavento2@gmail.com

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

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Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear the Honorable Chief Judge Barbera and Associate Judges:

I, Michael T. Pavento, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces personal struggles would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

As a retired Certified Public Accountant, I believe that if 2020 bar candidates have successfully completed the requirements stated in the above paragraph, they should not be penalized by delaying employment due to problems caused by the current pandemic. I thank the Court for its time and consideration on this urgent matter. I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Michael T, Pavento, CPA

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

In re: DIPLOMA PRIVILEGE FOR 2020 MARYLAND BAR APPLICANTS

My name is Ciara Beaulieu, and I am an applicant for the administration of the October 2020 DC Bar Examination, writing in support of emergency diploma privilege for Maryland Bar Applicants.

COVID-19 has had a devastating impact on our country, most notably on low-income communities, communities of color, and persons with disabilities. More specifically, COVID-19 has had calamitous ramifications for 2020 Bar applicants, as well as for those individuals in Maryland who desperately lack access to justice in the midst of civil and political unrest. With this recognition in mind, I strongly support the petition before the Maryland Court of Appeals, advocating for emergency diploma privilege.

I. Impact of Bar Exam Postponements and an Online Administration.

Maryland's proposed online exam presents vast opportunities for inequity, and the risk of technological failures is extraordinary.

A. Impact on Quality and Demographic Representation of New Members

The proposed online administration of the Maryland Bar Exam will gravely impact the quality and demographic representation of new lawyers admitted to practice in MD. In fact, it will disproportionately exclude from admission applicants who do not have safe homes; who cannot afford quiet spaces; who must work to feed themselves and their families; who are caring for elderly and immunocompromised persons; who are worrying daily for their own health, safety, and financial security; who rely on screen readers or other devices to support test-taking; who have children, partners, and other family sharing their homes; who are sick, hungry, or otherwise hurting. In other words, it will disproportionately exclude low-income applicants, applicants of color, women applicants, applicants with disabilities, and other historically underrepresented and marginalized individuals.

B. Technological Risks of Online Administration

Aside from the myriad issues applicants are facing at work and home, we have good reason to anticipate technological failures during the exam. Two out of three approved exam software vendors have already faced serious technological failures. For instance, during Michigan's exam, cyber attackers hacked ExamSoft and the program crashed. Technological malfunctions have also forced Indiana, which used a different software vendor than Michigan (ILG Technologies), to

switch to an open book exam, whereby applicants will receive and return the exam via email. Further, a recent virtual LSAT administration resulted in the loss of several law school applicants' scores. The technology is simply unreliable.

C. Temporary Supervised Practice is Untenable

Even if the Court extended a temporary supervised practice option for applicants who are unable to safely and adequately take the October Bar, this option will amplify the hardship we are already experiencing. In fact, a temporary supervised practice will require even more applicants to balance full-time work and studying for a later exam. Moreover, given the pandemic's unpredictable nature, it is likely these applicants will be required to endure a remote option next year. Diploma privilege is the only viable alternative.

D. Diploma Privilege Will Alleviate Applicant Hardship and Mitigate the Legal Needs of the MD Community

Not only will diploma privilege ensure that the admission process is equitable, it will further the interests of the MD legal community at large. Because of the pandemic and severe civil and social unrest our country is facing, MD has a vital interest in ensuring that sufficient lawyers are able to adequately represent those who need counsel most – those individuals who are also low-income, women, youth, persons of color, and persons with disabilities. Providing emergency diploma licensure for applicants is the only way to ensure our vulnerable community members are protected during this time.

II. Possible Conditions the MD Bar Can Adopt to Ensure Diploma Privilege Protects the Integrity of the Legal Community.

Given the immediate need for adequate lawyers, MD diploma privilege can require a various measures to ensure competency.

First, the MD Bar can require all newly licensed lawyers to complete robust continuing legal education (CLE) courses before – and subsequent to – their formal admission. This measure will ensure that applicants are sufficiently prepared to represent clients, and that they are consistently refining their advocacy skills.

Second, the MD Bar can require that all individuals approved for diploma privilege be strictly supervised by a licensed attorney for a probationary period of time (e.g. 400 hours) to ensure competency. Once the applicant completes the required hours, and their supervisor guarantees their fitness for independent practice, the applicant may be formally admitted to the MD Bar.

Third, the MD Bar can require all new members to complete a certain number of pro bono hours per year. Imposing such a requirement on those applicants who select diploma privilege would reinforce the MD Bar's commitment to the underserved community and aptly ensure that those individuals who are most in need of legal services are protected (*see above for the impact of COVID-19 and social unrest on vulnerable communities*).

III. Potential Role of Law Schools in Supporting Diploma Privilege and Any Respective Conditions Imposed Thereon.

MD law schools can support the authorization of Emergency Diploma Privilege in a number of key ways. For instance, MD law schools can work with the MD Bar to facilitate additional CLE courses for applicants, ensuring any CLE requirements are met in a streamlined and cohesive manner.

MD law schools can also provide certification or other documentation of previously completed pro bono hours for 2020 applicants. Such documentation can highlight applicants' work in clinics or legal non-profit organizations. Applicants without supporting documentation for pro bono hours can meet the requirement by completing a court-prescribed number of pro bono hours within a reasonable time after licensure.

Thank you for listening to my concerns.

Respectfully,

Ciara Beaulieu

August 24, 2020

The Court of Appeals of Maryland
361 Rowe Blvd.
Annapolis, MD 21401

In Re: Emergency Diploma Privilege for Maryland

Dear Chief Judge Barbera and Associate Judges,

The COVID-19 global pandemic has had a negative impact throughout our country. Adaptability and innovative solutions have allowed us to redefine the new normal. I author this comment in support of granting Emergency Diploma Privilege for Maryland because (1) Examsoft is not reliable for an exam of this magnitude; (2) at this time, a remote bar exam will be a test of resources instead of minimum competency; and (3) the Court's precedent acknowledges that diploma privilege is an effective method of measuring minimum competency to practice law.

First, Examsoft has not proven that it can successfully administer a remote bar exam to thousands of applicants, across the entire country, simultaneously. Examsoft's only relative experience is administering Michigan's one-day remote bar exam to about 500 applicants. The Maryland State Board of Law Examiners ("SBLE") alleges Michigan bar examiners were "generally satisfied with the performance of ExamSoft's software."¹ However, SBLE failed to mention that Michigan Supreme Court Chief Justice Bridget McCormack issued an apology letter to test-takers the day after the exam.² Chief Justice McCormack even questioned whether the bar exam is the best way to measure competency and whether it creates unnecessary and unfair barriers to the practice of law.³ Chief Justice McCormack's sentiments seem to undermine, and arguably contradict, the information SBLE chose to rely on and present to the Court. Also, unlike Michigan, Maryland will be using Examsoft's technology simultaneously with several other states. Examsoft has yet to test those capabilities. Maryland's July bar exam has been postponed twice. Therefore, the next decision regarding this exam needs to be definitively reliable, which Examsoft has not proven itself to be.

Second, an October remote bar exam will be a test of resources instead of minimum competency. Those that have the resources to seclude themselves in their home's den/office, summer home, or hotel will be more prepared for this exam. Personally, a quiet space has been the greatest obstacle. I live in a row home in inner-city East Baltimore. Unlike townhomes, row homes have more homes within a single block and are separated by thinner walls. All of my neighbors are either working from home or furloughed, which means that everyone is home during the day. Additionally, this is a family neighborhood so there are plenty of children outside because summer camps/schools are closed. Everyone being home, in combination with typical inner-city summer

¹ Letter from Maryland State Board of Law Examiners to the Court of Appeals of Maryland (August 18, 2020).

² Letter from Chief Justice McCormack to July 2020 Bar Applicants (July 29, 2020), <https://courts.michigan.gov/Courts/MichiganSupremeCourt/BLE/Documents/Chief%20Justice%20McCormack%20Letter%20to%20Test%20Takers.pdf>.

³ *Id.*

activities, has resulted in my neighborhood being busy and loud all throughout the day. This is not an environment that is conducive to studying nor taking a four-part two-day bar exam.

In addition, there are applicants that are being forced to work, instead of studying, because of financial need and/or risk of job loss. Most applicants strategically plan to be without an income for a fixed period to study for the bar exam. The two postponements have caused that fixed period to be extended, and many applicants have comprised studying to start working whatever job they can find. Others must work because of risk of job loss, including clerkships within the Maryland judiciary. Many bar applicants agreed to begin judicial clerkships in August. Some Maryland judges are insisting their incoming clerks uphold that agreement, despite recent events. I must acknowledge my privilege in this situation, in that the start of my judicial clerkship has been delayed until after the October bar exam. I also, fortunately, have the resources to refrain from working until then. However, this is still an issue I am obligated to highlight to the Court. The pandemic and two postponements will result in the October remote bar exam being a test of resources instead of minimum competency.

Third, the Court's use of Wisconsin law acknowledges that diploma privilege is an effective method of measuring competency. If diploma privilege does not effectively ensure competency, then Wisconsin's legal system should be catastrophic and unreliable. However, the Court has relied on and adopted Wisconsin law.⁴ Most recently, this Court relied on *Wisconsin v. Piddington*, 241 Wis. 2d 754, 775, 623 N.W.2d 528, 540 (2001), when the Court adopted a reasonableness standard when evaluating an officer's warnings and rights in accordance with the implied consent statute.⁵ By giving credibility to Wisconsin law, the Court acknowledges that diploma privilege is an effective measure of competency. Accordingly, the Court should give deference to Wisconsin's diploma privilege admissions criteria, especially considering it has been used the longest. Alternatively, the Court should rely on Washington's diploma privilege criteria because the Court has relied on Washington law more than Oregon and Utah law.

Lastly, the Court should outrightly disregard all opposition for diploma privilege that is based on upholding "legal tradition" and "rites of passage." This is a profession, not a social club. Moreover, if the legal profession strictly followed "tradition," four-sevenths of this Court would be notably different.

For the foregoing reasons, the Court should grant emergency diploma privilege. At this time, emergency diploma privilege is the most reliable option that can effectively ensure minimum competency to practice law.

Respectfully,



Reginald L. Smallwood III, J.D.
University of Baltimore School of Law

⁴See *Conover v. Conover*, 450 Md. 51, 75, 141 A.3d 31, 46 (2016) (adopting multi-factor test from *Holtzman v. Knott (In re H.S.H-K)*, 193 Wis. 2d 649, 533 N.W.2d 419 (1995)); see also *State v. Copes*, 454 Md. 581, 623, 165 A.3d 418, 442 (2017) (relying on *Wisconsin v. Tate*, 357 Wis. 2d 172, 849 N.W.2d 798 (2014)).

⁵ See *Funes v. State*, No. 65, SEPT.TERM, 2019, 2020 WL 3526025, at *12–13 (Md. June 30, 2020).

To: Nadine Maeser, Terri Charles, and other members of the Maryland Board of Law Examiners
From: Keelin Herbst
Date: August 24, 2020
Re: Comment on SBLE's Update Regarding Remote Bar Exam

To Whom it May Concern:

I was deeply disturbed after reading the statement the Maryland State Board of Law Examiners (SBLE) wrote and released last week. Particularly, it was of great concern to me that the SBLE dismissed all arguments that a remote bar examine will disparately impact or bar low income and BIPOC test takers. The reasoning being that the SBLE was not privy to survey results conducted by exam takers who have spent time (while studying for this exam) to gather such information. This is an extremely weak argument. I have serious doubt that it would have been impossible for the SBLE to reach out and obtain the survey results from the exam takers who conducted the survey. Even if the survey results from this source were not available, the SBLE should have conducted their own survey. SBLE has access to an e-mail list with all exam takers and I certainly hope that is it not beyond the ability of the SBLE to put together a simple google form or Survey Monkey. However, if SBLE is for whatever reason unable to put together a survey, I would be more than willing to either show the SBLE how to create a survey, or create it myself and share it with your office for dissemination. Not having the results does not mean that they were favorable to SBLE.

I also do not believe that the SBLE has adequately addressed concerns relating to the actual testing day. First, the statements by the SBLE regarding password dissemination through telephone and technical support by telephone directly contradict the FAQ's issued by the SBLE earlier this month stating that cell phones were not permitted in the testing room. I strongly encourage the SBLE to clarify this contradiction. Next, although I commend the SBLE on adopting the use of software which will not require a constant Wi-Fi connection, SBLE still has not addressed what will happen if a student's Wi-Fi goes out at the beginning or end of the exam. In Michigan, the exam was not administered at the set times due to website and software failures. Does the SBLE have a plan for this? Furthermore, as SBLE mentioned in its statement, there are exam takers from all across the country. Today, there are two hurricanes headed for the Gulf Coast and fires ravaging the West Coast. These acts of nature have interrupted Wi-Fi connections and even access to electricity. What if this happens during October 5-6th? Will those exam takers who have spent money and countless hours preparing for this exam be reimbursed? Will there be additional testing dates and accommodations for them? These are just some of the questions that need to be addressed by the SBLE to determine if a remote exam is actually feasible. Finally, I was fortunate to use ExamSoft for my law school exams at George Mason and have familiarity with the software. I can say that every single exam using this software, at least one or more students had issues either accessing the exam, staying connected, or uploading the exam results. And these were exams that were not loaded onto the computer, nor did they have incredibly large video files to upload with them. My first year of law school I was using an old hand-me-down computer that did not function correctly using ExamSoft despite meeting storage and other requirements. There were significant delays in my answer typing and in maneuvering from question to question. This type of delay for low income students who can't afford top-of-the-line computers will lead to unfair disparities in test taking conditions. It is unfair to base

someone's ability to enter the legal profession on whether or not they have access to an above-average laptop and undisturbed Wi-Fi. For these reasons, I believe that the use of a software such as ExamSoft or ILG will result not only in testing failures, but also will have a disparate impact on low income and BIPOC students.

SBLE has not done a sufficient job in identifying and addressing these concerns. I offer two solutions. First, SBLE could adopt a similar approach as Indiana or Nevada where the exam is administered via a .pdf sent to exam takers over e-mail and the exam is open book. This would put all students on the same playing field and eliminate issues related to Wi-Fi, lack of webcams, loud testing conditions, and others. The .pdf could easily be encrypted using a password that is also e-mailed to students or posted on the SBLE webpage. I know one major concern is cheating and that is why the SBLE favors a software that will allow webcam access. I can only speak from my experience at George Mason, but in the three years I served on the Honor Committee there was not a single instance of exam cheating. All of our exams were not proctored, instead professors relied on the honor system to ensure students were not cheating. It is counterintuitive that a profession that requires us not only to take an ethics exam, but also pass a Character and Fitness, still believes that we would cheat on the single most important exam of our careers. Additionally, as someone who has been preparing for this exam by doing timed essays and MBE questions, the structure and timing of the exam does not permit students who are ill prepared to succeed even if the exam is open book. While a student could look up a rule for maybe a handful of MBE questions, the time constraints do not allow students to look up every answer. This is especially true for the MEE where time is even more limited. Further, in real practice not looking up law is the basis for a malpractice suit. So, it makes little sense that an exam that tests our competency to enter into the legal profession would prevent the very action that could help us avoid malpractice in our future careers.

Second, the SBLE could adopt diploma privilege. Given the circumstances addressed above, even an open book, e-mail administered exam has faults. Many exam takers have children, roommates, jobs, and other distractions that in conjunction with a global pandemic have made studying for the bar exam nearly impossible. I fear that we will get nearer to the exam, or even on the exam day, the systems will fail. If the systems do fail, like other remote exams have, and the SBLE decides only then to take the diploma privilege route, students will have suffered severe economic harms. I have already taken out additional loans to simply pay for rent and groceries to support me through to an October exam. I live in Silver Spring and my expenses for this additional time are close to \$7,000. As someone who is pursuing public interest and will be clerking, this amount is crippling in addition to my student loans. If the SBLE decides to adopt Diploma Privilege, I could start working a full month earlier to alleviate the financial burden this exam delay has caused.

I would like to finally address the concern raised by some Board of Law Examiners, that the group of students pursuing and advocating for Diploma Privilege is a minority. I can only speak from my experience, but I do not believe this to be true. While some are not as vocal as others in advocating for Diploma Privilege there is a silent majority who favors this approach. We are tired, overwhelmed, and struggling to get by, just because we may not be loud, does not mean that our voices should not be heard.

Respectfully,

Keelin Herbst

keelinherbst@gmail.com
585-217-2279

[EXTERNAL] Comment on SBLE Update on Remote Bar Examination

Robert Sentman <robert.sentman@gmail.com>

Mon 8/24/2020 2:29 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I would urge the Maryland State Board of Law Examiners, as well as the Court of Appeals, to consider adopting a form of diploma privilege or Certified Limited Practice License for those recent law school graduates who would have taken the July 2020 bar exam but for the closures due to COVID-19. Bar exam applicants who expected to sit for the July exam as first-time exam takers would have expected to have their unofficial results by early November, and to be sworn into the practice mid-December should they have passed. Due to closures, postponements, and the impending apprehension of the remote examination, graduates face a delay in exam administration, notice of results, and swearing into the bar for successful exam takers. This prejudices graduates awaiting the bar exam and the opportunity to begin practicing, firms and offices throughout the state who have been waiting on new applicants for hire, as well as the entirety of Maryland's legal professions. Due to circumstances beyond anyone's control, it is only fair to these graduates eagerly awaiting licensure to consider an alternative that benefits all of those engaged in the practice of law in the State of Maryland.

Respectfully,

--

Robert E. Sentman, Esq. (MD, PA)

Krystle Chichester
4937 Wall Flower Way
Oxon Hill, MD 20745

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am a 2018 graduate of University of Baltimore School of Law, and I am registered to take the Maryland Bar Exam in October. I have previously taken the Maryland bar exam and was unsuccessful. I have successfully achieved the required score on the MPRE and the Maryland component exam, and I am diligently preparing for the Bar Exam.

Covid has drastically impacted the nation, and these are trying times. Studying for the Bar Exam is difficult enough without a pandemic or the limitations imposed because of the pandemic. The added stress of the state of the nation has great potential to negatively impact those of us studying for the exam. In addition to the studying period being impacted, the unpredictable testing environment is an added stressor. An unexpected visitor or child emergency during the exam could cause noise or disruption that would nullify that test taker's exam, due to no fault of the test taker. For these reasons, diploma privilege should be extended to those registered to take the exam in October.

In the event it is decided that only recent graduates should be granted diploma privilege, I feel an open book exam would be fair for exam retakers. For those of us retaking the exam, our careers have been on hold until we pass the exam. Asking us to either sit out the exam until next year, or imposing additional requirements would be unfair to us. An open book exam gives us the opportunity to sit for the exam, with the benefit of removing some of the additional stressors, and no additional postponement of our opportunity to sit for the exam.

For the foregoing reasons, I feel diploma privilege should be granted to all those registered to take the October Bar exam; or in the alternative, extend diploma privilege to the recent graduates and allow for an open book exam for all retakers.

Thank you for your consideration,

Krystle Chichester

[EXTERNAL] DP Support

Hall, Desiree (Law Student) <desiree.hall@law.barry.edu>

Mon 8/24/2020 2:32 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

In re: Diploma Privilege for 2020 Maryland Bar Applicants

Dear The Honorable Chief Judge Barbera and Associate Judges:

My name is Desiree Hall. I am a recent graduate from Barry University School of Law. I have taken the time out of a rigorous study schedule to express my concerns for the online bar exam and why I strongly support the petition before the Court of Appeals, advocating for emergency diploma privilege.

Part I – The need for Diploma Privilege

There are a great number of needs that would be addressed by granting diploma privilege. The first and most important need is peace knowing that I have access to a secured future. The consequences that COVID-19 has had on our economy and specifically our recent law graduates has been detrimental and the damages that stem from this pandemic will be long lasting. This does not change the fact that law school graduates need to make a living during these unprecedented times just as the rest of the world. Recent graduates have a need to provide and support their family who have supported them throughout their entire law school career. However, amongst the many graduates are those who are currently dealing with insecurities in regards to their future and can't in turn provide the needed support. When the world came to a screeching halt there was still a great need for our judicial system to continue to run. The main purpose of the judicial system in each state is to protect and serve justice to the citizens of the United States. In doing so the judicial system is able to provide safety to those who seek protection in domestic violence cases, ensure minor children are provided with a safe environment when it is reported that they have been subjected to abuse, and

safeguard the community from criminals who continued to commit crimes despite the global pandemic. Our judicial system is here to protect against all of the potential harms to our society and citizens despite the massive disturbance caused by COVID-19. There will always be a need for prospective lawyers to ensure that our citizens can have access to the judicial system to seek protection or justice whenever an instance may rise.

Further, employers will always need determined and competent attorneys that are willing to persevere in even the most difficult circumstances. In the midst of a global pandemic and racial injustice law students are still working and finding ways to cope with the environment while studying to take the bar exam. When there is a need to make sure minorities are represented upon an unlawful arrest, or upon the arrest of a peaceful protester, or upon unlawful detention of a refugee; the incoming legal members will make sure that these people who needs us are met with open arms. Whether that means studying in a hot car because the libraries are closed, or studying in a house full of people, or taking a pay decrease to put in extra time to study the needs will be met. Employers need to make sure that new hires are competent enough to practice law. What better way to ensure this than by teaching the graduate exactly what to do in these instances step by step. Through proper mentorship, guidance, and hands on task diploma privilege will be way more beneficial than a test.

Recent law school graduates need assurances and don't want to be left in the dark about their own future they have invested so much time and money into. Bank accounts have run dry paying for bar prep courses, shelter, childcare, food, and other essentials. It is very hard to make future plans faced with such unclarity as to when the bar exam will be administered. For these reasons a temporary license to practice until the bar exam can be safely administered will cause the same issues and will not be beneficial. Unfortunately, most students do not have the luxury of being able to afford another bar prep course in the future. Graduates can't afford to study full time again. Students can't afford to place off making an income.

Graduates can't afford to pay for child care for another two months for bar prep. Graduates can't afford to rent out spaces to study because libraries are still shut down, graduates can't afford to argue with landlords to get eviction notices removed. Graduates can't afford to delay loan payments and suffer from interest rates, graduates can't afford to homeschool their children and study for a bar exam. The budget for the administration of the July bar exam was carefully planned out and executed. However, students were forced to make the budget stretch or dip into emergency savings for another two months when the exam was pushed back to

October. There is a reason why the bar exam is strategically offered in July and February. The knowledge retention upon graduation from law school was carefully factored into picking the bar exam dates. Pushing the dates back and providing a temporary licensure program will defeat this purpose for the worst. It will place many law graduates at a risk of having to learn the material entirely over again instead of trying to remember and understand it. As a first-generation law school graduate I need to start bringing in an income from which I invested so much into.

For these reasons I urge Maryland Court of Appeals to adopt the diploma privilege in lieu of the remote October Bar.

Part II – Limits or conditions imposed on any diploma privilege

As in Washington State, the following limits should be required.

1. 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, [should be] granted the option of receiving diploma privilege to practice in Maryland.
2. The diploma privilege option will be available to applicants currently registered to take the examination who are taking the tests for the first time and those who are repeating the test.
3. Maryland Court of Appeals delegates the appropriate discretion to determine the timelines for eligible applications to notify MCCOA 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.

Respectfully,
Desiree J. Hall

Gitte and Ramin Gilani
22401 Majestic Court
Santa Clarita, CA 91390
gittegilani@sbcglobal.net

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

We, Gitte and Ramin Gilani, are parents of Kimiya Gilani, a 2020 graduate of American University Washington College of Law (WCL) and a 2020 October Maryland Bar Applicant. We are writing to express our support in granting the 2020 October bar applicants emergency diploma privilege.

Kimiya has expressed her interest in becoming a lawyer since she was in high school, as she saw injustices occurring in the world and in her community and she worked hard and diligently to make her dreams a reality. As a first-generation college graduate as well as a first-generation law school graduate, Kimiya has overcome many obstacles in her path to getting to law school and in completing law school successfully, earning her J.D. in May 2020. While she was a student at WCL, she held numerous internships and externships, all in public service, and completed over almost 700 hours of pro bono service, earning her the distinction of earning the Pro Bono Honors Pledge at graduation. She also worked on campus as a Dean's Fellow and worked as a writer on a law brief. Her academic accomplishments are a source of great pride and we know that she has the character, drive, and skills to be an exceptional attorney.

Upon graduating in May, she immediately began her bar prep schedule with plans to take the Maryland in-person July exam. Due to the Covid-19 pandemic, as you are aware, the in-person exam was postponed and then switched to an online exam scheduled for October. The constant changes, the uncertainty of the exam, and the problems numerous states have encountered with administering an exam online have caused Kimiya great stress and anxiety. There have been constant changes to her study plan due to the delays and rescheduling of the exam, she has lost job opportunities which brought her to take the Maryland exam, she has faced housing instability and financial troubles in obtaining health insurance, and this is all happening while actively trying to obey social distancing guidelines in order to stay healthy enough to study and take the exam.

Kimiya has worked incredibly hard through her rigorous studies at WCL and is eager to put her skills into practice and to give back to the community through her advocacy. Any

potential job opportunity is contingent on her passing the Maryland exam and being barred in Maryland.

The postponement of the bar exam as forced us to continue to financially support Kimiya. We had projected Kimiya to be financially independent by mid-2020 and have had to restructure in order to support her during this time. We are helping support her by assisting in paying for rent, health insurance, food, and other necessary expenses since she has not been able to start working in the legal field.

Kimiya has been keeping us updated through articles and news on the bar of what has been happening around the country as states struggle to administer online bar exams. We have seen the failure of the Michigan bar's use of ExamSoft (the same vendor Maryland has chosen) and worry that there will be similar attacks and failures when the time comes for the Maryland exam. We have seen how Florida cancelled their bar exam three days before their exam due to problems and failures of the software technology. Software failures and data breaches connected to remote software platforms are simply unacceptable.

We have seen the hard work Kimiya and her peers have done in order to successfully complete law school and grasp a command of what is necessary to practice law. These include graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component. We agree that the additional requirement of passing a character and fitness examination further assures the protection of the public.

We plea with the Court to enact emergency diploma privilege for all applicants scheduled to take the 2020 October bar examination and thank you for your consideration of this issue.

Respectfully,
Gitte and Ramin Gilani

[EXTERNAL] Comment in Support of Diploma Privilege

Richie, Claire Alexandra <car395@miami.edu>

Mon 8/24/2020 2:33 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Claire Richie

University of Miami

car395@miami.edu

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Claire Richie, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent, especially considering that many of these new graduates completed their degrees amid the challenging circumstance of COVID-19 disrupting their academic experience. Many bar applicants and their families are experiencing the economic unrest and turmoil suffered by many in this country. Granting diploma privilege would allow for these recent graduates to provide for their families using the education and experience they worked so hard to obtain.

Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. In these uncertain times, it is imperative to call our most talented and aware citizens to action. We need these diploma recipients now more than ever, and I would be confident in any of their representation.

I thank the Court for its time and consideration on this urgent matter.
Respectfully,

Claire Richie
PhD Student
University of Miami

[EXTERNAL] Diploma Privilege - please consider for the bar exam

Hill, Ashley E <ashley.e.hill@bofa.com>

Mon 8/24/2020 2:36 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Hello, I am writing on behalf of the thousands of people hoping to take the bar exam. I advocate for Diploma Privilege and strongly urge you to consider this in the best interests of these incredible future lawyers who have been working so hard for so long.

Thank you,

Ashley E. Hill

Internal & Corporate Communications

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August 24, 2020

Clerk of the Court
Court of Appeals of Maryland
361 Rowe Blvd.
Annapolis, MD 21401

By electronic transmission:

COACLERKOFTHECOURT@MDCOURTS.GOV

**RE: Diploma Privilege and SBE Proposal for Remote Exam
Mentoring as Paramount**

Dear Chief Judge Barbera and Members of the Court of Appeals:

I write to offer a comment as a Bar member on the proposal for the remote administration of a Bar examination as proposed by the State Board of Law Examiners. This Court admitted me to the Bar on December 13, 1994, and I have served as an AGC Peer Review Committee member, as a practice monitor twice with the AGC, and as a mentor both informally and through the Court's Professionalism program.

My own view is that the balancing of interests favors diploma privilege for any candidate who has graduated an ABA accredited law school and can demonstrate a passing score in Evidence and Professional Responsibility (courses for which no "open book" recourse suffices.) The MPRE provides adequate assurance of professional ethics rules, if there should be any question. Because the Court has already preliminarily approved the Board of Law Examiners' alternative approach, through the beleaguered software company ExamSoft, I write to suggest a related concern to the Court in the interest of the Bar: mentoring and its acute dearth.

I am concerned that, regardless of the gauge of the “sieve” chosen by the Court to select new Bar admittees, our new junior colleagues enter the practice of law at a severe disadvantage beyond mere the disruption of careers, jobs, income – the last of these an underappreciated harm especially for first-generation attorneys. I am concerned that the mentoring by which young attorneys become seasoned and later wise, now scarce, will become more scarce, relative to both demand and the needs of the Bar to assure that even high-scoring applicants learn the critical, unwritten customs of this profession.

No liability carrier has, in 25 years’ licensure, ever asked me about my Bar score (respectable but no better), my law school GPA (middle of the pack), nor my undergraduate GPA (mediocre). Nor has any employer or opposing counsel expressed much or any interest in those topics. The unwritten norms, however, are hard to learn without mentoring, yet are critical to effective practice. Knowing how a deposition proceeds in practice, for example, is difficult to decipher from a mere reading of the rules. Other examples come to mind: how to approach opposing counsel (or respond thereto) regarding extensions; what sorts of claims are disfavored in practice even if valid on a Torts examination; how to show human gratitude to an attorney or judge for a referral without violating ethics or causing embarrassment; how to show respect to a Clerk of Court (always and everywhere); the precise mechanics of balancing an escrow account in practice, rather than merely how “not” to do so the wrong way.

The slow-down of courts and of law practice creates developmental delays for new attorneys as a cohort. We, the Bar, must respond to the crisis.

No permutation of Bar examination elements covers these sorts of topics directly; at most, the examination can identify some bad practices but not confirm good practices. For this reason, now more than ever, the hortatory obligation of pro bono service to the Bar by activities for improving the legal profession (Md. Rule 19-306.1(b)(2)) is paramount. I would respectfully suggest to the Court that all members of the Court exhort - in their own voices and through those voices that the Court may influence – every Bar member of five years’ standing to commit to mentoring two 2020 admittees in 2021. While most will not answer the call, some will do so, and other Bar members may influence their firms to do so. This is, in my view, more important than the selection of the proper “sieve” of applicants: improvement, not mere sorting, of the cohort.

I do thank the Court for the opportunity to be heard as a Bar member on this important topic of interest to the Bar. I speak here for myself only, not my employer or other attorneys at my firm.

Sincerely,



T. Bruce Godfrey

Lois Chichester
Snowieball09@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Lois Chichester, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community previously worked closely with a law school student, under the supervision of his professor, to complete my estate planning. My experience with that student leads me to believe law school graduates would benefit from a Court order granting emergency diploma privilege to bar applicants, and I would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Lois Chichester

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Anna Mateo <annamateomusic@gmail.com>

Mon 8/24/2020 2:48 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Anna Mateo

[Annamateomusic@gmail.com](mailto:annamateomusic@gmail.com)

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Anna Mateo, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen

global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had

on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted

for Maryland's bar exam administration, the Court should enact emergency diploma privilege for

all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent.

Furthermore,

the additional requirement of passing a character and fitness examination further assures the

protection of the public. The aforementioned requirements are enough to instill confidence in the

2020 bar applicants' competence and ability to promptly and diligently represent community

members such as myself. I, as a member of the community who faces issues that a newly barred professional, would benefit

from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Anna Mateo

Dan Baker
DanKBaker1@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Dan Baker, a recent graduate from the University of Maryland School of Law, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members. As an applicant for the bar exam, I face considerable hurdles that as a result of the aforementioned conditions.

I live in Baltimore City and am subject to frequent power and internet outages. During my final exams this spring, my internet service cut out and Comcast was unable to fix it for days. Since that outage, I have had two more internet outages which required Comcast to send a technician to repair the lines—leaving me without internet service for days. Given the global pandemic, I have no alternatives if such an outage occurs again. Additionally, I have pets that might prove distracting and I live within a block of a fire department thereby experiencing apartment shattering sirens numerous times every day. Lastly, I have significant concerns regarding the inability of the exam software algorithm to properly recognize people of color. While some applicants may have the privilege and resources to take an online exam under ideal conditions—with highspeed internet, steady power, funds to rent an office or hotel, or the algorithmically recognized skin tone, I urge the Court of Appeals to recognize the extreme hardship presented by conducting a deeply flawed online exam in an attempt to maintain the status quo during an unprecedented global crisis.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Dan Baker

August 25, 2020

BY E-MAIL

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Dear Chief Judge Barbera and Associate Judges:

I am writing in response to your request for comment on a plan for safely admitting new lawyers to practice in Maryland in light of the ongoing COVID-19 pandemic. I am a graduate of the University of North Carolina School of Law Class of 2020, and I am an applicant to the Virginia bar. Though I am not currently applying for admission to the Maryland bar, I anticipate that my career may someday lead me to practice law in your jurisdiction. With that in mind, I am writing with concern for my future colleagues.

This Court has shown consideration for bar applicants' health and safety by choosing to forgo an in-person exam. Now, this Court is tasked with replacing the in-person exam with an equitable alternative for licensing new applicants. The only equitable alternative licensing scheme is diploma privilege.

I understand that several of my colleagues' comments will focus on the validity of a diploma privilege licensing scheme. I also expect that my colleagues will make a case, in great detail, for why an online exam is an untested, unreliable, and inequitable solution. Rather than restate these arguments, my comment focuses on one narrow issue: **why provisional licensure—temporary licensure requiring graduates to sit for the exam at a later date—is not the solution this Court should adopt.**

On its face, provisional licensure is an appealing solution. Adopting such a program would allow this Court to be responsive to applicants' concerns about an online bar exam while maintaining a semblance of the licensing scheme this bar has relied upon in the past. But provisional licensing would significantly disadvantage this class of graduates and create challenges for legal employers and clients.

Provisional licensure creates a class of pseudo-attorneys who are not competitive on the job market.

Recent graduates and bar applicants are emerging into an incredibly difficult and uncertain economy. At the same time, legal employers have been impacted by the economic downturn and are looking for ways to cut costs while maintaining a similar level of service. The result is a highly competitive job market. In such a market, applicants and new associates need every advantage to succeed. Provisional licensure marks these applicants with a distinct disadvantage.

Those who are currently searching for jobs have reported that uncertainty around licensure has left them disadvantaged in hiring. This is unsurprising. In any ordinary year, an employer may compare an applicant barred in the previous exam administration and an applicant who expects to be barred after the next exam cycle as roughly equal. This year, however, an employer hiring an unbarred applicant must take on the responsibility of providing additional supervision of that employee's provisional status for several months. They must also weigh the risk that, should the applicant take the bar and not pass it at a much later date, they will have invested several months of training and education into an employee who ultimately may not be able to work as an attorney. With all of this in mind, a reasonable employer weighing their options would nearly always be inclined to preference an application from a barred attorney over the application of an attorney who is provisionally licensed.

Even those recent graduates and bar applicants who graduated with job offers in hand have reported that uncertainty in licensure has had a significant impact on their career plans. Many major firms have pushed associates' start dates to as late as January 2021, citing a number of factors, including uncertainty of when applicants would be able to sit for the exam or be licensed. In other jurisdictions, uncertainty around licensure has led to firms rescinding offers altogether. Applicants reported this happening in New York shortly after that jurisdiction's cancellation of their planned fall exam. Firms in New York pulled associates' offers despite assurances from the New York Court of Appeals that a provisional licensure scheme would allow these applicants to practice in the time before they were able to sit for the bar exam. Employers in the District of Columbia may make similar decisions if this Court chooses to adopt a provisional licensure scheme.

Finally, given the economic challenges many firms and non-profits are currently facing, legal employers who hire those licensed with provisional status may not be willing to pay these employees the salary they might make as fully licensed attorneys. Instead, employers may pay applicants at the salary they generally choose to pay student law clerks. Further, these employers might choose to forgo hiring recent graduates completely. Instead, they may seek out law student clerks and externs to complete the sort of work they might assign to provisionally licensed associates or incoming attorneys. Student law clerks and externs have a similar level of experience to recent graduates, and student practice licenses give them similar opportunity to engage in supervised practice. All things roughly equal, student practitioners may be more appealing to employers than recent graduates because student practitioners can be hired at lower pay or for no pay at all.

Employers who hire 2020 bar applicants will face significant uncertainty.

Should employers choose to hire provisionally licensed applicants in spite of the concerns above, employers themselves will take on an additional burden in doing so.

Provisional licensure imposes a burden on employers in requiring them to provide an enhanced level of supervision to new employees. Provisional practice structures work best for certain employers—generally, big firms. Those firms often have robust supervision structures already in place. But other employers—smaller firms, non-profits, or public defender's offices, for example—can't offer the level of supervision that some of these provisional practice programs may require. These less-resourced employers rely on their first-years to be able to act on their

own authority, and often without a sign-off or approval from a supervisor. Imposing additional supervision requirements on employers like these would create a significant burden that might impact their overall ability to provide legal services.

Beyond this, the requirement that employees take the bar at a later date disadvantages employers and clients. Because employees will need to study and prepare for the bar, they will have multiple months where they will be less available to serve employers' and clients' needs. These preparations will almost certainly include taking multiple weeks out of the office to complete the final phases of bar study and sit for the exam itself. Employers will feel the impacts of losing employees for this period time. This will be exponentially true for those employers, like big firms, that hire large classes of employees. Those employers will lose multiple employees at a time. Furthermore, clients who develop one-to-one relationships with provisionally licensed attorneys, as may be the case in non-profits and in indigent defense services, will be impacted by an interruption in services while these applicants are away from the office.

Employers also must accept that, given the challenges of studying for the exam while working, there is a significantly greater than normal likelihood that those they have hired will fail the exam on their first attempt. Employers must determine how they will approach this problem and whether they will commit to continuing to supervise the practice of employees who fail as they make an additional attempt at bar passage.

Graduates who successfully complete a period of supervised practice can prove competence without the need for an exam.

Finally, requiring graduates who complete a successful period of provisional licensure to sit for the exam at some undetermined future date is inconsistent with the stated goal of the bar exam, which is to protect the public by ensuring attorney competence. If an applicant is able to practice successfully for a period of months under the supervision of a licensed attorney, and in that time the supervisor notes no incidents that give rise to concern about the applicant's competence or fitness, this in itself proves the applicant's readiness for practice. Requiring applicants to sit for an exam once their competence and fitness have been established in this manner needlessly creates an additional hoop through which applicants must jump.

For these reasons, provisional practice is not the right solution to the challenge this Court currently faces in providing a new licensing scheme for applicants. Granting an immediate diploma privilege, as described by my colleagues in their comments, is the only equitable option. I appreciate your consideration and your attention to these issues.

Sincerely,

/s/ Alyssa Leader
University of North Carolina School of Law
Class of 2020

Sarah Hernandez, J.D.
slivingston5@ymail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Sarah Hernandez, a 2020 graduate of the University of Baltimore School of Law and Maryland Bar applicant, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. As many of my fellow graduates have expressed, this experience of preparing for a bar exam during a pandemic has taken quite a toll on my mental health. My stress levels have been so high that I began to have physical symptoms, requiring me to undergo various procedures, blood tests, and exams. I was finally told that it was a product of stress. While I am reassured that I do not have any serious health problems, I am also concerned that I am so stressed out that I am making myself physically sick. And yet I recognize that I am one of the lucky ones. I have a strong WiFi connection and a relatively quiet place to study (except for my husband's work calls that are unfortunately quite loud in our small apartment). I worry about my friends and colleagues who live with multiple people, have to watch their children, or do not have access to reliable internet. Even in my relatively privileged situation, I still worry about unplanned interruptions during an online exam.

My greatest concern is the actual administration of the exam. ExamSoft's administration of the exam in Michigan to less than a thousand people is not at all reassuring given that the server crashed. I do not believe I can even adequately express how stressful it would be to be all ready to go to take the exam and then not be able to access it.

My fellow graduates and I are not trying to get out of taking the bar exam. I have been ready for three years to take this exam. To be honest, I actually don't mind taking exams (weird, I know). But the bottom line is this – ExamSoft and the SBLE cannot guarantee that they will be able to safely and securely administer the exam. I believe it is unfair to put applicants through this incredibly stressful situation without such a guarantee.

I recognize that the Court must balance a variety of interests while making this decision. For us graduates, all we want is to get to work and start making a difference in the lives of our fellow Marylanders. I believe that the Diploma Privilege Plus option laid out in the Emergency Petition will allow graduates to do that while also safeguarding the public.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Sarah Hernandez

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

August 24, 2020

*Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus*

Dear Chief Judge Barbera and Associate Judges,

I am a 2020 law school graduate and current Maryland bar applicant. I would first like to thank this Court for opening this public comment period, and for listening to the concerns that bar applicants have about the licensure process this year. I write in support of Diploma Privilege for Maryland's Petition urging Maryland to adopt Emergency Diploma Privilege Plus. I urge the court to thoughtfully consider the positions and circumstances of many law students due to the global COVID-19 pandemic.

It is hard to put into words how all of the changes surrounding the bar exam are affecting me. Unlike many of my peers, I am fortunate to be living and studying somewhere where I have my own quiet room to work in and somewhat reliable internet access. I am still under my parent's health insurance, I was able to move back in with my parents so I am not paying rent, and I have a secure job offer starting in January 2021 so I do not have to worry about my start date getting pushed back or having to work full time while studying. I undoubtedly know that I am one of the luckier ones.

However, I do feel like this new remote exam is going to be less about testing applicants' knowledge of the material and more about testing how applicants are surviving during this pandemic. I am having a much harder time staying focused on studying when there is so much unrest going on in the world, and the stress and anxiety that comes with the changing dates and unknowns surrounding the remote bar exam is overwhelming.

While the thought has crossed my mind that an exam based mainly on memorization of the entire legal world is the not best way to measure someone's competency to practice law, I believe that one of the most unfair aspects of this new remote exam is the lack of the ability to use physical scratch paper. As I think back over my many years of schooling and testing, I cannot think of a single time when I have not been allowed to have a writing utensil and paper, whether it be a test booklet or scratch paper, at my disposal. Throughout law school we were taught to diagram essay answers, make timelines for property or contracts questions, and underline or highlight important facts in multiple choice and essay fact patterns. Now, as I am taking my bar prep course, I feel like I am being mocked every time the pre-recorded lectures tell me how important it is to diagram and outline and underline. Barbri recently sent out a new YouTube video about how to take this exam without paper, and even on that video the president of Barbri said doing an MPT all online will be nearly impossible. I have been studying and practicing while trying to simulate these new conditions and I worry that instead of being tested on the material, I am being tested on the conditions of this new test.

I also share many of my colleagues' concerns regarding the ability of ExamSoft to successfully administer the remote exam to over 30,000 applicants at the same time. It is terrifying to think that the system could get corrupted or shut down in the middle of the exam. The problems that other jurisdictions have faced have not truly been addressed or fixed and the SBLE has not proposed how they plan on administering the exam in a way that will be completely free from those problems.

During these unprecedented times Emergency Diploma Privilege Plus is the most equitable and compassionate solution for 2020 bar applicants. I do understand the need for new attorneys to prove their competency to practice law. A Diploma Privilege Plus solution that requires graduation from an ABA accredited law school, a passing MPRE score, the Maryland Law component, and approval by the character and fitness committee will still guarantee an applicant's ability to practice law. Speaking personally, I graduated cum laude from an ABA accredited law school, represented clients in my law school clinic program, had four internships/externships representing clients throughout three years of law school, and even conducted a jury trial the summer before my 3L year. My success representing clients during these experiences proves my competence to be a practicing attorney more than an online exam of 100 multiple choice questions and three thirty-minute essays will.

I thank the Court for its time and consideration on this urgent matter.

Respectfully submitted,

Allison Friedman

[EXTERNAL] Comment Regarding Diploma Privilege

Kiran Jeevanjee <kj.aulr@gmail.com>

Mon 8/24/2020 2:55 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To Whom It May Concern:

I am submitting a comment in support of adopting diploma privilege for the state of Maryland. While the Court's mandate of the bar examination is a tool by which the court protects prospective clients and the assurance of ethical/orderly practice of law, the current circumstances resulting from the COVID-19 pandemic complicate matters. Recent law school graduates have been subject to changing examinations dates, potential delay of licensure, and emotional and financial hardship as a result of the pandemic. The Court should grant plenary admission to graduates of the American Bar Association-accredited schools who registered to take the bar examination and otherwise meet the court's standards for admission. This not only protects recent graduates, but also employers who are planning to welcome new graduates into their organizations.

Sincerely,

Kiran Jeevanjee

Darnell Ray
Darnell.Ray@gmail.com
August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Darnell R. Ray II, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Exam soft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Darnell R. Ray II

[EXTERNAL] MD Diploma Privilege Comment

Emily A <emilyahdieh@gmail.com>

Mon 8/24/2020 2:57 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good Afternoon,

My name is Emily Ahdieh and I am a 2020 law school graduate planning to sit for Maryland's remote bar exam on October 5-6. I would like to express my support for diploma privilege as well as highlight a few issues with the reply by Maryland's State Board of Law Examiners to this Court's order. First, in response to concerns about Exemplify's documented failure to provide exam passwords, the SBLE confidently replied that examinees have the option of receiving the exam password via text message on the day of the exam. This "solution" is incongruent with the SBLE's own testing procedures, which forbid examinees from having cell phones in the room during the exam. Moreover, this is not a real solution to Exemplify's documented failure to provide exam passwords in a timely manner. Exemplify failed to provide this service when Michigan examinees relied on the software and Exemplify has done nothing to illustrate that this failure will not be repeated when thousands more examinees from across multiple states rely on the software simultaneously in October. Therefore, SBLE's confidence that examinees will receive the requisite passwords for the exam is either unwarranted or it is supported by facts that SBLE has not shared with examinees. Second, the SBLE has brushed aside examinees' concerns about the availability of appropriate testing environments. After providing examinees with an extensive list of stringent testing requirements, the SBLE stated that examinees have not expressed difficulty in finding an appropriate testing environment that comply with the required testing conditions. The SBLE also suggested that examinees can take the exam in a library. This is another impractical "solution" from the SBLE because one of its testing condition requirements is that examinees must be alone in the room where they are taking the exam. Therefore, examinees cannot take the exam in a library unless they are in an individual room. In fact, my law school is providing classroom space for graduates taking a remote exam, however, I cannot utilize this option because I am not guaranteed to be alone in a room therefore I would be in violation of the SBLE's testing requirements. More importantly, as an examinee, I am deeply concerned about where to take this exam. My job was delayed due to the bar exam getting delayed, therefore I am currently residing at a family member's house where multiple people are working from home. I cannot guarantee that I will have an environment free of extraneous noise, as the SBLE required. The SBLE made no effort to solicit information from examinees about finding testing locations that will meet the SBLE's requirements, nor did the SBLE express to examinees that they should reach out to the SBLE with these concerns. If the SBLE had done so, I would have expressed my difficulty in finding an appropriate location. Finally, I believe it is important to express the disparate impact that this exam will have on individuals hoping to enter Maryland's legal market. The pandemic has profoundly affected the health (both mental and physical), finances, and futures of law school graduates. The SBLE has failed to sufficiently address these effects in their reply. Countless law school graduates across the country have

experienced surmounting issues with remote exams, with some exams getting cancelled mere days before the expected administration. How are Maryland examinees supposed to have any confidence in the administration of a remote exam when there have only been repeated failures in other jurisdictions with no real solutions? I hope that diploma privilege will be considered for the sake of Maryland's legal market. After final exams, final papers, and multiple jobs/internships, law school graduates deserve the opportunity to demonstrate the knowledge and skills they have spent three years gaining in law school.

Thank you,
Emily Ahdieh, J.D.
Antonin Scalia Law School at George Mason University

Kelly Rogers-Elliott
Retired teacher
krogerselliott@yahoo.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges:

I, Kelly Rogers-Elliott, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. Considering the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to represent community members, such as myself, promptly and diligently.

I believe that granting diploma privilege would demonstrate much needed equity for the diverse group of applicants waiting to begin their law careers. The hard work put forth to reach this point in their goals attests to their capability. To continue to push back the exam impedes plans for clerkships, salary, loan payments, and the ability to have health insurance, among other things. It is quite simply detrimental to this group of people who have shown they are ready to practice law. In addition, the concerns over the online safety of the software and the unrealistic ability to take this exam in households with multiple distractions, promotes an inequity that does not need to be present.

As an educator of 30 years I believe the best way to demonstrate knowledge is by practice and performance. In the "real" world this is what we are expected to do. As Benjamin Franklin is reputed to have said, "Tell me and I forget. Teach me and I remember. Involve me and I learn."

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Kelly Rogers-Elliott

[EXTERNAL] Diploma with Privilege Comment

Mitt Jean <mdljean@gmail.com>

Mon 8/24/2020 3:00 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To whom my concern:

Greetings!

My Name is Mitterand Jean-Francois; I am a 2020 Juris Doctor graduate of the University of Maryland and a resident of Maryland. I am writing against awarding diploma with privilege because its benefits are outweighed by the other privileges that graduate will lose. Specifically, we will lose the reciprocal privileges that many states have widely accorded based on passing the remote exam.

At this point on the grind, students like me have already put a considerable amount of energy and time in preparing for the exam; most of the hardship has already been overcome. Someone who is seeking an easy path to be a lawyer can hardly be deemed cut out for the exigencies of a successful legal career, both in terms of personal stress and economic hardship.

Most of the risks that candidates argue as grounds not to administer the exams would exist in a normal year. For instance, anything personal could happen in the morning of the exam, which would prevent a candidate from starting or completing the exam. A student might lose internet connection just as he could wake up, and his car can start the morning of the exam.

Given that the remote bar exam can be successfully administered based on the high reliability of the Exam Soft and because the benefits of reciprocal privileges are too great to forego at this junction in comparison to the possible—but improbable—risks that are being argued, the bar examiners should administer the remote bar exam in October as planned.

Warmly,

Mitterand Jean-Francois

NAME
[OPTIONAL] TITLE/EMPLOYER
EMAIL ADDRESS

August XX, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, [Yardana Neuman], a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces [and believe that law students that have not taken the bar are well equipped in representing me in any future contractual disputes.] would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
[Yardana Neuman]

Esther Neuman

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, [Esther Neuman], a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces [and believes that those who do not take the bar during this time are equipped to represent and draft future employment contracts if necessary] would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
[Esther Neuman]

Julie L. Gearty, J.D.
University of Maryland School of Law, Class of 2020
geartyjulie@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Court of Appeals
361 Rowe Blvd.
Annapolis, MD 41401
COAClerkoftheCourt@mdcourts.gov

Re: *Comment on the State Board of Law Examiner's Remote Bar Examination Administration*

Dear Chief Judge Barbera and Associate Judges,

My name is Julie L. Gearty and I am a May 2020 graduate of University of Maryland School of Law. I have recently relocated to New Jersey and plan to sit for this state's remote bar examination but feel compelled to submit a comment advocating on behalf of all the law graduates hoping to be licensed in my former home state of Maryland. I come to you as a deeply concerned friend to many applicants. We have spent countless stressful days and sleepless nights talking through the mess that is the bar exam administration this year. We have all been emotional several times due to the sense that the Board of Law Examiners continues to prioritize making money by administering a test over the wellbeing of graduates who desperately want to enter this profession to help make a difference. I would like to share some of their stories.

Speaking from both personal experience and on behalf of my fellow law graduates, those of us who were not fortunate enough to secure a job before the COVID-19 pandemic have virtually no accessibility to employment until we are licensed to practice law. One of my friends shared with me the other day that he signed a lease in January 2020, set to begin in August, and recently move into that new apartment with his fiancé. He was assured in January before signing the lease that he would receive a full-time, postgrad job offer from the environmental public interest organization where he was working at the time. After the pandemic began and the economy took the severe hit it did, his supervisor broke the news to him they would not be extending offers to any of their law clerks that year. He, of course, understood but knew the pressure was on to find new employment before the lease started. He has since found that without a clear, reliable path to licensure, hiring committees continuously tell him that they cannot wait around until whenever he is eventually licensed so they will not go forward with his job application. He then decided to lower his expectations and began applying to paralegal jobs. This was also met with disappointment when hiring committees expressed that they were all but certain he would leave

the paralegal job once he obtained his license and they could not afford to train someone all for them to ultimately leave a year later. He put it this way: “No one wants to hire a J.D. to be an attorney, no one wants to hire a J.D. to be a paralegal, so now I have no idea how to pay for food.” All of this because he has been branded unemployable until he is licensed to practice law, or at least until the Board of Examiners can provide *some kind* of reasonable assurance to a reliable path to imminent licensure. A remote examination in which scores will not even be released until the end of January 2021 is not that reliable or reasonable path. I pray for my friend every day that he and his fiancé manage to get by on her salary alone and they do not end up skipping meals to save money or being evicted for failure to pay rent.

Another friend of mine has ulcerative colitis. She has genuinely been considering taking the remote bar examination from the toilet because her fear is that she will not be able to go to the bathroom if her symptoms flare up during the exam. She is terrified that AI or even human proctoring would flag her as doing something suspicious, or possibly for cheating, if she were to excuse herself, ultimately canceling her scores. If this isn’t unconscionable, it is hard to imagine what is. Further, her student insurance has expired since graduation and her start date for her job was pushed back to February 2021 because she is still not licensed. Accordingly, she does not currently have health insurance. There was one evening recently when her pain was so severe that she would have otherwise taken herself to the emergency room for pain management. Now, she avoided the cost of the trip without coverage and instead suffered at home, in excruciating pain. All of this because the bar examination must prevail above all else.

A third friend of mine is currently five months pregnant, she will be nearly 7 months pregnant by the time the remote bar exam is finally set to happen. She has confided in me that her concerns are two-fold. The first is her scores will be canceled because she winces or fidgets in her seat because she is uncomfortable, feels pressure sitting in one position for too long, or is experiencing any kind of cramping. She worries that either AI or a human proctor would interpret through a screen that it seemed somehow suspicious. Her second concern is that if the software does not work in October, when over 30,000 applicants nationwide login to take the exam, she cannot be readily available to take the exam one, two, or three months later if it gets postponed again. She could physically be in labor or recovering in a hospital. We cannot keep imposing added anxiety on women in this vulnerable position over how a software will malfunction and how they need to hurry up and recover from giving birth so they can get back to studying for a thrice postponed exam. Expectant mothers deserve more respect and consideration than is being afforded to them by the Board of Law Examiners.

I would like to conclude by pointing out the atrocious media coverage around this issue. CNBC posted an article on August 19, 2020 entitled ‘*Literal hell*’- *how the pandemic made the bar exam even more excruciating for future lawyers*.¹ Another article from the Washington Post from July 13, 2020 is entitled *Why this pandemic is a good time to stop forcing prospective lawyers to*

¹ See Abigail Hess, ‘*Literal hell*’ — how the pandemic made the bar exam even more excruciating for future lawyers (2020), https://www.cnbc.com/amp/2020/08/19/literal-hellthe-pandemic-has-made-the-bar-exam-more-excruciating.html?fbclid=IwAR1bo7arSJtg1lflsNRY_1nFki2V8WFWu4FqcVVMjxzJrigwoMNV6ttuP7A

*take bar exams.*² Further, 126 public interest organizations, including the NAACP Legal Defense and Education Fund, seven state level branches of the ACLU, the Center for Reproductive Rights, National Lawyers Guild, and National Women's Law Center all signed a letter that was sent to the NCBE and 34 state board of examiners to advocate for diploma privilege due to public health and equity concerns.³ These are only three examples of the dozens of articles and press releases that slam the remote bar exam, legal profession, NCBE, various Board of Examiners, state legislators, and even the courts that continue to turn a blind eye to the stories of law graduates who are deeply suffering, far beyond what is justifiable to take an entrance exam testing minimum competency after three years of legal education and successful passage of the Multistate Professional Responsibility Exam. I firmly believe this period defined by chaos and how negligently it has been handled has seriously tarnished the reputation of the legal field and profession as a whole. It is now in the Court's hands to decide to help repair the damage that has been done, by granting diploma privilege to Maryland bar applicants.

At the end of the day, all legal professionals, including those working for the Board of Examiners, need to remember that this is not who we are. We do not sit idly by while pain and suffering are inflicted upon the vulnerable for our own monetary or professional gain. We are trained and taught to be so much better than this. We *are* so much better than this. While the Board of Examiners is not willing to set an example of what a hierarchy of priorities should be for hopeful attorneys, I urge the Court to take this step.

Thank you for your time and consideration,
Julie L. Gearty, J.D.

² See Valarie Strauss, Why this pandemic is a good time to stop forcing prospective lawyers to take bar exams (2020), <https://www.washingtonpost.com/education/2020/07/13/why-this-pandemic-is-good-time-stop-forcing-prospective-lawyers-take-bar-exams/>

³ See Lawyers' Committee for Civil Rights, Press Release (2020), <https://lccrsf.org/newsroom/news-press-releases/public-interest-organizations-advocate-for-diploma-privilege-due-to-public-health-and-equity-concerns/>

Dear The Honorable Chief Judge Barbera and Associate Judges:

This letter is in reply to the comment period regarding diploma privilege in light of the COVID-19 pandemic. Thank you in advance for your time and consideration in this matter.

I unreservedly support a diploma privilege to the 2020 graduates who are registered to take the October 2020 bar exam. I further believe that this privilege should extend until licensed health experts believe that an in-person exam would be safe once again. Although I appreciate the attempts to administer an online exam as opposed to forcing us to attend in-person, I do not believe that there is a realistic way to ensure that the remote October exam will be feasible.

This pandemic has been completely unprecedented in every way. Many of us – both bar applicants and non-bar applicants – have suffered from feelings of helplessness and hopelessness. Since March 2020, everyone has been forced to endure an entirely new way of living and some of us have lost our jobs, family members, and/or livelihood. I am personally a 2020 graduate of the University of Baltimore. We, understandably but sadly, had to sacrifice our graduation ceremony in order to ensure that our family and friends stayed healthy. I do not think a single graduate was surprised by the decision, but we still all worked brutally hard for the last three years for a very anti-climactic ending to our journey.

Seeing as this is new territory for everyone involved, it is understandable that there would be challenges along the way. We all knew once the pandemic evolved that sacrifices would need to be made. However, our legal careers should not be one. The Baltimore Sun shared an article on Facebook regarding the graduates' want for diploma privilege. If you go to the Facebook page, the comments on the article are absolutely astounding. A lot of ignorant people believe that we simply are advocating for diploma privilege as "an easy way out." That is both absurd and uncalled for. We all entered law school fully aware of and anticipating the bar exam at the end of our formal legal education. I genuinely would give anything to have the typical experience of spending 8 – 12 weeks studying full time for the exam and then taking it under

normal circumstances. I was excited to have the accomplishment of passing the bar, an exam which is universally known for being difficult and grueling.

As stated above, I am appreciative of the efforts of the SBLE to administer an online exam. I understand that there is hesitation to eliminate the bar exam completely because it is a “rite of passage” into the legal community, but I would like to bring to your attention to amount of criticism we as graduates during the pandemic are already enduring. Because the bar exam will be cut in half, we are already facing criticism that October exam-takers will somehow be less qualified to practice law. Those who are not taking the October exam have referred to it as the “dummy bar” or the “easy way out.” These are the same insults that come with diploma privilege, as well.

Ultimately, this is an exam that will dictate the rest of our lives. Our future is quite literally dependent on the bar exam. I have classmates who are taking the Florida bar exam, and I have watched their mental health absolutely deteriorate from the way that that exam is being handled. One of my friends in particular has been studying since May just to experience the exam being postponed three times now, once just days prior to the date scheduled. I fear that the same will happen to Maryland. No state as of yet has safely administered an online bar exam. We should be focusing on the material of the exam, not worrying about software problems.

Many of us do not have a space yet to take the exam. Again, we should be solely focused on learning the legal material, but instead, most of us are mainly stressing about technical issues. I personally live with three roommates and cannot guarantee that I will have a quiet room to take the exam. Background noise will always be an issue for me, and we are not even allowed to wear headphones. I am aware that in the SBLE’s response to the diploma privilege petition to the Court, they contended that the law schools are apparently working to provide rooms for those of us who need the space to take the exam, but please be advised that we have not yet heard anything formal from the University of Baltimore ensuring that this is true. I have

reached out to professors of mine who verified that the UB staff is diligently working on the issue, but that the availability of rooms will be completely dependent on the status of the pandemic at that time. Therefore, we would have to be in the dark about the room situation until possibly last minute.

In addition to the uncertainty about availability of rooms, the majority of bar applicants have no choice but to work full time during bar prep. I originally had intentions of taking ten weeks off of work when the exam was scheduled in July, and then had the same intentions when the exam was scheduled in September. However, when the exam was postponed to October, my employer could not accommodate my start date being postponed that late. I know many of my former classmates and colleagues are in the same boat. This is not a typical situation and none of us were given the choice to focus solely on bar prep. As a result, the majority of us are suffering emotionally, mentally, financially, and physically.

I beg the Court to understand that none of us are looking for a free pass. We all have worked hard in our endeavors to reach the end of our legal education and none of us are lazy by any means. We have endured countless law school exams and have taken the MPRE. The pandemic has caused emotional and financial turmoil for people of every profession. Even today (August 24), the start of the semester at many universities and schools, software is failing across the country. Zoom failed for approximately 17,000 people throughout the day. (See <https://www.ajc.com/news/breaking-zoom-crashes-for-users-across-the-globe/V6ZYIKEYNVFDVAGEOVEFPZRWQA/>). I cannot fathom that ExamSoft would be able to function successfully with approximately 30,000 bar takers in October. The only fair option at this point is diploma privilege. Thank you again for your time and consideration in this matter.

Respectfully submitted,
Stephanie Broznowicz, J.D.

Payton M. Aldridge, J.D.
13 E Read Street Apt. 9, Baltimore, MD 21202
payton.aldridge@ubalt.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Payton Aldridge, am a 2020 law graduate, and I am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. The COVID-19 pandemic has caused unprecedented difficulties for practically every institution. I was relieved when the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, it is clear that there are still a number of barriers that prevent a remote October bar exam from being an equitable solution.

While graduating from law school during a pandemic was not how I imagined beginning my legal career, I also believe it has showed the true strength and resilience of my colleagues. We are aware of the challenges ahead of us, because we have experienced great and unanticipated challenges at the beginning. Some of us have struggled with the loss of family members, isolation, and financial troubles. I personally lost my job due to the pandemic, and the added stress of financial uncertainty has caused another level of fear on an already terrifying time. But I know I am not alone in these circumstances. Many fellow law graduates are also from low socioeconomic backgrounds, and are first generation lawyers, and are not able to rely on others to support them during this time. Furthermore, many others are doing their best to parent their children, or take care of elderly family members. While these new challenges are not specific to the legal community, it is true that facing these challenges while studying and attempting to take the bar exam are undoubtedly going to affect the results.

I believe it is important to also state that we are not arguing for diploma privilege *because* it is difficult, we are doing so because it is unjust. The bar exam has always been a challenge for those seeking to be admitted, but it is impossible to ensure that the exam will be equitable, safe to administer, and will not unjustly affect those of low socioeconomic backgrounds, people of color, and people with disabilities at a much higher rate. The Maryland State Board of Law Examiners failed to address these concerns in their brief in any way. During my law school career I was a founder of the Students for Equity in Education (SEE) organization, and have been aware of the many barriers to a legal education for those with disabilities. A remote exam not only exemplifies these barriers, it exploits them. For example: a bar taker with a learning disability such as Attention Deficit Hyperactive Disorder (ADHD) must choose between taking a remote exam that will fail them for looking away from the screen or touching their face (automatic physical reactions of those with ADHD that cannot be controlled) or risking their life and the life of their family members or cohabitators to take an in-person exam with accommodations. I chose to attend law school to represent people with disabilities, and I am horrified that this is how the legal

community is treating them. This is discriminatory and should not be taken lightly, especially in a career field that has built itself upon zealous advocacy.

I take great pride in my success, and I sincerely would not advocate for emergency diploma privilege in any other circumstance. However, it is the only equitable solution. I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. Furthermore, both of the Deans of the law schools of Maryland have joined us in advocating for diploma privilege, and as respected members of the legal field, their trust in their graduates should not be taken lightly.

Despite everything, I am so proud of my class of graduates for all they are doing to persevere during this time. I feel safe and supported knowing that the future of this career field is in the hands of those who have come through this dark time, and who will not stop advocating for each other. However, I also know we need the support and advocacy of the entire legal community in order to continue to succeed. I ask that the Court take our concerns into consideration, and make a decision that they feel will best support the legal community. I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Payton M. Aldridge

Matthew Morris
Maryland Carey Law Class of 2020 and current Tennessee Bar applicant
Matthew.morris@umaryland.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Matthew Morris, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I have seen the issues that currently face the Baltimore region and the good work that my former colleagues participated in and will continue to participate in. These newly appointed lawyers will make the region a better place for their work. This community would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Matthew Morris, J.D.

[EXTERNAL] Emergency petition granting emergency diploma privilege

Katina Anderson <kanderson358@gmail.com>

Mon 8/24/2020 3:18 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Katina Anderson

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

[361 Rowe Blvd](#)

[Annapolis, MD 21401](#)

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Katina Anderson, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination. The October administration of the Bar Exam will be thousands more people logging on at the same time which will lead to issues with the program. Additionally, there are numerous privacy violations that will likely occur from using this software with the constant monitoring.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination

further assures the protection of the public. The 2020 graduates can have a mandatory CLE requirement with more hours to ensure that they are staying up to date on their professional duties.

I am asking you to show compassion for the 2020 graduates and grant them diploma privilege this year. They have suffered enough and their time would be better spent serving the community and practicing law.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Katina Anderson

[EXTERNAL] Advocating for Diploma Privilege for the bar exam

Marissa Simone <marissabaly@gmail.com>

Mon 8/24/2020 3:20 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good afternoon,

I am emailing to advocate for Diploma Privilege for the Bar exam. Many young people have been trying to take the Bar exam for months, and the online "solution" that the Bar exam is offering is no solution at all. There are many issues with the software and the rules with the software.

Thanks,
Marissa

Marissa Baly Simone

Megan T. Sunderland, J.D.
University of Maryland Francis King Carey School of Law
Class of 2020
msunderland@umaryland.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Boulevard
Annapolis, Maryland 21401
COAClerkoftheCourt@mdcourts.gov

Re: Comment on the State Board of Law Examiners' October 2020 Remote Bar Examination Update

Dear Chief Judge Barbera and Associate Judges:

My name is Megan Sunderland I am a 2020 graduate of the University of Maryland Francis King Carey School of Law (“University of Maryland School of Law”). I am currently registered to take the remote bar exam on October 5 and 6, 2020 in an attempt to gain admission to the Maryland bar. In response to the Court’s request for comments, I am writing to express my unequivocal support for the Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus filed by the advocates at Diploma Privilege for Maryland.

Almost three years ago, I walked into the University of Maryland School of Law in downtown Baltimore excited to begin my legal education. In the back of my mind, I knew that the bar exam would be my final step in becoming an attorney and have been prepared for that challenge since my first day of law school. However, the past five months have brought about extraordinary change to the world around us. The COVID-19 pandemic has made teamwork, solidarity, and creative problem solving more essential than ever in ensuring that citizens are supported throughout this time of crisis. With that, I can certainly appreciate the challenges that the Court and the SBLE have faced in determining the proper way to proceed with this year’s bar exam.

One of my primary concerns in proceeding with a remote bar exam is the technological feasibility of such an exam. Eighteen states, including Maryland, have chosen ExamSoft as their vendor for the October administration.¹ ExamSoft is one of three vendors that initially planned to administer the remote bar exam.² Among these vendors, similar exam technology is used by ExamSoft and Extegrity.³ On July 27, 2020, Extegrity concluded that it would no longer

¹ Diploma Privilege for Connecticut, *Tracking Bar Exam Software Use*, GOOGLE SHEETS (Aug. 24, 2020, 1:07 PM), <https://docs.google.com/spreadsheets/d/1t09gL-jMkGXt4gCE78k85nd94GuuZXrbMJKBgxKW3Ik/edit#gid=0>.

² Diploma Privilege for Maryland, *Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus*, 1, 6 n.32 (July 31, 2020).

³ See, State Board of Law Examiners, *October 2020 Remote Bar Examination Update*, 1, 2–3 (Aug. 18, 2020).

administer the remote exam.⁴ The ABA Journal recently published an interview with Greg Sarab (“Mr. Sarab”), the founder and CEO of Extegrity.⁵ During the interview, Mr. Sarab discussed the feasibility of and recent issues with remote bar exams, stating that, “[s]o far, what you’d want to see is every single test run and exam day going off like clockwork, and they haven’t[.]”⁶

As an applicant, Mr. Sarab’s statement troubles me. The issues with the remote exam have occurred on a state-by-state basis thus far,⁷ presenting an entirely new challenge when administering the exam in numerous states on the same two days in October. For the past year, my plan was to take the July UBE exam in Maryland and begin my clerkship in August. However, because the exam was delayed, I will now begin my clerkship on October 7, 2020, the day after the exam. Although I am grateful that I am currently able to study without simultaneously working, I am faced with new questions each day: Will the exam software encounter a technological issue that prevents me from taking or finishing the exam? What will happen if the exam is unable to proceed in October? How much notice will I have if the date of the exam changes once again? Will I have to adjust my schedule to account for working while continuing to study for the exam? These are just a handful of the questions that I have considered in recent months, but I have learned that the answers to each are relatively unknown.

I am one of many recent graduates who are faced with a significant amount of student loan debt after pursuing law school. Before the pandemic, my student loans were scheduled to enter repayment status during the final months of 2020. Under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), my student loans will not enter repayment status until at least January 2021.⁸ While this relieves some of my burden, I am depending on a flawless administration of the October exam in order to obtain my license and qualify for a raise in my clerkship salary⁹ as I begin to repay my student loans. If the remote exam cannot proceed, I will not only face greater strain in attempting to repay those loans, but my ability to become licensed and obtain a post-clerkship position will be delayed. I graduated from college in 2016 and began law school in 2017, earning limited funds while working during that yearlong educational hiatus. I currently live with my mother, who owns a business that has been essentially inoperable since the beginning of the pandemic. In planning for the repayment of my student loans, I have very little savings to rely on and cannot ask my mother for assistance. Accordingly, not knowing whether the exam will be able to proceed has caused me significant stress when considering my financial future.

As I mentioned at the beginning of this letter, I realize that the Court and the SBLE have encountered challenges while planning to administer a remote bar exam this year. However, the

⁴ *Id.* at 3.

⁵ See Stephanie Francis Ward, *Software provider pulls out of remotely proctored bar exams because of technology concerns*, ABA J. (Aug. 24, 2020, 1:58 PM), <https://www.abajournal.com/web/article/due-to-technology-concerns-software-provider-pulls-out-of-remotely-proctored-bar-exams>.

⁶ *Id.*

⁷ See Diploma Privilege for Maryland, *supra* note 2, at 5–10.

⁸ U.S. Department of Education, *Coronavirus and Forbearance Info for Students, Borrowers, and Parents*, FED. STUDENT AID (Aug. 24, 2020, 2:15 PM), <https://studentaid.gov/announcements-events/coronavirus>.

⁹ See Maryland Judiciary, *Law Clerk Information*, MD. CTS. (Aug. 24, 2:22 PM), <https://www.courts.state.md.us/sites/default/files/import/hr/lawclerks/pdfs/information-sheet.pdf>.

uncertainty of whether such an exam is feasible has become a substantial burden for applicants, including myself. In light of the COVID-19 pandemic, I believe that the most reasonable solution is to grant Diploma Privilege Plus in Maryland. This would allow me to begin my clerkship sooner, establish a concrete plan for the repayment of my student loans, and take steps to secure a post-clerkship position during this time of economic decline.

Since my first day of law school, I have looked forward to entering a profession that I have long regarded as being founded on equity, adaptability, and empathy. Granting Diploma Privilege Plus during this time of crisis would be a testament to that foundation, resolving applicants' growing uncertainty while continuing to ensure that they are qualified to enter the legal profession.

I sincerely appreciate the opportunity to submit a comment to the Court regarding this important matter. Thank you for your time and consideration.

Respectfully,

Megan T. Sunderland, J.D.

[EXTERNAL] Comment on 2020 Bar Exam & Diploma Privilege

Cassandra Brumback <cassandra.brumbach@ubalt.edu>

Mon 8/24/2020 3:23 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Cassandra Brumback

3L Law Student, University of Baltimore

cassandra.brumbach@ubalt.edu

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Cassandra Brumback, a law student, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity this has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community & a law student, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who may need affordable legal assistance, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

As a law student, I urge you to consider diploma privilege because my colleagues in the class of 2020 have unnecessarily suffered a great deal, through months of full time study, for an exam that is a technological uncertainty and that will not give them the customary mobility of the UBE. They paid fees of over \$750 and this online exam with 3 state reciprocity

is not what they paid for. In addition, many esteemed practicing attorneys admit that the material on the bar exam has little bearing on their everyday practice and that it is merely an archaic ritual meant to keep low income students out the profession. Who else but a wealthy student could afford the 5 months + of full time study, and an expensive prep course and fees, with no insurance and no income? This is unjust and impractical. The coronavirus has exposed the pointlessness and impracticality of the bar exam and I hope you will suspend it.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Cassandra Brumback

Cassandra Brumback

J.D. Candidate | Class of 2021

University of Baltimore School of Law

Publications Editor, *University of Baltimore Law Review*

cassandra.brumback@ubalt.edu

Connor Mulvey
111 North St.
West Pittston, Pennsylvania 18643
(570)-466-4118
connormulvey@gmail.com

August 24th, 2020

In re: DIPLOMA PRIVILEGE FOR 2020 MARYLAND BAR APPLICANTS

Dear Maryland Court of Appeals,

My name is Connor Mulvey. I am a bar applicant for the Washington D.C. bar examination expressing my support for the institution of emergency diploma privilege in Maryland.

I recognize the devastating effects the COVID-19 pandemic has had on our country. More specifically, I recognize the distressing effects it has had upon the 2020 bar applicants and upon those in our community who most need access to justice. I therefore strongly support the petition before the Court of Appeals, advocating for emergency diploma privilege.

As a bar applicant in this cycle, the consistent failures of testing for the online exams have shined a light on the impossibility of conducting such an exam this October. One company, Extegrity, has fully recognized that it is impossible to hold an online bar exam this year. Another company, ILG, just underwent a testing phase which resulted in catastrophic failure. Examinees' computers were damaged, their data and privacy were breached, and the technological problems were insurmountable. The final company, Examsoft, held an online bar in Michigan which was allegedly attacked by outside actors, harming the integrity of the exam.

Despite efforts to make the exam feasible, there has been little to no success. As an applicant, if an online exam were to be administered, I am deeply concerned for my privacy, property, and future. If an online exam were to be the method for this cycle it must be rigorously tested and made secure. A technological glitch or cyber attack should not be a factor in determining, or even have the potential to be a determining factor, whether a person be admitted to the bar. In normal circumstances we would not have to worry about something entirely outside of our control keeping us from passing the bar. These are not normal circumstances, and the concerns regarding effective administration are plaguing this cycle. The risk of harm to applicants is simply too high. We should not gamble futures on an unstable, improperly tested software.

Further, the uncertainties of facial recognition software and the demonstrated vulnerabilities of the exam software pose a risk to applicants' ability to obtain or maintain a security clearance. This liability particularly impacts applicants whose future careers may hinge on that security clearance. Many of our jobs, offers, or potential career tracks may be put at risk by an improperly tested program whose weaknesses we still do not know the full extent of.

Additionally, the proposed solution of provisional licensure is insufficient to meet the current and long-term needs of employers, clients, and prospective licensees. Provisional licensure, in practice, only delays addressing the problem, forcing all involved in the legal system to bear future costs. For those of us who are able to practice under a provisional licensure scheme, we will have effectively practiced law for a period of time and then be required to cease working and take an exam, really only serving as a months long roadblock to continuing work we have already been doing. For employers, this means attempting to put into place a level of psychic future-planning to ensure that workloads can bear the absence of reliable workers, and make economic calculations relating to keeping people on staff while giving them the necessary time to sit the exam. For clients, this means that there is the potential for an abrupt drop in communication with ongoing cases for up to several months. None of these scenarios provide an ethical option for the industry to implement. Although provisional licensure may be a short-term option for a very small proportion of applicants, the long-term and wide-ranging disruption that would result requires an alternative that provides certainty, reliability, and relief for applicants, employers, and clients: diploma privilege.

Provisional licensure also particularly impacts those whose jobs are both time-pressured and contingent on licensure, especially military jobs like JAG. These offers are also contingent on onboarding without a particular timeframe, and provisional licensure would force the entire scheme of federal and military offices to re-organize huge portions of their budgets, training, and travel to accommodate the court's inability to provide a quick and reliable answer to a problem outside of everyone's control. A provisional licensure scheme is a short-term solution to a long-term problem, and exacerbates the struggles faced by applicants in this cycle. It is for these reasons that emergency diploma privilege is the only answer.

Diploma privilege advocates have already recognized the need for a recipient of admission in this fashion to conform with the prerequisites of MPRE passage as well as satisfying the Character & Fitness requirements. In light of the circumstances, it is more than reasonable to put in extra conditions should the Court implement emergency diploma privilege in order to assure competency and to protect the public.

Many suggestions have been offered throughout these last few months as to what additional requirements should be imposed on diploma privilege recipients. Among these suggestions are mandatory CLE courses, fulfillment of a certain number of pro bono hours (either already completed or to be completed before full admission), and/or working a certain number of hours under the supervision of a licensed attorney. Each of these options serve the goal of protecting the community, and allowing 2020 applicants to be admitted without risking health or security.

Additionally, requirements to earn hours through public service work under the supervision of a licensed attorney would further serve the commitment of the Maryland bar to protecting underserved communities, especially during these times of immense hardship.

Pro bono requirements could be achieved for 2020 applicants by allowing applicants to submit letters of certification from their law school showing clinic or other pro bono legal work

completed on behalf of a legal aid clinic, law school affiliated legal clinic, or other legal non-profit. Applicants without supporting documentation for pro bono, can meet the requirement by completing a court-prescribed number of pro bono hours within a reasonable time after licensure. The Maryland Bar could even facilitate additional CLE courses that bar applicants would be required to complete.

Thank you for listening to my concerns.

Respectfully,

Connor Mulvey

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Keadija Wiley <kcwiley2@uncg.edu>

Mon 8/24/2020 3:25 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Keadija Wiley
Doctoral Student

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Keadija, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Keadija Wiley

--

Keadija Wiley, M.S.
Doctoral Student
Department of Human Development and Family Studies
Stone Building 188
University of North Carolina at Greensboro
kcwiley2@uncg.edu

Aryana Gilani
agilani@sandiego.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Aryana Gilani, the sister of a 2020 Maryland bar applicant – Kimiya Gilani, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a 2020 Maryland bar applicant's sister, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. As Kimiya's sister and closest confidant, I have witnessed the stress, anxiety and financial burden that the postponement of the bar has caused. Kimiya and her peers have worked tirelessly in preparation for the bar while continuing to adjust and adapt to all of changes that have occurred. These circumstances are abnormal and unprecedented and should be heavily considered for emergency diploma privilege so that all 2020 October bar applicants can safely and effectively start their careers. I, our family, and the community will benefit from a Court order granting all of us.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Aryana Gilani



**OFFICE OF THE
STATE'S ATTORNEY**
CECIL COUNTY, MARYLAND

JAMES A. DELLMYER

State's Attorney for Cecil County, Maryland

Circuit Courthouse • 129 East Main Street, Suite 300 • Elkton, Maryland 21921 • Office: 410-996-5335 • Fax: 410-392-7814

August 24, 2020

VIA EMAIL & REGULAR MAIL: coaclerkofthecourt@mdcourts.gov

The Honorable Mary Ellen Barbera, Chief Judge
Maryland Court of Appeals
c/o Suzanne C. Johnson, Clerk
361 Rowe Blvd.
Annapolis, Maryland 21401

RE: *Emergency Petition for Temporary Suspension of UBE Requirement and Order
Granting Emergency Diploma Privilege Plus*

Dear Chief Judge Barbera:

As State's Attorney for Cecil County, I write in favor of the 2020 Maryland Bar Candidates' Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus.

The Maryland criminal justice system as a whole is in need of attorneys. I believe that it is in the State's best interest to adopt a temporary emergency diploma plan that would allow recent law school graduates to begin working under the supervision of practicing attorneys.

This need is particularly acute for Public Defenders and State's Attorneys. The COVID-19 pandemic has affected our communities and offices directly. With the courts being closed and trials being postponed, our office's caseload has grown tremendously. Trials are accumulating and overlapping causing scheduling conflicts, and in order to alleviate said conflicts, our office requires additional staffing. We need attorneys present at preliminary hearings, motions hearings, and sentencings, and in order to refrain from rescheduling trials further due to lack of attorney availability, we simply need immediate assistance from new attorneys.

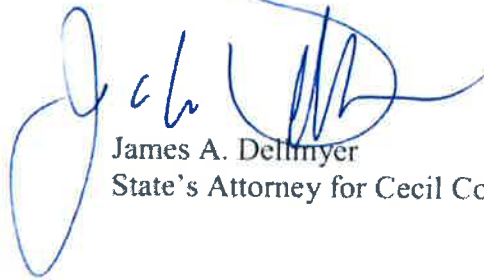
State's Attorneys, whose offices are funded by County governments, have far more limited resources and, as a result, offer lower entry-level salaried positions. Since we are typically unable to offer salaries that are competitive with the private sector, we must seek out newly admitted attorneys for these entry level positions.

Anecdotally, I have felt this pressure in our Office. While interviewing for an Assistant State's Attorney vacancy, I frequently found candidates who graduated from law school and are waiting to take the bar exam. Many of these candidates exhibit strong academic credentials and have a sufficient work history which indicates that they will make good prosecutors. I am confident that these individuals, under proper supervision and training, will be well-equipped to prosecute cases in Cecil County. Any person hired under such a program would be required to undergo rigorous training in our Office.

Any risk that may adhere to this decision is far outweighed by the benefits it can offer to State's Attorneys and other public agencies. With diligence, each future employer of these candidates will be able to train them thoroughly further mitigating any such risks.

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in blue ink, appearing to read 'J A Dellmyer', with a large, stylized flourish extending from the end.

James A. Dellmyer
State's Attorney for Cecil County

JAD:kjg

Christopher Jennison
chris.s.jennison@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Chief Judge Barbera and Associate Judges of the Court of Appeals:

I hope this letter finds you well. I am writing pursuant to the Court's August 20, 2020, news release, indicating that the Court of Appeals is accepting public comments through August 24, 2020, regarding the State Board of Law Examiner's (SBLE) update endorsing an October 2020 remote bar examination using ExamSoft and testing materials provided by the National Conference of Bar Examiners (NCBE). I strongly oppose a remote bar examination, and urge that the Court implement emergency licensing in the form of diploma privilege.

I am an active member of the Maryland bar (2016) and of the District of Columbia bar (2019). Though my practice has been in the federal government in D.C., serving as an Attorney Advisor for the Federal Aviation Administration, I have taken several pro bono matters in the Maryland courts and call Montgomery County, Maryland my home. I have been a member of the American Bar Association's Board of Governors (2015-16), a representative from the Maryland State Bar Association (MSBA) to the ABA's House of Delegates (2017-present), an officer of the ABA's Law Student Division (2015-16) and Young Lawyers Division (2019-21), and a member of the MSBA's Young Lawyers Section Council (2017-present). Currently, I am the immediate past chair of the MSBA's Section of Legal Education and Admissions to the Bar (2018-20) and

am a Young Lawyers Section representative on the MSBA's Board of Governors (2020-22). In 2016, I drafted and advocated for the American Bar Association to urge jurisdictions to expeditiously adopt the Uniform Bar Exam (UBE). Maryland answered the call then and in 2017, I testified before an Advisory Committee of this Court in favor of Maryland adopting the UBE. I am an active student of legal education and academia, at the state and national level, and an advocate for moving the Maryland courts forward to best serve the people of our state.

I am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, I co-authored and advocated ABA House of Delegates Resolution 10G, which was adopted on August 4, 2020. Though the Court should have received a copy of this resolution and a letter from ABA President Patricia Lee Refo on August 7, 2020, I am enclosing a copy of the resolution for your consideration. This resolution, in addition to calling for cancellation of the in-person exams, calls for the establishment of temporary emergency measures to expeditiously license recent law school graduates and other bar applicants, and raises a number of considerations if a jurisdiction adopts an online examination- which the SBLE has recommended. Here the clear emergency measure is diploma privilege.

The pandemic and ensuing recession have caused job loss and financial insecurity, as well as collateral food and housing insecurity, on not only bar applicants but also on the residents of our state. The Court of Appeals has immense responsibility in ensuring quality of the practicing bar, but it also has responsibility to do what is in the best interests of both current and future members of the bar and residents of our state. Limiting the ability of law graduates, who have studied for three or more years while expectantly waiting to enter the profession, paid or borrowed enormous sums of money, to advocate as a member of the bar, would be unjust to those who are

knocking on the door of the profession. It would also be detrimental to the legal profession's quests for access to justice, given that these individuals could well be the ones to help lessen the legal burden that will be crashing down with the ongoing pandemic and recession.

The Court of Appeals has also sought, under the direction of Chief Judge Barbera, to address systemic inequalities in the law. A remote examination requires a stable high-speed internet connection and a quiet and safe space during a pandemic in which we are told to stay inside. If an examinee has a roommate or family member on the internet doing work, they may encounter difficulties with limited internet resources. If a parent is taking the exam, they may struggle with children in the home who are participating in virtual school or struggling with caretaker responsibilities for those cooped in the home as well. My wife and I struggle to practice law with our seventeen month old—I shudder at the idea of what an exam with her constant need for attention, a snack, or developmental activities would look like during a two day online bar exam.

In an even worse scenario, should the October remote exam need to be cancelled due to immature software or logistical impossibilities, those who are most likely to leave the profession before entering it are also likely to be those who are confronted with no choice but to find sustainable non-legal work immediately. On the other hand, those who are likely to sit and wait for this Court and the SBLE to find an admissions solution are those who are independently able to make ends meet for months more, without gainful employment or health insurance. While the President has extended provisions from the COVID stimulus regarding student loans through December 2020, there is also a high likelihood that examinees in October would enter repayment on their student loans before having any word on whether they have passed an exam.

As a member of this legal community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE), and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The character and fitness examination is designed to protect the public, get a better background of those seeking to enter the profession, and to better understand who the potential practitioner is and will be. These four elements are enough to determine an applicant's fitness to practice law in 2020.

The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I would feel confident in my colleagues competence in practice and would welcome them taking a seat at the table of our profession, or joining me in court.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Chris Jennison', with a stylized, flowing script.

Christopher Jennison
chris.s.jennison@gmail.com

cc:

Judge Mark Scurti, MSBA President
Victor Velazquez, MSBA Executive Director
Elizabeth Rosen, MSBA Young Lawyers Section Chair
Harry Johnson, Maryland State Delegate to ABA House of Delegates
Judge Pamila Brown, ABA Board of Governors

**AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES**

AUGUST 3-4, 2020

RESOLUTION

RESOLVED, That the American Bar Association urges the highest court or bar admission authority of each jurisdiction to cancel and to not administer any in-person bar examination during the COVID-19 pandemic until and unless public health authorities determine that the examination can be administered in a manner that ensures the health and safety of bar applicants, proctors, other staff, and local communities;

FURTHER RESOLVED, That the American Bar Association urges the highest court or bar admission authority of each jurisdiction to: (1) establish temporary emergency measures to expeditiously license recent law school graduates and other bar applicants when public health and safety concerns preclude safe administration of an in-person bar examination, including but not limited to administration of a remote bar examination, creation or expansion of certified legal intern programs, supervised practice programs leading directly to licensure, a form of diploma privilege, or provisional admission subject to passing an in-person bar examination when public health and safety concerns permit such an examination; and (2) collect and report demographic data on applicants for licensure via such emergency measures; and

FURTHER RESOLVED, That the American Bar Association urges the highest court or bar admissions authority of a jurisdiction electing to administer a remote bar examination to do the following sufficiently in advance of the examination date:

(1) complete all testing of the reliability and security of the online platform;

(2) provide reasonable accommodations, consistent with public health and safety guidelines, to applicants for whom taking a remote examination would create a substantial hardship—including but not limited to applicants with disabilities, applicants who serve as caregivers to children or other family members, applicants who lack access to an appropriate computer or reliable internet access, and applicants who lack a quiet place to take a remote bar examination—and, if such accommodations are not possible, establish alternate methods to ensure the expeditious licensing of such applicants;

(3) disclose what data will be collected as part of the remote proctoring process, who will have access to such data, how long such data will be preserved, and what measures will be implemented to prevent the abuse or unauthorized disclosure of such

10G

data;

(4) disclose the protocols for remote proctored exams to applicants, as opposed to non-proctored exams, taking into account methods for not penalizing applicants for human eye and body movements (e.g., looking up or down as a natural movement), lip movement while reading, and other natural movements that applicants might normally make while taking in-person exams; and

(5) disclose to applicants and the profession information about exam coverage, scoring or grading of the exam, measures adopted to ensure reliability of the cut score, and potential portability or not of the exam.

REPORT

The novel coronavirus, COVID-19, has created unprecedented challenges across all sectors within the United States and the world. The legal profession has been no exception. Although federal, state, territorial, tribal, and local courts have done the best they can to continue operations while complying with social distancing and other public health guidelines, nearly every aspect of how the courts conduct business has been disrupted.

This includes the system for licensing new attorneys. While the fifty states, the five territories, the District of Columbia, and Native American tribes exercise independent authority to control admission to the practice of law within their respective jurisdictions, with relatively few exceptions, most individuals first become admitted to the practice of law by sitting for, and successfully passing, the bar examination. Although bar admissions remain a decentralized process in most respects, jurisdictions have largely come to a consensus to administer a bar examination prepared by the National Conference of Bar Examiners (“NCBE”) during the same two-day period in both July and February.

The COVID-19 pandemic, however, has turned what is normally an orderly process into chaos. While the July 2020 bar examination had originally been scheduled to be administered in all jurisdictions from July 28-29, 2020, as of this writing there are at least seven different date permutations for this exam, including as late as October 5-6, 2020.¹ Although a growing number of jurisdictions have announced the cancellation of the in-person bar examination in favor of a remote bar examination administered online, as of this writing a majority of jurisdictions are still holding in-person bar examinations.² And while some jurisdictions have created or expanded certified legal intern programs or enacted a diploma privilege rule in order to permit some or all bar applicants to practice notwithstanding any delays in the bar examination date, others have delayed the bar examination without providing such accommodations. Nevertheless, as of this writing, only nine jurisdictions have proceeded with an exclusively in-person bar examination on July 28-29, 2020, without adopting or expanding some sort of provisional practice rule.³

During the early stages of the COVID-19 pandemic, the ABA Board of Governors exercised its authority to establish policy between meetings of the ABA House of Delegates to enact Resolution No. 77, which urged the highest court or bar admissions authority of each jurisdiction to immediately adopt emergency rules to permit certain 2019 and 2020 law graduates, as well as certain judicial law clerks, to engage in the limited practice of law if the July 2020 bar examination in their jurisdiction was cancelled or postponed due to COVID-19. When the Board adopted the resolution on April 7, 2020, only four jurisdictions had announced the cancellation or postponement of the July 2020 bar examination, and none had announced that the bar examination would be

¹ *July 2020 Bar Exam Status by Jurisdiction*, NAT’L CONF. OF BAR EXAM’RS, <http://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/> (last visited July 27, 2020).

² *Id.*

³ *Id.*

administered remotely.

This Resolution builds on the foundation laid by Resolution No. 77 to address the new developments in the bar admissions landscape over the last four months. First, it urges that the highest court or bar admissions authority in each jurisdiction cancel the in-person bar examinations currently scheduled for September 9-10, 2020, and September 30-October 1, 2020, and not administer any other in-person bar examination until and unless public health authorities determine that the examination can be administered in a manner that ensures the health and safety of bar applicants, proctors, other staff, and local communities. The Resolution further urges the highest court or bar admission authority of each jurisdiction to establish temporary emergency measures to expeditiously license recent law school graduates and other bar applicants when public health and safety concerns preclude safe administration of an in-person bar examination. Finally, the resolution urges that jurisdictions electing to administer a remote bar examination implement appropriate safeguards with respect to the reliability and security of the online software; provide reasonable accommodations to all applicants; and disclose plans related to data collection, security protocols, exam coverage, scoring or grading, and portability.

At the beginning of the COVID-19 pandemic, there was some optimism that the public health emergency would be behind us by the summer and that administration of the July 2020 bar examination would not be affected. Unfortunately, that has not been the case. On the contrary, 18 states set single-day records of COVID-19 cases the week before the July 2020 bar examination was set to be administered,⁴ with cases declining in only two states.⁵ There is no indication that circumstances will meaningfully change prior to the administration of the in-person bar examinations currently scheduled for September 9-10, 2020, and September 30-October 1, 2020.

No one should have to choose between their long-term health—or life—and a licensing examination. However, bar applicants in jurisdictions scheduled to administer an in-person bar examination are being required to do so. And given the state of the legal employment market combined with the need to repay student loans and otherwise earn a living, many bar applicants feel they truly have no choice at all. As one bar applicant stated in an impact statement filed with the Supreme Court of Missouri in support of a petition to postpone the in-person bar examination scheduled for July 28-29, 2020:

I'm immunocompromised. I don't mean I get a lot of colds. I mean it takes me four complete sets of oral antibiotics and 10 months to get over a minor toenail infection. If I get coronavirus, I will die. But I financially cannot wait till the later date to take the bar, and nobody will hire me without the bar or diploma privilege because I'm under qualified for everything related to law and overqualified for everything not related to law. Facing student

⁴ Phillip Cheung, *U.S. Coronavirus Cases Soar as 18 States Set Single-Day Record*, N.Y. TIMES, <https://www.nytimes.com/2020/07/25/world/coronavirus-covid-19.html> (last visited July 27, 2020).

⁵ Univ. of Minnesota, Center for Infectious Disease Research, *US COVID-19 Case Counts Rise in 39 States, Decline in Only 2*, <https://www.cidrap.umn.edu/news-perspective/2020/07/us-covid-19-case-counts-rise-39-states-decline-only-2> (July 16, 2020).

loan payments and medical bills, I don't have a choice. **I am planning to sit for the July bar and, to be frank, if I die I die.** That's the position I am in right now.⁶

In apparent recognition of the health and safety risks, several jurisdictions administering an in-person bar examination required applicants to sign COVID-19 liability waivers as a condition for sitting for the examination.⁷ Moreover, there are numerous accounts that several of in-person bar examinations administered on July 28-20, 2020, did not follow guidance from public health authorities with respect to temperature checks, social distancing, and the wearing of face masks.⁸ It has also been confirmed that an applicant actually sat for the Colorado bar examination while unknowingly infected with COVID-19 as an asymptomatic carrier.⁹

The cancellation or postponement of in-person bar examinations, however, is not sufficient. Rather, courts and bar admissions authorities must provide alternate and expeditious methods to ensure that the licensing of new attorneys continues despite the COVID-19 pandemic. Such methods include, but are not necessarily limited to, administration of remote bar examinations, creation or expansion of certified legal intern or supervised practice programs, or the diploma privilege. As previously recognized in the report accompanying Resolution No. 77:

Yet there also can be no doubt that canceling or postponing a bar exam will significantly affect the lives, careers, and immediate personal plans of law graduates, their families, and the lawyers or other organizations with whom they might otherwise practice. Every law graduate in this country has planned and worked for years toward the goal not only of graduation from law school, but admission to the bar and licensure. The inability of a law graduate to take the bar examination in July 2020 would mean a delay, at the very least, of months in their ability to begin the practice of law. This delay may lead not only to tangible financial and family hardship, but disruption in the plans and operations of the organization and clients for whom these law graduates may already be planning to work.

Cancelling or postponing a bar examination for public health and safety reasons is not without consequence. The livelihoods, families, and careers of 2019 and 2020 law graduates may be uprooted, and financial security immediately threatened, with even a delayed exam. Upon graduation, the average 2020 law graduate will bear a debt load of

⁶ Copies of the 31 impact statements filed with the Supreme Court of Missouri can be found at https://docs.google.com/document/d/1_cWlJxiFEgdiOQfflLIIVm0rRlFV2DRTWk8tWI2GHdQ/edit (last visited July 27, 2020).

⁷ See Andrea Boyack, *Abuse of Contract and the July 2020 Bar Exam*, N.U. L. REV. OF NOTE, <https://blog.northwesternlaw.review/?p=1506> (July 15, 2020).

⁸ See Joe Patrice, *Bar Exams in the Time of COVID: Crashes, Hacks, and (A Few) Masks*, ABOVE THE LAW, <https://abovethelaw.com/2020/07/bar-exams-in-the-time-of-covid-crashes-hacks-and-a-few-masks/> (July 29, 2020).

⁹ Staci Zaretsky, *Law Grad Who Tested Positive for COVID-19 After Sitting For Bar Exam Speaks Out*, ABOVE THE LAW, <https://abovethelaw.com/2020/07/law-grad-who-tested-positive-for-covid-19-after-sitting-for-bar-exam-speaks-out/> (July 31, 2020).

\$142,870.4 That debt load remains unchanged while their job prospects disappear or diminish in part were their jurisdiction to deny them the opportunity to take the exam in July 2020 and begin to practice law. Public health and safety and the professional and financial security of law graduates need not be mutually exclusive.

The temporary measures encouraged by Resolution No. 77 were an excellent initial response to the pandemic but, as the pandemic has worsened, those measures are no longer sufficient. Small law firms, legal aid offices, other nonprofits, public defenders, and other government agencies do not have sufficient staff to supervise temporarily licensed lawyers until an in-person bar exam is possible. These organizations rely upon new lawyers, usually licensed by November, to serve clients directly. Nor can these organizations and their clients afford to release—or pay—temporarily licensed lawyers for six or more weeks to study for a bar exam offered sometime in the future.¹⁰ Maintaining temporary licensure as our profession's only response to the pandemic will worsen access to justice—at the same time that the pandemic is increasing legal needs among the vulnerable.

The current Resolution does not recommend a “one-size-fits-all” approach to licensing attorneys during the COVID-19 crisis. Every jurisdiction has its own unique legal system and has been affected by and responded to COVID-19 in a different way. It goes without saying that what may be appropriate for Utah may not be appropriate for New York, and what works in the U.S. Virgin Islands might not work in Kansas. Which particular methods should be utilized to license attorneys on an emergency basis is, and should remain, vested in the sound discretion of the highest court or bar admissions authority in each jurisdiction, exercised after due consideration of all relevant factors. However, given the substantial and unprecedented effect on not just law graduates and the organizations that employ them, but on individuals and businesses both large and small, no court or bar admissions authority should exercise its discretion to simply do nothing and/or hold back licensure until an in-person exam is possible which could be more than a year down the road.

Jurisdictions who elect to proceed with a remote bar examination should administer such an examination with appropriate safeguards in place sufficiently in advance of the examination date. Shortly after the first two states announced the transition to a remote bar examination in April 2020, one law professor expressed skepticism that what would ordinarily be “a years-long project” could be successfully implemented in just four months.¹¹ Such skepticism proved prescient: Indiana and Nevada, which had scheduled remote bar examinations to occur, respectively, on July 28, 2020, and July 28-29, 2020, both cancelled those examinations four days before they were set to occur, due to substantial technology problems with the software utilized by

¹⁰ For example, there is concern that bar applicants in Delaware may be “in limbo” for an extended period of time due to the cancellation of the July 2020 in-person bar examination and an announcement that a remote bar examination would not be administered in October 2020. See Bar Exam Tracker, <https://twitter.com/BarExamTracker/status/1289682319121448961> (Aug. 1, 2020).

¹¹ Derek Muller, *Blockchain and the Bar Exam*, <https://excessofdemocracy.com/blog/2020/4/blockchain-and-the-bar-exam> (Apr. 28, 2020).

their vendor, ILG Technologies.¹² The cancellation of the Indiana and Nevada remote bar examinations occurred days after the online General Surgery Qualifying Exam administered by the American Board of Surgery was cancelled on the day of the exam due to technical and security failures.¹³ Moreover, the Michigan remote bar examination crashed in the middle of testing on July 28, 2020, when the software utilized by its vendor, ExamSoft, locked applicants out of the exam after completing the first module.¹⁴ According to ExamSoft, these crashes were the result of a sophisticated cyberattack.¹⁵ Recently, the Law School Admission Council reported that it lost the answers for approximately 140 applicants who sat for the online administration of the LSAT in July 2020 due to “a technical issue” that prevented the answers from “transmitting into its system.”¹⁶

The administration of a remote bar examination also raises serious disparate impact concerns. To sit for a remote bar examination, an applicant must have access to an appropriate computer¹⁷ with reliable internet access, as well as the ability to take the exam uninterrupted for several hours in a quiet place. One recent survey has shown that a majority of bar applicants do not believe they have reliable internet access, and that white applicants are about 71 percent more likely to have such access when compared to black applicants.¹⁸ The same survey found that a majority of applicants do not have access to a quiet space to take a remote bar examination, with white applicants again being substantially more likely to have access to a quiet place than an applicant of color.¹⁹ And with schools and daycares closed in many parts of the United States, parents—and particularly mothers—cannot guarantee that they will not have to leave the room to attend to their young children.²⁰

The remote bar examination necessarily requires the collection of substantial

¹² Debra Cassens Weiss, *Online bar exams delayed in 2 states because of issues with testing software*, ABA JOURNAL, <https://www.abajournal.com/news/article/online-bar-exams-delayed-in-two-states-due-to-issues-with-testing-software> (July 27, 2020).

¹³ American Board of Surgery, *ABS Issuing Refunds, Launching Security Investigation for Virtual 2020 General Surgery QE*, http://www.absurgery.org/default.jsp?news_virtualqsqe07.17 (July 17, 2020).

¹⁴ David Jesse, *Michigan Online Bar Exam Crashes in Middle of Test*, DETROIT FREE PRESS, <https://www.freep.com/story/news/education/2020/07/28/michigan-online-bar-exam-crashes-test-examsoft/5526919002/> (July 28, 2020).

¹⁵ Allie Reed, *Cyber Attack Said to Disrupt Michigan's Online Bar*, BLOOMBERG LAW, <https://news.bloomberglaw.com/business-and-practice/cyber-attack-locks-michigan-bar-exam-takers-out-of-online-test> (July 28, 2020).

¹⁶ Caroline Spiezio, *LSAT maker says it lost about 140 online test takers' scores*, REUTERS, <https://www.reuters.com/article/lawyer-lsat-scores/lSAT-maker-says-it-lost-about-140-online-test-takers-scores-idUSL2N2F12WE> (July 30, 2020).

¹⁷ For example, Indiana requires those sitting for its remote bar examination to use external webcams rather than the webcams built-in to their laptop, in order to “give the proctors a better view than the camera that comes standard on many laptop computers.” Marilyn Odendahl, *External webcams, quiet rooms among details for first-ever remote bar exam in July*, THE INDIANA LAWYER, <https://www.theindianalawyer.com/articles/external-webcams-quiet-rooms-needed-for-first-ever-remote-bar-exam-in-july> (May 29, 2020).

¹⁸ Claire Newsome & Catherine Perrone, *The Inequity and Technology Behind an Online Bar Exam*, JURIST, <https://www.jurist.org/commentary/2020/07/newsome-perrone-online-bar-exams/> (July 18, 2020).

¹⁹ *Id.*

²⁰ *Id.*

amounts of data, including video footage of the applicant's home obtained through the remote proctoring process.²¹ Although as of this writing no jurisdiction has yet administered a remote bar examination, there are numerous reports of vendors retained to provide remote proctoring services for colleges and universities during the COVID-19 pandemic requiring test-takers to provide biometric data, or granting the proctor actual remote control of the computer.²² Some of these vendors assert the right to retain this information, and even share it with third parties.²³ Courts and bar admissions authorities should ensure that applicants know how their information will be used and that vendors use and retain applicant data only to the extent necessary.

Last, but not least, the online bar exam offered by certain jurisdictions on October 5-6 differs significantly from the paper exams offered on July 28-29, September 9-10, and September 30-October 1. The online exam will be half the length of the paper exams and, for the essay and performance test portions of the exam, candidates will not be able to compose answers while referring directly to exam materials; they will have to flip between screens. Perhaps for these reasons, NCBE has announced that it will not be able to scale raw scores from this exam. The lack of scaling, combined with the differences in exam administration, will make each state's existing cut score unreliable. States should make and announce plans, well before the exam date, about how they intend to handle scoring, cut scores, and portability of the exam.

In acknowledgment of the many problems possible with a remote exam – technical and access-related, as described above – and also knowing that the stress upon 2020 graduates who have been studying for the bar exam under incredibly difficult circumstances, a small number of states have opted for a diploma privilege, some with and some without a supervised practice component,²⁴ thus giving law school graduates a practice license without the necessity of a bar exam.²⁵ This privilege has existed in Wisconsin for over a hundred years, albeit limited to graduates of the two in-state law schools and conditioned on completing specified coursework in Wisconsin law.

²¹ Maggie Miller, Law school graduates worried about security, privacy of online bar exam, *The Hill*, <https://thehill.com/policy/technology/507381-law-school-graduates-worried-about-security-privacy-of-online-bar-exam> (July 14, 2020).

²² See Monica Chin, *Exam Anxiety: How Remote Test-Proctoring is Creeping Students Out*, *THE VERGE*, <https://thehill.com/policy/technology/507381-law-school-graduates-worried-about-security-privacy-of-online-bar-exam> (Apr. 29, 2020).

²³ *Id.*

²⁴ The jurisdictions that have enacted an emergency diploma privilege have not done so under the same terms. For example, Utah—the first jurisdiction to adopt an emergency diploma privilege—has limited it only to applicants who had already applied for the Utah bar exam prior to April 1, who graduated from ABA-accredited law schools with an average first-time taker bar examination passage rate in 2019 of 86%, and who first perform 360 hours of supervised practice. *In re Matter of Emergency Modifications to Utah Supreme Court Rules of Professional Practice* (Utah Apr. 21, 2020). Oregon, in contrast, adopted similar eligibility requirements, but declined to adopt a supervised-practice requirement. *In re Order Approving 2020 Attorney Admissions Process* (Or. June 30, 2020).

²⁵ In response to the COVID-19 pandemic, numerous jurisdictions have created, or expanded existing, certified legal intern programs, which permit law students and law graduates to practice under the supervision of a licensed attorney. A certified legal intern program differs from admission by supervised practice, however, in that a certified legal intern license is temporary and full admission to the Bar of the jurisdiction cannot be obtained without passing the bar exam.

The issues with respect to a diploma privilege, supervised practice programs leading to licensure, and other alternate methods of licensing attorneys without a bar examination are complex. While there has been much discussion over the years, accelerated in the last few months, about the advantages of a permanent diploma privilege or supervised practice admission over the current bar exam scheme in the states, the matter at hand here is more narrow and, of course, more urgent. Granting a diploma privilege or admission through supervised practice to 2020 graduates of ABA-accredited law schools will provide an immediate and permanent pathway to this cadre of young people and enable them to pursue their careers without the serious impediments that come from a bar exam administered either in-person (soon or at an uncertain later date) or remotely. This solution has been endorsed by a large and growing number of deans and other legal educators. And, importantly, this idea has been pushed forward by a very active and passionate group of students and graduates, all of whom have organized in the midst of this pandemic to advocate for the most straightforward, and compassionate, approach.

This resolution does not recommend specifically the diploma privilege over supervised practice, certified legal intern programs, or other alternatives, nor does it suggest a uniform approach to this privilege, if a jurisdiction granted it. But we note the advantages of this approach over the remote exam option – which, frankly, has already encountered obstacles, even as recently as July 28, 2020, in Michigan – in providing a mechanism for licensing these new graduates.

In important part, it is the mission of the American Bar Association “[t]o serve equally our members, our profession and the public by defending liberty and defending justice as the national representative of the legal profession.”²⁶ As one commenter succinctly stated, “We owe the newest members of our profession the most protection, not the least.”²⁷ Tens of thousands of law school graduates have worked their entire lives towards the goal of becoming licensed attorneys but have had the misfortune to graduate during the worst pandemic in a century. Simply put, a once-in-a-century pandemic warrants a once-in-a-century solution. We urge the highest courts or bar admissions authorities of each jurisdiction to take these modest but necessary steps to safeguard public health and safety without closing the doors to our shared profession.

Respectfully submitted,

Nesha R. Christian-Hendrickson, Esq.
President, Virgin Islands Bar Association

August 2020

²⁶ Am. Bar Ass’n, Mission Statement, <https://www.americanbar.org/about-the-aba/aba-mission-goals/> (last visited July 27, 2020).

²⁷ @ProfAMLondon Twitter (June 16, 2020, 6:46 PM), <https://publish.twitter.com/?query=https%3A%2F%2Ftwitter.com%2FProfAMLondon1%2Fstatus%2F1273039225890443264&widget=Tweet>

GENERAL INFORMATION FORM

1. Summary of Resolution

This Resolution urges that the highest court or bar admissions authority in each jurisdiction cancel the in-person bar examinations currently scheduled for September 9-10, 2020, and September 30-October 1, 2020, and not administer any other in-person bar examination until and unless public health authorities determine that the examination can be administered in a manner that ensures the health and safety of bar applicants, proctors, and other staff. The Resolution further urges the highest court or bar admission authority of each jurisdiction to establish temporary emergency measures to expeditiously license recent law school graduates and other bar applicants when public health and safety concerns preclude safe administration of an in-person bar examination. Finally, the resolution urges that jurisdictions electing to administer a remote bar examination implement appropriate safeguards with respect to the reliability and security of the online software, provide reasonable accommodations to all applicants, and take appropriate measures with respect to data collection, usage, and action.

2. Approval by Submitting Body

Approved by the Virgin Islands Bar Association on July 28, 2020.

Approved by the Law Student Division on July 31, 2020.

Approved by the Section of State and Local Government Law on July 31, 2020.

Approved by the Criminal Justice Section on August 1, 2020.

Approved by the Section of Dispute Resolution on August 1, 2020.

Approved by the Young Lawyers Division on August 1, 2020.

3. Has this or a similar Resolution been submitted to the House or Board previously?

On April 7, 2020, the ABA Board of Governors approved Resolution No. 77, which urged jurisdictions to adopt emergency rules to authorize 2019 and 2020 law graduates who cannot take a bar exam because of the COVID-19 pandemic to engage in a limited practice of law under certain circumstances.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

As noted above, the ABA Board of Governors approved Resolution No. 77 on April 7, 2020, to urge jurisdictions to adopt emergency rules to authorize 2019 and 2020 law graduates who cannot take a bar exam because of the COVID-19 pandemic to engage in a limited practice of law under certain circumstances. This Resolution does not supersede that policy but would adopt additional policies to address new concerns that have arisen because of the continued emergency conditions caused by COVID-19.

At the 2006 Annual Meeting, the ABA House of Delegates approved Resolution No. 113, which urged the National Conference of Bar Examiners to collaborate with state and territorial bar associations and bar examiners to ensure that the bar examination does not result in a disparate impact on bar passage rates of minority candidates. This Resolution urges jurisdictions administering a remote bar examination to provide accommodations to those who lack access to an appropriate computer, reliable internet access, or a quiet space, which are disproportionately minority candidates.

At the 2012 Midyear Meeting, the ABA House of Delegates approved Resolution No. 111, which among other things urged all entities administering a law school admission test to provide reasonable accommodations for test takers with disabilities, and to make all policies, guidelines, and administrative procedures readily accessible. This Resolution urges that similar accommodations and notice be provided with respect to any remote bar examination administered during the COVID-19 pandemic.

At the 2015 Midyear Meeting, the ABA House of Delegates approved Resolution No. 110, which among other things urged jurisdictions to identify and address the special needs of vulnerable populations, including but not limited to those with disabilities, when planning for and responding to disasters. This Resolution is consistent with that policy by urging jurisdictions to provide reasonable accommodations to the disabled and others with respect to any remote bar examination administered during the COVID-19 pandemic.

At the 2019 Annual Meeting, the ABA House of Delegates adopted Resolution No. 102, which urges jurisdictions to adopt “Pro Bono Scholar”-style programs to allow law students, in their final semester of law school, to provide full-time supervised pro bono services under the supervision of a non-profit legal organization. This Resolution identifies supervised practice and the expansion of certified legal intern programs as potential methods of providing temporary emergency licensure to recent law graduates.

5. If this is a late Report, what urgency exists which requires action at this meeting of the House?

N/A.

6. Status of Legislation (if applicable).

N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The recommendations would be disseminated to the highest courts and bar

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admissions authorities of each jurisdiction.

8. Cost to the Association (both indirect and direct costs).

None.

9. Disclosure of Interest.

None.

10. Referrals

ABA Law Student Division
ABA State and Local Government Law Section
ABA Criminal Justice Section
ABA Section on Civil Rights and Social Justice
ABA Section on Legal Education and Admissions to the Bar
ABA Young Lawyers Division
ABA Business Law Section
ABA Judicial Division
ABA Solo and Small Firm Section
ABA Center for Innovation
ABA Section of Dispute Resolution

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address.)

Anthony M. Ciolli
Past President, Virgin Islands Bar
PO Box 590
St. Thomas, VI 00804
340-774-2237
aciolli@gmail.com

12. Contact Name and Address Information. (Who will present the Resolution with Report to the House?)

Patricia E. Salkin
Provost
Graduate and Professional Divisions
Touro College
500 7th Avenue, 4th Floor
New York, New York 10018
646-565-6522
psalkin@tourolaw.edu

EXECUTIVE SUMMARY**1. Summary of Resolution.**

This Resolution urges that the highest court or bar admissions authority in each jurisdiction cancel the in-person bar examinations currently scheduled for September 9-10, 2020, and September 30-October 1, 2020, and not administer any other in-person bar examination until and unless public health authorities determine that the examination can be administered in a manner that ensures the health and safety of bar applicants, proctors, and other staff. The Resolution further urges the highest court or bar admission authority of each jurisdiction to establish temporary emergency measures to expeditiously license recent law school graduates and other bar applicants when public health and safety concerns preclude safe administration of an in-person bar examination. Finally, the resolution urges that jurisdictions electing to administer a remote bar examination implement appropriate safeguards with respect to the reliability and security of the online software, provide reasonable accommodations to all applicants, and take appropriate measures with respect to data collection, usage, and action.

2. Summary of the Issue which the Resolution addresses.

This Resolution urges the highest court or bar admissions authorities of each jurisdiction to take certain actions with respect to the COVID-19 crisis.

3. An explanation of how the proposed policy position will address the issue.

The Resolution addresses these issues by urging for the cancellation of in-person bar examinations, establishment of temporary measures to expeditiously license recent law school graduates and other bar applicants, and enactment of certain practices with respect to the administration of remote bar examinations.

4. A summary of any minority views or opposition internal and/or external to the ABA which have been identified.

No minority or opposing views have been identified.

NAME
[OPTIONAL] TITLE/EMPLOYER
EMAIL ADDRESS

August XX, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Annemarie Duerr, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community who faces issues a newly barred attorney could help with would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Annemarie Duerr
University of Baltimore, School of Law
JD Candidate, 2022

[EXTERNAL] Diploma Privilege

Hira Javed <hj4710a@student.american.edu>

Mon 8/24/2020 3:36 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good Afternoon,

I hope all is well. My name is Hira Javed and I am a current 3L at American University Washington College of Law. I am writing to you today in support of granting Diploma Privilege for the Class of 2020. It is no surprise that we are living through one of the worst nightmares of modern history with the COVID19 pandemic. It is difficult for students to study for the bar exam under such conditions, especially those that do not have access to stable internet, a quiet place to study, etc. Furthermore the software used to administer remote bar exams has proven time and time again to fail. It is also difficult for our recent graduates to focus on bar exam preparation with the Civil Rights protests taking place all over the country, practically in every city.

I am asking you to show compassion for my peers and grant them diploma privilege this year. They have suffered enough and their time would be better spent practicing law than studying for an exam.

Thank you for your time.

Best,
Hira

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Hira Javed
Symposium Editor, *Journal of Gender, Social Policy, & the Law*, Vol. 29
Juris Doctor Candidate, 2021
American University Washington College of Law
(347) 247-2322

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Hira Javed
Symposium Editor, *Journal of Gender, Social Policy, & the Law*, Vol. 29
Juris Doctor Candidate, 2021
American University Washington College of Law
(347) 247-2322

[EXTERNAL] Bar Comment

Ike <ikempa96@gmail.com>

Mon 8/24/2020 3:43 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To Whom it May Concern,

As an applicant for the bar exam it is imperative that the Court grant diploma privilege plus. Maryland Rules of Procedure, Rule 19-206, states the following:

Purpose of Examination: The purpose of the general bar examination is to enable applicants to *demonstrate their capacity to achieve mastery of foundational legal doctrines, proficiency in fundamental legal skills, and competence in applying both to solve legal problems consistent with the highest ethical standards*. It is the policy of the Court that no quota of successful applicants be set but that each applicant be judged for fitness to be a member of the Bar as demonstrated by the examination answers.

Rule 19-206 (emphasis added). My question posed to you is, how is this possible given the current state of the United States? With the United States leading in the number of deaths in the world due to Covid 19 and the unemployment rate at an all time high, all current applicants have been affected by this pandemic in some type of way. From my own perspective, to simply leave out my home, in order to find a suitable work environment to "achieve [a] mastery of fundamental legal doctrines," is not possible given that libraries, coffee shops, and the like are all closed due to Covid 19. Even more scary and real is the fear of catching covid 19 and dying, solely "to achieve th[is] mastery of fundamental legal doctrines," to study in a peaceful environment. In addition, because of the circumstances, I am the sole financial provider for my family, thus requiring me to work a full time job, plus overtime, when possible. If I am able to study a few hours a day, I am lucky. Even if I am fortunate to study for those hours, there is a constant worry if I will pass the exam in order to practice, to provide for myself, my family, and loved ones.

I doubt that the rule makers, at the time that this rule was created, took into account a situation as such. If it was so, this Court will not be hearing comments from the public. Also, given the failures that other jurisdictions encountered with taking a remote exam, such as in Florida, there is no certainty that the State Board of Law Examiners will be successful. Once again, leaving applicant's in more uncertainty, frustration, and an inability to practice law.

Given all of this, I ask this Court to consider Rule 19-206, and consider the current situation that this country is facing. In the alternative, if the Court is not willing to waive the bar exam, I ask the Court to consider making the exam open book, and create other requirements to ensure that applicants are adequately prepared to practice in today's cultural climate, such as requirement to work under the supervision of another attorney for a number of years, CLE's, and the like. Similar to what the State of Washington did.

I thank you for taking the time to read this comment, and I hope when making a decision, the Court considers the comments submitted from the public.

Best

Nicholas B. Jordan
nicholas.jordan@ubalt.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

My name is Nicholas Jordan. In May 2020 I graduated summa cum laude from the University of Baltimore School of Law, and this is my personal story. For all three years of law school, I worked at a restaurant full-time. During that period, my partner Lindsay also worked full-time as an emergency room nurse. We have two children, Gia (age 3) and Jett (just turned one), who coincidentally enough were born the week before my LSAT and a week before my first day of 3L year, respectively. Law school has been an absolute challenge both in the material taught and the logistics of my life circumstances, and I say that absent a global pandemic. COVID-19 has brought its own unique challenges that I fear may be insurmountable. I am asking this Court to grant diploma privilege for 2020 law school graduates in the state of Maryland.

In mid-March, my life as I knew it was upended. I lost my restaurant job, my kids' preschool was closed down, and my wife was working overtime in the emergency department at Union Memorial. What was once an even split of chores and childcare between us became her collecting 100% of the income, and when not at work isolating from us, and me doing 100% of household tasks and watching the kids, all while finishing my last semester of law school online. Attending class was impractical. Actually studying, reading, and feeling prepared for class was impossible. My GPA was saved by the fact that the school went to pass/fail grading instead of giving letter grades. It was one of the most stressful times of my life, by far.

However, it wasn't all bad. I quickly established a routine, let the house get a little messy as a temporary trade-off until school was over, and the income from the CARES Act literally kept us from going hungry and defaulting on the mortgage. The end of the semester finally came, and it was time to shift to bar exam preparation. I had my study routine down where I got up early, stayed up late, and even got some time in during naps. I was feeling cautiously optimistic about being prepared for the July exam, just in time for when the CARES Act ended, and I'd have to return to work. When the announcement was made postponing the exam and moving it online, I was mortified and felt completely helpless. The artificial normalcy I'd created for us had evaporated, and for the first time in my young legal career, I seriously doubted my chances to succeed.

Since then, I've returned to the restaurant to make some money until I begin my clerkship at the Court of Special Appeals this Wednesday. I have been able to spend a grand total of 12.5 hours studying over the past two weeks and have absolutely no idea what that figure will be once I start my new job. The time that I am able to study, I'm constantly looking over to see if my kids are okay and worrying about Lindsay and how her day in the ER is going. As I'm writing this right now, I am pulled over on the side of the road because both kids happened to fall asleep in the car – it's the only chance I have.

I have worked as a research assistant for three different professors, was a member of moot court and the executive board of Law Review, was offered a job at McGuireWoods starting Fall 2021 based on my work performance last summer, prior to my son's premature birth, I'd never missed a class, and I managed to finish law school ranked third in my class. I find the idea of this online, remotely administered, abbreviated bar exam that purports to test minimum competency to practice law a little insulting. In light of the circumstances, the October exam absolutely will not measure competency. It will measure who lives with their parents and has no bills to pay and who is struggling to barely get by. It will measure who has the cleanest office space with the fewest distractions and the fastest, most reliable internet service. It will measure who has loved ones working as frontline medical professionals that they constantly think about, and who does not. It will measure who has been the least impacted by COVID-19 and who has been the most impacted by COVID-19. The only equitable solution is diploma privilege. Thank you for your consideration.

Respectfully,
Nicholas B. Jordan



UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW

Kathleen Hoke
Law School Professor

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Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401

Via email to COACLERKOFTHECOURT@MDCOURTS.GOV

August 24, 2020

Dear Madam Clerk:

Please accept the enclosed Letter in Support of Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus. I am available at (410)706-1294 or khoke@law.umaryland.edu for any questions about this submission.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen Hoke".

Kathleen Hoke
Law School Professor

CC: Virginia Grimm, for Petitioners (gia.grimm@gmail.com)
Maryland State Board of Law Examiners (SBLE@mdcourts.gov)

**LETTER IN SUPPORT OF EMERGENCY PETITION FOR TEMPORARY SUSPENSION OF UBE REQUIREMENT
AND ORDER GRANTING DIPLOMA PRIVILEGE PLUS**

I am writing on behalf of myself and the undersigned members of the faculty at the University of Maryland Francis King Carey School of Law in support of the July 31, 2020 Petition, In Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus ("Petition").

By letter dated August 5, 2020, Maryland Carey Law and the University of Baltimore School of Law registered institutional support for the petition. We are grateful to Deans Tobin and Weich for submitting the letter of support (Deans' Letter) with which we concur. This letter communicates our support for the Petition and specifically responds to the letter submitted by the Maryland State Board of Law Examiners (SBLE) on August 18, 2020, responding to the Petition.

Disproportionate Impact on Test Takers of Color

The Petition sets out what is well-known: The remote exam, if it is held, will have a negative effect that will be felt most keenly by Black, Indigenous, and People of Color (BIPOC). Petition, p. 4. The Deans' Letter likewise notes the expected disparate impact, pointing out that diversity in bar membership continues to lag. Indeed, the bar exam has racist roots. It was instituted in this country to exclude immigrants and other non-white-male people.¹

We believe bar passage rates continue to reveal the structurally racist impact of the exam.² Bar examiners nationwide continue to study, and fail to resolve, the problem of the disparate impact of the

¹ Dan Subotnick, *Does Testing = Race Discrimination?: Ricci, the Bar Exam, the LSAT, and the Challenge to Learning*, 8 U. Mass. L. Rev. 332, 265-66 (2013).

² Jane E. Cross, *The Bar Examination in Black and White: The Black-White Bar Passage Gap and the Implications for Minority Admissions to the Legal Profession*, 18 Nat' Black L.J. 63 (2004); see also Narelssa Smith, African American Attorney Network, *Factors Affecting Bar Passage Among Law Students: The REAL Connection Between Race And*

bar exam on BIPOC. Clearly the SBLE is aware of this serious problem. When one adds the indisputable fact that BIPOC are experiencing deeper negative consequences of the COVID-19 pandemic,³ it becomes clear that BIPOC will be more harshly impacted by having to take the bar exam online at this time.

Despite the Petition and the Deans' Letter mentioning this critically important issue, and the national recognition of it, inexplicably, the SBLE wholly ignores the issue in its response.

The severe problem is aggravated by another aspect of the online bar exam and that is the impact of the use of artificial intelligence (AI) to monitor exam takers. AI notoriously has a negative impact on BIPOC and BIPOC have considerable fear of the use of AI.⁴ Nothing in the SBLE Response addresses this valid concern. Rather, at pages 2 to 3 and 7, the SBLE Response explains that although AI will be used and may flag potential violations of conduct restrictions, people will review all of these flags. This implies that such flagged conduct will not result in disqualification of the test taker.

Taking a significant, life-altering exam while worrying about whether your innocuous behavior will trigger an AI flag is stressful for anyone. For BIPOC, who have had many experiences with racist misinterpretations of their innocuous, often habitual, behaviors, the stress will be multiplied.

This Court should require the SBLE to address these issues—and any others associated with the disparate impact of the bar exam and its online administration. The first step to preventing a problem is to acknowledge it. The SBLE should do so. The next step is prevention; that can be done by granting the Petition. Beyond that, this Court and state bar examiners nationally must reckon with the racist history and continued impact of bar exams.

Bar Passage (May 15, 2018), available at <https://aaattorneynetwork.com/factors-affecting-bar-passage-among-law-students-the-real-connection-between-race-and-bar-passage/>.

³ Oppel, *et al.*, *The Fullest Look Yet at the Racial Inequity of Coronavirus*, The New York Times (July 5, 2020), available at <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>.

⁴ See Solon Barocas and Andrew D. Selbst, *Big Data's Disparate Impact*, 104 Calif. L. Rev. 671, 683-84 (2016).

Prior Performance of Online Bar Exam Administration

The SBLE acknowledges that the four non-UBE states that have administered (or attempted to administer) an online bar exam have experienced serious difficulties. Throughout the SBLE Letter there is a notable absence of identification of sources about or the reasons for these problems. Specifically, the SBLE Letter does not reference discussions with or data from the four states that administered online bar exams this year. It seems instead that the SBLE is relying on media outlets and Twitter as sources. With access to the National Conference of Bar Examiners (NCBE) and peer BLEs in other states, it is disappointing that the SBLE has not used its connections and resources to genuinely investigate the array of problems that occurred in Nevada, Florida, Michigan, and Indiana. Perhaps a fulsome understanding of the problems is not yet possible. In that case, it is wrong to charge forward with an online bar exam.

Additionally, the SBLE suggests that any of the issues associated with exam administration by ILG should be disregarded because Maryland plans to use ExamSoft to administer the Maryland bar exam. SBLE at 5. The reality is that if Maryland insists on an October online bar exam, ExamSoft is the only option as the other vendors are no longer in the market for this season. The serious problems encountered in Indiana and Florida with ILG are well-known by Maryland test takers and are not unique to a particular online vendor—they could happen with any vendor. The rational stress associated with this knowledge will no doubt negatively impact Maryland test takers even if ExamSoft is the vendor. We urge the Court to consider the problems with the ILG-administered tests along with the known problems that occurred during ExamSoft-administered tests and direct the SBLE to provide a plan for avoiding all of the issue.

The ILG experience was a disaster in Indiana and Florida. In Indiana, the first test run was a complete failure and the bar examiners pushed back the date of the exam by one week. The second test

run was also a failure. As a result, the Indiana bar examiners made a last-minute decision to email the exam to test takers, offer the exam open book, and not employ any online identification or monitoring of the exam takers.⁵ Nevada likewise postponed its ILG-administered exam by two weeks and eventually offered the exam with no identification or online monitoring.⁶

In Florida, a trial run of ILG was scheduled for August 17th for the August 19th exam. Aware that the system would fail, the Florida bar examiners canceled the test run on August 16. At that time, less than 72 hours before the exam, the Florida bar examiners also canceled the bar exam. They have not yet announced a date or format for the exam.⁷

The SBLE is aware of these problems and disregards them, saying they are inapplicable to ExamSoft. That is a serious mistake. There have been problems with ExamSoft as well.

The biggest issue of concern of which the public is aware regarding ExamSoft's administration of the Michigan bar exam relates to passwords to access the exam.⁸ Test takers were unable to access passwords to restart the exam in the afternoon apparently due to an attack on the password distribution system. As a result, panicked test takers attempted to contact ExamSoft and the Michigan BLE to gain access. Some test takers waited more than 45 minutes to gain access to the afternoon

⁵ Stephanie Ward, *Indiana changes online bar exam again after 'repeated and unforeseen technical complications'*, ABA Journal (July 29, 2020), available at <https://www.abajournal.com/news/article/state-changes-online-bar-exam-due-to-tech-issues>.

⁶ Jacob Solis, *Modified bar exam leaves bar examiners, law school grads split as Supreme Court mulls how to handle testing amid pandemic*, The Nevada Independent (August 4, 2020), available at <https://thenevadaindependent.com/article/decision-on-modified-bar-exam-leaves-bar-examiners-law-school-grads-split-as-supreme-court-mulls-how-to-handle-testing-amid-pandemic>

⁷ Alan Gassman, *Over 1,000 young lawyers are stranded as Florida bar exam is canceled on 72-hours notice*, Forbes (August 17, 2020), available at <https://www.forbes.com/sites/alongassman/2020/08/17/over-1000-young-lawyers-are-stranded-as-florida-bar-exam-is-canceled/#6f0353a12b42>

⁸ Stephanie Ward, *Software provider pulls out of remotely proctored bar exams because of technology concerns*, ABA Journal (August 18, 2020), available at <https://www.abajournal.com/web/article/due-to-technology-concerns-software-provider-pulls-out-of-remotely-proctored-bar-exams>. ExamSoft administered an online version of the California First Year Law Students' Examination this summer. Test takers experienced password access issues for that exam as well. Stunningly and perhaps foreshadowing, the SBLE blames the test takers in California for not accessing their passwords in a timely manner. SBLE Letter at 4

portion of the exam. ExamSoft support services was overwhelmed in responding to this problem during the administration of a one-day exam in one state.

The SBLE suggests that the attack on the password distribution in Michigan could not happen in Maryland and downplays the ongoing investigation of it by the Department of Homeland Security (DHS) and the Federal Bureau of Investigations (FBI). Citing no evidence, and in complete disregard of the DHS and FBI ongoing investigations, the SBLE states: “[R]eports on Twitter and other outlets that the [Michigan] ‘exam was hacked’ or otherwise compromised were false. The integrity of the exam questions and applicant answers was not compromised. Only the availability of the start-up password for one session of the examination was affected.” SBLE Letter at 4-5. With an open investigation, no one can conclude at this point that there was no attempt or actual “hacking.”⁹

In addition, we are concerned that the SBLE seems to shrug off the impact on test takers of the delay and the cause of it. Any interruption for the test takers is unacceptable. Test takers and administrators did not know at the time what would result from the attack. They still do not know the ramifications, as test data is not yet available. That is an unacceptable level of stress to place on test takers and an unacceptable risk for the SBLE to take.

Despite minimizing the attack in Michigan, the SBLE has apparently put in place procedures for the distribution of passwords on the day of the exam. The backup procedures include texting passwords to test takers or having test takers call to retrieve the password. SBLE Letter at 5. Thus, the SBLE obviously has some concern over the integrity and security of password distribution. But the plan is inconsistent with the rules for the online exam, which were posted on August 21, and include a prohibition on having a phone in the room during the exam. If a test taker does not have a phone in the

⁹ It appears that the Michigan Bar Examiners are still gathering information about the myriad issues raised by the online exam, surveying test takers. <https://twitter.com/barexamtracker/status/1296513590904737797?s=12>.

room, they cannot receive a text or make a phone call to secure the password. If a test taker has a phone in the room, they are in violation of the conduct rules and can be disqualified. The SBLE's inconsistency here should give this Court pause as to whether the SBLE can effectively administer an online bar exam under current conditions.

At present, at least fourteen jurisdictions will be using ExamSoft to administer the modified online bar exam on October 5 and 6. This means about 30,000 test takers will be accessing and taking the exam through ExamSoft. With no experience of a seamless online bar exam through ExamSoft, the SBLE is taking a gamble that all will work well with more than a dozen other states using ExamSoft and tens of thousands of test takers using the software at the same time. That risk is borne by the test takers and the immeasurable stress they are currently experiencing knowing that is damaging. No one wants to even imagine the outcome if ExamSoft experiences failures or attacks on October 5 or 6. We should not have to, as there should not be an online bar exam administered in Maryland those days.

Privacy for Test Takers

The online environment creates concerns related to privacy of test taker information and images. Without factual support and despite an ongoing DHS and FBI investigation of the Michigan fiasco, the SBLE asserts that there is no concern about data or image privacy. SBLE Letter at 5-6. The SBLE makes the unsupported statement that "[t]here was no attempt, much less any successful attempt, to penetrate, corrupt, or destroy the exam delivery and proctoring software or ExamSoft's database system [in Michigan]." SBLE Letter at 5. The SBLE then doubles down on their better-than-the-federal-authorities position, stating that "[d]espite the fact that there is no indication that the July 28 cyber-attack penetrated or was even directed at any ExamSoft servers housing applicants' personal information, the Department of Homeland Security and FBI are conducting a criminal investigation into the incident." The SBLE simply is not in a position to know better than the federal agencies whether a

cyber-attack occurred or was attempted on July 28. The disregard of privacy concerns and the DHS and FBI investigation deeply undercut the confidence that test takers and the bar should have in the SBLE.

Access to Appropriate Space and Effective Technology

The SBLE has put no apparent effort into determining whether test takers will have access to appropriate space and technology to take the online exam. The Petitioners presented data from a survey of test takers, noting that space and technology are concerns and that those concerns are held disproportionately by BIPOC. The SBLE dismisses this information: "Although the petitioners cite, in footnote 68, to a compilation of survey results they state support this assertion, the SBLE is not able to access the survey results, as no link is provided in the footnote. The SBLE also *cannot independently determine* whether the petitioner's characterization of the population of applicants lacking internet access or suitable exam space as 'many' is an appropriate one." SBLE Letter at 9 (emphasis added).

There is simply no basis for questioning the Petitioners' description of the survey results. Equally disturbing is that after rejecting the Petitioners' survey results, the SBLE explains that they "cannot independently determine" whether there are many test takers with concerns about space and technology. The SBLE suggests that they do not think space and technology are genuine concerns because they have only received a handful of calls or other communications regarding space and technology. What this makes clear is that the SBLE has not conducted any independent survey to ascertain the answer; while they say they cannot, the reality is that they have not.

This is in stark contrast with the efforts of Petitioners, who are recent law school graduates who graduated in the midst of a pandemic, have faced two exam date changes and one format change of the bar exam, and are studying and often working. They have put in the effort to survey their colleagues—a survey the SBLE rejects. The SBLE relies instead on the alleged lack of communication from test takers about these issues. One can think of many reasons a test taker would not contact the SBLE to express these concerns, including that the SBLE has extraordinary power over their futures. The larger point,

however, is that the SBLE has the responsibility of gathering this critically important information, especially if it is going to challenge that provided by Petitioners.

In the same letter in which the SBLE rejects the Petitioner's survey results and suggests the lack of communication from test takers means there are no concerns about space and technology, the SBLE points to the generous offers of Maryland Carey Law, UB Law, and local law firms to provide space and solid internet access. But why would the local law schools and law firms be offering to open up space for test takers if effective access was not an issue? The reality is that although it has the contact information and resources to do so, the SBLE has chosen not to determine if this is a problem. Moreover, even if these concerns are present for a small number of test takers, as the SBLE acknowledges, that is too many. These test takers are more likely to live in challenging environments with stressors far beyond the average. These are the exact test takers whose concerns should be paramount in deciding how to proceed in a fair and equitable manner.

Conclusion

The Petitioners have requested an appropriate solution to a serious problem. The SBLE has not responded fully to the myriad issues raised in the Petition and by the circumstances, creating deeper concern about the fairness of an administration of a remote exam in October or any time in the near term. For these reasons, we respectfully request that this Court grant the Petition.

Respectfully submitted,



Kathleen Hoke

Authorized to submit on behalf of the following additional members of the University of Maryland Carey School of Law faculty:

Tauyna Banks	Leigh Goodmark	Douglas Colbert
Gordon G. Young	Michael Pappas	William Moon
Michael Greenberger	Russell McClain	William Piermattei
Maureen Sweeney	William Reynolds	Michael Milleman
Micah Yarborough	Natalie Ram	

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

The conditions under which the online exam is being offered are untenable. Most notably, exam takers are not allowed to use scratch paper. Our bar prep courses emphasize the importance of taking notes and diagramming questions in order to reach correct answers on the exam. Our prep courses do not offer alternatives or solutions for test strategies for an exam without scratch paper. Additionally, an online exam requires reliable internet access. Internet access is a privilege that not every bar taker has reliable access to and is a utility that is commonly unreliable even in the best of times. Further, test takers should not be obligated to risk their privacy and digital security in order to take an exam that only serves to prove "minimal competence."

There are reasonable and equitable solutions for proving the "minimal competence" of new attorneys. I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE), and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a recent law school graduate scheduled to take the bar exam, would benefit from a Court order granting emergency diploma privilege to bar applicants.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Randa Medley

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
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COAClerkoftheCourt@mdcourts.gov

Re: Response to SBLE Update and comments on Diploma Privilege

We would like to thank the Court for allowing us the opportunity to express our concerns over the remote bar exam. As May 2020 graduates from the University of Maryland and the University of Baltimore we are writing this comment to inform the Court of how the decision to move forward with a remote exam affects us and to respond to some of the assertions made by the SBLE in their “October 2020 Remote Bar Examination Update.” We believe that diploma privilege or diploma privilege plus is the most equitable solution to licensure during a global pandemic.

1. Response to SBLE Update

SBLE notes in their comment arguing against diploma privilege that the portability agreements “provide significant flexibility for many applicants.”¹ As of the writing of this comment Maryland has entered into reciprocal agreements with thirteen states.² While these agreements allow for some flexibility it is a far cry from the flexibility granted by the 36 states that administer the UBE.

SBLE argues that because they have not received complaints about access to technology and suitable exam space that access to resources is not a major concern stating that “the SBLE has received only a handful of emails from applicants expressing concerns over exam space and access to technology.”³ While we cannot speak for others, we both face concerns over having a suitable place to take the exam free from distraction and noise but have not reached out to SBLE directly with these concerns. Arguing that because they have not received many complaints about disparate impact of a remote exam due to access to resources is naïve and short-sighted.

Finally, the SBLE’s underlying argument that the passage of a bar exam is the only way to ensure competence is erroneous. The bar exam tests your test taking ability and memorization skills, not your competence as a lawyer. Diploma privilege could take many forms in order to ensure competence without relying on an inequitable online exam that has failed to be successful in any jurisdiction thus far. Diploma privilege plus could include additional requirements such as: 1. Requiring individuals to have participated in a clinical experience during law school (this is already required by both Maryland law schools); 2. Require applicants to complete at least 70% of their bar prep courses or complete a CLE course to prepare for practice.

¹ October 2020 Remote Bar Examination Update, State Board of Law Examiners 5 (Aug. 18, 2020), <https://mdcourts.gov/sites/default/files/import/coappeals/pdfs/remotebarexamreport202008.pdf>.

² *Id.*

³ *Id.*

Personal Impacts of a Delayed and Remote Bar Exam

We have both been severely and negatively impacted by COVID-19. We both attended law school in order to study environmental law and both are actively looking for employment in the public interest. Job opportunities for newly graduated lawyers have all but disappeared since the pandemic began. Neither of us have yet to find gainful employment and financial stability has quickly become a pressing concern. With no income, crushing student loan debt, and very few job opportunities, we are unsure of how we will manage in the coming months.

We have both been severely impacted by SBLE's decision to conduct a delayed remote bar exam amid a global pandemic. We both currently reside in a small townhome where sound travels easily and have only one room with a door. Further, we have three animals also living in the house and will have to make arrangements for them while taking the bar.

Further, prior to the pandemic we both had plans to practice in Maryland for a year or two before moving to Colorado. Now, because of the decision to move to an online exam with very limited portability, these plans will not be possible without taking the bar multiple times. Granting diploma privilege would allow us to practice in Maryland before taking the UBE when it is safe to do so, in order to be able to practice in any of the thirty-six states that have adopted the UBE.

We attended law school to advocate for fairness and equity. We are merely asking the Court to provide us with the same equity during these unprecedented times. We thank the Court for the opportunity to submit this comment.

Respectfully,

Emily Schenning, J.D.
Harrison Scherr, J.D.

Matthew Collins
mkcollins2012@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order
Granting Emergency Diploma Privilege Plus

Dear the Honorable Chief Judge Barbera and Associate Judges:

I, Matthew Collins, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. A very common argument made by those in support of administration of an online bar exam focuses on the need to prevent those who are academically and ethically unqualified from being admitted to the bar. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. If the bar exam truly prevented the unqualified from becoming members of the bar, there would be no disbarment. Given the lack of evidence of practical merits of the bar exam, combined with the inherent risk of using a non-secure software platform and the inequality of administering a standardized test in non-standardized testing conditions, I strongly urge the Court of Appeals to grant Emergency Diploma Privilege Plus.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Matthew Collins

August 24, 2020

VIA E-MAIL

Clerk
Maryland Court of Appeals
361 Rowe Blvd.
Annapolis, Md., 21401
coaclerkofthecourt@mdcourts.gov

RE: Support for Admission to the Maryland Bar by Diploma Privilege

Dear Maryland Court of Appeals Clerk's Office,

We the undersigned legal organizations are engaged in training and supporting the next generation of public interest attorneys and are committed to a diverse and inclusive profession that reflects the communities we serve. We have a shared recognition that diversity in the legal profession remains [woefully inadequate](#), and the bar exam is one of many structural barriers that contribute to that problem. As such, we are very concerned that continuing bar exam administration during this pandemic will unnecessarily and unequally burden applicants as they attempt to enter critical public interest roles in the profession. In states where recent candidates have been required to take the bar exam in person or online, there already have been significant problems including, for example, the exposure of test takers to COVID-19 and cybersecurity failures.

The COVID-19 pandemic has negatively and irreparably harmed the health and livelihood of millions around the country, hugely increasing the need for public interest practitioners. Neither the virus nor its catastrophic effects appear to be waning anytime soon. We do not believe in-person bar exams should continue under these conditions, nor do we believe online examinations are an equitable substitute. Instead, we urge the cancellation of state bar examinations this year and the awarding of full diploma privilege to recent law school graduates.

We write especially to emphasize that both in-person and online exams exacerbate inequities affecting applicants of color, lower-income applicants, and applicants with disabilities. Even absent a global pandemic, preparing for the bar exam requires intensive, focused study that graduates who are living in crowded homes, caring for children or other family, or managing illness may not be able to do. With the added challenges imposed by the pandemic, law school graduates with [chronic health conditions](#) and living with essential workers (who are disproportionately people of color and women) or at-risk family members are placed at a further disadvantage relative to their peers. The extension of the bar exam to October in some states means a five-month income gap that is more difficult for lower-income graduates and graduates of color to bridge.

These inequities, cancelled or postponed exams, and the troubled roll-out of in-person and online bar exams risk disrupting employment for a significant number of bar applicants. Delays in licensing graduates also affects the communities to which bar applicants would provide legal assistance. Each year, more than 24,000 law school graduates begin jobs that require bar

[admission](#). Approximately half of these graduates serve the needs of low- and middle- income communities and small businesses. Disrupting the flow of new lawyers into direct-service providers, government offices, and other public interest legal positions will further undermine access to justice for under-resourced communities that already struggle to obtain legal assistance. The threats our marginalized communities face are especially grave at this moment: [a wave of mass evictions appears imminent](#), [workers continue to face unsafe working conditions](#), and voter suppression foreshadows “[a potentially disastrous November election](#).” We need licensed law graduates to meet the needs of these communities right away.

From a public health perspective, in-person exams immediately risk serving as a vector for the spread of COVID-19. Despite varying levels of mitigating safety practices instituted by examiners, multi-hour indoor activities present a significant risk of infection. In [Colorado](#), for example, an examinee tested positive for COVID-19 after the exam, which directly exposed 22 other people who were in the same room. This exposure risk will negatively affect all bar-takers, but disparately impacts individuals with health problems making them especially vulnerable to COVID-19, or who live with or care for individuals with such risks and cannot self-isolate. Holding in-person exams also will risk sparking broader community spread as test takers and administrators return home from test sites. Furthermore, holding in-person exams—and allowing the further spread of the virus—will itself have a disparate racial impact because people of color who contract COVID-19 have [significantly worse health outcomes](#) than do their white counterparts.

Although online exams reduce the risk of sparking new outbreaks, [they exacerbate inequities among bar-takers and have proved to be unreliable](#). Online exams, especially ones implemented for the first time, present many accessibility challenges to people with disabilities; for example, people who are blind and have other visual and eye coordination problems may not be able to access the facial recognition software required for some online tests. Persons with disabilities who request reasonable accommodations for the online exam also have been required by various states to take the exam in-person. Additionally, access to fast and reliable internet connectivity is not equal across communities. Rural communities and low-income neighborhoods, as well as neighborhoods inhabited predominantly by communities of color, frequently have spotty internet service as a result of “[digital redlining](#).” Household overcrowding and family obligations may make taking the bar at home effectively impossible, and the pandemic has further limited the number of quiet public spaces, such as libraries, where bar-takers could go. The online exams administered thus far have been plagued with [cybersecurity and access issues](#), and the use of facial recognition technologies risks [threatening civil rights and civil liberties](#), particularly for people of color.

Given the public health and equity concerns of in-person and online exams, we believe the only fair, safe, and administrable option is diploma privilege—in other words, licensing recent law graduates without requiring a bar examination. Wisconsin licenses lawyers through this practice for in-state graduates on a permanent basis, while [Louisiana](#), [Oregon](#), [Utah](#), and [Washington](#) have implemented some form of diploma privilege on a temporary basis in response to the COVID-19 pandemic. To the extent there are concerns about the ability to assess minimal competence to practice without the bar examination, [state bars can add requirements](#), including for example, requiring affidavits from an employer or externship supervisor that the candidate possesses the knowledge and skills to practice law, law school certification of additional

educational credentials, such as successful completion of a clinic or externship, more explicit supervision requirements for new lawyers or completion of bridge-the-gap programs and other online CLE programs.

We urge the State of Maryland to grant admission based on receipt of a juris doctorate for the duration of the coronavirus pandemic.

Signed,

Public Rights Project

A Better Balance

Advocates for Basic Legal Equality, Inc. (ABLE)

Advocates for the Elderly and Disabled

Alternatives for Community & Environment (ACE)

American Association of University Women (AAUW)

American Constitution Society

American-Arab Anti-Discrimination Committee (ADC)

Americans United for Separation of Church and State

Amistad Law Project

ArchCity Defenders

Asian American Legal Defense and Education Fund (AALDEF)

Bazelon Center for Mental Health Law

Bet Tzedek Legal Services

BPI (Business and Professional People in the Public Interest)

BU Law Immigrants' Rights and Human Trafficking Program

California Innocence Project

Campaign Legal Center

Center for Constitutional Rights

Center for Popular Democracy

Center for Public Interest Advocacy and Collaboration at Northeastern University School of Law

Center for Public Representation

Centro Legal de la Raza

ChangeLab Solutions

Charles Hamilton Houston Institute for Race & Justice at Harvard Law School

Chicago Community Bond Fund

Columbia Law School Immigrants' Rights Clinic

Columbia Legal Services

Committee of Public Counsel Services

Community Legal Services, Philadelphia

Connecticut Legal Rights Project, Inc

Defender Impact Initiative

Disability Rights Education & Defense Fund

Dominican Bar Association

Earthjustice

Education Law Center-PA

Election Protection Arizona

Equal Justice Center
Equal Justice Society
Fair and Just Prosecution
Family and Children's Law Center
First Shift Justice Project
Gideon's Promise
Hawaii Innocence Project
Health Law Advocates
Hispanic National Bar Association
Immigrant Justice Corps
Immigrant Legal Resource Center
Innocence Project of Florida
Innocence Project of Minnesota
Just Futures Law
Justice Catalyst
Justice in Aging
Juvenile Law Center
Katharine & George Alexander Community Law Center
Kentucky Innocence Project
Lambda Legal
LatinoJustice PRLDEF
Law School Transparency
Lawyers for Civil Rights (Boston)
Lawyers' Committee for Civil Rights Under Law
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Action Center
Legal Aid at Work
Legal Aid of Sonoma County
Legal Clinic for the Disabled
Legal Services for Children
Massachusetts Advocates for Children
Massachusetts Law Reform Institute
Midwest Innocence Project
Mississippi Center for Justice
Mississippi Workers' Center for Human Rights
Mobilization For Justice, Inc.
Movement Law Lab
NAACP Legal Defense Fund
National Center for Law and Economic Justice
National Center for Lesbian Rights
National Disabled Law Students Association
National Employment Law Project
National Immigration Project of the National Lawyers Guild
National Lawyers Guild
National Organization for Women
National Women's Law Center

Neighborhood Legal Services Association
New York Lawyers for the Public Interest
Northern California Innocence Project
Northwest Immigrant Rights Project
Northwest Workers' Justice Project
Oasis Legal Services
People's Parity Project
Philadelphia Volunteer Lawyers for the Arts
Pride Law Fund
Prisoners' Legal Services of Massachusetts
Protect Democracy
Public Justice
Public Justice Center
Public Law Center
Skadden Fellowship Program
Social Justice Collaborative
Southern Center for Human Rights
Southwestern Pennsylvania Legal Services
Texas Appleseed
The Bronx Defenders
The Harvard Legal Aid Bureau
The Rhode Island Center for Justice
Towards Justice
Transformative Justice Coalition
Urban Justice Center
Women's Law Project

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am writing today as a member of the public and as the boyfriend of a 2020 applicant to urge you to consider implementing some form of diploma privilege for the 2020 applicants. These individuals have worked for three years in anticipation of taking the bar exam, but this year's pandemic has thwarted their plans. For many of them, this has resulted in delayed employment, loss of health insurance, and loss of a quiet space to study.

My girlfriend has been preparing for the bar exam since before I even met her. She has put her heart and soul into her education at the University of Maryland just like she did as an undergraduate student at Towson University. Her dedication to the legal profession and to wanting to contribute to positive change in the community is unwavering. At a time when Maryland is facing so much turmoil over the coronavirus pandemic, we need people like my girlfriend who can inspire change and who can dedicate themselves to ensuring that voices are heard, and people are supported.

However, the current plan for the remote administration of the bar exam is presenting an unnecessary barrier for the class of 2020. For my girlfriend, she worries about the internet going out on the day of the exam. She worries about her test score getting lost as has happened with the LSAT scores. She worries about how to take the exam without the opportunity to mark up the answers. She has told me about the experiences of ExamSoft in Michigan as well as all of the other software failures across the country. As a software developer, I am worried for her and every other applicant. It is fundamentally unfair to subject these applicants to a remote administration with a software company that has yet to prove themselves in a timely manner.

As a member of the public, I am fully confident in the ability of the class of 2020 to represent me in any action, if need be, regardless of whether they took the bar. I urge the Court to please consider some form of diploma privilege because our community needs these applicants.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

William Fitzgerald

[EXTERNAL] Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Riley Horan <rileykhoran@gmail.com>

Mon 8/24/2020 4:05 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Riley Horan

[Rileykhoran@gmail.com](mailto:rileykhoran@gmail.com)

August 24, 2020

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility, security, and safety of Examsoft, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Riley Horan

[EXTERNAL] Diploma Privilege Proposal

George Liebmann <george.liebmann2@verizon.net>

Mon 8/24/2020 4:23 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To the Clerk:

Please substitute this version of my letter, which corrects some typographical errors, for the one sent several minutes ago.

George Liebmann

August 24, 2020

To the Judges of the Court of Appeals

I write to vigorously oppose the proposal for so-called "Diploma Privilege" for admission to the Bar now before the Court.

I have been a member of the Maryland Bar for 56 years and have been President of the Library Company of the Baltimore Bar for the last 16 years. I served as Law Clerk to Chief Judge Brune of the Court of Appeals in 1963-64, as Executive Assistant to Governor Hughes in 1979-80, as reporter for or chairman of various gubernatorial study commissions, as Chairman of the Section of Judicial Administration of the Maryland State Bar Association, as a past member of the Commission to Revise the Annotated Code, and as the author of four volumes on Maryland Practice and Procedure published by the West Publishing Company.

I am not in the habit of commenting on rules proposals. I last did so, along with Henry Lord and James Astrachan of the Baltimore Bar about seven years ago, when we complained of delays in rendering decisions by the Court of Appeals and what we saw as politicization of the former Maryland Professionalism Center. The Court responded with admirable alacrity on both these issues.

The current proposal is of at least as great significance. I oppose it for the following reasons:

1. The proposal transfers control over Bar qualifications to law schools that have a pecuniary interest in the non-maintenance of standards. It is not so long ago that the retiring dean of one of our local law schools alleged that law schools were being treated by their universities as 'cash cows' to support other functions. Few students are dismissed from or fail to graduate from law schools.
2. The Bar examination serves an important pedagogical purpose, requiring intensive study and review of the previous three years' work.
3. The Bar exam provides an at least minimal assurance that those passing it are sufficiently literate and knowledgeable to provide prompt and accurate responses to new and unexpected legal problems.
4. Failure to give this year's examination will render it impossible to revive an examination requirement. Those failing future examinations will find it hard to understand why those who have been excused from passing them are allowed to practice while they are not.
5. Removal of the Bar exam will eliminate the most significant way in which applicants can assess the merits of law schools by removing published passing rates. Since law schools are also eliminating the LSAT test as a requirement for applicants, the reputation of law schools will rest on no objective measure but on the vagaries of paid advertising and public relations.

6. The Bar exam operates as a check on the fragmentation of law school curricula in response to faculty demands by assuring that important parts of the course will be devoted to core rather than exotic subjects.

7. Waiving the requirement of an exam this fall will not accelerate the ability of those excused to earn a living at the Bar, since the remaining hurdles, those mostly perfunctory, will consume as much time as the administration and grading of the exam.

I view with astonishment some of the arguments made in favor of the proposal, such as those invoking the "Housing and food vulnerabilities of many recent graduates." Those completing a three-year law course are not dwellers in homeless shelters or tent cities, nor the "prisoners of starvation" celebrated in the Internationale. The law schools, and, if necessary, the library over which I preside have ample spaces for study.

The invocation of the 'race card' : undocumented "potential racial bias in artificial intelligence used to monitor" is reprehensible. Too many distinguished minority lawyers and judges have cleared much greater hurdles than a monitored remote exam.

Some legislators have joined in the demand, though others to their credit have not. I am reminded of H.L.Mencken's observation that if there were a significant number of cannibals in the electorate, some politicians would urge that they be given regular meals of grilled missionary.

Maintenance of minimal standards for a learned profession requires rejection of this scheme and support for the wise decision of the Board of Law Examiners.

Respectfully yours,

George W. Liebmann

Scott Cain
Sac0019@mix.wvu.edu

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges:

I am an applicant for the Maryland Bar Exam. The Court has asked for comments regarding the Online Bar Exam scheduled for October. My comments will span the hardships I have faced this summer in preparation for the Bar Exam to alternatives to the exam. While I cannot speak for every law graduate out there, I hope that my comments help to persuade the Court in their decision regarding the exam.

Every law student sacrifices the summer to study for the Bar Exam. Bar prep courses start out right away as a cram session. As the honorable Judges are aware, prepping for the exam is essentially a full-time job. However, I am not your traditional law graduate, as I am a 43-year-old veteran with a wife and a kid. This makes studying a lot harder than it would have without this pandemic. I study at home because nowhere else is open for me to study. My daughter does not seem to understand the amount of time required for studying. She remembers me taking her to work with me when I managed a pizza place and always having time to do things with her.

My wife understands that I need to study. She was prepared for me to study until the exam in July. She was not happy with my having to be unavailable to help around the house as

much as I had been. We have been working through a lot of issues together and prep time is just added strain.

I am covered by the VA for medical issues. I need to be seen to have my blood sugar checked and my medicines adjusted. I have not been able to do this because of the pandemic and to some extent bar prep. I also have vision issues that I was working with a local optometrist to deal with. The pandemic has delayed my ability to get much needed tests or even new glasses. My vision will be an issue with the online exam, as I will explain later.

Technology

The State Board of Law Examiners (SBLE) has selected Examsoft as the provider for the Bar exam. SBLE failed to address many concerns in their response. I have the following concerns regarding remote proctoring of the exam:

1. What size files will need to be uploaded to Examsoft and do they have the required server space to accept the size files from 30,000 plus examinees?
2. Does Examsoft have the capability to accept multiple connection requests from 30,000 plus examinees simultaneously?
3. Does Examsoft have the manpower to properly review all AI flagged incidents?
4. What precautions has Examsoft made to prevent the issues faced by the 2014 test takers whose answers failed to upload properly?
5. What are the plans to provide for issues during the exam or internet outages?

1. What size files will need to be uploaded to Examsoft and do they have the required server space to accept the size files from 30,000 plus examinees?

Storage space on computers is always an issue. To the best of my knowledge, we have not been provided with the information regarding the size file that will be created by the software. I suspect that with the program recording audio, visual, and screenshots of our test taking, we can expect each file to be around a Gigabyte in size. It is possible that the file will be a little smaller or much larger depending on many factors such as resolution, audio quality, and encoding. With an estimated 30,000 examinees taking the exam, that comes out to roughly 30,000 Gigabytes worth of data per testing session for 60,000 Gigabytes of data per day. This leads to a couple of issues relating to the ability of Examsoft to handle an estimated 120,000 Gigabytes worth of data being uploaded to them and their storage space.

2. Does Examsoft have the capability to accept multiple connection requests from 30,000 plus examinees simultaneously?

Examsoft has handled exams in the past. However, to the best of my knowledge, they have never handled an exam with this much data being moved around. It is not unreasonable to believe that when their site gets bombarded with requests for uploading these files, it will fail and Examsoft will claim they were the victim of a distributed denial of service (DDOS) attack. SBLE stated that Examsoft claims they were targeted by a DDOS attack when offering the exam in Michigan. I propose the alternative explanation that Examsoft was not prepared to handle the simultaneous log in attempts of multiple users all requesting access to the same resource at the

same time. Denial of Service attacks come in two forms: flooding and crash attacks. Flooding attacks, according to Norton¹, “occur when the attacked system is overwhelmed by large amounts of traffic that the server is unable to handle.” This would be difficult to differentiate from a server simply receiving numerous valid requests in a short period of time. San Diego Comic-Con suffered this issue for many years as thousands of fans would sit at their computers waiting for ticket sales to begin.² Once the sale began, and people clicked to buy tickets, the site would get overwhelmed and crash. To make matters worse, fans would keep hitting refresh, essentially sending a new request to an already overwhelmed server and compounding the issues. In reports regarding the Michigan Bar Exam, at least one applicant reports refreshing the page multiple times over 30 minutes, likely compounding the issues Examsoft was already facing. Not every system crash is the result of mysterious cybercriminals, and SBLE’s mischaracterization of a DDoS attack as being sophisticated is not supported by any evidence provided by Examsoft so far. Examsoft will likely never be able to show conclusively that a legitimate DDoS attack was launched against them. If the Court moves forward with them as the provider for the October exam, it is likely they will once again blame imaginary cybercriminals for their shortcomings.

3. Does Examsoft have the manpower to properly review all AI flagged incidents?

Examsoft claims that every AI flagged event in any examinee’s file is flagged for review by a live person. We have no indication of how many times on average a person is flagged by AI and there is no indication of how long it would take to review those flagged. Operating under the

¹ <https://us.norton.com/internetsecurity-emerging-threats-dos-attacks-explained.html>

² <https://latimesblogs.latimes.com/technology/2011/02/comic-con-ticket-sales-crash-again-for-the-third-time.html>

assumption that every candidate is flagged at least one time and that it takes approximately 10 minutes per flag, to load the file, select the flagged portion, review the portions, make a determination, and close out the candidate's file; it would take approximately 208 days of manpower to review just those single flags per individual. Realistically, people are going to get flagged more than once, amplifying these numbers. I already know I am going to be flagged multiple times because I need to take my glasses on and off to see different fonts and text sizes and I am, generally, a nervous test taker. (Basically I hit just about everything they say not to do on the FAQ) If we up the average flagged incident to 10, and there is a margin of error here because in theory it would take less time to review multiple flags because the file is already open, the number of days for review jumps from 208 to 2,083. This alone could delay countless applicants from getting their results or, worse yet, could result in Examsoft simply clicking through the flags to clear them all and meet their deadline. If this were to happen, then what is the point of having them "proctor" the exam?

4. What precautions has Examsoft made to prevent the issues faced by 2014 test takers whose answers failed to upload properly?

In the summer of 2014, Examsoft could not handle exam answers being uploaded.³⁴⁵ This resulted in mass panic from those taking the exam. Law Schools claimed that the lower than

³ <https://www.insidehighered.com/news/2014/08/05/glitches-aside-boards-law-examiners-still-depend-examsoft>

⁴ <https://abovethelaw.com/2014/07/bar-exam-disaster-examsoft-makes-everyones-life-hard/?rf=1>

⁵ [https://www.courthousenews.com/bar-exam-software-firm-to-pay-2-1m-settlement/#:~:text=\(CN\)%20%E2%80%93%20Bar%20exam%20software,the%20multiday%20test%20last%20year.&text=Several%20lawsuits%20followed%20and%20were%20ultimately%20combined%20into%20the%20class%20action](https://www.courthousenews.com/bar-exam-software-firm-to-pay-2-1m-settlement/#:~:text=(CN)%20%E2%80%93%20Bar%20exam%20software,the%20multiday%20test%20last%20year.&text=Several%20lawsuits%20followed%20and%20were%20ultimately%20combined%20into%20the%20class%20action)

expected scores from that year were related to issues around the upload error. Examsoft eventually settled a class action lawsuit for \$2.1 million and paid each applicant \$90. While Examsoft may have engaged in some corrective action for such small files to be uploaded, what have they done to ensure this does not repeat itself with the much larger files we are expected to upload now? What safeguard do I and other applicants have that we will not simply be paid \$90 next summer for our trouble while we are forced to retake this exam?

5. What are the plans to provide for issues during the exam or internet outages?

Historically, the solution to technical problems during the live and in person exam was to switch to pen and paper and finish your exam. Given we are not allowed either of these things during the exam, what are we expected to do when faced with an issue? What is Examsoft's tech support capacity? If I have an issue, will I get that time back or will I just be at a loss? I obviously cannot keep writing while remaining on hold with tech support because I cannot have a phone in the room, and I cannot use scrap paper.

A quick google search finds an Examsoft Troubleshooting Guide that is 21 pages long.⁶ The first 5 pages are overview and setup information. That leaves us with 16 pages of things that can go wrong and how to fix them. Not that it matters that this text exists, because we would not be allowed to have it in the room with us. However, the point is how much CAN go wrong and how much Examsoft knows HAS gone wrong in the past.

Most law schools use a version of Examsoft for finals. The size of each class varies, but the larger classes have had about 90 students. Every single time I took an exam in law school, there

⁶ <http://www.examsoft.com/sedb/docs/Troubleshooting%20Guide.pdf>

were at least 3 to 5 students who experienced technical issues during the exam. Our tech guy would take their computer and look at it while the student kept going on pen and paper. Now, lets scale this up to what we are looking at with a nationwide simultaneous start exam of over 30,000 people. To be on the conservative side, estimate 4 failures per 100 applicants. That is a 4% fail rate. 1,200 examinees can expect to face some form of technical issue that requires the aid of tech support. That is a conservative estimate, as it could just as easily be higher and is only taking similar issues that people faced in a school setting. Who knows what errors will occur using the remote proctoring software?

Errors on Examsoft's end aside, what is to be done for applicants who lose internet connection? I have personally lost my internet for long stretches of time for 3 out of the last 4 days. I would not have been able to log in and get the password, download the exam, or upload my answers while the internet is down. I live in Garrett County, where we are experiencing an almost 600% increase in tourism, adding strain to our existing limited internet infrastructure. I have always had issues with my internet in the past but never as badly as of recent. At one point, I had no internet for a little over 18 hours.

Solutions

Diploma Privilege Plus

Many are calling for Diploma Privilege and I believe that is a potential solution. SBLE argues that a filter needs to be in place to filter applicants for minimum competence. (Page 9 of SBLE Answer) Is that not what the MPRE is for? Is that not why we have CLE courses? Is that not why we have sanctions? A more meaningful safeguard would be making an initial applicant

to the Bar provisionally accepted and require so many hours of supervised work. If the only reason for the exam is to safeguard the public, we have ways of doing it that do not disadvantage those who have children and/or a spouse and those who took on crushing debt in the hopes of practicing law. I spent a year and a half working in a clinic for credit, two summers to help keep cases alive, and then a few months post-graduation to ensure my clients were handed off properly and to help out. My clinic supervisors all said that when I start practicing, they are always available to help and answer questions. My clinic partner and I argued in the United States Court of Appeals for the Third Circuit and won a decisive victory for our client and for asylum seeking immigrants. (John Doe v. AG) To say that I have not demonstrated minimum competence because I have yet to pass the Bar Exam seems insulting.

SBLE argues that to grant diploma privilege, the Court should follow certain safeguards that other states have put in place. This is absurd, as the Court has the power and the authority to do what they see is right. If the Court wanted to extend diploma privilege to the current batch of applicants, the Court could place as much or as little restrictions as it saw fit. In my opinion, the court should consider diploma privilege with certain limitations, such as working under the supervision of an attorney for no fewer than 400 hours. I am honestly not opposed to the number being higher. The Court could also extend diploma privilege to those who are willing to do so many hours working as a public defender or for some other non-profit access to justice project. The Court could use this as an opportunity to funnel numerous graduates towards understaffed programs for a short period of time. The Court should not feel limited by what other states have done when those other states have simply done what they feel is right for their state. This Court should do the same.

It is worth pointing out that there is growing support for Diploma Privilege in our state amongst state delegates and with the law school deans who initially supported this online exam. New York recently held a roundtable discussion on the subject and it sounds like they are gaining support as well.

Email Exam

I recognize that the Court may find that Diploma Privilege is a solution they are willing to back at this time. However, to continue with an online proctored exam through Examsoft is leaving examinees open to many unknowns and likely problems. So, why not do what other states have done successfully and do an essay and short answer exam through email. If our goal is to test for the minimum competence of a future attorney, what better way than through an exam that more closely reflects real world issues? With an email exam the test is open book, eliminating the need for the bulky and invasive proctoring software. The examinee can use their notes to answer questions and is still timed. This is more in line with what I believe is expected of an attorney in the real world. If you show me an attorney in the real world who writes for three hours straight without consulting any legal authority, I will show you an attorney likely to be disbarred soon.

While an email exam still requires internet, the file size is drastically smaller. With luck, any issues a student might face with the internet can be handled with a phone call to SBLE's representative. While internet connection could still be an issue, a 5 to 20 MB file would be much easier to upload with low bandwidth than the file that Examsoft will need.

The elimination of remote proctoring also allows ease of mind for the examinees. My daughter interrupted me at least 4 times when I took my mock exam. My dog and cats often come and visit me while I am sitting studying. The only room in my house that I can use that would provide some privacy lacks decent airflow or air conditioning and if I were to move my computer into that room the added heat will likely cause it to shut down. The local places I have used in the past to study had unreliable internet and, if they were open, subject to a vastly increased foot traffic with all the tourists. I do not mind taking an exam, but I just cannot do it under the conditions for which it is being offered. As it stands right now, I am likely to withdraw my application for this bar exam and hope that something has changed by February. That means almost 6 more months of studying. Almost 6 more months of having to decide between a part-time job to make ends meet or trying to study and work. It means taking the sacrifices I have made over the last several months and throwing them out the window and starting fresh. Nobody should have to suffer like this for a single exam. Even the United States Medical Licensing Examination has suspended part of its examination until at least June 1, 2021.⁷

Conclusion

This is my second time attempting to write these comments. The first time, I lost internet connection and my software was unable to upload a copy of the file to my OneDrive. The computer then restarted and wiped my original draft. Imagine if I had been taking the planned exam in October. I would not have been able to download the exam, the password, or assuming I had started, upload my responses.

⁷ <https://covid.usmle.org/announcements/usmle-completes-second-testing-event-medical-school-support>

Maryland has the choice to fight the tide and stay the course or to make some sort of corrective action and provide much needed relief to the current applicants. As a passenger on this ship I ask the Court to provide the aid we need and to not go forward with the October Bar Exam as planned. Make the changes and bring us into a safe harbor before it is too late.

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

In re: Comment on the State Board of Law Examiners' Remote Bar Examination
Administration Plan

Dear Chief Justice Barbera and Associate Justices,

We are Diploma Privilege for D.C., an advocacy team that thoroughly researches the unique concerns raised by this year's bar admission application period coinciding with a global pandemic. Our main objective is to secure a more equitable and feasible path to licensure for 2020 attorney-applicants in the District of Columbia, but we are a part of a national movement that also supports attorney-applicants with the same or similar objectives in other jurisdictions.

We extend our deepest appreciation to the Court for opening a period of public comment for Maryland. Our jurisdiction closed its public comment period on August 12th. From that public comment period, we saw that the overwhelming majority of attorneys, members of the public, and applicants believed that granting emergency diploma privilege, or diploma privilege plus (as advocated for by our colleagues at Diploma Privilege for Maryland) was the best solution. The D.C. Court of Appeals received more than 500 comments, with 471 supporting some form of diploma privilege, and 29 against an alternative path to licensure in lieu of the bar exam. Given the current trajectory of the national effort, we suspect you may see similar results in Maryland.

We are confident that our colleagues in Maryland have provided a comment that succinctly lays out the challenges facing an online administration of the bar exam, the socioeconomic and racial disparities facing this year's applicants, and the financial burden that continued delayed licensure places on us all. Our comment will instead address the arguments we noted during the D.C. public comment period that advocated against emergency diploma privilege. It is our hope that by directly responding to each of these arguments with facts to the contrary, the Court will gain a deeper understanding of why the unique challenge of licensure during a

global pandemic is only met with emergency diploma privilege. It is the most equitable solution.

“I had to take the bar exam, all lawyers therefore should”

It is important to consistently remind the public that the bar exam is fairly new, given the fact that the legal profession has existed in this country since 1776, but the bar exam was not a requirement for admission per the ABA until the 1920s. In fact, one of the most effective and revered Supreme Court Justices, Chief Justice Earl Warren was admitted to practice before it was promulgated. The modern Multistate Bar Examination (MBE) was not created until 1972. Because of its age, the bar exam was not a factor the last time the world faced a global pandemic in 1918. As a result, no attorney can say that they successfully prepared for, and passed the bar exam during a global health crisis of this magnitude. If you add to that the current staggering unemployment, economic unrest, groundswell of protest activity to address racial violence, and natural disasters occurring right now in California, Iowa, and the Gulf Coast; the situation this year’s applicants find themselves in is unprecedented. Additionally, the bar exam proponents are advocating for is not the same bar exam they took in the following ways:

- Libraries, cafes and public spaces remain closed. In a typical bar exam season, if an applicant does not have an adequate place to study at home, they have free, public spaces available to meet their needs. Because of the pandemic, applicants without a home environment conducive to concentration and preparation are at a marked disadvantage.
- This year’s examinees will be forced to provide their own quiet place, free from intrusion, with internet service in order to take the remote exam. For applicants with families or roommates, this could mean incurring the expense of hotel rooms on top of other financial burdens.
- Applicants will not have access to a physical test booklet, or physical scratch paper. This point is significant. All commercial bar prep programs and law school classes train applicants to make physical margin notes, draw circles, underline and diagram questions before answering. This is most critical for Property, Wills & Trusts, Civil Procedure and Contracts questions. All tested on the Maryland bar exam. “Virtual Scratch Paper,” which is provided on-screen only, does not allow for drawing of any kind; is difficult to navigate on a single screen (dual screens have been prohibited); and will take valuable time away from question completion as applicants belatedly attempt to adapt to the newly introduced technology. Bar examiners are not

providing accommodations for tactile learners for whom physical scratch paper is vital.

This year, no bar applicant subject to the remote October exam will take a bar exam that was given in the past. In fact, they won't even be taking an exam that commercial bar prep companies or bar tutors have ever seen to prepare them for. The statement "I had to take the bar exam, all lawyers therefore should" is already deeply flawed; but if the Court was to follow that sentiment, they would see it is impossible for bar examiners to meet the standard of previous administrations of the bar exam in times like this. This pandemic and other national crisis are forcing everyone to adjust. The attempt to adjust the bar exam on the fly, by placing it online is not feasible. Every attempt to administer the bar exam online has failed or suffered severe technical difficulties. It is simply not possible to administer the bar exam as it was administered in years past.

"The bar exam tests minimum competence"

Some opponents of diploma privilege have argued that because the bar exam is presumed to test minimum competence, jurisdictions need to administer an online or in-person bar exam. However, this rationale is flawed because it does not consider the many ways an attorney-applicant is screened for minimum competence during the application process. First, one of the most important components of attorney competence is understanding an attorney's ethical duty. All attorney-applicants are required to take and pass the Multistate Professional Responsibility Exam. This ensures new attorneys have a solid grasp of the rules to which they will be bound as attorneys, before obtaining their license.

The next most important component of attorney competence is the attorney's ability to demonstrate good moral character, a personal adherence to the rule of law, and the character for truthfulness needed to disclose any prior impropriety for examination by the Committee on Admissions. This component of competence is screened by the issuance of a Moral Character and Fitness determination, which all attorney-applicants must pass before receiving their license. In our observation, the assessment of these first two components of competence, have not been impacted by the global pandemic, natural disasters, or current civil unrest. The bar exam has.

Finally, a minimally competent attorney should be able to read, comprehend, and apply the law to facts. Law schools have taught and tested this component of

competence to attorney-applicants before conferring J.D. or L.L.M. degrees. Individuals who did not display competence did not receive a degree. To that end, the Maryland Court of Appeals and Maryland Bar Examiners have proposed that the bar exam is a capstone of everything attorney-applicants should learn in law school. That is to say, the bar exam is merely a duplicative measure of competence because law schools have already vetted this area of competence in accordance with ABA standards.

Furthermore, there is no evidence correlating the bar exam to success as an attorney. In 2008, the Law School Admissions Council (LSAC) commissioned a study to determine what makes an effective lawyer.¹ They found that effective lawyering was correlated with personality assessments that measured emotional stability, self-control, conscientiousness, and ambition. These personality traits, which are highly correlative with common ethics and malpractice complaints, are not tested even tangentially by the bar exam. This further shows that the bar exam does not actually add to the assessment of attorney competence.

Instead, attorney-applicants are already screened for minimum competence using the MPRE, the Moral Character and Fitness Determination, and the several compulsory classes and exams that are completed in their JD and LLM curriculum. Additionally, attorneys swear an oath to a judge to maintain their competence as long as they practice law. Bar associations continue to screen licensed attorneys for competence throughout their entire career with compulsory Continuing Legal Education (CLE) courses and enforcement of the Model Rules of Professional Conduct. The bar exam does not measure minimum competence. The bar exam is not, by far, the most important component of this vetting process, and it is not a necessary component because it is a duplicative.

“The bar exam protects the public”

The notion that the bar exam protects the public implies that all those admitted before its modern promulgation in 1972, lawyers admitted in Wisconsin (where diploma privilege is still practiced), and the countless law students who practice under apprenticeship, pro bono, and legal clinic supervised practice are a danger to the public. Certainly, that cannot be in the case. In Washington D.C., last year’s graduating classes from American University, Washington College of Law;

¹ Alexia Brunet Marks & Scott A. Moss, What Predicts Law Student Success? A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes, 13 J. Empirical Legal Stud. 205 (2016).

Catholic University of America, Columbus School of Law; Georgetown University Law Center, George Washington University Law School, and Howard University School of Law collectively completed an estimated 455,400 hours of supervised practice for credit and 114,400 hours of pro bono service. This represents public facing work, real cases, with real clients in need of representation. There is no data to support competency issues or harm to the public as a result of this supervised work. Wisconsin, who implements diploma privilege as policy every year, has no more disciplinary issues than any jurisdictions that require the bar exam.

“The bar exam should be given as soon as it is safe to do so”

When will the pandemic be over? No one knows the answer to this question right now. Health officials are predicting that this pandemic will be with us even in 2021, which means that even the February 2021 bar exam will be impacted.

However, we do know that attorney-applicants are already facing severe consequences for having their licensure delayed. These are consequences that a temporary license will not fix. In fact, a temporary license will only add to the attorney-applicant's plight. Several attorney-applicants have lost job offers because their employer could no longer wait for them to take a bar exam. Others have had their start dates for jobs delayed by up to five months or more because their employers are waiting for them to receive their license. Those especially vulnerable are attorney-applicants who have not yet secured employment. Most employers need fully licensed attorneys in order to service their clients effectively because they will need attorneys who can sign off on briefs and appear in court as well as advising clients in a manner that only licensed attorneys are authorized to do. These employers cannot afford to settle for hiring unlicensed attorneys under temporary licensure because they will have to devote their resources to overseeing everything the unlicensed attorney does and getting other attorneys to cover areas that the unlicensed attorney is not authorized to cover. If employers attempt to do this, then they may have to trickle down the cost of these extra oversight measures to their clients, in turn making access to legal resources less affordable for the public.

Furthermore, most attorney-applicants cannot continue to study without working to support themselves. We know that working while studying for the bar exam correlates with lower passage rates. But at this rate attorney-applicants have been pushed to seek employment, even if it is non-law related employment, while they also study for the bar exam. Thus, for the foreseeable future it will not be safe or

feasible to administer a bar exam. It is extremely harsh to continue to ask attorney-applicants to delay receiving full licensure to practice in their chosen profession after they have already spent time and money to successfully complete all courses through high school, college, law school, the MPRE, and a Moral Character and Fitness Determination.

In closing, we fully support the proposal our colleagues in Maryland have submitted to the court, for grant of diploma privilege plus. That proposal calls for:

The Court of Appeals to waive the Md. Rule 19-201(a)(3) UBE requirement for all July 2020 Maryland Bar applicants. Waiving the UBE requirement means that bar applicants must still have:

- (1) completed the pre-legal education requirements for admission to a law school approved by the American Bar Association;
- (2) graduated with a juris doctor or equivalent degree from a law school located in a state and approved by the ABA;
- (3) achieved a qualifying MPRE score;
- (4) successfully completed the Maryland Law Component of the admission requirements; and
- (5) established good moral character and fitness for admission to the Bar.

COVID-19 has created challenges no one could have anticipated. Several months ago, countless applicants prepared to begin studying for the bar exam as planned, with no idea of what was to come. But what has come has been devastating. Over the past few months, applicants and their would-be future clients have faced catastrophic losses of life, losses of livelihood, heightened stress, and despair. Many have had their lives changed forever. Three or four years ago, 2020 bar applicants started law school with the dream of becoming lawyers, to answer a noble calling and join this revered profession. Circumstances beyond anyone's control have made the path to licensure—the final step toward that goal—difficult, protracted, and in some ways, impossible. Diploma privilege plus provides a much-needed

alternate path to permanent licensure that this court can easily implement. It is supported by the deans of the Maryland law schools and several other schools around the country, public interest organizations, countless legal scholars and practitioners. In the face of the worst pandemic in living memory, we urge the court to open this path to licensure and offer a crucial lifeline to clients, legal employers, and bar applicants in these uncertain times.

Respectfully,

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Cc: Diploma Privilege for Maryland

[EXTERNAL] Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Brianna Gaddy <briannagaddy11@gmail.com>

Mon 8/24/2020 4:09 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To The Honorable Chief Judge Barbera and Associate Judges:

My name is Brianna Gaddy, and I am an applicant for the administration of the October 2020 MD Bar Examination. I would like to thank the Court for opening this public comment period and for listening to the concerns bar applicants have about the licensure process this year. COVID-19 has had a devastating impact on our country.

I strongly support the petition before the MD Court of Appeals, advocating for emergency diploma privilege. As an applicant, I am appreciative that MD is to offering an online Bar Exam instead on an in-person administration because it is the safer of the two options. However, the proposed online exam presents many opportunities for inequity and the software risks are great.

While I am lucky that I am not facing the inequity of job insecurity resulting from the pandemic, I have faced many anxieties exasperated by the decision to administer an October online exam. Following the State Board of Law Examiners decision, I had to start my clerkship in Maryland State Court while continuing to study for the bar exam. The uncertainty regarding whether the exam can be administered fairly and without issue has made it difficult to focus fully on my clerkship and on the bar studying. Diploma Privilege is the most equitable response.

The proposed online administration of the MD Bar Exam will gravely impact the quality and demographic representation of new lawyers admitted to practice in MD. In fact, it will disproportionately exclude from admission applicants who do not have safe homes; who cannot afford quiet spaces; who must work to feed themselves and their families; who are caring for elderly and immunocompromised persons; who are worrying daily for their own health, safety, and financial security; who rely on screen readers or other devices to support test-taking; who have children, partners, and other family sharing their homes; who are sick, hungry, or otherwise hurting. School districts are now moving to completely online classes which creates greater hurdles to a successful examination for those who have to care for children at home while studying and taking the bar exam. In other words, it will disproportionately exclude low-income applicants, applicants of color, women applicants, applicants with disabilities, and other historically underrepresented and marginalized individuals.

Given the immediate need for adequate lawyers, MD diploma privilege can require a various measures to ensure competency. First, the MD Bar can require all newly licensed lawyers to complete robust continuing legal education (CLE) courses before – and subsequent to – their formal admission. This measure will ensure that applicants are sufficiently prepared to represent clients, and that they are consistently refining their advocacy skills. Second, the MD Bar can require that all individuals approved for diploma privilege be strictly supervised by a licensed attorney for a probationary period of time (e.g. 400 hours) to ensure competency. Once the applicant completes the

required hours, and their supervisor guarantees their fitness for independent practice, the applicant may be formally admitted to the MD Bar. Third, the MD Bar can require all new members to complete a certain number of pro bono hours per year. Imposing such a requirement on those applicants who select diploma privilege would reinforce the MD Bar's commitment to the underserved community and aptly ensure that those individuals who are most in need of legal services are protected.

Temporary licensure is not an adequate substitute for diploma privilege. Temporary licensure renders applicants ineligible for most public sector jobs. It also requires private sector employers to "take a chance" on an applicants that will have to take significant time off at a later date to study for and take the bar exam.

The uncertainties created by delaying the bar exam to October, along with the clear inequities and unpredictability of conducting a massive online bar exam, uniquely and substantially harms 2020 bar applicants. We need a solution grounded in fact, equity, and compassion. That solution is emergency diploma privilege. Thank you for giving us the opportunity and platform to raise these concerns.

Respectfully,

Brianna Gaddy

[EXTERNAL] in re: Diploma Privilege

Veronica Faison <veronica.faison@student.american.edu>

Mon 8/24/2020 4:11 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good afternoon, I'm Veronica Faison, a third-year law student at American University in D.C. I'm writing to urge that Maryland offer diploma privilege in lieu of requiring law school graduates to take the bar. While the bar is typically a gatekeeping function to "bar" out nonwhite students from becoming lawyers, having the bar in the midst of a crisis- one that disproportionately impacts nonwhite people who are more likely to be essential workers- is unconscionable in all-forms, both online and in-person.

Maryland should not require that law school graduates risk their lives and assume the risk of contracting a deadly disease in order to be eligible for employment. Especially when employment and the financial security and healthcare coverage it can offer is even *more* imperative during this period of instability. The bar was postponed when it became clear that the pandemic was not ending; now that there is no definite period of safety, the requirement of having the bar needs to be thrown away.

I hope this reaches you well and in good health and thank you for reading.

Veronica Faison (she/her)

J.D. Candidate 2021

"Inclusion isn't an event and diversity isn't an activity."

VP of Campus Education, If/When/How @ WCL

Student Affairs Chair, GWAC

Sang Hyuk Kim, J.D.
Candidate for October 2020 Maryland Bar Exam
shkim5131@gmail.com

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Sang Hyuk Kim, a recent graduate of the University of Maryland Francis King Carey School of Law and a candidate for the October 2020 Maryland Bar Exam, am writing to express my support for the emergency diploma privilege and to highlight my concerns in planned remote bar exam on October 2020.

In reaction to the unprecedented global Pandemic and challenge for administering an in-person exam in July 2020, the Court of Appeals decided to postpone the July bar exam through an Administrative order issued on May 26, 2020.¹ Furthermore, the Court of Appeals authorized Maryland State Board of Law Examiners (“SBLE”) to cancel the in-person bar exam and to adopt remote administration of bar exam in October 2020 on June 17, 2020.²

However, considering the concerns regarding the feasibility and safety of ExamSoft, the software the SBLE has adopted for Maryland’s bar exam administration, the Court should authorize emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

1. Uncertainty of ExamSoft’s Capacity in Accommodating Excessive Number of Examinees

The reliability on the ExamSoft’s capability to process and proctor one of the most important exams in the life of examinees without any flaws have not been proved. Also, the concern for their reliability is getting deepened, especially since more than 30,000 applicants across the 18 states will take the bar exam on the same day at the same time.³ In the dawn of consideration of the possibility of a remotely administrated bar exam, the National Conference of Bar Examiners

¹ See *Maryland State Board of Law Examiners Covid-19 Emergency Response*, STATE BOARD OF LAW EXAMINERS, <https://www.mdcourts.gov/ble> (last visited August 23, 2020).

² *Id.*

³ See Sam Skolnik, *October Online Bar Exams Spark Technology, Privacy Concerns*, BLOOMBERG LAW, <https://news.bloomberglaw.com/us-law-week/october-online-bar-exams-spark-technology-privacy-concerns> (last visited August 23, 2020).

provided SBLE three choices of Vendors as the exam software providers, which are Extegrity, ILG Technology, and ExamSoft.⁴ Extegrity have withdrawn their position as the vendor due to significant technology and procedural burden, as well as insufficient development time or product testing for the technology.⁵ Another vendor, ILG Technology, has reported numerous occasions of failed attempts of software operation during the test run and jurisdictions, which initially choose ILG Technology as their vendor, have canceled their remote, proctored exam.⁶

The ExamSoft has experienced a scandalous Distributed Denial of Service (DDOS) cyberattack in the middle of Michigan Bar exam administrated on July 28, which may leave thousands of Michigan Bar examinees in frustration and mental burden.⁷ In spite of showing this systematical vulnerability against malicious attack, the representative of ExamSoft alleged that their program is ready to take the massive anticipated volume of examinees in the October Bar exam without any factual evidence supporting their claim.⁸

SBLE submitted the Maryland Court of Appeal a letter in response to the Court's request on August 13, 2020, to update SBLE's preparation to administer a remotely delivered bar exam in October 2020.⁹ In response, SBLE provided that the other jurisdiction that has used ExamSoft as their vendor relayed to other states that they were "generally satisfied" with the performance of ExamSoft's software.¹⁰ Mere "general satisfaction" cannot be a warrant for the reliable performance of ExamSoft's software. Moreover, it would not guarantee whether there will not be any DDOS cyberattack or any systematical malfunction caused by the massive volume of test-taker accessing ExamSoft's program simultaneously. Thus, without any further assurance that ExamSoft can provide a reliable, secured exam software that can guarantee to provide an environment where the examinee can fully show their potential, I plead the Court to consider waiving the UBE requirement under Md. Rule 19-201(a)(3) temporarily.

2. Undue Hardship on Test-takers

On August 7, 2020, SBLE announced a guideline for October 2020 Remote Bar Exam in Maryland.¹¹ In the general guideline, SBLE mentioned the test-takers would be recorded through the webcam on an individual's laptop, and the recording will be reviewed by an Artificial Intelligence (AI) to flag any unusual behavior to detect potential cheating.¹² In their response on

⁴ See Stephanie Francis Ward, *Software provider pulls out of remotely proctored bar exams because of technology concerns*, ABA JOURNAL, <https://www.abajournal.com/web/article/due-to-technology-concerns-software-provider-pulls-out-of-remotely-proctored-bar-exams> (last visited August 23, 2020).

⁵ *Id.*

⁶ See *In Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus* (July 31, 2020) at 6 – 8; See also *Re: October 2020 Remote Bar Examination Update*, STATE BOARD OF LAW EXAMINERS (August 18, 2020) at 3 - 4.

⁷ See *In Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus*, *supra* note 6 at 9.

⁸ See Skolnik, *supra* note 3.

⁹ See *Re: October 2020 Remote Bar Examination Update*, *supra* note 6 at 1.

¹⁰ *Id.* at 4.

¹¹ *FAQs Related to October 2020 Remote Bar Exam in Maryland*, STATE BOARD OF LAW EXAMINERS, <https://www.mdcourts.gov/sites/default/files/import/ble/pdfs/october2020remotebarexamfaqs.pdf> (last visited August 24, 2020).

¹² *Id.*

August 18¹³, SBLE ensured even if the AI flagged a recording to indicate an unusual behavior exist, a human proctor would further review the recording to determine whether actual cheating was conducted.¹⁴ However, even though SBLE explained that not all the exam day behavior flagged by AI would cause the formal investigation on the examinee,¹⁵ the test-takers would highly likely put themselves on behavior restriction, and it would still create a heavy mental burden on the mind of the test-takers. Similar to the potential danger of the technical error, the limitation on exam day behavior is another factor that may prevent the test-takers to perform their 100% full capacity on the exam.

Furthermore, the general guideline provided that the examinees will not be allowed to use any physical paper copy of the questions nor scratch papers during the exam.¹⁶ Without the physical scratch paper or paper copy of the questions, the test-takers would not be able to underline, make a side-note, nor draw a diagram to understand and process the questions asked easily. It would put this year's test-takers at a relative disadvantage position than other Bar examinees who previously took the exam or will take the exam in the future in the in-person exam. Although SBLE mentioned the "virtual" highlight function and "virtual" scratch space would be provided as a tool in the ExamSoft program¹⁷, it is not the way the majority test-takers were trained and studied during their three-years practice in the law school, in a bar preparation course, and at work experience. It is highly doubtful that a practicing lawyer in the industry uses only the materials on the screen and through virtual memo in the computer, without using any notepad or printed materials. Therefore, implementing the exam system that only provides virtual scratch space or virtual highlight function would put this year's test-takers in an adverse position and also is an impractical way to determine whether the test-takers have competency in practicing law.

Additionally, allowing the test-takers only to read and process the exam questions through a screen without any physical assisting tools would put the test-takers who speak English as their second language at a relative disadvantage. As an immigrant who speaks English as a second language, I have overcome the language barriers and have been fighting against the prejudice that I cannot be a good lawyer because English is not my native language. As I graduated from the University of Maryland School of Law, without any delays, with completion of Business Law concentration, and during the emergence of the global Pandemic, I finally had confidence that I can pass the Bar exam and become a lawyer that I always have dreamt. However, since SBLE has implemented the remote bar exam which only allows reading through on-screen without any help of a physical paper, in a way that I have never done in any of my law school exams, I need to train myself in a new way of solving the bar exam questions in this limited time.

I cannot speak for all the test-takers who speak English as their second language or any other test-takers who are already well adapted to process information solely on-screen. However, I do believe the 6 hours, virtually administered exam, through an impractical method, cannot be a good determinant of my competency as a lawyer and my capability to deliver value to the clients.

¹³ Re: October 2020 Remote Bar Examination Update, *supra* note 6.

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ *FAQs Related to October 2020 Remote Bar Exam in Maryland*, *supra* note 11.

¹⁷ *Id.*

I wish to plead the Court to take in mind when considering the viability of remote bar examination, the possibility that implementing those restrictions aforementioned may impose an undue hardship on some of the bar examinees who are already have been adversely impacted by the harms of the global Pandemic.

Based on my concerns regarding the hardships the remote bar examination may impose to impede the examinees to perform their full potential, I respectfully ask the Court to consider implementing the emergency diploma privilege to all the candidates for October 2020 Maryland Bar Examination.

Respectfully,
Sang Hyuk Kim, J.D.

Jake Ulick
Purchasing Manager: Curio Wellness
Lutherville-Timonium, MD
jacobeulick@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, **Jake Ulick**, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community whose significant other of 10 years is seeking admission to the Maryland Bar, would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me. My girlfriend of the last 10 years, who this past semester graduated from the University of Maryland School of Law, and I have been working to establish a life for ourselves after finishing our undergraduate studies. I have worked diligently to help a new local business establish itself and expand, while my girlfriend decided to spend 3 years of her life and incur additional debt to further her education. Her and I have both had to make sacrifices as it pertains to our relationship in order to do what's best for both of us as young adults such as putting off moving in together—largely a result of being on a single income. Thus, it is extremely important to me that she and all of her colleagues around the state are able to proceed with their post-law school career plans without the pending uncertainty of a testing method that's intended to test something that's already been proven by these graduates.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Jake Ulick



National Disabled Law Students Association

August 24, 2020

Robert C. Murphy Courts of Appeal Building

361 Rowe Boulevard, 4th floor

Annapolis, MD 21401

Via email: COACLERKOFTHECOURT@MDCOURTS.GOV

RE: Comment in favor of granting diploma privilege

INTRODUCTION: THE BAR EXAM AND DISABILITY DIVERSITY

The National Disabled Law Student Association (“NDLSA”) writes to this honorable court at its request to advocate that the Maryland Court of Appeals adopt a diploma privilege route to admission in light of the emergency conditions and limitations imposed by the pandemic.

NDLSA is an organization run by law students, law graduates, and candidates for bar admission to support disabled law students’ unique needs before, during, and after their legal education by building community through advocacy, peer network facilitation, and disability diversity education. We aim to create equal access and opportunities throughout legal education and careers. The current pandemic bar exam crisis is a barrier unrivaled by those erected in the past. We appreciate the opportunity to explain to this court why the decision to adopt a diploma privilege option uniquely impacts disabled candidates.

The court must take note that the current landscape for attorneys with disabilities is abysmal. According to available data, disabled persons are the most underrepresented group in the legal profession. Recent research by the National Association for Law Placement found that while people with disabilities make up 20% of the general population, they comprise only



National Disabled Law Students Association

0.5% of law firm partners.¹ The same study relates that only 0.46% of associates identify as disabled. The legal profession rarely lives up to its stated values of equity and inclusion, which is especially palpable for the disability community. The lack of disabled representation is not a matter of competency. Instead, it is a reflection of systematic and purposeful discrimination—disabled law students and attorneys universally experience unrelenting social and physical barriers to access from the first day of law school to the day they retire. These barriers harm individuals and drain the legal profession of talented, diverse, and passionate advocates.

Equal access to the legal profession hinges on equitable licensure procedures and practices. Disabled candidates are subject to arduous and invasive accommodation application procedures that often take several months to complete and require expensive evaluations by professionals who do not traditionally accept insurance. Bar exam accommodation procedures are superfluous and go above and beyond similar processes by peer institutions like law schools, colleges, and other standardized testing organizations.² Disabled candidates are also subject to discriminatory

¹ Nat'l Ass'n of Law Placement, *2018 Report on Diversity in U.S. Law Firms* (Jan. 2019), https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf; Stephanie Villinski, *It's Time to Remove Professional Barriers for Lawyers with Disabilities*, 2Civility (Jan. 30, 2020), <https://www.2civility.org/its-time-to-remove-professional-barriers-for-lawyers-with-disabilities/>.

² To receive any testing accommodation in Maryland, the applicant must mail in a massive packet in an envelope separate from the bar application; applicants are advised to send in the accommodations application at least two months before the test date and warned that if they use the same envelope, action on the accommodations request may be "substantially delayed." The packet must include (1) an application form, (2) a letter from their treating health professional including (a) a comprehensive description of the preparer's credentials, (b) a report on evaluations conducted within the past three years (except that for permanent disabilities, test results from within the past five years "may" be acceptable as long as the applicant was over the age of eighteen when tested), (c) diagnostic criteria, diagnostic tests, test results, interpretation of the results, notice of whether the applicant has previously received special education services, an individualized education plan, or any other school services evidencing the existence of a disability, (d) an explanation of the candidate's limitations arising from the diagnosed disability with a specific explanation of how the disability would impair examination performance, and (e) a description of specific accommodations recommended, an explanation of why the accommodation is appropriate and necessary notwithstanding any treatments the candidate has received, and a detailed explanation as to why accommodations are needed now if they were not in the past, (3) an original, signed letter from their college and/or law school deans or other appropriate school officials describing any accommodations received for college and/or law school examinations, and whether any accommodation request they made was granted, denied or granted in modified form, (4) copies of all correspondence requesting test accommodations for bar examinations in other jurisdictions and the correspondence addressed to the applicant granting or denying test accommodations in those jurisdictions, and (5) standardized test score reports for the SAT and/or ACT, LSAT, and the MPRE and copies of correspondence requesting test accommodations for those tests and the correspondence addressed to applicant granting or denying test accommodations, certified copies of college and law school transcripts. The applicant's accommodations request will be automatically denied if it excludes any of those elements. All of the



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questioning regarding mental health disabilities on character and fitness evaluations. And yet, Boards of Bar Examiners around the country have failed to recognize that the inequities in this process are multiplied by their hurried attempts to create an online bar exam. The administration of the online bar exam will disproportionately disadvantage candidates with disabilities.

I. RECOMMENDED APPROACH TO DIPLOMA PRIVILEGE OR EXPANDED TEMPORARY PRACTICE

NDLSA believes restrictions on diploma privilege are unnecessary because the safeguards in Rules 19-201 to 19-222 suffice to protect the public. However, if the court thinks these safeguards need to be supplemented, it is NDLSA's position that diploma privileges with restrictions are preferable to current remote exams. The court should only select options that do not prejudice communities that have been historically excluded from the legal profession. It is in the public's interest to have these voices represented.

In adopting the conditions associated with the diploma privilege program, the court should be mindful that this is not a one-size-fits-all situation. For example, supervised practice is a common suggestion, but it is not tenable for all new attorneys. It may be practicable for first-year associates at large law firms but impracticable for first-year public interest attorneys. In addition to varying job types, candidates also have different needs based on disability and travel restrictions due to the pandemic (e.g. state mandated quarantine periods). There should be flexibility in what a

paperwork above is required *even* for accommodations that could confer no testing advantage, that no one would request if not disabled, such as a Braille exam. Furthermore, applicants with specific disabilities (learning disabilities or ADD/ADHD) must provide extensive documentation even beyond that just listed. Finally, if after the applicant jumps through all of those hoops, the Board still deems the application insufficient, the applicant must also be prepared to submit to an independent evaluation and release the Board from liability for any harm arising from the independent evaluation.



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candidate needs to do to qualify. The court should, therefore, offer several options as a pathway to diploma privilege. We propose the following framework:

Applicants must have a JD or LLM, complete the character and fitness application, and complete two of the following three options.³

- Complete a requisite number of CLE-like courses with knowledge checks
- Complete a New Lawyers Webinar Course—a short course highlighting the area of law that is most important for new lawyers to learn
- Complete a requisite number of hours of supervised practice

One option should be off the table entirely: restricting licensure to candidates who have already registered for the Maryland bar exam. Candidates with disabilities were forced to pick their location early because of the months-long paperwork required for testing accommodations. Many of those candidates were unable to select their preferred state and did not have the flexibility to change their registration as conditions changed. If Maryland adopts diploma privilege, it should reopen its application process to protect this group of applicants.

II. THE ONLINE BAR EXAM, INACCESSIBILITY, AND CORONAVIRUS EXPOSURE

NDLSA commends this court's dedication to keeping options open by continuing to hold the online examination in conjunction with considering a diploma privilege pathway. Still, NDLSA urges the court to recognize that

³ Any option offered must be adaptable such that it complies with the ADA and other federal and state disability protections. (e.g., extending the time allowed to complete CLE courses).



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the administration of the online bar exam is untenable for disabled and non-disabled candidates alike. Across the country, jurisdictions have implemented new restrictions, specific to the online exam, that discriminate against disabled candidates. These restrictions are so discriminatory that they are likely to screen out many disabled persons, in violation of the ADA. Some of these restrictions include: forcing accommodated and immunocompromised candidates to sit for the exam in-person, Artificial Intelligence (“AI”) flagging of “abnormal” movements more likely to be exhibited by disabled test-takers, inability to move for upwards of ninety minutes at a time (including inability use the bathroom, change menstrual products, or breastfeed), and lack of access to physical scrap paper.

A. The NCBE’s memorandum of understanding restricts jurisdictions’ discretion over accommodations in the name of “exam security,” generating invidious discrimination.

Jurisdictions (e.g., California, New York) have confirmed that regardless of remote exam administration, they will require accommodated candidates to take the exam in-person, putting disabled bodies at a high risk of contracting COVID-19. They must do so because NCBE has required states administering an online exam to sign a memorandum of understanding (“MOU”) to the effect that the states may only administer the exam through one of three pre-approved vendors or through in-person testing for alternate formats. Maryland, however, has the power to renegotiate and/or refuse to sign the MOU.

Disabled applicants are already more likely to be in high-risk CDC categories for conditions such as autoimmune disorders, diabetes, and pulmonary conditions. Forcing disabled candidates to choose between



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their lives and long-term health and a timely professional licensure exam is discriminatory. It does not comport with the values of our justice system.

It is not fair or appropriate to ask accommodated candidates to trust that the jurisdictions will create a safe testing environment. Despite testing precautions, COVID-19 infections still occur at in-person testing facilities, as was recently demonstrated by MCAT administration failures despite extensive consultation with infectious disease experts.⁵

Furthermore, given current time constraints, it is exceedingly difficult to successfully administer an ADA-compliant remote exam. That difficulty, combined with the restrictive MOU, explains why various state boards are sidestepping the issue by requiring many examinees with accommodations to take the exam in-person. Software often lacks the requisite flexibility to provide what would ordinarily be straightforward accommodations, and no state that has moved the bar exam online has expended any effort to ensure the transition is fair and equitable for disabled students. In fact, many have imposed new barriers like requiring in-person notarization of updated medical documentation and declining to reopen accommodation application periods for examinees changing jurisdictions due to the exigencies of the current crisis.

The solution is not to modify the technology, which is unrealistic on this timeline. Rather, the solution is to finally trust that disabled applicants are competent, hardworking, invaluable members of this community. Offering a diploma privilege option establishes that new foundation.

B. AI-assisted proctoring, particularly as programmed by the approved vendors, is unsafe and discriminatory.



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ExamSoft maintains an “artificial intelligence” function to flag “abnormal” movement. Maryland has elected to use this function. This decision will disproportionately harm Black candidates, disabled candidates, and Black disabled candidates, a multiply-marginalized group.⁴ Applicants with disabilities are more likely to express “abnormal” movements due to the varied needs of their bodies. For example, persons with Autism Spectrum Disorder (ASD) are likely to engage in stimulation behaviors that will trigger a “flag” on their test administration. The risk of bias cannot be eliminated through human review of flagged behaviors. Even if a human reviewer is aware of a candidate’s disability accommodation, the flagging still results in unequal and discriminatory administration. Disabled candidates are thus subject to an extra layer of review that is unlikely to be resolved equitably by a human reviewer. Additionally, human reviewers hold their own implicit or unconscious biases against Black, disabled, and Black disabled candidates.⁵

Consider the following violation: candidate looks off screen for 5 seconds due to a psychiatric disability, neurologic disability, stimulation behavior, or the like, and the AI system flags the testing sessions for review. How is a human reviewer going to evaluate whether the candidate is looking at material? How will a candidate defend that they were not looking at material? Maryland’s decision to use AI has set up a system from which it is impossible to exonerate oneself, and disabled applicants are more likely than other applicants to be subject to such a review. Disabled examinees will be disproportionately monitored and flagged due to NCBE and states’

⁴ See, e.g., Brian Fung, *Facial recognition systems show rampant racial bias, government study finds*, CNN Business (December 19, 2019), <https://www.cnn.com/2019/12/19/tech/facial-recognition-study-racial-bias/index.html>; Shea Swauger, *Our Bodies Encoded: Algorithmic Test Proctoring in Higher Education*, Hybrid Pedagogy (April 2, 2020), <https://hybridpedagogy.org/our-bodies-encoded-algorithmic-test-proctoring-in-higher-education/>.

⁵ *Implicit Biases & People with Disabilities*, ABA Commission on Disability Rights (Jan. 7, 2019), https://www.americanbar.org/groups/diversity/disabilityrights/resources/implicit_bias/; Jenna Cho, *New implicit-bias tool offers insight and answers*, ABA Journal (June 1, 2020), <https://www.abajournal.com/magazine/article/new-tool-offers-insight-answers>



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cheating concerns, even though no research has ever documented that examinees with accommodations are more likely to cheat.

Human monitoring is not a viable option either, as the only vendors that offer the service have serious and concerning personnel issues that may jeopardize the safety and security of exam takers. For example, female test-takers reported that they received Facebook friend requests from male proctors after the men had watched them for several hours taking the General Surgery Qualifying Exam.⁶

Indiana and Nevada have recognized the unacceptable risks of AI proctoring—the software is likely to crash under the strain of a high number of simultaneous users and uses invasive surveillance techniques. These jurisdictions are holding an open-book exam, eliminating the need to use AI proctoring software. While we urge this court to adopt diploma privilege, the court should, at a minimum, bar the use of AI software in conjunction with the online examination.⁷

Simply put: we were not ready for a crisis of this magnitude, and unfortunately, the online bar exam using currently-available technology is not a panacea. This court gets to choose who suffers because of boards' lack of preparation and technological incapacity. We urge this court not to, once more, let the burden fall on disabled or otherwise marginalized test takers.

C. Restriction of movement

⁶ FAQs - 2020 Virtual General Surgery Qualifying Exam, American Board of Surgery, http://www.absurgery.org/default.jsp?faq_virtualgsqe2020; ABS Issuing Refunds, Launching Security Investigation for Virtual 2020 General Surgery QE, American Board of Surgery (Jul. 17, 2020), http://www.absurgery.org/default.jsp?news_virtualgsqe07.17; American Board of Surgery (@AmBdSurg), Twitter, (Jul. 16, 2020, 8:31 PM), <https://twitter.com/AmBdSurg/status/1283922325910491137>.

⁷ Sam Skolnik, *October Online Bar Exams Spark Technology, Privacy Concerns*, Bloomberg Law (Aug. 18, 2020), <https://news.bloomberglaw.com/ip-law/october-online-bar-exams-spark-technology-privacy-concerns>



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Under ordinary circumstances, during an in-person bar examination, candidates are permitted to briefly leave the room if they must urgently use the restroom to take care of a bodily need (e.g., bathroom use, lactation relief, changing menstrual products, or becoming ill). Jurisdictions have never before required accommodations or medical documentation for candidates to be able to leave the room as described. However, if a candidate needs to tend to these needs during the online bar examination, most jurisdictions are requiring medical documentation and, at a minimum, an administrative accommodation form in order to effectuate that request.

As described above, the online administration creates new barriers for disabled and non-disabled candidates alike who, under normal circumstances, would not need special permission to move their bodies in the ways that they must. Given the unprecedented nature of remote exams, examinees are unlikely to have evaluations that support newly needed accommodation requests. All people ordinarily touch their faces, fidget, and look off-screen to avoid eye strain or as part of their cognitive process. While some people may be able to abate those behaviors, many with medical conditions or non-neurotypical cognitive processes cannot. Persons unable to conform to unreasonably strict AI monitoring standards that perpetuate ableist norms should not be subject to additional monitoring, additional invasive medical record requests, or risk of being flagged on the online examination.

Lastly, there are practical situations born of the COVID-19 pandemic that restrict applicants' ability to take this exam at home in a space free of additional persons. Parents, especially, may not be able to find childcare or effectively keep children out of the room for several hours.

D. Scrap paper restrictions



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In the name of “test-security,” NCBE’s MOU includes a prohibition against physical scrap paper. This is a fundamentally unfair policy for any candidate, regardless of disability status. Candidates train for the exam under the valid assumption that they will be able to write out diagrams and make notations. This issue is particularly pertinent to the Multistate Performance Test (“MPT”). Without outlining, highlighting, and notation, it becomes a senseless demonstration of working memory rather than actual skill. Handwriting is a significantly different modality than typing.⁸ All major test prep companies train examinees using physical scrap paper techniques that will not translate to virtual scrap paper. Virtual scrap paper is simply not an equitable replacement for actual scrap paper.

III. EXAMSOFT, MARYLAND’S SELECTED VENDOR, HAS NOT SUFFICIENTLY DEMONSTRATED THEIR CAPACITY TO ADMINISTER AN ACCESSIBLE, TECHNOLOGICALLY SOUND EXAM

The online exam is likely to fail for a significant number of candidates due to vendors’ lack of technological and customer service capacity for a national exam set to start at the same time across the country for a minimum of 30,000 candidates. One main vendor, Extegrity, pulled itself out of the running for bar exam contracts citing its lack of capacity to handle the volume of testers for a “same-time” test on October 5th and 6th.

The Maryland Board of Law examiners has selected ExamSoft as the state’s online bar vendor-- NDLSA has serious concerns about this selection. As a preliminary matter, it should be against the State of Maryland’s public policy to conduct business with ExamSoft. The CEO has

⁸ See Velay Mangen. “Digitizing literacy: Reflections on the haptics of writing.” In: Zadeh M. H., editor. *Advances in haptics* (pp. 385-402), InTech. Rijeka, Croatia; Nancy Olson, *Writing By Hand Helps Student Cognition In A Specific Way*, Forbes (Sept. 28, 2016), <https://www.forbes.com/sites/nancyolson/2016/09/28/writing-by-hand-helps-student-cognition-in-a-specific-way/#10a98fa3891e>



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a history of racist, ableist, and otherwise bigoted behavior.⁹ Additionally, ExamSoft has a history of failing applicants taking the bar exam, requires users to allow the software access to their entire hard drive, and is unlikely to have the capacity to administer the exam to the estimated 30,000 people taking the online bar exam at the same time on October 5-6. In 2014, ExamSoft settled a lawsuit with bar exam test-takers for \$2.1 million for a technological failure that prevented them from being able to upload their answers in the written portion of the exam.¹⁰

Neither ExamSoft, nor the jurisdictions using ExamSoft, have announced what measures are in place to comprehensively protect the privacy and data of test-takers or ensure that the software is capable of such a significant endeavor.

CONCLUSION

This pandemic has impacted the globe irreparably. While we will reflect, rightfully so, on this time with a lens necessary to capture the loss of life, we are also hopeful it will force us all to reexamine systemic inequalities in our society. This pandemic has not only exacerbated these inequalities but, for many people, brought them to light for the first time. Many are just now learning to listen to those whose voices have long been dismissed and suppressed. The time is ripe for improving upon outdated systems.

Actions taken by the NCBE and state boards in response to the pandemic have both illuminated and intensified long-running, entrenched barriers to access and equity in the legal profession. The bar exam always has disadvantaged people with disabilities; we have to pay more, work harder,

⁹ Sebastian J. Vos (@Sjvos), Twitter (Jul. 21, 2011, 5:50 PM) ("Back from Paris. I survived hoards of Chinese and fat Americans on the Eurostar"); Sebastian J. Vos @Sjvos, Twitter (Apr. 5, 2011, 5:50 PM) ("Watching the biggest loser. Why is watching obese people so compelling?").

¹⁰ *ExamSoft to Settle Bar Exam Software Glitch Class Action for 2.1 Million*, Morgan & Morgan (May 11, 2015), <https://www.forthethepeople.com/blog/examsoft-to-settle-bar-exam-software-glitch-class-action-for-21-million/>.



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and plan for longer in order to secure necessary accommodations. New and substantial challenges are now mounting on old ones, as examiners attempt to mitigate the pandemic's risks by moving the exam online. There simply is not enough time to build a test that accommodates all test takers. Failing to deliver an exam that accommodates all people safely will mean the continued and further exclusion of people with disabilities from the legal profession. This not only hurts our community but also deprives the public and profession of a valuable set of perspectives and skills.

The most commonly cited objection to diploma privileges is that the bar exam serves an important function in protecting the integrity of the justice system and public safety. However, the integrity of the justice system and public safety are best served by the inclusion and elevation of attorneys from historically marginalized communities. Providing diploma privilege is a step toward creating a legal community that is more dedicated to the public interest and more in touch with the needs and interests of our nation's most vulnerable populations.

Since representation is in the public interest, and there are numerous ways to uphold professional standards, NDLSA firmly believes that diploma privilege is the only option. The Maryland Court of Appeals has the opportunity to lead the legal community toward creating a more equitable legal community and justice system.

Megan Parkhurst
mparkhurst@umaryland.edu

August 23, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Chief Judge Barbera and Associate Judges:

I, Megan Parkhurst, a May 2020 graduate of the University of Maryland School of Law, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. The State Board of Law Examiners' decision to move forward with the remote exam is imprudent. I respectfully ask this Court to enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

I can only speak to my own experience in preparing for the bar exam in the midst of this pandemic. My experience is exactly the type of experience that the SBLE believes is largely nonexistent. The SBLE, without polling any bar applicants, "believes that applicants have adequate opportunity to secure a quiet space to prepare for and take the online exam."¹ This belief is rooted in conjecture rather than data. I am one of the survey applicants that reported concern over a lack of a quiet space (and consistent internet) to take the online exam.

I responded to the survey truthfully as such for many reasons. I live in a small apartment in Towson with my significant other, who must work from home every day. He works in customer service for the finance industry and his work-day consists of repeatedly calling clients on a work phone that *must* be directly connected to our internet router. If I were to take the bar exam in our apartment's office, my significant other would have to work from our dining room—which does not have a door. I would inevitably hear his voice consistently making phone-calls, and this would likely raise issues for the proctors; I worry that I may be accused of cheating. Moreover, given that my significant other directly connects his work phone to our internet router and requires internet access for his work computer, our internet frequently drops out during the day. Therefore, I am extremely worried that my simultaneous connection to ExamSoft during the bar exam and my significant other's work-related internet connections will cause the internet to drop out during the exam. I have no other safe, quiet place to take the exam because all of my friends and family are likewise working from home and/or lack reliable internet connectivity. I cannot reasonably expect my friends or family to rearrange their work lives for two days purely to accommodate me. Finally, I live with my rescue dog, who frequently barks and whines out of anxiety. It is inevitable that his

¹ October 2020 Remote Bar Examination Update, State Board of Law Examiners 8 (Aug. 18, 2020), <https://mdcourts.gov/sites/default/files/import/coappeals/pdfs/remotebarexamreport202008.pdf>.

barking will not only be a distraction to me during the exam, but that it too will raise an issue with the exam's strict silence requirements. My concerns, as well as those of other students who have it even worse than I do, deserve due attention—if any one of the above scenarios were to take place during the October 5th and 6th exam administration, I not only risk failing the exam, but I also risk losing the dream job I have worked so hard to secure.

Moreover, the bar exam and this pandemic have significantly impacted my life these past few months in copious other ways. I am truly facing increased financial, emotional and mental stress. I graduated at the top of my law school class this May. Previously, I never questioned my ability to pass the bar exam—my study and test-taking habits have consistently led to success, and I figured they would not fail me this time around. However, my confidence has rapidly declined. My study habits are suffering due to increased stress and anxiety brought on by the pandemic and bar-related uncertainties. Moreover, I fear that even despite my diligent preparation, the virtual exam will 'fail' me due to my lack of a quiet space and consistent internet, or through no fault of my own, due to software-related issues.

Overall, I strongly ask that this Court grant emergency diploma privilege to bar applicants such as myself. I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Megan Parkhurst



STROTT & DILLON, LLC

ATTORNEYS AT LAW

Mark Husted
Strott & Dillon, LLC
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August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Mark Husted, a licensed attorney and a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. As an attorney myself who is now licensed in three states, I feel that the general public would greatly benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Mark Husted

Mark Husted

[EXTERNAL] Please take a look

Brittney Anderson <brittney.anderson@me.com>

Mon 8/24/2020 4:17 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Brittney Anderson

August 24, 2020

North Carolina School Administrator

Suzanne C. Johnson

Clerk of the Maryland Court of Appeals

361 Rowe Blvd

Annapolis, MD 21401

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Brittney Anderson, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination. The October administration of the Bar Exam will be thousands more people logging on at the same time which will lead to issues with the program. Additionally, there are numerous privacy violations that will likely occur from using this software with the constant monitoring.

Temporary licensure is not an adequate substitute for diploma privilege. Temporary licensure renders applicants ineligible for most public sector jobs. It also requires private sector employers to "take a chance" on an applicants that will have to take significant time off at a later date to study for and take the bar exam.COVID-19 has had a devastating impact on our country and we need to make sure that the solutions that we are coming up with are fair and equitable for everyone. The online administration fo the bar exam will overwhelmingly hurt those who do not have safe homes; who cannot afford quiet spaces; who must work to feed themselves and their families; who are caring for elderly and immunocompromised persons; who are worrying daily for their own health, safety, and financial security; who rely on screen readers or other devices to support test-taking; who have

children, partners, and other family sharing their homes; who are sick, hungry, or otherwise hurting. School districts are not moving to completely online classes which creates greater hurdles to a successful examination for those who have to care for children at home while studying and taking the bar exam. In other words, it will disproportionately exclude low-income applicants, applicants of color, women applicants, applicants with disabilities, and other historically underrepresented and marginalized individuals

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The 2020 graduates can have amandatory CLE requirement with more hours to ensure that they are staying up to date on their professional duties.

I am asking you to show compassion for the 2020 graduates and grant them diploma privilege this year. They have suffered enough and their time would be better spent serving the community and practicing law.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Brittney Anderson

[EXTERNAL] Comment on Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Linda Benesch <lindahbenesch@gmail.com>

Mon 8/24/2020 4:21 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Linda Benesch, a member of the general public, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself.

As someone who is engaged to and lives with a bar applicant I see every day the enormous stress that he's under. Every day he worries about what will happen if an emergency happens during the exam such as a fire drill, his computer breaking, or the system crashing as has happened in other states. This is extremely detrimental to his mental health. I know that his classmates are going through similar struggles, and many of them also have to deal with additional stressors such as childcare.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Linda Benesch

[EXTERNAL] Bar Comment

Regina Michael <reggimichael@yahoo.com>

Mon 8/24/2020 4:22 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To Whom It May Concern,

I ask the Court to consider granting the diploma privilege for my son. Earlier this year I was diagnosed with COVID-19. Since then I have not fully recovered. My son has been my primary care-taker. He takes me to doctors' appointments and provides me all that I need. In his available time, he is available to study, but my heart goes to my son because he does the best that he can. In this time with death and loss of a job, there is so much uncertainty. From my experience, test performance is the ability to perform the best under certain conditions. I pose a question to you, with all that is going on, how is that possible? I ask that given the uncertainty, that you consider granting the diploma privilege for these applicants taking the bar exam.

Best

[EXTERNAL] Diploma Privilege Comment

Anna Isernia <anna.isernia@gmail.com>

Mon 8/24/2020 4:22 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To Whom It May Concern:

I am writing to you today to advocate for the recent graduates of ABA-accredited law schools throughout the nation that seek access to the Maryland Bar that they may be granted diploma privilege. As you are undoubtedly aware, graduating from an ABA-accredited law school is no small feat. It requires three years of diligent study, sacrifice, grit, determination, and a small fortune. Students who graduate from these institutions are prepared for practice as much as before they take the Bar Exam as after. The Bar Exam does not, in any way, prepare attorneys for practice. It is a mere gatekeeping tool, originally created to keep students of color, and more particularly Black students, from obtaining accreditation as attorneys. Why should Maryland follow in the footsteps of a clearly racist policy that keeps the future of law at bay?

The situation grows more dire in light of COVID-19 limitations. In-person bar exams are not safe as the virus is airborne through small droplets. Online bar exams have proven un-administrable due to security issues as well as through access issues. Being unable to take the bar exam when the bar exam is a necessary requisite to practice relegates lower income students even further to the edges of the profession, something which this profession is very guilty of.

Maryland has the choice now to stand on the right side of history and grant diploma privilege to those students who have gone through the rigorous academia of law school. These students are ready to practice and deserve to be employed. Please make the right decision and grant diploma privilege now.

Sincerely,
Anna Isernia

AU International Law Review | Vol. 36 | Symposium & Events Editor

Alternative Dispute Resolution Honor Society | Executive Marketing Director

JD Candidate, 2021

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August 24, 2020

Suzanna C. Johnson
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361 Rowe Blvd.
Annapolis, MD 21401
coaclerkofthecourt@mdcourts.gov

RE: Comment on State Board of Law Examiners' Update Regard Remote Bar Examination

Dear Chief Judge Barbera and Associate Judges:

I appreciate the Court of Appeals' communication and resolve throughout these difficult adjustments. I know that everyone—the State Board of Law Examiners (SBLE), the Court, and test takers—are entering uncharted waters, and communication continues to be the most helpful method to minimize stress and set clear expectations.

I also respect the SBLE's decision to administer an online exam in October. For what it is worth, the SBLE has determined that an online test is the proper path to licensure for 2020 Bar Applicants, and I trust that this decision has been made with much deliberation. Applicants' home lives have been upended during the coronavirus pandemic, and a remote administration clearly presents a number of difficulties that affect applicants in inequitable, unforeseen, and serious ways.

With all of these considerations in mind, my only request is simple: The SBLE must commit to administering the Bar Exam remotely on October 5-6, and if *any* unforeseen roadblocks arise, they must cancel it entirely and provide permanent Diploma Privilege. With its most recent response letter, the SBLE has conveyed its unwavering confidence in the ability to administer an online exam on the dates intended. Any variance from that plan, stemming from any obstacle whatsoever, should result in Diploma Privilege.

Applicants such as myself have adjusted our life plans around the rescheduled exam date. For example, I have moved my own wedding to the weekend following the exam. If Maryland were to push back the exam date just one week (as Louisiana did this past week), I would need to reschedule a wedding and honeymoon once again. This potential change, while substantial and costly for any person, pales in comparison to some of the obstacles my fellow applicants face, such as childcare, employment, and health needs.

Furthermore, I cannot imagine a scenario worse than pushing the exam to 2021 based on an obstacle that arises this fall. To put applicants through this process for another four to six

months would be completely counter to the goals of the licensure process, and would create disastrous results for employment and family needs.

The need for communication is strong, and the need for stability is perhaps stronger than ever. Once again, I respect the SBLE's decision to administer the exam this October, but any variance from that plan whatsoever must result in complete and permanent Diploma Privilege. I hope that the SBLE provides assurances that the Bar Exam administration process will not be prolonged past October 5-6, 2020 in any form.

Sincerely,

Trevor Hoffberger
University of Maryland, Baltimore Francis King Carey School of Law
Class of 2020

[EXTERNAL] Waiver of Maryland Bar Exam for COVID-19

Katherine Adelaide <adelaide_associates@yahoo.com>

Mon 8/24/2020 4:25 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Chief Judge Mary Ellen Barbera and Associate Judges:

I am writing in support of waiving the 2020 Bar Exam, not just for recent graduates, but for any law school graduate who had planned to take the Bar exam prior to COVID.

I graduated in 1989 from the University of Maryland School of Law as a single mom and chose to do consulting to be at home to raise my daughter. I have since gone on to do much pro-bono civics work in domestic violence and the Open Meetings Act and have been advised by many colleagues to take the bar and practice to be of greater assistance to those in need, especially to victim-survivors of Domestic Violence, of which I am one and citizens seeking transparency in government meetings.

I was forced to learn more about assault law and the problems victims face than I care to admit and testify in Annapolis re: domestic violence legislation. Having had to obtain multiple protection orders and having survived a hit man, I know too well the need for pro bono domestic violence attorneys, especially during COVID as DV cases are soaring.

Please do not discriminate against women like me who graduated from an accredited law school.

If you vote to provide a waiver, and I hope you do, please do not discriminate and include all law school graduates.

Thank you for your consideration of this request.

Sincerely,

Katherine T. Adelaide, JD
9 Courtland Street
Taneytown, Md.
301-575-4889

[EXTERNAL] Comment on Petition for Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus

Joseph Rossi <joseph.rossi@ubalt.edu>

Mon 8/24/2020 4:26 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Good Afternoon,

I am a recently graduated law student who will be sitting for the Bar Exam in October. The arguments put forth in the initial petition, supported by 1000+ signatures, outlines the necessity for a diploma privilege plus, but I felt the need to raise a few more points during this comment period.

1. The Court mentioned no evidence of hardships presented by those about to sit for the exam. Upon request, I am certain the authors of the initial petition would be happy to share the hundreds of unique hardships that were described to them when creating the petition. These comments and stories are all contained in a Google document under their control.

2. ILG, one of the three companies that offered Bar Examination software, has dropped out of offering software for an Fall Bar Exam, because, in their words, the technology to carry out such an examination does not in fact exist at this time. Not that they do not have the technology, but that the technology does not exist anywhere. This was evidenced in the petition by the three states that had to catastrophically cancel their bar exam die to technology failure. 2/3 of those who thought they could carry out the bar have not been able to, and there is no proof or assurances that ExamSoft has this capability either. There is far more evidence to support the conclusion that the bar cannot be carried out remotely, instead of the idea that ExamSoft somehow has figured out how to accomplish this when no other company or state has successfully done it.

3. Without access to a law school or testing site, I, as well as a majority of other applicants, do not have access to consistent Wifi or a secure testing space. I will have to take the Bar Exam in the public business office of my apartment building, as I cannot take it in my apartment while my family is home. My Wifi is not stable or fast enough to support me taking the bar, while children and my wife are at school or working remotely with live video as well. I will certainly not be able to take the test within the guidelines set forth, as my internet will either certainly lag or fail, or someone else may enter the room/video while I am taking it, which would flag me and disqualify my score. Many law students are having to pay to take the exam in hotels, which I cannot afford at this time, and most law student cannot either.

It is far more likely than not, at this point in time, that a remote bar exam will fail. The diploma privilege plus plan offers a way to ensure new lawyers can practice at the standards the state requires, without forcing an issue ridden test that, upon failure, will further

complicate the lives of a class of lawyers who have already seen their job market and career plans crumble in the span of a few months.

Thank you,

Joseph L. Rossi
UB Graduate 2020

Margaret Strakna, J.D.
mstrakna@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
COAClerkoftheCourt@mdcourts.gov

*Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus*

Dear Honorable Chief Judge Barbera and Associate Judges:

If we had a choice, I imagine every single 2020 bar examinee writing to you would prefer that we had been able to take the bar exam last month, as originally intended. However, we are not living in normal circumstances right now. The COVID-19 crisis has upended lives worldwide, including those of 2020 law school graduates, with little to no precedent on how to move forward. Emergent times call for emergency measures. Therefore, I am writing to advocate strongly for Diploma Privilege Plus.

Just over three years ago, I became the first person in my immediate family to earn a bachelor's degree; just over three months ago, I became the first person in my extended family's known history to earn a professional practice graduate degree. I have fought tooth and nail throughout my education to succeed without the benefit of family members who had been in my shoes before. It is that same tenacity and grit that has helped me in my advocacy on behalf of victims of intimate partner violence. No law school class taught me more about the law or lawyering, nor can any test measure my competency to practice better, than spending an entire year representing victims of intimate partner violence, coerced immigrants, and victims of child sexual abuse in UM Carey Law's Gender Violence Clinic while I contended with my brother's lymphoma diagnosis and my own serious cardiac diagnosis, provided intensive care for a terminally ill pet, and experienced multiple other significant upheavals of my personal life. I am more than competent to practice law, as are my colleagues. To say that my experience representing those clients, as well as the wide-ranging clinical experiences of graduates of Maryland's two law schools¹ is less sufficient than a bar exam in measuring competency to

¹ Both the University of Baltimore School of Law and the University of Maryland Francis King Carey School of Law require their full-time, day program students to either practice in their clinical law program or gain comparable experiential learning experience. See University of Baltimore School of Law, EXPERIENTIAL LEARNING, <http://law.ubalt.edu/academics/experiential/> ("Three credits must come from work in a clinic or an externship, helping real clients with real issues."); University of Maryland Francis King Carey School of Law, THE CARDIN REQUIREMENT, <https://www.law.umaryland.edu/Programs-and-Impact/Clinical-Law/The-Cardin-Requirement/> ("[T]he University of Maryland Francis King Carey School of Law requires every student who initially enrolls as a first year, full-time day student to provide legal services . . . as a prerequisite to graduation.").

practice law would be an indictment by the Court and the State Board of Law Examiners of two of the nation's top-ranked clinical law programs.²

I concur with the many excellent arguments being made in favor of Diploma Privilege Plus by my fellow bar applicants and my colleagues at DP4MD. However, the fact that graduates who completed a clinical law experience have already proven competency to practice is not the only issue I want to specifically address in advocating within this letter.

Additionally, the online bar exam has a significant adverse impact on disabled examinees. As I mentioned above, and in my previous remarks within DP4MD's hardship survey, I was recently diagnosed with a serious condition that causes my body to improperly circulate blood through my body when I am under stress. Though my condition can be well managed in general, the conditions under which I would have to take an online bar exam are incompatible with me maintaining my health. I personally need to have constant access to water and sports beverages in order to keep my body functioning normally and prevent me from nearly fainting six to eight times per day. This is not feasible when drinking those beverages would likely cause the exam software to mark my behavior as suspicious countless times throughout the exam, not to mention the improbability of the exam proctor considering my test-taking environment "secure" enough for the exam if I have a beverage on the table that they cannot physically inspect. Other disabled examinees will likely experience adverse health consequences as a result of the many other rules requirements the NCBE has for states offering the online bar exam: particularly the ban on leaving the room to relieve oneself during the exam (for examinees with irritable bowel syndrome, celiac disease, or other gastrointestinal disorders) and the requirement that no pets be in the exam room (for examinees with post-traumatic stress disorder, severe anxiety, or epilepsy who require the assistance of a service animal).

I, and my fellow bar applicants, will experience severe hardship if the online bar exam goes forward, and the public will be no better served or protected. Please implement the only equitable solution to these unprecedented times – Diploma Privilege Plus.

Sincerely,

Margaret Strakna, J.D.

² University of Maryland's clinical law program is ranked sixth nationally by U.S. News. U.S. News, *Best Law Schools of 2021*, CLINICAL TRAINING, <https://www.usnews.com/best-graduate-schools/top-law-schools/clinical-training-rankings>. University of Baltimore's is ranked 14th. University of Baltimore School of Law, CLINICAL LAW PROGRAM & EXTERNSHIPS, <http://law.ubalt.edu/clinics/index.cfm>.

[EXTERNAL] Joy Applewhite: Comment for Diploma Privilege

Joy Applewhite <ja1481a@student.american.edu>

Mon 8/24/2020 4:27 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To Whom It May Concern:

I hope all is well. I am Joy Applewhite, a 3L at American University Washington College of Law. I write to you to advocate Maryland grant diploma privilege to the graduating class of 2020. In a nation, where the Bar exam is already another barrier for minority students to become members of this great profession, requiring the taking of the exam during a pandemic only magnifies the issue, making it harder for minorities to become legal professionals. Furthermore, I raise again that this is a pandemic where everyone has been affected to a degree. Students have worked dutifully for the last three or four years to be subject to circumstances beyond their control. Recent graduates have jobs waiting for them or are looking for jobs in a sea of uncertainty. Diploma privilege would greatly benefit the class of 2020, allowing them to begin their careers and serve the profession. These are the times where states should adapt to the times and allow students to have diploma privilege. The recent graduates will learn many things in their careers that are far greater than what a standardized test "proves," especially when the virtual sitting is subject to technical difficulties and students are put at-risk gathering for an in-person sitting. The skill of lawyering does not happen overnight and comes with practice, mistakes, and lessons learned. I know the recent graduates are prepared to carry this torch and are deserving of diploma privilege after their completion of their legal education in good standing.

Respectfully,
Joy Applewhite

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Joy Applewhite
JD Candidate, 2021
American University Washington College of Law
Mid-Atlantic Vice Chair | 2020-2021
National Black Law Students Association
joy.applewhite@student.american.edu

Casey Marson
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August 24, 2020

Suzanne C. Johnson
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Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I, Casey Marson, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. I am a 2020 graduate from American University Washington College of Law, and I am registered to take the Maryland October 2020 Bar Exam.

In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a 2020 graduate from an ABA accredited law school, the last several months have been insurmountably difficult. I am a planner, and global pandemic was something that I never anticipated happening in my lifetime, let alone at the most stressful crossroad of my life to date. My support for diploma privilege should not be confused with laziness, apathy, or a search for a free pass. Vigorously studying the law for the past 3 years and practicing the law under the supervision through my law school's Clinic Program makes me appreciate the need for competent lawyers. The only equitable resolution for the situation COVID-19 has created is granting diploma privilege. An in-person exam, at this time, is likely not safe or compatible with CDC Guidelines. I personally would not feel safe in a room full of hundreds or thousands of individuals at this time. However, an online exam is not any more feasible in light of all the circumstances. I have been studying for the exam since June. SBLE rescheduled the exam for September and then October a few weeks later. This is time I have been unable to work and make money (due to full-time studying), and unable to apply to most jobs (due to my lack of bar status). I had to take out a large amount of student loans to fund my law school education, and the inability to take the bar exam or get barred weighs heavily on the financial burden and stress.

The worrisome aspect of this situation is that several states have attempted to administer online exams and encountered devastating problems. Michigan encountered a DDoS cyberattack, and Florida cancelled the examination just days before it was supposed to be administered due to other technical difficulties. I do not feel confident that UBE states will be able to successfully

administer an online bar exam by October. I worry about my (and my colleague's) internet connections, or if they will be able to find a safe and quiet place to take the exam. Even if the test is successfully administered online, I worry we will not be able to pass due to the rule against any scrap paper or writings of any kind. Multiple choice questions, essays, and especially an MPT requires a great deal of thoughtful planning. Despite practicing without taking notes or using paper, I worry this will impact the chances of competent people being able to pass this exam and start their career. If I cannot take this exam in October, I legitimately worry how I can continue studying full-time and not working, waiting for a first chance to get barred. I worry I will not be able to pay for my apartment and buy food. Because of insurmountable uncertainty regarding the exam and its administration, diploma privilege is the only just way for competent Fall 2020 Bar takers to begin a legal career.

As a member of the community, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community would feel confident in their representation of me.

I thank the Court for its time and consideration on this urgent matter.

Respectfully,
Casey Marson

August 24, 2020

Suzanne C. Johnson
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COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I want to first and foremost take a moment and thank you for giving us and other members of the community—both legal and not—an opportunity to comment on the State Board of Law Examiners' ("SBLE") Examination Administration Plan for the October 2020 Remote Bar Examination. While we understand that the SBLE concludes that it should administer the October 2020 remote bar exam using materials supplied by the National Conference of Bar Examiners ("NCBE") and software provided by ExamSoft, we strongly urge the Court to, instead, grant Diploma Privilege Plus to all July 2020 Maryland bar applicants.

The past few months for everyone nationwide has been uneasy to say the least. With that being said, I can assure recent law school graduates have felt this in ways most cannot imagine. Under normal circumstances, we would have taken the bar in July; however, it was around March when students had a feeling that would not be the case. I remember three years ago sitting law school orientation when one of the Deans wrote in bold letters on the board "July 28-29, 2020" and just left that there. As we would come to find out these would be the dates of the bar examination for the class of 2020. Numerous times at orientation professors, former students and mentors stated about how much work will go into the next three years in order to be able to sit and pass the bar exam. They promised that over the next three years they were going to work with and challenge us in order to ultimately teach us strategies and techniques to help us become advocates for society. Little did we know that after the three years in school, graduating law school was not actually going to be the most challenging part.

The real journey starts back in April 2020 when the Maryland SBLE website was updated and stated they will determine no later than May 22, 2020 whether a bar exam would be administered in July. On May 23rd we awoke to an email from the SBLE apologizing for the frustration applicants must have experienced awaiting a decision, however they told us the bar exam was officially postponed to September 9th and 10th. Immediately I thought, how is this going to change my preparation schedule? Am I going to have to work during bar prep? What is the best way to navigate this situation?

This first postponement to September triggered a lot stress because knowing the magnitude of this exam, all applicants want is to be able to utilize our resources effectively. For most like myself, I had planned on taking two months off to dedicate myself to a full-time study schedule. This idea of not working and only studying was not a new concept for bar prep, as this study tactic was conveyed to me by various legal professionals. However, I had not been working since the end of April when finals week began, and I had just turned 26 years old which meant I needed to obtain and pay for my own health insurance – we are in a global pandemic after all. I knew I did

not have much of a choice other than to go back to work so I could afford the necessities of life and I could figure out my study plan at another time.

On June 14th we got an email from a professor who told us although not confirmed, but there were whispers of a remote exam. We were told to pause from studying and "take some time for self-care and reflection". A few days later on June 17th we received yet another email from the SBLE where they determined an in person bar exam could not be administered safely and the bar exam would be postponed again to October 5th and 6th but this time it would be online. I was at a loss for words.

As a society I do not think we talk about mental health enough, but to say examinees have been pushed close to a breaking point with this exam is putting it mildly. For us examinees we are talking about our livelihood and our future on the line, and sadly I believe that argument gets easily lost. Anxiety and depression have always plagued our profession but add in the stress of a global pandemic and the uncertainty of the biggest exam of your life is unfathomable.

We have all worked extremely hard and sacrificed a lot to get where we are today. Unfortunately to some, the legal profession has a negative connotation associated with it. Even though I knew I should not have, one morning I found myself reading comments from a post The Baltimore Sun released pertaining to diploma privilege. Having members of the community who you have never met comment you are incompetent, you should just put a mask on and suck it up, just another participation trophy, or no one should ever hire you can make one question their self-worth in this field. I remember thinking to myself I went through an entire three-year program, took and passed every final, wrote countless papers, was on journal, did clinical work, did an externship, worked full time, but could I really not be worthy? Could I have done more? To make matters worse, it was the opinions of attorneys who are already barred who argue we must take the bar exam simply because they took the bar exam and it is only fair. But to that I say it is not fair and these are not the same circumstances.

For most attorneys who took and passed the bar exam, they spent two months after graduation in preparation for the exam whether utilizing a commercial bar prep course or studying on their own. Maybe some were working full time and studying in their spare time. Regardless, they did not have an added pressure of a deadly virus that is COVID-19 and trying to make sure not only were they staying mentally healthy, but physically healthy too. They had the library, they had offices, they had an outlet in this world. Today, for the class of 2020, we have been in quarantine since March and have lost those privileges we too thought we would be able to utilize. Due to the multiple postponements of the exam and everyone being on different schedules due to work or other circumstances – most of us find ourselves stuck in alone with only your thoughts and bar prep materials. It is easy for someone in this position to lose sight of the finish line.

During these past three years in law school, I was always worried during exam time – would I know the material well enough to prove to the professor I was competent. Now, my biggest stress is something completely out of my control that only the class of 2020 will understand and that is the remote online exam. I constantly stress about the possibility of failing for matters that are out of my control - yet completely preventable with diploma privilege. Failing the bar exam for a computer technical error? Or because I do not have a quiet place to test in the midst of a pandemic? To me it seems a bit extreme. Recently, Judith Gundersen, President of the National Conference of Bar Examiners said in her online President's Post that the bar exam is a test of minimal competency and furthermore, that "licensing exams must stay valid and reliable...so that there is confidence and consistency in the result." A remote online exam in the midst of a pandemic unfortunately does not convey those notions in any regard. A remote exam places all applicants on

an uneven playing field from the start and will feel as if it is simply a competition of whose resources will allow them to succeed on the given test day.

Once we found out our exam would be using the vender, ExamSoft, we knew we would need wi-fi to check in and to begin/close out the exam and were required to have a webcam with a microphone for remote proctoring. During the exam we are not allowed to use the restroom, move from our seat and we should always be looking at the camera recording us during the duration of the exam. My classmates and I have spent thousands of dollars registering for the bar prep courses this summer to be taught that we need to outline, highlight, take notes, diagram for all essays, and multiple-choice questions. Now this was not the first time I heard this because almost every professor I had at the University of Baltimore always mentioned outlining an answer prior to actually answering the question. Yet for our bar exam we are not allowed physical pens, pencils or scratch paper to annotate anything. It is evident this is not the same exam that attorneys have taken in the past and are pleading for us to sit and take now.

The remote proctoring is an obvious concern because it has yet to have one successful trial without flaws. Seeing Michigan's online bar exam for 750 people get "hacked" in the middle of the exam is incredibly alarming. To make matters worse having the vendor ExamSoft say it was due to a "sophisticated cyberattack" is distressing. I understand Nevada, Indiana and Louisiana were all using a different technology, but it goes without saying as a bar applicant I understand the stress and anxiety this can cause. I cannot fathom what it must have been like to receive an e-mail 3 days prior to the bar exam only to be told it was cancelled simply because the technology was not feasible. Having one of the vendors chosen by the NCBE drop out because he said remote proctoring was not envisioned for a large-scale simultaneous start exam raises a red flag for applicants. Further he said the stakes for law graduates are too high and remote proctoring creates an undue risk for an October exam. I cannot imagine what will happen when half of the country, approximately 30,000 law school graduates, has to log onto the software on October 5th and 6th. We all have this feeling in the pit of our stomach of this inevitable. There is no good way to give an exam in a pandemic, but to make examinees suffer mentally, emotionally and financially is taking a tremendous toll.

The last argument I would like to address is the one I continually see which states diploma privilege will harm the interests of the public. That perception could not be further from the truth. Look at everything we as law school graduates have overcome in the past three years. We have gone to an ABA accredited school where our professors made us confident to be successful advocates and lawyers. They along with our Deans have all prepared us to go out and use our voice for something good. Not to mention the experimental and clinical work we have done in conjunction to school – we are more than ready to serve the public. I truly believe in this unprecedented times we must think outside of the box at what is practical given the circumstances we are dealt. Law school graduates should have all of their accomplishments taken together to show they are minimally competent just as the bar exam would test. Diploma privilege is not a privilege by any means, each and every student has dedicated the past three years to becoming the best advocate they can be. With the added supervision, diploma privilege will allow not only growth of our future leaders but as a community as well.

As a country in the midst of a global pandemic no solution is correct. However, this solution of diploma privilege seems to be the best given the circumstances. None of us graduates are trying to evade the bar exam, we went to law school fully understanding what we were going to have to do at the end of three years. Unfortunately, life changes and things do not always stay perfect.

However, after numerous postponements and unproven technology we must adapt. I thank the Court for its time and consideration on this urgent matter.

Respectfully,

Jessica Rubin
University of Baltimore, Class of 2020

Hillary Pham
Maryland Bar Applicant
phamhillary@gmail.com

August 24, 2020

Suzanne C. Johnson
Clerk of the Maryland Court of Appeals
361 Rowe Blvd
Annapolis, MD 21401
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Re: In Response to the State Board of Law Examiners' October Exam Administration Plan

Dear Chief Judge Barbera and Associate Judges:

I, Hillary Pham, a Maryland Bar Exam applicant and recent graduate from the University of Maryland Francis King Carey School of Law, am writing to express my support in granting the 2020 October bar applicants emergency diploma privilege. In light of the unforeseen global pandemic and inability to safely administer an in-person exam, the Court of Appeals correctly decided to postpone, and ultimately cancel, an in-person bar exam. However, considering the detrimental impact job loss, financial insecurity, and housing insecurity has had on 2020 bar applicants in the midst of a recession, as well as the concern regarding the feasibility and safety of Examsoft, the software the State Board of Law Examiners has adopted for Maryland's bar exam administration, the Court should enact emergency diploma privilege for all applicants scheduled to take the October 2020 bar examination.

As a bar exam applicant and recent law school graduate, I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies graduates as competent. Furthermore, the additional requirement of passing a character and fitness examination further assures the protection of the public. The aforementioned requirements are enough to instill confidence in the 2020 bar applicants' competence and ability to promptly and diligently represent community members such as myself. I, as a member of the community faced with two pandemics this year; Covid-19 and its resulting racism and xenophobia against the Asian-American community. As an Asian American recent law school graduate, I would benefit from a Court order granting emergency diploma privilege to bar applicants and would feel confident in their representation of me. I thank the Court for its time and consideration on this urgent matter.

Further, as someone who applied for accommodations for the Bar Exam, I do not believe that the SBLE is properly addressing students with testing disabilities the accommodations they need to successfully take a Remote Bar Exam. My WiFi is pretty spotty at my residence, and I cannot take the exam in a public location that has a reliable connection, like the University of Maryland Carey School of Law or a public library, because of my compromised immune system among other medical conditions. I have read the FAQ's for the October 2020 Maryland Bar Examination which states on page one that "Each examinee's testing location must have Wi-Fi access to check-in and begin each session of the exam and at (or after) the close of the exam to submit examination answers, **but** the applicant is not required to maintain an active internet

connection throughout each session." If I am being virtually proctored and will need to stay on screen for the MEE and MBE, I would require a "quiet and distraction free" environment which may be difficult since I do not have access to that type of environment nor can I guarantee reliable internet connection during that time.

Respectfully,

Hillary Pham

[EXTERNAL] Comment on Diploma Privilege

Heidi S <heidismucker@gmail.com>

Mon 8/24/2020 4:28 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

Dear Maryland Bar Examiners,

To say these are unprecedented times is an understatement. Summarily put, the metaphorical whiplash myself and my fellow 2020 law school graduates have experienced since the beginning of March 2020 is enough to send any sane adult into a downward spiral.

And yet, I have seen incredible resilience and perseverance from my fellow 2020 graduates. Honestly, it is like nothing I've actually witnessed before. As 3Ls and 4Ls, we had our last semester ripped out from underneath us. Then graduation. Then a July bar exam. Then a September exam. And here we are, facing an online exam that will likely be proctored through software not built to sustain and carry out a simultaneously-administered exam of this multitude, only to be left with a largely non-portable score.

Yet the logistical issues of moving forward with an online administration of the bar exam don't stop there. If someone's child accidentally enters the room, the examinee fails. If they look off to the side for too long, likely in deep thought, the examinee fails. Not to mention, those examinees who are not privileged enough to be living in a safe and quiet space. What of those examinees who live in a multi-generational home? What of those who don't currently live in a safe space? Not everyone has the funds to go to a hotel for two days, especially now as start dates for work have been pushed back from MONTHS and our savings accounts that were meant to last until August now have been depleted?

The actual necessity of the bar exam has come into question and were it not for this global pandemic, I likely would never have questioned the exam's validity. But watching has the date and method of administration has been changed on a seemingly never ending basis this spring and summer, I fully question it.

The class of 2020 has spent three years (four years for those in part-time programs), dedicating ourselves to learning and absorbing everything we possibly can about this profession. We have had sleepless nights, cram sessions, moot and mock trial competitions, hundreds of hours researching and writing our comments for journal and law review. We have been published, we have won and litigated cases through participation in legal clinics. And we have rolled with the punches as a pandemic took away the celebration of our YEARS of hard work. But rolling with the punches is not how I saw myself entering the legal field.

Today, I am ready and able to serve as a licensed attorney. I am competent, compassionate, intelligent, and READY. The bar exam in October, if it should actually take place, has no relation to my ability to work in the legal field in an astute, careful, and intelligent manner.

The bar exam has zero relation to the attorney I feel I am now and the attorney I will become in my career.

The class of 2020 has withstood enough punches and done so with class and resilience. Perhaps it is time to recognize this and do away with a prohibitive and unnecessary exam that has no statistical, proven effect on an attorney's ability to faithfully provide the public with critical legal services. At this point, the exam is not "protecting the public" but rather prohibiting our class, and the classes that will come behind us, from entering a field we have studied diligently and faithfully over at least three years.

Diploma privilege is necessary, the bar exam is not. By all means, feel free to put conditions such as minimum GPA or a certain number of reported supervised work hours on diploma privilege. But at this moment it is time to recognize that the class of 2020 is an asset to the legal community and continuing to expect us to take these punches on the chin is cruel, uncompassionate, and, in my opinion, simply wrong.

I advocate for diploma privilege for the class of 2020 and for future applicants for licensure as attorneys in the state of Maryland.

Best regards,
Kathryn "Heidi" Smucker

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August 24, 2020

Suzanne C. Johnson
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Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges:

I am writing to advocate against further delay in administration of the bar exam and against potential adoption of temporary diploma privilege. I am also writing to voice concerns regarding the July 2020 bar exam, suggest alternatives, and to mention Maryland bar applicants' preexisting competence and commitment to the state of Maryland.

I graduated this May from the Catholic University of America Columbus School of Law. In September 2019, I was selected to join the Air Force JAG Corps following my graduation. Every branch of the military requires that recruits or applicants to any role or corps within the military meet three main requirements: (1) medial requirements, (2) an educational requirement dependent upon their role, and (3) physical fitness requirements. For example, people enlisting in the military must (1) report to a Military Entrance Processing Station (MEPS) for a physical and other medical screening, (2) receive a passing score on the Armed Services Vocational Aptitude Battery (ASVAB), which is a multi-aptitude exam, and (3) pass the physical fitness standards required by their branch. The medical and educational requirements must be met before someone can formally join the military and attend either basic (for enlisted members) or officer training, while the physical fitness requirement is typically tested during the first week of basic or officer training.

The Air Force JAG Corps and the JAG Corps of each branch of the military are corps specifically made up of attorneys and paralegals. The attorneys are officers and the paralegals are enlisted members. Accordingly, the JAG Corps of each branch requires attorney selectees to (1) attend and pass a MEPS physical, (2) become fully licensed to practice law in any state or jurisdiction, and (3) pass their branch's physical fitness test at officer training.

In prior years when bar exams have been administered as scheduled, JAG Corps selectees must take the bar exam, await bar exam results, apply for character and fitness, await character and fitness results, and be ceremonially sworn in to practice law before they can formally commission and began officer training. It is only upon starting officer training that JAG Corps selectees can begin work and be paid. Unlike with firms or clerkships, there is also no way for law school graduates joining the JAG Corps to begin working for their employer in any sort of capacity while awaiting bar exam results or their swearing-in ceremony. Undue delay in administration of the bar exam thus creates a financial burden on selectees awaiting the ability to work.

I anticipate that there are other jobs in the legal field with similarly strict licensure requirements. On behalf of JAG Corps selectees like myself and on behalf of any other similarly situated July 2020 applicants to the Maryland bar, I ask that Maryland (1) not take any action that would further delay administration of the bar exam and swearing-in ceremonies, and (2) not adopt temporary diploma privilege because it will likely prevent us from beginning work until we can be permanently and fully licensed. The point in time of permanent and full licensure would unfortunately be unknowable, given the long-term uncertainty created by the coronavirus pandemic. Therefore, this could leave us without work for an indefinite period of time, forcing us to either abandon our commitment and desire to use our legal education to serve our country in the JAG Corps or find temporary work for an indefinite period of time. The latter is a poor solution and replacement, though. The advent of the coronavirus pandemic has thwarted the job-search efforts of many recent law school graduates; some of my peers have not even found to jobs to begin with, much less a second, temporary job.

I am not only planning to join the military after becoming licensed to practice law, but I am also already part of a military family. After graduating from Parkdale High School in Riverdale, Maryland, my father promptly enlisted in the U.S. Army. He was stationed all over, from North Carolina to Panama, before he was stationed back in Maryland and met my mother in Fells' Point while she was attending Towson University. Throughout his career, my father has been stationed at Ft. Meade in Maryland multiple times.

Thus, we are a Maryland family as well as a military family. My mother grew up in Bowie in the same home from which I now write this comment: my grandparents' home that they built in 1974. I moved around growing up, living in Illinois, California, Virginia and Washington state, but I also lived in Maryland. I started my K-12 education at Rockledge Elementary School in Bowie, and I ended it at South River High School in Edgewater, where I won state championships in girls' soccer and girls' indoor track & field. I was also the yearbook editor-in-chief and homecoming queen, and I worked for many years at Mike's Bar and Crabhouse in Riva: a staple of the Anne Arundel county blue crab and water-front dining scene. I later went on to attend the University of Maryland, College Park, where I competed on the mock trial team under Professor Mark Graber, a professor of constitutional law at the University of Maryland Francis King Carey School of Law, and completed my B.A. in Government & Politics in three years.

I share all of this because, as a JAG Corps selectee, I could have sought bar licensure in any state; as discussed above, each branch's JAG Corps requires selectees be licensed in any one

of the 50 states, plus the District of Columbia. As a military kid myself, it is hard to say that I am from any one state. However, I chose to apply for the Maryland bar because, at the end of the day, Maryland is home. Maryland is my domiciliary, and it is to Maryland that I have the most significant connections.

I anticipate that many other Maryland bar applicants have similar stories. I met one of my best friends from college through the UMD mock trial. She is from Baltimore and went on to attend law school at the University of Baltimore. During law school, she clerked in the Special Victims' Unit at the State's Attorney's Office and has since been selected to work as a prosecutor for the State's Attorney's Office. Since I have known her, she has been committed to the city of Baltimore and passionate about representing and supporting its citizens. One of my best friends from law school, at the Catholic University, is from St. Michaels and she attended college at Mount St. Mary's here in Maryland. During law school, she interned in the Maryland State Senate and with the Anne Arundel County Office of the Public Defender. She hopes to become a Maryland public defender in the near future. Since I have known her, she has been committed to the state of Maryland and passionate about representing and supporting its citizens. Before applying to the Maryland Office of the Public Defender, she is first clerking for the next year with an Anne Arundel County judge, but the start of her clerkship has been delayed two months due to the delay in the bar exam.

I am asking that the same consideration and investment that Maryland bar applicants have shown toward and made in this incredible state be shown toward and made in us. I ask that Maryland be a state that cares about its people at every level. Governor Larry Hogan's response to the coronavirus pandemic has, in my view and the view of many other Marylanders and Americans, been professional, organized, thorough, thoughtful, and strong. I ask that this same approach be taken by every branch of Maryland's government. Throughout this pandemic, I have deferred to what my state and local governments have recommended and ordered because they had and have more information about the nature of the pandemic and its spread than I do; I am a budding and hopeful member of the legal field, not the virology field. In this situation, though, those of us who finished law school by taking remotely administered timed online final exams, and who may have even helped our faculty select the best grading policy in light of the pandemic, have the most information and experience. It is my understanding that Diploma Privilege for Maryland has submitted a comment supported by many sources, and I ask that this comment be reviewed and considered with the utmost care.

I cannot speak for every July 2020 applicant to the Maryland Bar, but from what I see, we are a group of law school graduates committed to using our legal education to serve and give back to the state of Maryland. We have roots and/or connections here, and we are invested in this state. I have read JAG-related comments on diploma privilege from other states that I think miss the point because they focus on how JAG selectees now have no way of picking a state to be barred in that would enable them to go to officer training at the earliest possible time. There is a valid financial concern with the timing of one's officer training, as JAG selectees cannot commission and receive pay until they begin officer training. This is a financial concern that I share. I am currently living off of my student loans until I can start work. However, I have no interest in forum-shopping for my state of bar licensure because that license means something to me. It means more to me than a fungible formality that can be gained via forum-shopping.

Frankly, if we ultimately have a bar exam, it should mean more than that. The bar exam should be more than a mere formality and perquisite that law school graduates just need to take care of, because then it would serve no true purpose. If it is the case that the bar exam is a mere formality that serves no true purpose, then Maryland bar applicants are currently wasting time studying that could otherwise be spent working for or in the state of Maryland. This pandemic has negatively impacted the economy. Therefore, Maryland bar applicants could both be making money to support themselves during this financially troubling time and bolstering the economy by getting to work.

As with the coronavirus pandemic, I do not have all of the information regarding the purpose of the bar exam. It may very well be the case that studies or metrics have shown that it ensures competency to practice law; I would have liked to do more research on this during the comment period, but must of course return to studying for the bar exam. Therefore, whatever is decided I will defer to and trust, so long as the Court of Appeals and State Board of Law Examiners (SBLE) diligently ensures that the bar exam serves a purpose during this pandemic that cannot be fulfilled by (1) graduation from an ABA accredited law school, (2) a passing score on the Multistate Professional Responsibility Exam (MPRE), (3) a passing score on the Maryland Law Component (MLC), (4) applicable Continuing Legal Education (CLE) requirements, and (5) adjusting the administration of any kind of exam to replicate administration of the MLC.

On the fourth point, the JAG Corps of each branch requires JAG Corps selectees to attend JAG school after attending officer training to ensure that they are prepared to practice law in the JAG Corps. JAG attorneys are typically in the courtroom very early in their career, serving as prosecutors in the military justice system. Therefore, JAG school importantly prepares them to take that uniquely early step in their legal career. For JAG Corps selectees, this is essentially a field-specific form of continuing legal education that ensure competency to practice law in the JAG Corps. In the firm context, the demands of their clients create the need for all of their attorneys to practice law competently and diligently. Accordingly, many large firms have developed thorough programs to train summer and junior associates and ensure their competency to practice law at their firm. Therefore, I believe employers' training and education requirements, at least in part, fulfill the purpose of the bar exam.

On the fifth point, I believe that the SBLE could administer the multiple-choice portions of the bar exam in the same manner that it administers the MLC. Additionally, I believe that the SBLE could administer both essay portions of the bar exam (the 30-minute essay questions, and the 90-minute, closed-memorandum-style essay question) in a similar manner that may not involve the option to retake the exam section, as with the MLC, because that would be impractical, but would allow bar applicants to complete the essay portions at a time that works best for them. For final exams, the Catholic University afforded students a 48-hour window for each final exam that they had. Students were required to complete their exams, which ranged anywhere from 1.5 to 6 hours long, depending on credit hours testing accommodations, at any point within this window. This worked very well and could be an option if the SBLE still wanted to administer essay portions of the bar exam, but do so in a manner that is more

universally accessible to Maryland bar applicants under the circumstances created by the coronavirus pandemic.

I thank the Court for its time and consideration on this urgent matter. Again, I mainly ask that these petitions be reviewed and considering with the utmost care, and that our experience taking online exams as May 2020 law school graduates be taken into account with earnest. I wish all readers of this letter, and all those working to address this matter, good health, both physical and mental, during this trying time.

Respectfully,
Paige Francis Markley

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August 24, 2020

Suzanne C. Johnson
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Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear Honorable Chief Judge Barbera and Associate Judges:

My name is Victoria Kadous and I am a 2020 graduate of American University Washington
College of Law registered to take the 2020 October Maryland Bar Exam.

I recognize the devastating effects the COVID-19 pandemic has had on our country. More specifically, I recognize the distressing effects it has had upon the 2020 Maryland Bar Exam applicants and upon those in our community who most need access to justice. I firmly believe graduation from an ABA accredited law school, a passing score on the Multistate Professional Responsibility Exam (MPRE) and a passing score on the Maryland Law Component qualifies applicants as competent. I therefore strongly support the petition before the Court of Appeals, advocating for emergency diploma privilege for Maryland Bar applicants.

Due to these unexpectant global circumstances, the only equitable resolution for 2020 October bar applicants is diploma privilege. While I am extremely grateful there will not be an in-person bar exam for Maryland, an online bar exam is not the solution. An online bar exam raises privacy concerns, resource concerns, and cannot be fairly and equitably implemented. This is evidenced by the states who have already tried to administer exams this way and have either failed to do so or have encountered many obstacles. Law students have spent their academic careers working to get to this exam and risk losing everything they worked for due to the problems like this that would not arise during normal circumstances.

Personally, I live in an apartment with two roommates who will be working while I'm taking the exam. They both need to be on various video calls and making phone calls throughout the day. We don't know how the exam software will affect our connectivity and whether any technical issues will arise during the exam such as power outages or Wi-Fi outages. Further, we don't have any way of getting far enough apart to ensure that my computer will not pick up their voices while they are working.

Taking an exam such as the bar exam at home causes another obstacle other than the noise and Wi-Fi concerns. We are not allowed physical scratch paper during the exam and are not given any virtual scratch paper during the MBE. Throughout my bar prep course with Barbri, it has been

noted numerous times that in order to successfully complete certain questions, you need to mark the question up, highlight them and/or write stuff down. I have been practicing doing MBE questions without marking anything up and without writing things down, and have found that it takes a significantly longer amount of time to answer those questions than the test normally allows. During a normal bar exam, we would have test booklets to write all over as well as scratch paper. Here, we are left with none of that and that places us at a disadvantage. It will lead to examinees failing when they would have passed under normal testing circumstances.

The class of 2020 could not have predicted they would be taking the bar during a global pandemic. Granting diploma privilege is the only equitable solution for 2020 bar applicants, as well as the most compassionate solution. Thank you for taking the time to allow public comment and for listening to the concerns of the public.

Respectfully,

Victoria Kadous

[EXTERNAL] Diploma Privilege

Brian Cunningham <bcunningham1@loyola.edu>

Mon 8/24/2020 4:29 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

I am against allowing diploma privilege regardless of present circumstances. Every year, candidates must study and pass the bar exam to have the right practice law in the State of Maryland. Every year candidates fail this exam and must retake it until he/she shows the requisite knowledge required to pass. By granting diploma privilege, a 100% pass rate will occur thus allowed every law school graduate to begin the practice of law without demonstrating the ability to test for all subjects. I understand these are extraordinary times but there are ways to allow for a testing of the skills and knowledge of candidates. The state does not need an influx of attorneys who did not need to demonstrate proficiency in the law before being allowed to practice.

Sincerely,

Brian C. Cunningham, Esq.

"The law is what we live with, Inspector. Justice is sometimes harder to achieve." -Sherlock Holmes

[EXTERNAL] Comment Re Diploma Privilege

Autumn Clarke <ac8535a@student.american.edu>

Mon 8/24/2020 4:29 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To whom this may concern,

As a third-year law student, I am writing to express my support for the Maryland Court of Appeals to grant diploma privilege to the graduating law school class of 2020. The pandemic and the strife it has brought to students are the very reason why diploma privilege should be granted. To force students to test under these conditions is discriminatory and humane-less. It is imperative that the Maryland courts provide diploma privilege, a solace for so many students who have uncertain futures. I urge the Maryland Court system to aid students during these uncertain times and be on the right side of history.

Sincerely,

Autumn Clarke

Emma Dorris, J.D.
University of Baltimore School of Law '20
emma.j.dorris@gmail.com

August 21 2020

BY EMAIL

COAClerkoftheCourt@mdcourts.gov

Re: Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting
Emergency Diploma Privilege Plus

Dear The Honorable Chief Judge Barbera and Associate Judges,

I am a recent graduate of the University of Baltimore School of Law and a Maryland July 2020 bar applicant. I am writing to express my support in granting October 2020 bar applicants emergency diploma privilege plus. I want to thank the Court for opening this comment period and for listening to our concerns about the licensure process. The global pandemic has caused devastating effects across the world and within the United States. It has uniquely affected applicants for the bar exam. For the following reasons, I believe the Court should grant the Emergency Petition for Temporary Suspension of UBE Requirement and Order Granting Emergency Diploma Privilege Plus ('The Petition') for all October 2020 examinees.

1. *Effects on Applicants' Mental Health*

I graduated from the University of Baltimore School of Law in May 2020. Since beginning law school, my classmates and I understood that after the 3 or 4 years, we would embark on an intense 10-week bar preparation course right after graduation and then take the Bar Exam. However, of course, the global pandemic threw a wrench in these plans. Toward the end of May, the State Board of Law Examiners (SBLE) and Court of Appeals correctly decided that an in-person July exam would not be feasible due to the public health risk of large gatherings and postponed the exam to September. The SBLE then cancelled the in-person exam and postponed to a remote exam in October.

While I agree that cancellation of an in-person exam was the most prudent choice, postponing the exam twice has and will continue to have devastating effects on my mental health. A process that was supposed take place from May to July has turned into May to October. I am familiar with the old saying regarding studying for the bar exam - "it's a marathon, not a race." However, as the finish line keeps moving, this has now become a six month marathon with no potentially no end in sight.

I have woken up almost every day since the end of May with a sense of dread and anxiety because I do not know if I will have a chance of becoming a licensed attorney this year or even next year. I feel defeated and exhausted every single day - not only worried about my and my family's health and safety due to the pandemic, but because of the ongoing uncertainty of the bar

exam. I have family members who are healthcare workers in Maryland and elsewhere – including one at Johns Hopkins - and I especially worry about their safety. I have had multiple anxiety attacks and physical symptoms resulting from anxiety.

I acknowledge that bar preparation traditionally is a stressful experience and a lot of bar applicants have had to deal with various hardships during this period. However, the global pandemic, in which the United States now leads globally in confirmed cases and deaths¹, is an extraordinary circumstance that affects every single bar applicant this year. The postponements of the exam and the uncertainty of whether we will be able to successfully take the exam in October has and will continue to have devastating effects on my mental health.

In addition, how I had planned to study for the bar is starkly different than what I have been forced to do now. I always expected to be able to go to coffee shops and the law library to study, but it is not safe to do so and many places, including the law library at University of Baltimore, are still closed. Further, I was a full-time day student for all three years of law school. I always expected that bar preparation would be my full time job for ten weeks. Knowing my study habits and how I learn, I knew this was the best way to ensure my success on the bar exam. Now, I have to start my full time job in the middle of studying for the bar due to it being postponed to October.

I live in an apartment, so I have to pay for rent, groceries, and other bills, and am too old to remain on my parents' health insurance. It is vital that I have health insurance during a pandemic. Moreover, I did not take out a bar loan and I am quite literally running out of money. Thus, I cannot afford to postpone starting my job until October. I also have private student loans that went back into repayment, the monthly payments for which I cannot afford. I acknowledge I am lucky to still have a job while others have lost theirs, however, learning how to juggle studying for the exam that will dictate my future and training for a new full-time job is something that I was not at all prepared for and is adding to my current struggles with mental health.

The uncertainties about the bar and the effects it is having on my mental health has severely impacted my ability to study. As such, I have fallen weeks behind on my bar prep schedule that Barbri has laid out for me. In law school, I dealt with sometimes debilitating stress and anxiety, deaths in the family, and various illnesses and other hardships in law school, however, I was able to successfully complete my classes, internships, and clinical experience and I graduated magna cum laude. This is a stark contrast to what my life is like right now studying for the bar. I have never before felt so utterly defeated and unable to focus or retain information – solely due to the stress and anxiety from the pandemic and the uncertainties surrounding the bar exam. I say all of this not to garner pity or sympathy, but to paint a picture of the life of a current bar applicant.

¹ COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU), JOHNS HOPKINS UNIVERSITY OF MEDICINE, <https://coronavirus.jhu.edu/map.html> (Aug. 22, 2020).

2. *A remote bar exam in October is not feasible*

I am extremely concerned about the feasibility of a remote bar exam in October. So far, no jurisdictions have successfully administered a remote bar exam without technological problems.² I do not feel that SBLE has given examinees adequate reassurance that a remote exam in October will be successful using ExamSoft. Michigan administered their remote exam on July 28th and in the middle of the exam, there were reports by examinees that the software crashed and they were unable to access the second module.³ ExamSoft attributed the issue to a “sophisticated [DDoS] attack specifically aimed at the login process.”⁴ ExamSoft then released a statement that it requested the FBI and DHS be involved in an investigation. In SBLE’s response letter to the Court, they claimed that “reports on Twitter and other outlets that the ‘exam was hacked’ or otherwise compromised were false.”⁵ However, they provided no source to back up this assertion. Moreover, we are less than two months away from the exam and to my knowledge, there are no reports informing us on the progress of this investigation or that Michigan has resolved it. As someone who is supposed to be using this software in October, this is troubling. A potential DDoS attack in the middle of the bar exam should not be something that bar applicants have to worry about. At the very least, we should be kept up to date on the status and progress of this investigation.

Most importantly, now that jurisdictions are left with only ExamSoft as the software vendor to use for the October remote exam⁶, how is ExamSoft going to be able to support potentially 30,000+ exam takers at the same time in October? This is concerning to me. Furthermore, if we have technological issues during the exam, how will we be able to report these issues? SBLE notes in their response to the Court that this risk may be mitigated by applicants opting in to receive the password via text message or telephone.⁷ However, in contrast, in their FAQs Related to the October 2020 Remote Bar Exam in Maryland, SBLE states that we will not be allowed to have phones in the room and we will not be allowed to get out of our chairs and leave the exam room.⁸ In addition, SBLE states that “situations such as that which occurred in Michigan would necessarily arise at a point where the applicant had not yet accessed the secure exam materials and where use of a phone would likely be appropriate.”⁹ SBLE provides no support for this claim. Further, if there are technological issues during the portion of the exam

² Indiana and Nevada both had to postpone their exams and ended up moving to open book, email exams after multiple unsuccessful attempts to test the software.

³ See Caroline Spiezio, *Michigan Software Crash Roils First Online Bar Exam*, REUTERS (Jul. 28, 2020, 4:26PM), <https://www.reuters.com/article/lawyer-coronavirus-michigan/michigan-software-crash-roils-first-online-us-bar-exam-idUSL2N2EZ26A>

⁴ *Id.*

⁵ State Board of Law Examiners, October 2020 Remote Bar Examination Update, at 4–5.

⁶ One of three available software companies, Exegritty, informed State Bar Examiners that they would not be able to use their software for the remote bar exams. See Stephanie Francis Ward, *Software Provider Pulls Out of Remotely Proctored Bar Exams Because of Technology Concerns*, ABA Journal (Aug. 18, 2020, 2:41 PM), <https://www.abajournal.com/web/article/due-to-technology-concerns-software-provider-pulls-out-of-remotely-proctored-bar-exam>. In addition, jurisdictions are moving away from ILG, the second of three options available to states

⁷ State Board of Law Examiners, October 2020 Remote Bar Examination Update, at 5.

⁸ *FAQs for October 2020 Remote Bar Exam in Maryland*, State Board of Law Examiners 2-3 (Aug. 7, 2020), <https://www.mdcourts.gov/sites/default/files/import/ble/pdfs/october2020remotebarexamfaqs.pdf>.

⁹ State Board of Law Examiners, October 2020 Remote Bar Examination Update, at 8.

that is secure, SBLE has provided us no reasonable avenue for how to report these issues. SBLE's blanket statement that ExamSoft was not and will not be subject to "hacking" does nothing to reassure applicants that technological issues will not disrupt the exam or that our data will remain private.

Additionally, an article published on August 20th, 2020 by Electronic Frontier Foundation (EFF) noted that student proctoring apps "violate student privacy [and] negatively impact some populations."¹⁰ In response to this article and a tweet by United for Diploma Privilege asking the organization to comment on ExamSoft's use of AI proctoring, the Surveillance Technology Oversight Project (S.T.O.P) stated "[w]e think this trend is deeply concerning and support the calls for . . . diploma privileges for law school graduates. Our forthcoming report will detail many of the reasons why these systems are error prone and ripe for bias."¹¹ This increases the concern that AI proctoring through ExamSoft will not be secure and will potentially result in the violation of applicant' data privacy.

3. *Access to technology and test-taking space free from disturbances*

SBLE states that "examinees may take the October remote bar exam at home, at work, or any other quiet space of their choice."¹² I live in a small apartment on ground level. The only space I have to study and take the exam is the second bedroom. I do not have an office at work or access to any other "quiet space." My desk is right next to a window. The walls are very thin in my apartment and if people are outside having conversations, yelling, laughing, etc., I can hear it very well in my room. The wall where my desk sits is adjacent to the apartment next to us and I can very clearly hear people talking and yelling. In addition, several times every week, there is landscaping outside, vacuuming in the hallway, and various maintenance being done in my apartment building, all of which creates loud, extraneous noise in the room where I will be taking my test. SBLE assures us that "[o]ther behaviors cited in the Diploma Privilege Petition will likely trigger various levels of scrutiny after the exam" and that "talking or other noise in the exam space would be flagged and possibly reviewed, but mere 'extraneous' noise would not result in sanction."¹³ SBLE does not explain what these "other behaviors" consist of and what would be qualify as "mere extraneous noise." These statements do not reassure applicants what specific types of behavior, besides the obvious visible cheating or leaving the room, would subject us to sanctions and/or cancellation of our exam scores. We have little reassurance that outside noises and other things that happen out of our control will not result in our scores being cancelled.

Furthermore, I would like to note that it is troubling that SBLE did not address our concerns laid out in the Petition for Diploma Privilege showing a clear disparate impact that a remote bar

¹⁰ Jason Kelley & Lindsay Oliver, *Proctoring Apps Subject Students to Unnecessary Surveillance*, ELECTRONIC FRONTIER FOUNDATION (Aug. 20, 2020), <https://www.eff.org/deeplinks/2020/08/proctoring-apps-subject-students-unnecessary-surveillance>.

¹¹ @DiplomaPriv4All, Twitter (Aug. 23, 2020, 9:58PM), <https://twitter.com/DiplomaPriv4All/status/1297714936508891136>; @StopSpyingNY, Twitter (Aug. 23, 2020, 11:22PM), <https://twitter.com/STOPSpyingNY/status/1297736009258536961>

¹² *Id.* at 7.

¹³ *Id.* at 7.

examination has and will have on people with disabilities, Black applicants and other applicants of color, and low-income applicants.

4. *The requirements of admission to the Bar laid out in the Petition for Diploma Privilege Plus are sufficient to ensure applicants' competency to practice law and to protect the public*

Finally, I want to address the argument that the bar exam is necessary to ensure competency to practice law and that law school does not prepare us for practice. I firmly believe that emergency Diploma Privilege Plus laid out in the Petition ensures applicants' competency to practice law and does not run afoul of the duty that the Court has to protect the public. I am proud of the education I received at the University of Baltimore School of Law. There, I learned and practiced legal writing and research in almost every single one of my classes and I developed these skills even further in the two years I spent as a staff editor on Law Review. I took challenging courses, a lot of which were "bar exam" courses, and successfully used and developed lawyering skills to complete internships at the Maryland Office of the Public Defender and the Maryland Court of Appeals. In addition, because of University of Baltimore's emphasis on gaining practical legal experience, I spent one year as a Law Clerk at a successful criminal defense law firm in Baltimore. There, I spent time in the courtroom, researched a plethora of criminal and constitutional issues and drafted several motions. Moreover, I spent a semester as a Rule 19 student attorney in University of Baltimore's Immigrant Rights Clinic where I gained invaluable experience actually participating in the practice of law and ultimately gaining a favorable outcome for our client. In fact, University of Baltimore School of Law's clinical programs is ranked 14th in the nation by U.S. News and World Report.¹⁴

Asking for emergency Diploma Privilege Plus is not asking for a "free pass" on the bar exam. As laid out in the petition, applicants would still be required to pass the MPRE, pass Maryland's character and fitness evaluation, and pass the Maryland Law Component. These requirements are sufficient to ensure our competency to practice law and the protection of the public. I respectfully ask the Court to grant the petition as such.

¹⁴ Clinical Law Program & Externships, Clinical Education: Student Attorneys Representing Clients, UB School of Law, <http://law.ubalt.edu/clinics/index.cfm>.

5. Conclusion

For the reasons stated above, Diploma Privilege Plus is the only equitable solution to the current crisis that we are facing. Growing up in Maryland, I have always had pride to be a resident of this state. I respectfully urge the Court to be a leader among jurisdictions in this country and show that it has empathy for the struggles facing bar applicants.

I thank the Court for its time and consideration in this matter.

Respectfully,

Emma Jaclyn Dorris, J.D.
University of Baltimore School of Law, '20
Towson University, '15

[EXTERNAL] Comment on the Maryland Bar Examination

Dawinder Sidhu <dss@umbc.edu>

Mon 8/24/2020 4:30 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

August 24, 2020

Suzanne C. Johnson, Clerk
Court of Appeals of Maryland
361 Rowe Blvd.
Annapolis, MD 21401

Dear Ms. Johnson:

I am writing in response to the request from the Court for comment on the administration of the October 2020 bar examination, and specifically on whether, as an emergency measure, the Court should waive the Uniform Bar Exam (UBE) component of the examination. As a long-standing member of the Maryland bar, as a past professor at both the University of Baltimore School of Law and the University of Maryland Francis King Carey School of Law, and as several of my former students are now preparing for the examination, I appreciate the opportunity to submit this comment to the Court.

As explained below, I support the waiver of the UBE, the replacement of the Maryland component of the examination with mandatory training seminars, and the wholesale reconsideration of the delivery of legal education in Maryland so as to obviate the need for an examination at all.

First, as a threshold matter, I wish to pay tribute to the Court for its ongoing interest in determining how the bar examination may be administered safely and responsibly. The Court's decisions to postpone the examination from July to September, to push it further to October, and then to shift to an online testing format, reflect the Court's active and demonstrated concern for the health and well-being of the bar applicants, proctors, and the community at large. While other jurisdictions forged ahead, only to jeopardize that health and well-being, impose draconian test-taking rules, and suffer setbacks in test administration along the way, Maryland has taken a more prudent and humane approach. Maryland deserves credit for charting this deliberate and thoughtful course.

Second, to resolve whether Maryland should administer a full online examination, as currently planned for October, or waive the UBE, as

proposed by the petitioners, it is necessary to consider the fundamental purpose of the bar examination itself. It seems that a primary rationale for the examination is that it promotes public confidence in newly admitted attorneys. This justification raises a critical question: what is the point of three-years of full-time legal education (and its associated financial and psychological costs), if it produces graduates who are nonetheless incompetent, or at least perceived to be incompetent? Instead of perpetuating a system in which an examination apparently compensates for the shortcomings in legal education, and asking only whether the examination should be offered fully or partially, the profession should be assessing how legal education may be improved such that the examination may be dispensed with entirely. That is, it is time to treat the underlying cause rather than merely tinker with the remedy.

To close the gaps between legal education and legal practice, and between professional competence and the public confidence, may seem to be a task beyond our grasp, particularly in light of present circumstances, but workable solutions are within our reach. For example, professional skills courses (e.g., legal research and writing) of at least three-credits should be mandatory each semester of a student's legal education, and each student should be required to demonstrate certain practice proficiencies after each year.

Third, this is not to say that law school graduates should skate into practice. But the current post-graduation system represents a squandered opportunity to provide meaningful instruction and guidance. At present, preparation for the bar examination consists of rote memorization. In lieu of this extended cram session, the Court should mandate that each graduate attend mandatory seminars on Maryland law, Court procedure and etiquette, professionalism, and community engagement. These seminars—akin to foundational legal education, an early counterpart to existing continuing legal education (CLE) courses—will allow the members of the bar and bench to mentor entering professionals, set the curriculum, and produce income that can then be deployed for scholarships, access to justice projects, and similar civic initiatives. I commend this model to the Court and would urge it to adopt it as soon as practicable, and by this fall, if possible.

In light of the above, I support the petition insofar as it argues for the UBE to be waived. In addition, I propose that the UBE be scrapped, that the Maryland law component be replaced with intensive educational sessions, and that the law schools take on greater responsibility to ensure that graduates possess the requisite knowledge and professional skills to undertake the practice of law.

I hope that my perspective may be useful in the Court's decisionmaking process.

Yours in Service,

Dawinder (Dave) S. Sidhu
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The Judges of the Court of Appeals of Maryland
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Re: Comments in Support of Diploma Privilege

Your Honors:

I am writing briefly to urge the Court to consider granting the Diploma Privilege to law school graduates who received their degrees this year. I have been a member of the Maryland Bar since 2012, and I would be entirely comfortable working alongside members of this year's graduating class. They have already surmounted the numerous challenges attendant on law school students—taking a core curriculum of courses covering the fundamental principles of law, passed a course on professional responsibility, practiced and refined their legal writing, and engaged in a variety of extracurricular legal activities, to name just a few—and I am confident that they will be highly capable and valued members of our legal community. I look forward to their admission to practice.

Respectfully submitted,

Julia Horwitz (CPF. No. 1212120044)

[EXTERNAL] Diploma Privilege

Eryka Jones <ej4023a@student.american.edu>

Mon 8/24/2020 4:30 PM

To: COA Clerk of the Court <coaclerkofthecourt@mdcourts.gov>

To whom it may concern,

My name is Eryka Jones and I am a current law student at the Washington College of Law at American University. I stand with the graduates of 2020 and believe they are more than competent to be lawyers without the need for a bar exam – something that does tell the true capabilities of a lawyer.

I support diploma privilege.

Best regards,

Eryka C. Jones

IP Brief, *Junior Staffer*

Mock Trial Honor Society

Barbri Ambassador

BLSA, *Marketing Committee*

American University Washington College of Law

J.D. Candidate, 2022

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608-695-8618

[LinkedIn](#)

August 25, 2020

Maryland Court of Appeals

Re: Diploma Privilege as a Necessary Temporary Option for Admission to the Maryland Bar

Dear Chief Judge Barbera:

We, the undersigned deans of law schools in Washington, DC, submit these Comments in support of offering diploma privilege as a temporary option for admission to the Maryland Bar at this extraordinary time of a global pandemic.

We appreciate the hard work that the State Board of Law Examiners (SBLE) has put into assessing bar admission during this cycle, as well as the Court of Appeals' careful review of the SBLE's August 18, 2020 report. We especially appreciate the decision to adopt an online bar exam in October 2020. Although we have some concerns about the administration of the online exam, especially for test-takers with disabilities who need testing accommodations, we support the availability of the online option for those who need access to licensing through the October exam in other jurisdictions using the same online exam. We are, of course, pleased that Maryland has entered into a reciprocity agreement with the District of Columbia where many of our graduates will be taking the bar.

In addition to the online exam, we submit that temporary or emergency diploma privilege for those with the intent to practice in Maryland is a necessary and workable option for the following reasons:

- a) Our 2020 graduates have been hit particularly hard with constant changes in the traditional routine that most licensed attorneys have followed over many years; the most recent graduates had no choice but to adapt to an abrupt switch to online classes this past spring in order to complete their Juris Doctor degree, and they had to regroup after canceled in-person exams scheduled initially for July and later for September. The downside is the loss of sustained focus and intensity on bar exam preparation, and that is now coupled with concern about the reliability of the online platform for the October exam.
- b) Our 2020 graduates are prepared for practice having completed a full course of study designed to enable them to practice law responsibly, particularly under the supervision of employers that is traditional for entry-level attorneys.
- c) Ultimate fairness would result in the bar admissions process during this historic pandemic where racial, economic, and health equity issues are in stark focus and disproportionately affect bar applicants who are low-income, diverse, and first-generation college and law school students.
- d) Adequate protection for Maryland consumers of legal services would result based on the high quality of instruction our law schools provide, including excellent experiential programs, and making diploma privilege recipients subject to the attorney discipline and ethics enforcement system to manage any potential complaints.
- e) Greater certainty would result for legal employers that their 2020 hires will be duly licensed to practice law in a reasonable time frame, particularly if there were to be a major glitch in an October online exam administration, and just cause to bypass a February bar exam.

We thank all involved in this effort, including the graduates who have acquitted themselves well in thorough and fact-based advocacy, and in whom we have enormous pride and hope for excellent and effective work in support of their clients throughout their careers. We advocated for temporary diploma privilege in the District of Columbia and New York, and we urge Maryland to do the same on an emergency basis.

Respectfully submitted,

Robert D. Dinerstein
Professor of Law and Acting Dean
American University, Washington College of Law

Dayna Bowen Matthew
Dean and Harold H. Greene Professor of Law
George Washington University Law School

William M. Treanor
Dean & Executive Vice President
Paul Regis Dean Leadership Chair
Georgetown University Law Center

Renee McDonald Hutchins
Dean & Joseph L. Rauh Chair
University of the District of Columbia
David A. Clarke School of Law

Stephen C. Payne
Dean, Columbus School of Law
Knights of Columbus Professor of Law
The Catholic University of America

Danielle Holley-Walker
Dean & Professor of Law
Howard University School of Law