

WASHINGTON STATE
B A R A S S O C I A T I O N

Board of Governors Meeting
Late Late Meeting Materials

June 26-27, 2020
Webcast & Teleconference

**WASHINGTON STATE
BAR ASSOCIATION**

Board of Governors

BOARD OF GOVERNORS MEETING Late Late Materials June 26-27, 2020 Webcast and Teleconference	
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June 24, 2020

Additional Comments Regarding Diploma Privilege

9 comments opposed to Diploma Privilege

Against Diploma Privilege as Granted:

Sent to Supreme Court and Copied Governor Higginson June 23, 2020 - Dear Supreme Court-

Good afternoon. I am writing on behalf of myself, and not as a representative of my law firm with respect to the decision to allow 2020's law school graduates to be granted admission to the WSBA without taking the Bar Exam.

I will admit that my initial response was, "I took that thing, they should have to take it as well." I took some time to have second thoughts. I went through law school and took the Bar Exam fairly recently, and I talk with a lot of students and recent graduates. I can see where change is desperately needed in law school, with the Bar Exam, and generally within the legal profession.

Unilaterally allowing this year to avoid the Bar Exam does not seem to be a reasonable method of making change for the better. While the current exam takers are living in unprecedented times, all of them are living through it together. They have constant moral support from everyone around them. No such Diploma Privilege was granted to individuals in my graduating class who were taking the exam when living through a divorce, essentially postponing labor, or having a family member die. All of those life events are just as stressful and difficult as Covid (if not more so), and each of those individuals had to live through the stress alone without every single other individual sharing the same stress to commiserate, and they still had to take the Bar Exam.

And, while I agree that safety should be a huge concern for everyone, there are ways to mitigate the "in person" issues, and those means are being used now as our state begins to open. Masks, hand sanitizing, air filter, and other methods help prevent the spread. The Bar has already instituted additional testing days and sites, so that the rooms will be less full.

Further, a substantial number of individuals use their computers to take the Bar Exam, as they do for final exams during law school. Switching to an all online system of exams would be very simple for the majority of current law school graduates. The computer programs look down all ability to reach other programs (like the internet), and I can say from experience that the time



limitations essentially prevented me (even if I wanted to) from being able to use printed materials or a second computer to look information up and still complete the Exam. And, if I were the type of individual that would cheat on the exam, I would find ways to do it despite being locked in a big room where I am only allowed to bring a Ziplock bag of pencils. If we can't trust our graduates to take the exam in a reasonably ethical manner for a year or two while Covid makes its way through the world without locking them in a room where someone checks their pockets, then we really should just never admit another attorney to the Bar.

Finally, the major response I hear from most attorneys surrounding me is "I would never hire anyone that did not take the Bar Exam." Further, any states I have reviewed for reciprocity (3 or 4), will allow you admission after a certain number of years of practice, but only if you meet that state's criteria for a normal application, with a certain number of years of practice. That criteria almost always includes passing a Bar Exam. Allowing this year's graduates to have admission privileges without taking the bar is likely to be far more detrimental to them than actually taking the Bar Exam in the long run. While I fully support their ability to make an informed decision about their long-term plans, this decision also does not improve the legal profession or the public's confidence in the legal profession.

Again, after second thoughts on this matter, I am supportive of change to law school, the Bar Exam, and to the legal profession generally. I do feel that it should be a plan that does not harm the graduates or the legal profession overall.

I hope you will reconsider the decision to unilaterally allow graduates to avoid the Bar Exam.

Sent to Supreme Court and Copied Governor Higginson June 23, 2020 - Dear Supreme Court:

I strongly oppose allowing Bar applicants a waiver for taking the Bar exam. I taught law students for 10 years at Gonzaga Law School, and there are some students where it becomes apparent that they should NEVER practice law. The Bar exam protects the public from incompetent attorneys.

Some attorneys on the WSBA RPPT listserve suggested a provisional approach, which sounds reasonable to me. I am pasting that post below:

List serve colleagues:

> I, for one, plan to write to the Supreme Court on this issue. This broad
> and sweeping decision to exempt all applicants for the summer 2020 bar
> exams to never have to take the bar in Washington is too broad. First, bar
> applicants who previously failed the Washington bar, no matter how many

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> times, are now automatically admitted if signed up for the Summer 2020
> exams (July and September). Second, the last bar exam pass rate was only
> 49%. When I took the bar in 1989, the pass rate was only 62%. I certainly
> have not followed bar passage rates in Washington, but I think they have
> varied between about 45% to 75% over the last 30 years. The exam is a
> competency measure to protect the public and to ensure a certain level of
> competency to practice law in Washington. We are a profession with many
> technical rules and requirements and the public deserves the protection the
> bar exam provides.

>

> A more balanced approach could be that the 2020 summer exam applicants are
> admitted on a provisional basis and can practice law so long as they sit
> for the bar exam by the summer of 2021. Their admission to the bar would
> remain valid until the results are announced for the summer 2021 exam in
> the fall of 2021. If they pass that exam their admission continues. If
> they fail the bar exam in either the winter of 2021 or summer 2021, then
> their provisional admission ends until they take the exam again and pass.
> This approach balances the effect of the Corona Crisis on studying for and
> passing the bar exam during the crisis and allows for gainful employment in
> the interim. This approach would also protect the public because those who
> ultimately have a problem passing the exam will not be admitted on a long
> term basis until they can show their basic competency to practice law.

>

> I understand that this approach of temporary licensing is being used by
> the Washington State boards that license dentists and pharmacists;
> similarly it should apply to lawyers. I encourage each of you to write to
> the Supreme Court on this important issue for our profession.

Thank you for your time and efforts on behalf of our profession.

[Sent to Supreme Court and Copied Governor Higginson 6/23/2020](#) - Dear esteemed Justices.

I respectfully disagree with your decision to create the most lax entry admission standards (nationwide) for the 2020 law school graduates. See Article below.

While compassion is one thing, abdication of responsibility for setting standards for admission is completely another. You know, based on past bar admission pass rates, that you have now welcomed into our bar, people who would not otherwise have qualified.

You had other options. More thoughtful options. More credible options.

You also create an unfair stigma for 2020 graduates who now have automatic admission. The admission year 2020 will bear an asterisk in many minds.

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You really could do better and be more thoughtful than you were.

Thank you for considering my comments. I now need to go pound my head against the wall...something I reserve for stultifying occasions like this.

Comments Opposing Diploma Privilege Posted to the Real Property Probate and Trust Section List Serve

Posted 6/23/2020 - I'll add that as a professional fiduciary and attorney we often see the fallout of substandard legal work. The public pays the price for this, and when it results in engaging the courts that price can be quite high. Sorry to say, but this is our experience from attorneys who have passed the bar. None of us is perfect, that's for sure, and I have made my share of mistakes, however, the knowledge and discipline required to pass the bar seems to be to be an important filter to obtaining a license with a significant impact on the public.

Also, we hire people with law degrees, and greatly appreciate the skill sets they bring, even though that person may not be a member of the bar. In particular, we would want someone with the education, but who really is not interested in the private practice.

Posted 6/23/2020 - This is not right. As stated, a provisional entry with an obligation to pass the bar with 12 months should be the route.

Posted 6/23/2020 - **I believe the bar exam waiver for this year was only for ABA graduates only. All the Rule 6 law clerks, non ABA graduates and foreign LLM still have to take the exam.**

Why is one group better than the other? I don't know.

I was a Rule 6 Law Clerk, I passed the winter 2012 bar exam, the pass rate was 51%. Many attorneys said, geez your exam must have been horrible, I think most attorneys will say they are all horrible or a war story about the exam. I wanted to take the exam, it makes you a better attorney. The exam should *not* be exempt to any graduates regardless of where he/she went to school.

I was a real estate broker, the economy was failing in 2007, I didn't have the means to go to law school and sustain all the bills. I enrolled in the Rule 6 program. I defiantly had a lot of hands on experience working with a practicing attorney.

I studied for a least 6 months for the exam, I took the bar bri course, 2 times and countless exams from previous bar exams. The exam teaches you discipline, issues identification and ethics. Memorization was key and breaking down subjects to really attack the essays.

Do the law schools teach ethics? I don't know.

These students that diploma through are at a disadvantage, because not only is it good to know the laws, issues, dealing with clients, but Ethics are a priority every day in practice.

Posted 6/23/2020 - I agree with the provisional license approach – have 12 months to pass, or two consecutive bar exams, and if you don't pass, your license to practice is revoked until you pass.

Wonder what the malpractice carriers think of this. In our small practice, I know we wouldn't bother hiring someone who hadn't taken and passed the bar exam – I suspect that we would have trouble getting insurance coverage for that person.

Posted 6/23/2020 - I take this opportunity to comment on the Diploma Privilege rule change.

I retired as a Judicial Officer a few years ago (Lincoln County District Court). I have practiced about 45 years and continue to practice law. The law has been a great vocation for me.

I am particularly concerned about granting a license to an applicant who in the past had flunked the bar exam. I have known excellent attorneys who had to take the bar exam more than once. My thought, however, has turned to a particular member of my law school class. This was a student who many of us in school were surprised had made it into law school. I recall that this particular law school graduate not only didn't pass the test on his first try, but repeatedly was unable to pass it and in fact never did. It is my belief that this was an appropriate outcome when considering the needs of the public.

I understand that some people can function as attorneys who are not naturally adept at passing tests. I think it is worthwhile for the profession and the public to have a system where certain applicants overcome their testing weakness or possibly other natural weaknesses by hard work which by itself tends to create a better individual and therefore a better attorney. Those who prevail over adversity enjoy a well deserved feeling of heightened accomplishment that others don't share.

Finally, I have been disappointed in the quality of work that I witnessed from a very small percentage of attorneys who practiced in my court. It would be a shame if this rule change ended up with judges being similarly disappointed in the future in a greater percentage of sub-par attorneys than what I experienced. I have reflected on the fact that my disappointment undoubtedly failed in comparison with the likely degree of disappointment experienced by the clients who were represented by that very small percentage of sub-par attorneys.

I would suggest that the rule be changed to issuance of a provisional or temporary license for those who have not previously flunked the bar exam, until they are able to take and pass it.

Posted 6/23/2020 - While we may not know all the facts yet on what prompted the SC to change the rules, what we do know is that they initially agreed with the Board of Governors to not suspend the bar exam requirement. Dean Clark then writes a letter to the SC and two days later the rule got changed. I am not aware of any input from any other law school. I am not aware of any input from any other person or entity in that two day period. Interestingly, the court suspended APR 3 and 4. It did not suspend APR 1(b) which requires the bar exam. The SC had the power under its own rules to modify a rule in an expedited fashion for "exceptional circumstances" under APR 9(j). But as I read that rule, they still have to comply with APR 9(i) or (h). I have no information they did. So subject to learning more about what occurred, they have violated their own rules. Of course, under case law, they have the inherent power to do as they please.

Even if the SC felt that Dean Clark's letter had substance, the SC could have granted provisional licenses subject to passing a bar exam when it becomes available.

The letter from Dean Clark indicates that the faculty at the Seattle University faculty unanimously supports the idea of a study to determine if the bar exam should be eliminated.

I think there is a great danger in allowing law schools, not just the three in Washington, but all "accredited" law schools from, essentially, determining who is qualified to practice law, that anyone who gets a JD is, per se, qualified. That is certainly a debatable proposition and, arguably, presumptuous. I think what can be safely asserted is that we regularly build into our systems checks and balances. Doing away with the bar exam would eliminate that.

The BOG is meeting this Friday and Saturday (virtually), and this is on Fridays agenda. Our bar association is meeting tomorrow to discuss this. I would encourage bar members to write the BOG and the SC to express their opinions.

Posted 6/24/2020 - The letter doesn't really (in my opinion) point to "taking" the exam as the issue - it appears to focus on the fact that students had problems *studying for the exam*. Personally, I think this makes the risk of malpractice even higher for these practitioners because not only have they not passed the exam - but they haven't properly studied all the topics which the WSBA and UBE have deemed to be critical for competent practice. When I was studying for the exam I virtually never needed to be around other people because it was all online. However, there were secure places you were welcome to go to study if your home life was a little too distracting.

I am sure many of these new attorneys will be great attorneys. However, I think this was poorly decided and could have been more narrowly-tailored (remember that term, anyone?) to protect the interests of the community and allow some leniency for new lawyers under the unique circumstances presented to these students.

Plus, if I were a client, I'm not sure I would feel comfortable hiring an attorney who didn't take the bar exam. I would maybe even feel more harmed if I didn't feel they did a good job, or worse, they committed malpractice and the mistake could have been avoided if they had studied for and sat for the exam. Would I have the right to know whether they passed the bar? Would that have to be disclosed to me? This issue could create distrust and could actually have a long term negative effect on the careers of these attorneys which, maybe, the Supreme Court didn't weigh in the balance of their decision.

Just some of my wandering thoughts. I also think we have officially spent more time debating and considering this decision than the Court did.



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June 25, 2020

SENT BY EMAIL TO supreme@courts.wa.gov

Washington State Supreme Court

Re: Decision to Allow Law School Graduates
to Practice Without Successful Bar Exam Results

Your Honors:

With all due respect, I am writing to communicate, as forcefully as possible, what appears an almost cavalier and casual knee-jerk decision waiving the requirement of a successful bar examination to those seeking admission to the Washington State Bar.

As an attorney with over 64 years of practice, it is my strong opinion that the noble profession of practice of the law is now no more than a business occupation. The decision to waive the bar examination requirements minimizes the value of candidates qualified to practice the "business" of law.

I recognize the inconvenience and difficulty of administering the examination in these challenging times. However, these and other issues are minimal considering the consequences being forced upon the public by admitting poorly qualified attorneys to the practice. By way of poor example, we can take driver's tests by computer, SAT test by computer and numerous other examinations in similar fashion; however in your view the Bar Association cannot be entrusted to formulate an appropriate solution.

I respectfully request you reconsider the prior decision.

Very truly yours,

Dominick V. Driano

DVD/tg

cc: Ms. Carla Higginson (carla@higginsonbeyer.com)