

**TO:** WSBA Board of Governors  
**FROM:** Daniel D. Clark, WSBA Treasurer & 4<sup>th</sup> District Governor  
**DATE:** June 19, 2020  
**RE:** July & September 2020 WSBA Bar Exam Potential Application Fee Refund Issue.

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**ACTION/DISCUSSION :** Discussion and recommendation from B & A Committee to Full Board of Governors to recommend denial of refund for Summer (July & September 2020) WSBA Bar Examination Applicants.

Budget and Audit Committee Members,

As you know, the Washington State Supreme Court *sue sponte* decided on June 12, 2020 to grant the diploma privilege to most applicants for the Summer 2020 bar examination. The Court had previously voted to lower the MBE required score from 270 to 266, and to order that the exam be offered at three (3) locations in both July and September 2020 dates and alternate locations as a way to provide greater social distancing and protections and safeguards for participants.

The Court's decision left open the decision as far as any refund of any application or bar examination fee(s) of the applicants for the WSBA to decide. It is my understanding that in multiple conversations with the Court, WSBA staff have been told that the Court is specifically allowing the WSBA through the Board of Governors to determine what, if any amount of refund should be appropriate in this unprecedented situation regarding the Court's June 12, 2020 Order.

The following will detail the latest known statistics of the issue and then as WSBA Treasurer, I will make a recommendation to the Budget of Audit committee of how I would recommend we proceed. The process will be that this matter will be on for a potential vote and recommendation to the full BOG at the June 22, 2020 Budget and Audit Committee meeting and then it will be sent to the full BOG for a final decision at the June 26-27 Board of Governors meeting.

**Current WSBA Summer (July & September 2020) Bar Exam Applicants:**

As of June 18, 2020, per Jean McIlroy, Chief Regulatory Counsel for WSBA, there were a total of 701 applicants for the July and/or September 2020 bar exam. Of these applicants, the following breakdown had requested the diploma privilege, and/or had indicated they wished to proceed with the July 2020 examination, or September 2020 examination. There were also 18 applicants had yet to indicate a

decision or a request, and so they likely if they fail to respond would be treated as wanting to take the exam.

<b>UBE Bar Exam Test Takers July 2020</b>	<b>95</b>
<b>UBE Bar Exam Test Takers September 2020</b>	<b>50</b>
<b>UBE Bar Exam Test Takers Total July &amp; September 2020 as of June 18, 2020</b>	<b>145</b>

There are currently 18 applicants that qualify for the Diploma Privilege that have not rendered a decision yet on the UBE exam. If we include those for purposes of this count, that would raise the total number of UBE Bar Exam applicants to 163.

Current Number of Applicants that are requesting the Diploma Privilege:

<b>Diploma Privilege Option (registered for July)</b>	<b>421</b>
<b>Diploma Privilege Option (registered for Sept).</b>	<b>127</b>
<b>Diploma Privilege Total</b>	<b>548</b>

So there are 548 total applicants as of last count that could be subject to a potential partial or full refund of application and examination fees depending on the decision of B & A and the Board of Governors. This figure is assuming that all 18 undecided were to either failure to timely request the privilege and/or decide to take the UBE exam. It is also assuming that the Court will not reverse its current stance on not allowing any APR Rule 6 graduate candidates to be eligible to apply for the Diploma privilege.

**Current potential Refund:**

The minimum amount at issue is the \$585 dollar basic application fee times the current 548 applicants, or a total of \$320,580.00.

This amount would be the minimum amount, because per Jean McIlroy, some applicants file late and pay a higher fee (\$885) and some applicants are already licensed as lawyers in another state but don't qualify for Admissions by Motion or UBE score transfer, and those attorney applicants pay a higher fee (\$620 if they file timely, \$920 if they file late). Because of the current Pandemic and working from home, there is not a current ability to reasonably pull up the actual numbers and determine exactly what the numbers would be at the time of drafting of this memorandum.

Under existing WSBA Admissions policies, the WSBA does not provide any refund if a request for a withdrawal and refund is made less than 60 days before the exam.

APR 3 (i) Applications; Fees; Filing currently provides in pertinent part:

(i) Applications; Fees; Filing. (1) Every applicant for admission shall:

(A) Execute and file an application, in the form and manner and within the time limits that may be prescribed by the Bar;

(B) Pay upon the filing of the application such fees as may be set by the Board of Governors subject to review by the Supreme Court; and

(C) Furnish whatever additional information or proof may be required in the course of investigating the applicant's qualification for admission or licensure, and investigating the applicant's good moral character and fitness pursuant to APR 20-25.6.

**(2) Refunds of any application fees shall be handled according to policies established by the Bar.**

(3) Transfers of applicants from administration of one examination to administration of another examination shall be handled according to policies established by the Bar.

**Analysis:**

As stated above, under existing Admissions policies, the WSBA does not provide any refund if a request for a withdrawal and refund is made less than 60 days before the bar exam. Under this existing policy, July test takers would not be eligible for any potential refund and only September test takers would be.

If the B & A Committee took the position that we wanted to refund all of the diploma privilege requestors fees minus the 300 dollar required deduction for mandatory WSBA fees, we would be looking at a minimum refund amount of \$320,580. This would likely be higher for the applicants that are either late filed, and/or attorney candidates from other states.

If we gave a refund for everyone less the \$300 dollar administrative fee (based on our minimum total application fee revenue amount of \$320,580), would result in a minimum of \$156,180 paid out by the WSBA in return to the applicants. This figure may be higher depending on the number of candidates that paid higher than the minimum amount.

This is illustrated as follows:

<b>Total minimum Diploma Privilege Amount</b>	<b>\$320,580</b>
<b>Less \$300 administrative fee based on minimum total amount of \$320,580).</b>	<b>\$320,580 - \$164,400</b>
<b>Total minimum paid out by WSBA to applicants:</b>	<b>\$156,180.</b>

This figure would be higher obviously depending on the total actual number of late filers and attorney member filers from other jurisdictions that pay a higher application fee.

**Treasurer Recommendation:**

After examining existing WSBA reimbursement policies, APR 3, and the situation before us, It is my strong recommendation as WSBA Treasurer that the Budget and Audit Committee vote to recommend to the Board of Governors not to offer any refund for candidates that either take the UBE exam and/or that invoke the diploma privilege. It seems grossly unfair to the candidates that actually take the exam and the 40,000 plus other WSBA

members of the Washington State Bar to refund bar application and examination fees to candidates that are then admitted to the practice of law through this extraordinary order of the Court.

It would be my strong recommendation to the B & A committee and Board of Governors to determine that no refund is appropriate in this situation, to welcome all Diploma privilege applicants into WSBA as members and to use these normal funds acquired through the bar examination process to absorb extra costs which will likely result from having to administer the Summer 2020 Exam in July 2020 and September 2020, and in offering the exam at multiple locations v. 1 traditional summer exam. I do not believe there is any court rule, or policy that would require the WSBA to refund the fees, and it seems reasonable that the fees normally would be non-refundable if an applicant took the exam pass or fail. It seems in my strong opinion to be an unjust enrichment and a windfall to the applicant that results in fundamental unfairness to the process and other applicants that actually take the examination, if we were to simply grant a partial or full refund under these circumstances.

To that end, it is the recommendation of WSBA Treasurer Dan Clark to recommend denial of any refund to the Summer 2020 (July & September) bar exam for applicants that invoke the diploma privilege. For members that request withdrawal from the September exam who meet the 60 day window for a refund under normal policies, I would believe it reasonable they be allowed a refund minus the \$300 dollar traditional administrative fee. This would be intended only for applicants that withdraw from the exam and do not either take the exam, and/or receive the diploma privilege.

In any event, this memorandum was meant to offer more of a background regarding what issue is before the Budget and Audit Committee. Thank you and please let me know if you have any questions.

Respectfully,

Daniel D. Clark

WSBA Treasurer/4<sup>th</sup> District Governor

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