



September 24, 2020

VIA EMAIL ONLY

Hon. Martha Walters
Chief Justice of the Oregon Supreme Court
Supreme Court Building
1163 State St
Salem OR 97301

martha.l.walters@ojd.state.or.us

RE: Diploma Privilege for all 2020 Graduates

Dear Chief Justice Walters:

On behalf of the Oregon Women Lawyers (OWLS); Oregon Filipino Lawyers Association (OFALA); OGALLA: The LGBT Bar Association of Oregon (OGALLA); and the Multnomah Bar Association (MBA); we write to urge the Oregon Supreme Court to extend Diploma Privilege to all 2020 law graduates, not just those who were signed-up to take the July 2020 in-person bar exam. Furthermore, we support ABA Resolution 10G, which strongly urges all state bars to cancel in person or potentially vulnerable online administrations of the bar exam and consider adopting alternative methods of licensing new attorneys until a safe and secure method of administering a bar exam is available.

Diploma Privilege for All 2020 Graduates

We commend and thank you for your June 29, 2020 order granting one-time Diploma Privilege for in-state graduates and people who graduated from ABA-approved law schools with first-time bar passage rates of at least 86%. However, the requirement that people eligible for Diploma Privilege be signed up to take the July 2020 in-person bar exam arbitrarily leaves out 2020 graduates who are otherwise qualified to begin their practice of law.

Recent graduates have shown their persistence and grit, by completing their schooling amidst a global pandemic. There are many reasons that a graduate may not have signed up for the July 2020 in-person exam, that have nothing to do with their qualifications or fitness to practice. Board members from our affinity bar associations have heard from 2020 graduates who are ineligible for the current Diploma Privilege. Reasons for not signing up for the July exam include:

1. Graduates with serious health concerns were reluctant to place themselves at risk by physically sitting in a large group exam setting in July. Therefore, they signed up to take bar exams in other UBE states with exams later in the fall. After the July exam cap was reached in Oregon, some of these other states cancelled in-person fall exams. Graduates in this situation were then left in the position of needing to wait until February 2021 to take another UBE exam, or sitting for the October online non UBE exam.
2. Some graduates would have applied for the July 2020 in-person exam prior to the exam deadline, but were unable to do so, because the cap was reached fifteen days prior to the stated deadline. In fact, the cap was reached just four days after the OSB announced that the exam slots would be first-come first-served. We have heard two primary reasons that graduates were waiting to sign up.
 - First, cost. Many bar exam takers (including several affinity bar board members back when we took the exam) had to borrow money from banks, friends, or family members; or otherwise gather the funds. This takes time and often leads to signing up at the latter end of the enrollment period.
 - Second, health and safety information regarding COVID-19 changes daily (this was especially the case back in April and May). Some bar exam takers were waiting to see if they would feel safe taking an in-person exam in rooms filled with many other people. Many were waiting to see if the exam would be cancelled due to increasing COVID-19 infections and deaths.
 - Third, we heard from the BBX that some people submitted applications on the day the cap was met. Many others did not submit applications after the cap was met, even though there were still several days before the deadline passed. We were informed by members of the BBX, that had they known signing up for the July exam would be a prerequisite for Diploma Privilege, they would have continued to accept applications beyond the day the cap was reached, if only to preserve the Diploma Privilege option for those applicants.

The fact that graduates waited until between May 15 and May 30 to apply to take the bar may speak to whether they are risk averse and whether they readily have financial resources available to make that commitment. The fact that students waited until between May 15 and May 30 to apply to take the bar says nothing about their qualifications or their potential to become successful lawyers in the State of Oregon.

We believe that excluding 2020 graduates who did not sign up for the July 2020 in-person bar exam may have a disparate impact on students from marginalized communities, specifically, graduates who are Black, Indigenous, and other people of color (BIPOC), those with disabilities or with underlying health issues, first generation college graduates, and graduates who are low-income. We urge intentional

consideration of how limiting Diploma Privilege to people who signed up for the July 2020 in-person exam will impact the diversity of the bar.

Support of ABA Resolution 10G

The COVID-19 pandemic is a global catastrophe and as such, Oregon is not the only jurisdiction weighing questions about how and whether to conduct bar exams, and how to license recent graduates amidst the outbreak. Our new graduates are a part of our legal community. They are balancing substantial student debt and the urgent need to support themselves and their families. In asking them to choose between taking an in-person exam that could put their health and the health of their loved ones in danger; taking an online exam that has been untested and requires access to expensive computer hardware; or forego taking the exam for a year and face the economic hardship of being unable to practice law; we are asking them to do something none of us had to do. Our new graduates are making this choice while navigating the hardships many of us are facing, including care taking for others, and trying to protect our own health. It is a choice fraught with danger and hardship. Forcing our new graduates to make this choice, is simply not fair.

For these reasons, OWLS, OFALA, OGALLA, and MBA support ABA Resolution 10G (attached). The resolution recommends three courses of action.

1. A halt to in-person bar exams until and unless public health authorities determine that the examination can be administered in a way that ensures the health and safety of bar applicants, proctors, other staff, and local communities, including appropriate social distancing and cleanliness throughout the facility where the exam is held.
2. Establishing 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. These measures could include many things, including the expansion of the Diploma Privilege already granted by the Oregon Supreme Court.
3. If administering a remote bar exam, test the reliability and security of the online platform in advance, provide reasonable accommodations to applicants for whom taking a remote examination would create a substantial hardship, and take other steps recommended in Resolution 10G.

We are now nearly six months into various levels of government mandated shutdowns due to the COVID-19 pandemic. According to current medical and scientific estimates, things will not change dramatically through the fall and winter, unless people take this illness seriously and start following strict social distancing guidelines. In late August, Governor Brown stated that on the course we are on now with COVID-19, schools will potentially be closed until April of 2021. We urge the Supreme Court

and BBX to cancel the February 2021 in-person exam now and make alternate plans early, to give graduates guidance and options well before that exam date.

As mentioned in the previous section of this letter, OWLS strongly encourages the Supreme Court to expand Diploma Privilege for all 2020 graduates (including fall and winter 2020 graduates) who graduated from ABA-approved law schools with first-time bar passage rates of at least 86%. We also request that the court continue to monitor the pandemic and how it may affect current 3L students and 2021 graduates.

While online exams at first consideration seem like a reasonable alternative to unsafe in-person exams, many of the online exams that have taken place so far have had challenges with fairness, privacy, and technology. Some states like Michigan have had their online bar exam system crash during the exam. Other states have faced technological issues and had to cancel or change online exams just days before they were scheduled to take place.

OWLS, OFALA, OGALLA, and MBA share the concern of the National Coalition of Bar Associations of Color (CBAC) when it comes to the disparate impact that COVID-19 has had on communities of color and bar examinees of color. According to the CBAC, "As noted in the report accompanying ABA Resolution 10G on this issue, a recent survey showed '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.' The same survey noted that the majority of bar examinees '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.' People of color and non-traditional students, who have already faced and conquered institutional challenges to complete their legal education, will face additional barriers in the event of additional delays."

We are very concerned about our 2020 graduates, especially our graduates from BIPOC and other marginalized communities. Some may have jobs lined-up already. Those jobs may be conditioned on them being licensed attorneys. Without expanded Diploma Privilege, or other creative alternatives to the bar exam, law school graduates may not be able to secure a job as expeditiously if they have to wait to take a bar exam when it is safe to do so. This is particularly relevant now, as our state and country are in a period of sharp economic downturn.

Future Licensing of Oregon Attorneys

In addition to concerns with the administration of the bar exam during the COVID-19 pandemic, OWLS, OFALA, OGALLA, and MBA request that we, along with members of other affinity bar associations, be a part of the conversation moving forward on how Oregon attorneys are licensed. Prior to the pandemic, the bar exam was still problematic. It has always had a disparate impact on examinees from outside the dominant culture. Like the Supreme Court, and Oregon State Bar, affinity bar associations are deeply

committed to increasing the diversity of our legal community. This is an imperative if we hope to provide true access to justice to all Oregonians.

Now is the time to move beyond statements of solidarity with BIPOC people and organizations, it is time for action. If we want to move the dial on increasing diversity in our legal community, we need to actually change how we do things. As Oregon lawyers, judges, and justices; licensure and regulation of attorneys are squarely within our sphere of influence. If equity is our goal, then we must maximize opportunities for diverse law graduates to become licensed Oregon attorneys.

We understand that the Supreme Court created a workgroup to look at alternative ways of becoming lawyers. We request that alternatives to the bar exam for licensure of law graduates be considered as part of this workgroup's charge. We further request that diverse attorneys within the Oregon bar be included as necessary stakeholders.

Thank you for your consideration. We look forward to working together toward our shared goal of equity and inclusion in the Oregon legal community.

Very truly yours,



Valerie Colas

President, Multnomah Bar Association



Maya Crawford Peacock

President, Oregon Women Lawyers



Hugo Gonzalez Venegas

Chair, OGALLA: The LGBT Bar Association of Oregon



Peter Sabido

President, Oregon Filipino American Lawyers Association