

July 7, 2020

Hon. Jeffrey S. Bivins, Chief Justice
Hon. Cornelia A. Clark
Hon. Holly Kirby
Hon. Sharon G. Lee
Hon. Roger A. Page

Tennessee Supreme Court
Supreme Court Building
Suite 321
401 7th Ave. North
Nashville, TN 37219-1407

Dear Chief Justice Bivins & Justices of the Tennessee Supreme Court:

We, as deans of the Lincoln Memorial University, University of Memphis, University of Tennessee, and Vanderbilt University law schools, write to express our support for the Petition for Emergency Rule Waiver filed by registered bar examination applicants and to request that the Court, under its inherent authority to regulate the practice of law, institute a one-time emergency “diploma privilege” to practice in Tennessee for any person who timely filed an application for the July or October Tennessee bar exams and is otherwise qualified for admission. We understand and support the need for the cancellation of the July examination, and appreciate the efforts of the Tennessee Board of Law Examiners (TNBLE) and the Court to continue plans to administer safely a full examination at the end of September and to extend the time period of Supreme Court Rule 10.04, under which the applicants will be permitted to engage in the supervised practice of law. TNBLE continues to demonstrate its creativity and dedication to health and safety in carrying out its responsibilities during the COVID crisis.

However, as anticipated, the pandemic continues to worsen as the number of new confirmed and presumptive COVID-19 cases continues to increase at record rates in our state. Just last week, Governor Lee extended his emergency order limiting group meetings to 50 individuals and authorized county mayors to issue mask requirements in recognition of the growing and ongoing risks that COVID-19 presents to the health of Tennesseans. Postponing the exam until February is not a viable option for graduates, even given the Court’s generous allowance of practice pending admission, because student loans will come due in September and graduates will require full licensure to comfortably begin their practices. No prior cohort of bar applicants has ever faced such a consequential and constantly changing choice between their health and safety, financially providing for their basic needs and the needs of their family members, and pursuing the licensure required to complete the three-year investment of time and significant resources that will promote their new livelihoods. In light of these circumstances, authorizing a diploma privilege is the more prudent and equitable option for our state.

We fully appreciate the priority the Court must place on protecting the public by determining the proficiency of new licensees. Nonetheless, a number of other states have concluded that they can accomplish this without a traditional bar exam, having either adopted a

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diploma privilege or administering non-traditional bar exams, including remote administration. Wisconsin has had a diploma privilege for its two law schools for years. Washington State first reduced the passing score on the UBE from 270 to 266 before granting a diploma privilege to all registrants, including those who previously had failed the bar exam. Utah adopted a path to licensure through supervised practice for all graduates of ABA-approved law schools with a designated July 2019 first-time taker bar pass rate that included both law schools in Utah. Oregon reduced the cut score from 274 to 266 and adopted an optional approach for graduates of the three law schools located in Oregon. Those graduates sit for the next exam or accept a diploma privilege, which likely would not be subject to comity in other states. In addition, like Utah, Oregon extended the diploma privilege to graduates of its three law schools and all ABA-approved law schools with a designated first-time pass rate in July 2019. Washington, D.C., Maryland, and Massachusetts have decided to administer the October bar remotely. Indiana will remotely administer a one-day bar exam, including the Indiana Essay Examination and a series of short answer questions on topics covered on the MBE. Louisiana will also administer a one-day exam remotely, which covers a reduced set of topics. Michigan adopted a one-day remote essay exam. Nevada will also administer a remote bar exam, including essays and the MPT. Florida has also canceled its July bar exam and will administer an abbreviated exam remotely. In canceling its July bar exam, Texas continued plans for in-person administration of the September bar exam and added a remote exam planned for October. Other states are still considering what action, if any, to take.

The Court and the TNBLE will still be in a position to protect the public with adoption of a one-time diploma privilege. Applicants still have to pass the MPRE ethics exam. Students would still have to take the Tennessee Law Course and meet Character and Fitness requirements. The Court could also require those admitted by diploma privilege to meet Continuing Legal Education requirements even during the first year following admission.

Apart from administration of the bar exam itself, there are very real concerns for our graduates in preparing for the exam. All students in our state law schools had to finish their law school careers remotely, sometimes under dire home circumstances due to COVID-19. While finishing law school, some students home-schooled their children; others suffered job loss; and still others coped with family members who fell ill, became unemployed, or even died. Many of our students could not find a quiet place to study, as some struggled to find sufficient internet connections to even attend class. These same struggles have only been amplified in preparation for this ultimate, high-stakes test - a test for which a planned administration has been cancelled less than a month before its planned administration. Many graduates have been unable to access printing services, quiet study spaces, quality internet, in-person workshops or counseling with faculty members, or other resources that are routinely provided to our bar studiers. Graduates of color, who are disproportionately at risk of contracting the virus and suffering adverse consequences, are perhaps the most challenged in their bar preparation due to the increased health risks and inequality of access.

In addition to the challenges faced by current applicants for admission, requiring travel and attendance in an enclosed space for two days creates an unnecessary risk to public health. Spread of COVID-19 is much more efficient indoors and compounded by the duration of

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exposure. Efforts to socially distance test-takers have limited TNBLE's options for an October administration to a single site in Knoxville at the far end of the state. Many examinees will have to travel more than six hours to sit for the exam, necessitating hotel stays and restaurant meals, potentially further spreading the virus and putting those sitting for the exam at increased risk. Three states currently limit travel from Tennessee, but current plans for the administration of the October bar exam in Tennessee will promote and require travel throughout our own state.

Finally, there is the additional prospect that our graduates are preparing for an exam that will not occur. The ability of TNBLE to administer the exam is still contingent upon the health conditions in the state at the end of September. That uncertain state of affairs only adds to the stress current bar applicants now face. Even if the bar exam goes forward, the applicants' ability to perform as well as possible will have been seriously undermined by the historic, disruptive, constantly changing circumstances under which our applicants are preparing, as well as the extraordinary (masked, socially distanced) conditions under which they will likely have to take the exam. Given these obstacles, we are concerned about whether an in-person October bar exam will be a valid and reliable assessment of our graduates' ability to demonstrate to the TNBLE that they possess the knowledge, skills, and abilities basic to competence in the profession of law.

We greatly appreciate your consideration of this matter. We are happy to meet to discuss these issues further. Please do not hesitate to let us know if we can answer any questions or provide additional information.

Sincerely,

Matthew R. Lyon
Lincoln Memorial University
Duncan School of Law

Katharine T. Schaffzin
University of Memphis
Cecil C. Humphreys School of Law

Doug Blaze
University of Tennessee College of Law

Chris Guthrie
Vanderbilt University Law School

cc: Margaret L. Behm
William L. Harbison
Robert F. Parsley
Amy Pepke
Jeffrey M. Ward
Lisa Perlen