

June 15, 2020

The Honorable Chief Justice Walters
The Oregon Supreme Court
1163 State Street
Salem, Oregon 97301

The Honorable Angela M. Franco Lucero
Oregon State Board of Bar Examiners
16037 SW Upper Boones Ferry Road
Tigard, Oregon 97281

Dear Chief Justice Walters and the Honorable Franco Lucero:

We write today to ask for your reconsideration of diploma privilege given the extenuating circumstances that have only worsened since the May 15 Oregon State Board of Bar Examiners decision to host the July 2020 bar examination. The confluence of the viral pandemic and the response of civil unrest in the wake of racial injustice has made diploma privilege the only ethical and just path to licensure.

Attached you will find (1) a letter providing legal and policy arguments for granting diploma privilege, (2) more than 300 applicant and attorney signatures in support of the letter's position, (3) a collection of more than 50 personal stories regarding the disparate impacts of the global pandemic and current civil unrest, and (4) survey data in connection with the letter demonstrating that diploma privilege has strong support amongst Oregon bar applicants and the broader Oregon legal community. The letter has amassed nearly 350 signatures from the legal community in *less than 24 hours*, and support continues to pour in.¹

Since circulation began, several applicants and attorneys have raised two additional salient points, which were not included in the attached letter. We ask that this Court and the Board consider these as well:

- 1) The Board letter dated May 15, 2020 interprets ORS § 9.220 as requiring an exam. Under a diploma privilege, applicants must still take and pass the Multistate Professional Responsibility Exam (MPRE), developed by the National Conference of Bar Examiners. The MPRE is an exam establishing requisite "learning and ability" as provided by ORS § 9.220. The MPRE and the Bar's character and fitness evaluation serve the important policy function of consumer protection in the practice of law. Further, successful graduation from an ABA-accredited law school itself demonstrates substantive knowledge of the law. In combination, the MPRE, the character and fitness evaluation, and graduation demonstrate to the Court, the Board, and the Oregon bar that those admitted to the practice of law under a diploma privilege are competent to stand as knowledgeable and ethical attorneys.
- 2) If this Court and the Board choose to both grant a diploma privilege and proceed with the UBE exam, a protective order should be included in this Court's order to protect against discriminatory employment practices for those admitted to the bar under a diploma privilege. Such a protection should make it so that no employer may inquire into whether the newly admitted attorney had taken the UBE or not, thereby protecting those already disproportionately affected by this

¹ The letter will remain open for further signees to support this important decision, any further information that we can provide will be gladly proffered.

worldwide pandemic and civil unrest from potential discrimination from employers now and in the future.

As organizers of this letter, we would like to further express support for the June 15 letter submitted by the deans and faculty of the three Oregon law schools calling for this Court to use its inherent authority to grant a one-time diploma privilege. The leaders of our Oregon law schools have taken a thoughtful and attentive approach to addressing this worldwide crisis, and they have demonstrated unwavering commitment to the wellbeing of students and the greater legal community. We thank them for their work and implore the court to grant this urgent relief to safeguard the health and safety of 2020 graduates and bar applicants.

Please feel free to contact any of the individuals below if you have questions, comments, or concerns about the contents of the letter or its attachments.

Thank you again for your prompt consideration of this urgent matter.

Sincerely,

Samantha Klausen, J.D. Willamette University College of Law '20
Julie Preciado, J.D. Willamette University College of Law '20
Peter Raptis, J.D. Lewis & Clark Law School '20
Jennifer Reger, J.D. University of Oregon School of Law '20
Dale Wilhelm, J.D. Willamette University College of Law '20

Encl:

Cover letter
Letter of Support for Diploma Privilege
Signature Page of J.D. and Attorneys
Impact Statements
Survey Data

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Dear Chief Justice Walters and the Honorable Franco Lucero:

We write on behalf of the undersigned Oregon 2020 J.D. graduates and July 2020 Oregon bar applicants to request that the Court and Oregon Board of Bar Examiners (the Board) afford a diploma privilege to qualified applicants for the July 2020 UBE administration in Oregon. In light of the worsening COVID-19 pandemic, the unrest surrounding the recent killings of George Floyd, Ahmaud Arbery, and Breonna Taylor, and the current urgent need for attorneys, we ask the Board to reconsider its May 15, 2020 decision to proceed with the Summer 2020 administration of the bar exam. Additionally, we request the Court to reconsider the scope of the Rules for Admission and Bar Rules of Procedure that must be amended to accommodate public health orders, as outlined in the Chief Justice's Order No. 20-009 issued on March 27, 2020. We urge the Court and the Board to announce that those bar applicants who meet appropriate eligibility requirements, as determined by the Court, be admitted to the Oregon State Bar without being required to sit for the bar examination. Our reasoning for this request for reconsideration of the Board's prior decision is explained below.

We are aware of and appreciate the ongoing efforts that the Board is taking to address the health and safety of applicants during, and before, the scheduled examination, but we are concerned that these efforts are now insufficient. The circumstances supporting the Board's decision dated May 15 have since greatly worsened. With expanded availability of information, it is apparent that COVID-19 cases continue to rise along the West Coast, including in Oregon. Prior to June 7, Oregon had only reported a single day with more than 100 new COVID-19 cases. Since then, the Oregon Health Authority has reported at least 100 new daily COVID-19 cases three times, including the highest single day rise on Thursday, June 11, 2020, reporting 178 new cases. At the time of this writing, Multnomah County, where at least one scheduled testing site is located, has not even been permitted to enter Phase 1 of the reopening plan.

At this point, applicants are nearly halfway through traditional bar prep programs and still have limited assurance that a July or alternative fall bar exam is even feasible. We have been unable to use many university facilities and resources in preparation for the bar examination; and have been continually forced to adjust working conditions to accommodate the growing changes associated with the COVID-19 pandemic, including children at home, lost financial resources, and caring for the health of ourselves and our family members. The last thing we want is to risk our lives or the health of our families in an effort to acquire admission to the livelihood we have worked so hard to attain. We should not have to choose between sitting for the bar exam or caring for our families and communities during an unprecedented public health crisis.

Even as the continued challenges surrounding the pandemic are being addressed by the Board, the drastic change and unrest in our nation surrounding the recent killings of George Floyd, Ahmaud Arbery, Breonna Taylor, and countless other Black individuals have further affected applicants, particularly BIPOC applicants. As the Court noted on June 5 in addressing the death of George Floyd, “[t]he urgency for action has long been upon us, but the immediacy of the need is even more apparent today.” BIPOC communities throughout the state, including recent graduates, “continue to experience inequality that has only been compounded by the coronavirus.” The Court recognized that “[w]e must stand firm against racism and oppression. We must be intentional in our efforts to move in a different direction. . . . We must examine, anew, what we are doing, or failing to do, to root out conscious and unconscious bias in our legal system.” Now, more than ever, our work is increasingly important, necessary, and urgent. This work starts with rooting out the unfair circumstances and consequences faced by Oregon BIPOC bar applicants.

The once “unprecedented situation” caused by the pandemic has exponentially worsened in ways we could not have anticipated as the confluence of the viral and racial pandemics impact graduates, especially BIPOC graduates, studying for the bar exam. The impact of this national crisis compounded with the already stressful and concerning pandemic offers new extenuating circumstances for the Court and the Board to consider. The additional challenges that we have faced warrant a re-opening of the discussion and decision to require bar exam passage for this year’s applicants.

The Court and the Board can demonstrate their commitment to applicants’ physical and mental health by granting diploma privilege. As new Oregon lawyers, we can begin practice to address and assist BIPOC, lower-income communities, people with disabilities, and others in need of an urgent response to these critical health issues and these unprecedented times. While requiring a bar exam for licensure has long been the norm, doing so now may be insupportable given the extraordinary circumstances applicants face this year. The burdens of the coronavirus pandemic and the unrest surrounding racial injustice that we are all experiencing are disproportionately borne by applicants of color as they struggle to prepare for the bar exam. Removing the exam barrier to admission would be a step towards responding to our applicants’ concerns by “work[ing] to ensure that our courts are open and accessible to all Oregonians, particularly communities that have been historically marginalized and oppressed.”

Oregon would not be alone in considering a diploma privilege. There are examples available for the structure of such an exception: Washington, just days ago, admitted all applicants with a J.D. from an ABA accredited law school who otherwise meet the conditions for admission. Or, the Court could consider the approach taken by Wisconsin, providing admission to the Bar for graduates of schools within the state. Utah has also provided a limited diploma privilege option during the COVID-19 pandemic.

The Board letter dated May 15, 2020 cites ORS § 9.220 as the impediment to granting diploma privileges in Oregon. The Board’s interpretation of the statute, however, is a limited reading. As written, § 9.220 already allows for discretion on part of the Supreme Court or the Board of Examiners. Section 9.220 requires that applicants be: 1) at least 18 years old; 2) of good moral character and fit to practice law; and 3) show the requisite learning and ability. The requisite learning and ability must be shown “by the examination of the applicant, by the judges or under their direction.” Under ORS § 9.220 then, the Court has the discretion to use other means to ensure applicants’ knowledge. Furthermore, the Court has inherent authority to regulate the practice of law in Oregon, including admission. ORS § 9.006 reinforces this fact, stating, “nothing in ORS 9.005 to 9.757 affects the *inherent authority of the Supreme Court* to adopt rules for the operation of the courts, including any rules *relating to the regulation of the practice of*

law, that are deemed necessary by the court" (emphasis added). Admission to the practice is clearly a necessary component of "the regulation of the practice of law" in Oregon.

In terms of readiness for practice, we have prepared for three years of constant study, internships and clinical experience, and have exhibited dedication and resilience during an extraordinary time for our country and the world. We are ready and able to be outstanding practitioners. Our service is needed now more than ever to provide our communities with the access to justice, the exact motivation that prompted many of us to attend law school in the first place. Let us help further our "moral imperative" to take action to create a more just, equitable, and accessible Oregon by granting a diploma privilege.

In the alternative, the Court and the Board should consider temporarily reducing the minimum passing score. Oregon would not be alone in taking such an action. Prior to its final diploma privilege ruling, on May 20, 2020, the Washington Supreme Court temporarily reduced the minimum passing score in Washington for its July 2020 and September 2020 tests. This score modification recognized the extraordinary challenges that applicants faced in 2020, but it did not take into account the more recent civil unrest and worsening pandemic, which were the ultimate determining factors for the Washington Court's grant of a diploma privilege. If the Court and the Board further evaluate and determine that the legislature must act to amend ORS Chapter 9 in order to consider alternatives to admission by examination, we urge the Court and the Board to lower the minimum required passing score and to lobby the Oregon legislature during the next legislative session to amend Chapter 9 to allow the Court flexibility in times of crisis or emergencies.

Now is such an emergency. The current concerns that are growing in relation to the COVID-19 crisis and the grief, frustration, and trauma caused by glaring racial inequity that have taken place over the last several months must be considered in determining whether a just and fair administration of the bar examination can take place at this time. For the reasons articulated above, and in recognition of the extraordinary circumstances surrounding the administration of the bar exam which are likely to persist through July and beyond, we respectfully request that the Court provide a diploma privilege.

Thank you for your consideration of our time-sensitive request. We deeply appreciate the Court's care for this next generation of lawyers and your leadership on matters of racial justice.

Sincerely,

The undersigned graduates from the law schools of Willamette University, University of Oregon, Lewis & Clark, and schools outside of Oregon and attorneys.

(see signatures attached)