August 14, 2020

Via Electronic Mail

Hon. Chief Justice Charles T. Canady
Hon. Justice John D. Couriel
Hon. Justice Jorge Labarga
Hon. Justice Alan Lawson
Hon. Justice Carlos G. Muñiz
Hon. Justice Ricky Polston
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1925

David C. Reeves, Esq., Chair
Michele A. Gavagni, Executive Director
Florida Board of Bar Examiners
1891 Eider Court
Tallahassee, FL 32399-1750

Re: Florida Bar Examination Contingencies in Light of COVID-19

Dear Chief Justice, Justices, Mr. Reeves, and Ms. Gavagni:

As you know, on April 7th we came together by way of letter as Florida law school deans to offer recommendations and assistance to you for a successful administration of a summer Florida Bar Exam. We “expressed our alignment with the Court and the Board of Bar Examiners that some rigorous process is necessary to ensure the competency of new attorneys, even in these tumultuous circumstances” posed by COVID-19. In light of the worsening pandemic conditions in Florida and the dangers posed by an in-person exam, we welcomed and celebrated your decision to cancel plans for the physical Bar Exam in July in Tampa and Orlando, and replace it with an online Bar Exam on August 19th.

Ten of us come together publicly again to thank you for all of your hard work and dedication to ensuring that our graduates have the benefit of a summer Bar Exam. Particularly, we welcome your most recent efforts to address the technical and security issues with the current examination software (ILG), as described in your public update and email message to examinees, yesterday August 13th.

Based on your recent updates, we acknowledge and appreciate that you are firmly committed to all efforts to proceed with an online examination on August 19th. Given the persistence of technical issues that have prevented online exam administrations in other jurisdictions (and especially with the current software
vendor), we urge you to articulate a contingency plan in the event that the live software trial you now have scheduled for August 17th proves unsuccessful.

We recommend that such a contingency plan be a solution in the mode adopted by Indiana and Louisiana. We recommend, therefore, that the examination be administered open book, without the technical impediment of live remote proctoring. We also suggest that essay answers be submitted by email, rather than through the essay software, to eliminate any technical barriers that might impede an examinee’s work product. Finally, we ask you to examine critically the use of the multiple-choice portion of the exam, and to consider whether it can be administered at all if the ILG software is deemed to be unworkable.

Articulating such a contingency plan publicly, and this week, would minimize delay in the event of technological impossibility with ILG, and allow applicants to pivot quickly to a different mode of testing – an especially important objective considering that there now will be fewer than 48 hours between the postponed live trial of the exam software and the actual administration of the Bar Exam.

Announcing this sort of contingency plan in advance will inspire confidence among applicants that the examination will proceed in some form, unhindered by technological obstacles. It also will help lessen the understandable stress and anxiety of our graduates, who will welcome (and deserve) the additional clarity and reassurance.

Most importantly, your advance public announcement of the contingency plan above will help to address some of the special burdens faced by examinees whose socioeconomic circumstances (i.e., living arrangements, child- and eldercare responsibilities, financial and health status, access to printing and other services, etc.) will make it much more difficult for them to adjust nimbly and quickly to a different testing format in fewer than 48 hours. It concerns us greatly that many of these disparately burdened and disadvantaged graduates are members of racial and ethnic minorities, women, and the disabled – precisely those communities that are critically underrepresented amongst practicing lawyers in Florida.

As we said in May, “[w]e have confidence in your judgment, and we recognize that there are no perfect solutions.” We further recognize that a contingency plan similar to that adopted by Indiana and Louisiana would make it difficult to norm this exam against prior and future exams, but in light of the unprecedented circumstances in which this exam is taking place, it may be quite difficult to do so in any event. As legal educators, cognizant of the nature of legal practice, we feel that these measures do not undermine the fundamental purpose of the exam and will continue to comprise a “rigorous process…to ensure the competency of new attorneys.”

Again, we thank you for your tireless and thoughtful efforts in support of our graduates’ ability to take a summer Bar Exam and promptly join the ranks of the licensed bar. We also appreciate your continuing openness to our concerns and recommendations.

We remain committed to your success in administering, and that of our graduates in taking, the Summer 2020 Florida Bar Exam. And we continue to be at your disposal for any assistance you may need through next week and beyond.
Thank you in advance for your time and consideration.

Respectfully yours,

Kevin Cieply, President & Dean  
Ave Maria School of Law

José R. (Beto) Juárez, Dean & Professor  
Nova Southeastern University  
Shepard Broad College of Law

Leticia M. Diaz, Dean & Professor  
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Tamara F. Lawson, Dean & Professor  
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