

Second Report of the Task Force on the New York Bar Examination:

The Coronavirus and Bar Examination Administration

March 30, 2020

The Task Force on the New York Bar Examination (“Task Force”) was formed in April, 2019 by then-President of the New York State Bar Association Michael Miller to study and report on the impact in New York of the Adoption of the Uniform Bar Examination. The Task Force issued its Report on March 5, 2020 and the Report is scheduled to be presented at the April 3, 2020 meeting of the Association’s Executive Committee and the April 4, 2020 meeting of the Association’s House of Delegates.

On March 7, 2020, Governor Andrew M. Cuomo issued an Executive Order declaring that a disaster emergency in New York State due to the onset of the novel coronavirus (COVID-19).<sup>1</sup> As the COVID-19 virus spread rapidly through the State and beyond, the Governor took a variety of actions to limit the contagion through restrictions on public assembly and non-essential public and private activity. In the light of the Governor’s pronouncements and the serious public health crisis existing throughout the State, Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence K. Marks issued a memorandum on March 13, 2020 outlining actions taken to limit high-volume court proceedings. Two days later, with the public health crisis growing to pandemic proportions, Chief Administrative Judge Marks issued an order limiting all the courts of the State to essential operations only, effective March 16, 2020 at 5:00 p.m. As of March 29, 2020, the coronavirus has continued to spread throughout the United

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<sup>1</sup> Executive Order No. 202.

States, with our country now having more cases of infection than any other country in the world.<sup>2</sup> New York State has been especially hard hit, with our State having nearly one-half of the reported cases nationwide. Governor Cuomo has stated that experts project that the apex of the pandemic in New York may still be 14 to 21 days away.<sup>3</sup> The Governor has ordered schools in New York to remain closed at least through April 15, 2020.<sup>4</sup>

While the major threat to public health and safety posed by the coronavirus, which is causing a rapidly compounding number of deaths and serious illnesses, may loom much larger than the disruption caused to otherwise healthy people, it is nevertheless the responsibility of the New York State Bar Association to champion and advocate for the interests of the legal profession. To that end, President Henry M. Greenberg requested that the Task Force consider the impact of the current health crisis upon the July 2020 administration of the Bar examination.

We have endeavored to address these issues promptly as we are acutely aware of the anxiety and uncertainty that law school students who are graduating in the Spring 2020 are experiencing. In the best of times, graduating law school students may be apprehensive as to finding a position, starting a position, relocating and studying for the bar examination and as to consequences of the test results. This year, because of the existing public health crisis and related limitations on law practices, both public and private, there are reports that job offers have been or will be delayed or withdrawn, compensation may be re-examined, and general employment start dates may be adjusted. Worse, these economic dislocations come at a time when so many law school students are burdened with significant debt from student loans for both college and law school.

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<sup>2</sup>Maxouris, New York May Be Weeks Away from a Peak in Coronavirus Cases, CNN, updated 2:41 p.m., March 28, 2020.

<sup>3</sup> *Id.*

<sup>4</sup> Executive Order 202.11, dated March 27, 2020.

We are also very much aware that it is presently impossible to forecast with certainty when the current restrictions on social distancing may be lifted. The present health crisis has not yet reached its apex in New York and other parts of the country may only now be approaching the initial period of infection that New York has already experienced. Every day there are, among countless other developments, new pronouncements as to the nature of the virus, potential mitigation measures to address it and the scope and duration of limitations on public assembly and movement. Our recommendations necessarily reflect our best judgment predicated on the information presently available. We want to be clear that we are prepared to reevaluate our recommendations on the basis of new information as it develops.

*A. The July 2020 Bar Examination Should be Postponed and  
The Examination Administered Proximate to Labor Day 2020*

At its initial meeting following the issuance of its new charge, held by remote video/teleconference on March 26, 2020, the Task Force concluded that the July 2020 administration of the Bar examination in New York should be postponed. The postponement of the Bar examination is, in our view, the best of the options presently available. We were heartened, therefore, to learn that late the very next day the New York Court of Appeals determined to delay the July 2020 administration of the Bar examination until dates in the Fall to be determined. While we commend the Court for taking this decisive action, and thereby mitigate the uncertainty being experienced by law school students, we are extremely concerned as to prospective rescheduled dates.

Because New York has adopted the Uniform Bar Examination, the administration of the Bar Examination is entirely dependent upon the National Conference of Bar Examiners (NCBE), which prepares and licenses the test. Since the impact of the coronavirus is being experienced differently in different parts of the United States, we were concerned that the NCBE could insist

that the UBE be administered in July or decline to prepare an iteration of the UBE to be administered at a date later in 2020. We, therefore, welcomed the NCBE's announcement that, while it would defer a final determination as to what to do regarding the July 2020 administration until May 5, 2020, it was committed to providing an administration of the UBE in the Fall to those jurisdictions that cannot provide a July exam or cannot administer at normal seating capacity.

We are, however, deeply concerned with published reports that the NCBE may be contemplating the new Fall testing dates would be in the period between September 29 and October 1, 2020.<sup>5</sup> Since September 28, 2020 is Yom Kippur, the holiest day in the Jewish calendar, administering the examination the following day or days would be extremely insensitive to bar applicants of the Jewish faith. With the Jewish High Holidays commencing with Rosh Hashanah on September 18, 2020, and concluding with Yom Kippur on the evening of September 28, 2020, it would be very ill-advised to require Jewish bar applicants to choose between religious observance and bar preparation. Even more importantly, the contemplated dates will have a substantial and adverse impact on most of the test takers. The reality is that many bar applicants, particularly first-time test takers who graduated in May 2020, will have commenced legal or other employment by September 2020, making it difficult for them to take time off from their new positions to take the examination, much less study for it. Having gone through the process ourselves, we know that graduating seniors count on using the summer to study for and take the Bar examination. Even putting aside the overwhelming consequences of the health crisis, it will be much more difficult for those who have started employment in September to use their evenings and weekends to study for the Bar examination, particularly

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<sup>5</sup> See Morris, Officials Ponder Potential Delay in July Bar Exam Because of COVID-19, Texas Lawyer, March 26, 2020 at 5:56, Law.com.

when they trying to acclimate to their jobs and, possibly, their new residences. We question how it will be fair to correlate the performance of those applicants to take the Bar examination in late September or early October with those applicants who took the Bar in July having more time available to prepare for it and the ability to concentrate upon it exclusively.

We urge the New York Court of Appeals, and the New York Board of Law Examiners, to take all actions necessary or appropriate to administer the bar examination proximate to Labor Day, September 7, 2020. In normal years, law school students graduate in May and the bar examination is administered in or about the third full week of July. Law school graduates typically use the period between the end of law school and the administration of the examination to study for the examination, including the taking of bar review courses. Thus, in typical years, law school graduates would have the balance of July and all of August to prepare themselves to commence employment, which may entail their physical relocation and other extensive preparations. Graduates who do not yet have employment may use that period to conduct job searches.

While 2020 surely is not a typical year, we believe that we should endeavor to try to normalize the situation as much as is possible. Administering the bar examination either shortly before or shortly after Labor Day would permit law school graduates to use the summer period to prepare themselves for the bar examination. That scheduling would also avoid requiring bar applicants to take time off from positions that they may have just started in order to sit for the examination and avoid distracting them from their new employment by having to study for the examination. It could well be a significant hardship to law graduates, burdened with student loans, to have to defer commencement of employment in order to prepare for and take the bar examination. An early September date would cause the least amount of disruption to a recent

graduate who may have already be starting, or about to start, a new position, whether in the public or private sector. And, by scheduling the examination in early September, conflict with the Jewish holidays can be avoided.

We recognize that, in New York at least, it is not presently possible to forecast when the present health crisis will abate sufficiently to permit the safe renewal of larger public gatherings. However, we also believe that, if New York now commits to administering the bar examination in early September, the Board of Law Examiners will be able to procure a sufficient number of locations, and train the requisite number of proctors so as to be able to securely administer the bar examination in settings offering appropriate social distancing. Indeed, even if the bar examination were administered later in the Fall, arrangements to obtain locations and proctors would need to be made now.

It may be well be possible to administer the bar examination in more, less-dense, locations. Assuming that social distancing requirements remain relatively constant for the next several months, it may be necessary to limit each room where the test is given to no more than 10 people. While this approach would require more locations and more proctors than are customarily utilized, and would increase the cost of administration, we believe that, with advance planning, the use of more sites, with less density, is feasible. This feasibility is one of the reasons why we agree with the postponement of the July 2020 examination. We urge that, rather than a further postponement, planning begin immediately to make sure that a Fall 2020 examination can be administered and that a further postponement of the examination be avoided.

While it is true that New York cannot unilaterally compel the NCBE to administer the bar examination on any particular date, we believe that, because of the large number of test takers

who take the test in New York, New York can –and should – exert its prominent role in the American legal community to influence the NCBE to offer the UBE in early September.

We urge that New York use its influence as well to have the NCBE announce, by no later than May 5, 2020, whether it will administer a July 2020 examination anywhere and the dates for the Fall administration of the Bar examination. It is important for law graduates to be able to make their plans for the Summer and Fall in light of the Bar examination dates.

We express our concern at the prospect that the UBE could be administered in July 2020 in some of the UBE states. It is possible that, if the UBE is administered in some states, law graduates will endeavor to register to take the examination there, thus causing that State to have a greater than usual number of test takers, some of whom may then seek to transfer their score to New York in order to gain admission here sooner than they might through an examination administered in September 2020 or later. Because of the way the UBE is graded and scored (a subject extensively discussed in our prior report), a rush by those ultimately seeking admission in New York to take the examination in July 2020 elsewhere could skew the results. We urge the Court of Appeals and BOLE to study this possibility and consider whether, for purposes of 2020, it is necessary to preclude the use of a July 2020 examination score for purposes of transfer into New York. We certainly do not wish to see law graduates game the system by flocking to take the test in a jurisdiction where they would not otherwise take the test.

We also urge the BOLE to train a sufficient number of examination graders so as to be able to grade a Fall 2020 test as expeditiously as possible and thus reduce delay in the admission process. Similarly, we respectfully urge the Appellate Division to make its best efforts to admit successful test takers to practice as expeditiously as is possible through the efficient administration of the character and fitness process .

*B. Alternatively, the Use of Student Practice Orders Should be Expanded*

While we believe, on the basis of the information presently available, that it will be possible to administer the Bar examination in early September, it is prudent to have an alternative available to enable law graduates to commence the practice of law without further undue delay in the event that conditions prevent the administration of the Bar examination as we contemplate. We conclude that the most practical avenue, consistent with both the interests of the law graduates and the public interest in assuring that licensed lawyers have established a minimum level of competence, is to expand the existing provisions for supervised practice.

New York presently permits governmental agencies, such as District Attorney offices, Corporation Counsels, and legal-aid organizations to apply to the Appellate Division for an order permitting law school graduates, as well as law students who meet certain criteria, to engage in law practice activities enumerated in the order.<sup>6</sup> These orders are addressed to the sponsoring organization and are not dependent upon the name or identity of the participating student or graduate. Stated somewhat differently, many governmental agencies and legal-aid organizations already have student practice orders in place that permit law graduates to engage in practice activities while waiting to take and pass the bar examination. For years, new law graduates have, for example, worked as assistant district attorneys, assistant corporation counsels, and as attorneys for legal aid societies, while awaiting their passage of the Bar examination.

By use of student practice orders, a law graduate is permitted to engage in the practice of law and have gainful employment. The public is protected since the activities of the law

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<sup>6</sup> See Judiciary Law, §§478, 484.

graduate are subject to the supervision of a licensed attorney. The concerns and complications posed by a provisional admission are avoided. Only law graduates who have failed the Bar examination twice would be ineligible for participation under a student practice order.

The statutes authorizing the issuance of student practice orders do not permit such orders to be issued to private sector attorneys. Should the delay in the administration of the Bar examination be only from mid-July to early September, there would not be a pressing need to re-examine the exclusion of the private sector from student practice orders. However, we would recommend seeking legislation now to permit the Appellate Division to issue student practice orders for private sector attorneys and law firms. With such authority, law graduates would, if the delay in Bar examination administration becomes prolonged, have an avenue by which they could gainfully practice law under the supervision of licensed attorneys. The Appellate Division would have the authority to pass upon applications for such orders and determine whether a particular attorney or law firm is positioned to provide an appropriate degree of supervision to a recent graduate. Since most law graduates do not simply proceed into practice as sole practitioners (hang out their own shingle, so to speak), entering practice under the supervision of an employer, the use of student practice orders conforms to real world reality, without sacrificing our commitment to protecting the public through an appropriate examination and licensure system.

Likewise, we recommend that the existing statutory language in Sections 478 and 484 be clarified to assure that 2020 law graduates may participate in practice under student practice orders. At present, the statutes offer participation to law students who have completed at least two semesters and to law graduates who have taken the bar examination immediately available

after graduation.<sup>7</sup> The statutes should be clarified to specify that law graduates who are awaiting the administration of the first Bar examination following their graduation are eligible for participation.

We urge that such legislation be adopted promptly so that student practice orders may be issued without delay in the event there is a significant delay in the administration of a Fall 2020 examination.

*C. General Waiver of Distance-Learning Limitations  
For all ABA-Accredited Law Schools for the Spring 2020 Semester*

The Court of Appeals imposes instructional requirements that must be satisfied by those seeking to take the bar examination in New York. Among other things, the Court has limited the use of distance learning, *i.e.*, courses in which the instructor and the students are physically separated from each other with technology being utilized so that students can interact with the instructor and with each other. The rules of the Court of Appeals permit, subject to certain conditions<sup>8</sup>, up to 15 credit hours of distance learning courses to be counted towards the 83 credit hours needed for graduation as well as towards the 64 credit hours of required classroom instruction. While these rules are normally eminently sensible, the distance learning limitations should be relaxed for the Spring 2020 semester on a one-time basis in light of the devastating impact with which the coronavirus has struck at the mid-point of the Spring 2020 law school academic semester.

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<sup>7</sup>Persons who have graduated law school but failed the first examination are eligible provided they have taken the next succeeding examination and have not been notified that they failed it (Judiciary Law, §478, 484).

<sup>8</sup> There must be opportunity for regular and substantive interaction between the faculty member and students and among students and the faculty member must regularly monitor student effort and accomplishment and there must be the opportunity for communication regarding the student's work. In no event is credit allowed for correspondence courses. (See 22 NYCRR §520.3[c][6]).

Due to the public health concerns, law schools across the country began to close their physical facilities and shift to online learning as early as March 4, 2020. The first law school to close was New York Law School, followed rapidly by law schools at the University of Washington, located in another American jurisdiction hard-hit by the virus, Stanford University, University of California -Berkeley, Fordham University and Hofstra University.<sup>9</sup> Closures of law schools, like closures of public schools and other places of public assembly, have spread widely throughout the county. On a virtually overnight basis, law schools, with commendable effort and agility, shifted to distance learning in order to permit their students to continue with their studies. Without the ability to make robust use of technology, students in American law schools would have been stopped in the middle of the Spring semester and potentially required to restart the semester after the crisis abates.

Anticipating that the abrupt movement toward distance learning in March 2020 could render some law students ineligible to sit for the bar examination in New York if they had already taken 15 hours of distance learning courses, the New York Court of Appeals, on March 19, 2020, announced that it would permit law schools to apply for programmatic waivers of the distance learning requirements due to the coronavirus epidemic. Waivers must be requested by the dean (or person designated by the dean) and must address nine identified factors.<sup>10</sup> The Court of Appeals indicated that it would evaluate each application for a waiver on an individual basis, taking into account “the challenges faced by law schools during this health emergency and

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<sup>9</sup> Sloan, Coronavirus Closures Hit Law Schools at Stanford, Columbia and Several Others, March 9, 2020 at 12:42 pm., law.com.

<sup>10</sup> The factors to be addressed include: an estimate of the portion of the semester’s instruction that will be completed by distance learning, whether the course was designed for or is easily adaptable to distance learning, whether the faculty members have the experience to deliver distance education, whether the school has the technical capacity to support this form of instruction, a description of the technology to be used, whether the distance learning will be synchronous or asynchronous, how the school will confirm that students meet the distance learning requirements, whether the manner of grading will change, and whether the course requirements will change.

their available resources, as well as the fact that the majority of law students have completed approximately half of the semester via existing learning methods.”

It appears that most, if not all, of the law schools located in New York have applied for and received waivers. While we commend the Court of Appeals for rapidly developing an approach to accommodate the unexpected utilization of distance learning as the exclusive means for completing the Spring 2020 semester, we respectfully submit that the approach adopted by the Court of Appeals falls short of what is required in these difficult times. The July 2019 bar examination was taken by 3,513 graduates of ABA-accredited law schools situated in New York and by 2,994 graduates of ABA-accredited law schools located out of State. Given the large number of graduates of New York-based law schools who sit for the bar examination in New York, it is reasonable to anticipate that the New York-located schools will each apply for a distance-learning waiver. However, it is far less clear that the deans of the law schools located outside of New York will submit waiver applications.

There are 200 fully ABA accredited law schools in the United States, with only 15 of them being located in New York. As our March 5, 2020 report set forth, using information from 2018, Harvard Law School had 287 students apply for admission in New York, Stanford had 38, and Notre Dame had 30. We respectfully question whether the deans of law schools located outside of New York will take the time and effort to apply for a waiver of the New York distance learning requirements, especially given the great stresses that law schools are experiencing at this time. We perceive that it is an undue burden to require all of the nation’s law schools to potentially have to submit a distance learning waiver application to each American jurisdiction that any one of their graduates may seek admission. We also believe that it would be unduly

burdensome to the Court of Appeals itself to have to review potentially 200 waiver applications in the compressed time frame required to decide who may sit for the Fall 2020 bar examination.

The failure of a law school dean, whether by oversight or by intent, to submit an application to the Court of Appeals, or to successfully obtain a waiver, will not have a direct consequence to the dean or to the law school. The consequence will be felt exclusively by the student who will then not be eligible to take the bar examination in New York. The student could be eligible to take the bar examination elsewhere but he or she would be unable to transfer his or her UBE score into New York since the student must still meet New York's educational requirements.<sup>11</sup> In addition, the student would be unable to "vouch in" to New York without examination even after five years of successful practice in another American jurisdiction since even such attorneys must satisfy New York's educational requirements.<sup>12</sup> This result appears to us to be an unduly harsh penalty for a circumstance totally outside the control of the individual student.

We believe that it is critical to recognize that, as a result of the present health crisis, ABA-accredited law schools and their student had no choice but to shift to distance learning in order to complete the Spring 2020 semester. Rather than rely upon a cumbersome and intrusive waiver process, we recommend the adoption of a one-time, limited expedient. We urge the Court of Appeals to adopt a rule that credits earned at any ABA-approved law school in the United States as the result of a course that, in the Spring 2020 semester, commenced as a conventional in-person instructional course but was shifted to distance learning as the result of the coronavirus crisis, be counted towards the 83 credit hour and 64 classroom credit hour requirements, notwithstanding the otherwise applicable limitations on distance education.

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<sup>11</sup> 22 N.Y.C.R.R. §520.2(b)(2).

<sup>12</sup> 22 N.Y.C.R.R. §520.5(a)(2).

The adoption of such a rule would eliminate the need for individualized law school waiver applications and enable law school graduates to sit for the bar examination in New York without stress or worry. It would eliminate the burden on the Court of Appeals itself to evaluate up to 200 individual waiver requests. Most fundamentally, it would assure that no person graduating in 2020 from an ABA accredited law school in the United States would be deprived of the opportunity to take the bar examination in New York, or gain admittance to practice in New York, by reason of the temporary and involuntary need to use distance learning in order to complete the 2020 Spring Semester. The proposed rule would also protect those who will graduate in 2021 and later years as well.

*D. Other Considerations*

The Task Force has also considered potential means, other than postponement, for addressing the impact of the coronavirus epidemic on the July 2020 bar examination. On March 22, 2020, an ad hoc group of distinguished academics released a paper which highlighted the need for immediate action. One of the authors, Professor Eileen Kaufman, is a member of the Task Force and two others, Professor Deborah Jones Merritt and Dean Judith Welch Wegner, made presentations to us during the course of our review of the Uniform Bar Examination. We express our very deep appreciation to all of them for drawing the attention of the Bench and Bar to this important issue and for their thoughtful suggestions. The Task Force has also received a letter presented by some 1,000 law students advocating for a diploma privilege system as well as submissions by individual law students. We have carefully considered the various suggestions made to us.

### *1. Online Testing*

It has been suggested that the July 2020 (or Fall 2020) bar examination could be offered entirely online. We question whether this is even technologically feasible. And even if so, we are concerned as to whether all test-takers would have the necessary internet access and quiet locations that would be necessary for test taking. The experience with the New York Law Examination does not lend confidence that online testing would be sufficiently secure so as to avoid all incidents of dishonesty. Any system of online testing would require a significant trial period in order to confirm its viability, which time does not presently exist. While greater use of technology to assist in the administration of the bar examination should be considered, we do not believe that this is now time to experiment.

### *2. Emergency Diploma Privilege*

Some, and particularly current law students, have advocated for the granting of admission solely on the basis of graduation from an ABA-accredited law school or, alternatively, on the basis of law school graduation plus satisfaction of other criteria, such as completion of the New York Law Examination, CLE courses, bridge-the-gap programs, or evidence of successful completion of an internship or clinical program. While the Task Force recommended, as part of its March 2020 report, consideration of a pilot program predicated upon a student's concentration in New York law, we do not favor an emergency diploma privilege as a response to the coronavirus crisis.

By both statute and court rule, New York generally requires that an applicant for admission to practice (not previously admitted elsewhere) pass the written bar examination.<sup>13</sup> The Board of Law Examiners is not empowered to waive the bar examination requirement for

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<sup>13</sup> Judiciary Law, §§460, 463; 22 N.Y.C.R.R. §520.7.

individual persons as its role is merely ministerial in certifying to the Appellate Division the names of the candidates who have successfully passed the examination.<sup>14</sup> The Court of Appeals is empowered to dispense with the bar examination where the applicant is a graduate of one of the following named law schools: Albany Law School, New York University Law School, Columbia Law School, University of Buffalo Law School, Cornell Law School, Syracuse College of Law, Brooklyn Law School, and Fordham Law School. It may also dispense with the examination for graduates of any law school, registered with the Regents of the University of the State of New York, which requires a three-year course for graduation.<sup>15</sup>

While the Court of Appeals has the authority to eliminate the examination requirement for New York-based law schools, it has evidently done that only twice, both times being for military veterans. During World War II, the Court dispensed with the examination for bar applicants who: (i) had been on active duty in the armed forces for at least 12 months after September 16, 1940 and who had been honorably discharged; (ii) had been residents of New York State for the preceding six months; and (iii) had completed (A) two-thirds of law school but had the balance of law school delayed by military service or (B) law school but was prevented from taking either of the next two bar examinations due to military service.<sup>16</sup> A comparable rule was in place for veterans who entered military service after January 1, 1963 and remained in force through 1969.<sup>17</sup>

The diploma privilege for veterans existed at a time when New York had an entirely home-grown bar examination and the curricula of New York-located law schools had an

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<sup>14</sup> *Koeppel v. Wachtler*, 183 A.D.2d 808, 583 N.Y.S.2d 975 (2d Dept. 1992).

<sup>15</sup> Judiciary Law, §53(5).

<sup>16</sup> See Rule III-A for the Admission of Attorneys and Counselors at Law, 1945 N.Y. Laws 2170.

<sup>17</sup> See 1969 Civil Practice Annual at 9-10.

extensive New York law focus. As we discussed in our March 2020 report, since the advent of the Uniform Bar Examination, there has been a dramatic reduction in the number of New York law oriented courses offered by law schools and in the number of students who take such courses when offered. The New York Legal Examination, we have reported, is a flawed and inadequate device which does not even purport to measure an applicant's knowledge of New York law.

Under the UBE, the New York bar passage rates for graduates of New York and non-New York law school graduates are comparable. For the July 2019 examination, 85% of first-time test takers who were graduates of New York law schools passed but so did 87% of first-time test takers who were graduates of non-New York law schools. For the July 2019 examination, 76% of all takers who graduated from New York law schools passed, as did 78% of all takers who graduated from non-New York law schools.

We would be very concerned about affording a diploma privilege to those who graduate from New York-located schools without there being a rational basis upon which to deny a similar privilege to all graduates of all ABA-accredited law schools. Similarly, while it may be that a high percentage (more than 85%) of all first-time takers pass the bar examination, it remains that the conferral of a diploma privilege upon all first-time takers would result in the admission of a substantial number of persons who would have likely failed the examination. For the July 2019 bar examination, 5,517 graduates of all ABA-accredited law schools took the test; 769 failed. Of a total of 6,507 graduates from all of the ABA-accredited law schools took the test, 1,487 failed.

This analysis has excluded foreign law school graduates who represent an increasing number of test takers. In July 2019, only 53% of the foreign law graduates who took the bar examination passed it.

While we believe that a diploma privilege for bar applicants with a solid law school grounding in New York law is a concept worth study and development, we do not believe that the conferral of diploma privilege is an appropriate response to the present circumstances, especially where, as here, the bar examination can be administered in the Fall. Just as we are concerned that persons seeking admission in New York would flock to take a July 2020 examination in other States in order to gain earlier admission here, we are concerned that a diploma privilege would open the door to the admission of a large number of individuals who only wanted to use New York as a vehicle for gaining admission elsewhere. As we have discussed in our March 5, 2020 report, this already occurs and devalues the significance of New York admission and imposes administrative burdens. Furthermore, with many law schools adopting pass/fail grading for the Spring 2020 semester, and with different law schools having different grading and admission standards, the absence of an examination would create unacceptable risks that persons lacking minimum competence to practice law would gain admission in New York. Further, inequities would be created between persons who failed the July 2019 or February 2020 examination and who cannot gain admission, and were seeking to take the test in July 2020, and those who were anticipating taking the test for the first time in July 2020. While bar passage rates are higher for first-time takers, as discussed above, a significant number of first-time takers fail. Likewise, most persons who take the test more than once eventually pass. It would make little sense to admit all first-time takers on the basis of their diploma, while not also admitting persons who failed the test on the basis of their diploma.

Respectfully submitted,

The Task Force on the New York Bar Examination