

June 29, 2020

Chief Justice Nathan L. Hecht
Justice Jimmy Blacklock
Justice Jane Bland
Justice Jeffrey S. Boyd
Justice Brett Busby
Justice John Phillip Devine
Justice Paul W. Green
Justice Eva Guzman
Justice Debra Lehrmann
Supreme Court of Texas
201 W. 14th Street
Austin, TX 78701

Ms. Susan Henricks, Executive Director
Texas Board of Law Examiners
205 W 14th Street, Suite #500
Austin, TX 78701

Mr. Augustin “Augie” Rivera, Jr., Chair
Texas Board of Law Examiners
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Mr. Trey Apffel, Executive Director
State Bar of Texas
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1414 Colorado Street
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Via email

Dear Chief Justice Hecht, Members of the Supreme Court, Ms. Henricks, Mr. Rivera, and Mr. Apffel:

As the deans of the ten Texas law schools, we are very grateful for your efforts to address the unprecedented challenges now confronting those who wish to be admitted to the practice of law in Texas. We also greatly appreciate the leadership and flexibility that the Supreme Court of Texas and the BLE have shown to date in undertaking significant and unprecedented measures during this crisis, all towards the goal of ensuring that a bar exam can go forward and that applicants have a safe and successful experience: modifying the supervised practice rules, offering a second Texas Bar Exam in September, increasing flexibility for bar takers to switch their exam without additional expense, implementing various Covid-19 health and safety protocols, and reducing the bar exam from three days to two.

In recent days, however, the arc of the coronavirus has changed, and these measures no longer seem sufficient.

Like you, we take very seriously our responsibility to ensure that our graduates are prepared to represent the citizens of our State and nation with diligence, skill, and professionalism. And, like you, we are committed to the well-being of recent law-school graduates.

For almost a century, the Texas Bar Exam has been used as the primary means by which the State of Texas determines that new entrants to the Bar have the minimum competency to practice law. We write on behalf of our students who are scheduled to take the Texas Bar Exam in July

and September because this year, in light of the coronavirus pandemic, the traditional Texas Bar Exam is unlikely to serve that function effectively.

We appreciate that you have been regularly monitoring the coronavirus pandemic and are meeting this week to decide important questions facing current bar applicants. As you prepare for those meetings, we respectfully offer three alternatives that will protect the public, and also protect the health and well-being of bar takers. These alternatives also allow applicants the ability to utilize their degrees and to provide needed legal services to Texas individuals and businesses.

We highlight a few considerations that underlie the following proposals:

- We fully recognize that the protection of the public and the proficiency of new licensees to the Bar must be paramount in any course of action.
- It is our collective understanding that applicants who pass the Texas Bar Exam generally commit between 350-500 hours of study in the months leading up to the exam.
- While it is true that not every student passes the Texas Bar Exam on the first attempt, within two years, on average more than 9 out of 10 recent graduates from our ten law schools successfully pass the Texas Bar Exam. (Please see ABA Data, attached.) An even higher percentage pass the Texas Bar Exam on a later attempt.
- The average law student graduates with approximately \$107,000¹ in law school student loans – in addition to whatever undergraduate loans they have incurred. Most students must begin making payments on those loans six months after graduation – or November 2020 for most July and September bar takers.
- The Texas Supreme Court has made the determination that the Texas Law Course satisfies the Texas Law Component for students who pass the UBE (and therefore have not passed a bar exam testing Texas Law).
- Our bar takers have been diligently studying for the July and September administrations based on the current plan, in many cases since before graduation, even taking practice tests in masks while social distancing themselves. All of these students have been ordering their lives and financial matters in reliance on the expectation that they will be prepared to take the July or September administration and receive their results in October or November.
- Current-year law graduates have done all that their law schools, the Supreme Court, and the BLE have asked of them. For them to be denied the opportunity to be licensed for months or even a year, due to the inability to test them safely and consistently with prior-year bar takers, would result in significant personal and professional consequences that could permanently affect the trajectory of their careers.
- It is important and necessary to provide bar takers a great deal of certainty at the earliest juncture concerning their path ahead. (Each of us is regularly fielding concerns from graduates regarding their uncertainty.) Enough anxiety accompanies the bar exam even

¹ <https://www.accesslex.org/index.php/xblog/what-do-we-know-about-law-student-indebtedness>

in normal times. Until now, the current plan of bar administration had given our bar takers the necessary certainty that has allowed them to plan effectively in matters of employment and their financial obligations and student loans.

- Our state is now at an inflection point. The Covid-19 contagion is steeply rising, with infections and hospitalizations increasing beyond even those seen in the spring. The trajectory of the pandemic going forward is not one that inspires confidence that the current plan of bar administration will work for many recent graduates, or perhaps for any of them. There appears to be a meaningful probability that our state and the nation will return to state and municipal shelter-in-place directives that would make the July and September administrations difficult or impossible to offer. Indeed, in the past few days, Harris County Judge Hidalgo and San Antonio Mayor Nirenberg have issued emergency alerts pleading that people again stay home. Projections indicate that the peak for the virus is weeks away.

We all have hoped that the July and September bar administrations would go forward as planned – and perhaps there is a plan that will allow them to go forward safely. Our concern is that there is unlikely to be a guarantee that these exams can be held as planned, leaving our students (who are near the finish line of their preparations) with ongoing uncertainty.

Therefore, if there is uncertainty regarding whether either or both of these exams can proceed, the need for an alternate plan is evident. Moreover, as we hope you fully appreciate, we do not believe that the announcement of such an alternate plan can be delayed. There are just four weeks remaining until the scheduled July administration; this makes the need for an alternate plan all the more imperative, given that if the July date (or even the plans for September or February) fails, our July bar takers could not, as we understand it and despite prior hopes of the BLE, be accommodated in either September or February.

We are aware of solutions that have been implemented or considered in other states:

- Utah adopted a [360-hour supervised practice approach to licensure](#), which is limited to graduates of ABA-approved law schools with an 86% first-time taker bar pass rate (which both Utah schools meet).
- Washington State (which already had reduced the passing score on the UBE from 270 to 266) granted a [diploma privilege](#) to all registrants, including those who previously had failed the bar exam (despite the fact that the July 2019 Washington Bar Exam pass rate was 68.5%).
- Washington, D.C., adopted an [October remote administration](#).
- Indiana adopted a [one-day remote bar exam](#) that will include the Indiana Essay Examination and a series of short answer questions on topics covered on the MBE.
- Louisiana decided on a [one-day exam](#), which can be taken remotely, which covers a reduced set of topics.
- Maryland announced a [remote exam](#) in October.
- Michigan adopted a [one-day online essay exam](#).
- Nevada adopted a [remote exam](#) consisting of essays and an MPT.

- Other states are in the process of reconsidering what to do in light of the surge of Covid-19 case nationwide, including Oregon and Minnesota.²

We draw upon the deliberations in those states to offer the following potential alternate plans.

In addition, we recognize that there are at least four different categories of bar takers that must be considered:

- Texas law school graduates and students who have registered for their first attempt at the Texas Bar Exam in July or September.
- Non-Texas law school graduates and students who have registered for their first attempt at the Texas Bar Exam in July or September.
- Students who have registered for the UBE in another jurisdiction this summer or fall who may not be able to take that exam.
- Students who have registered to retake the Texas Bar Exam in July or September after having failed the exam at least once before.

Despite the impact of the pandemic, the Supreme Court of Texas finished its docket utilizing video oral arguments rather than require litigants and attorneys to remain in limbo during this health crisis. In addition, all ten law schools adopted their teaching and classes online in response to the pandemic. We ask that you take a similarly pragmatic and flexible approach in addressing the urgent difficulties confronted by current applicants.

The following are three options that could be announced now:

- a. Convert the July and September exams to optional or mandatory remote administration. As a remote version of the MBE portion of the exam appears unlikely to be available then, as some other states have done, the Court and the BLE might shorten the exam and reduce the coverage of the exam. If remote administration is optional, this would dramatically reduce the space needed by the BLE to administer the exam.

Online options may present challenges to the BLE in administration. Some of those challenges involve security. As our schools have conducted remote exams, we would be pleased to discuss potential solutions to those challenges with the BLE. We also note that the LSAT is now administered remotely. While there are differences between the two exams, the fact that the LSAT has addressed similar security concerns provides some comfort that they can be overcome or accepted here as well.

In addition, there are technology concerns inherent in remote administration: Test takers must have access to the proper technology. The technology must work without failure.

² The Court and BLE already are aware that Wisconsin has long had a [diploma privilege](#) for the graduates of the two law schools in that state. New Hampshire has a special [Daniel Webster Program](#) through the University of New Hampshire Law School that permits graduates who completed a special program to be licensed to the bar without taking the bar exam.

The examinee must be in a venue in which the exam can be taken without the distractions of noise and interruptions. Again, our law schools can assist the BLE in these matters.

As a variant to a remote exam in July and September, Texas could offer the NCBE online exam in October. The exam is a shortened version of the UBE that will be offered in Texas in February 2021. There are downsides to this option. The current bar takers are studying for the Texas bar exam and relying upon taking the Texas essay component. The NCBE October exam will use the MEE component. This nevertheless may be an acceptable alternative to the current situation, and it might be feasible to use Texas essays.

- b. Adopt an apprenticeship system that would permit licensure upon the completion of a certain number of hours of supervised practice – a number that should be commensurate with the number of hours students typically prepare for the Texas Bar Exam. For many years, there have been discussions in Texas and other states about the feasibility of an apprentice system for law graduates. The current pandemic could provide an auspicious opportunity for testing such a system. Our law schools will commit to finding appropriate supervisors and to actively monitoring the quality of the experience, including submission of a certification of adequate apprenticeship to the BLE once a student's apprenticeship is concluded.

Indeed, our schools are already adept in such matters owing to obligations imposed by exacting ABA accreditation standards on student field placements with practicing attorney supervisors who are not law school faculty members. This one-time solution could yield valuable longitudinal research data on the efficacy of such a system. Moreover, such apprenticeships could even open the door for graduates for future employment, which is crucially important given the significant economic challenges the pandemic has created.

- c. As a third, and equally viable, option, all ten law schools would support a one-time diploma privilege option for graduates of our law schools. While this approach is unprecedented in recent times, Texas has utilized the diploma privilege to license new attorneys in the past.³ But, these are unprecedented times, as this appears to be the first time that taking the Texas Bar Exam potentially involved risking one's health and the health of others – as evidenced by the fact that BLE staff may opt out of test administration. Alternatively, all ten law schools would support a provisional license administered with a probationary period. If there are no allegations of misconduct or

³ Texas became a state in 1845. From 1846-1903 attorneys were given oral bar examinations (see Texas Laws 1846, page 245). In 1903, the Texas legislature decided a standard written exam was required. (see Texas Laws 1903, page 59). In 1905, UT law grads, and then in 1919 other Texas schools, were exempted from these requirements. (Texas Laws 1905, page 150, Laws 1919, page 63). In 1935, the legislature abolished the diploma privilege. (Texas Acts 1935, page 438).

ethical violations against a provisional licensee during that period, the provisional license would convert to a full license.

Two notes are worth mentioning:

1. In addition to any of these three options, we recognize that each graduate could complete a Texas Law Course that satisfies the Texas Law component that will accompany the introduction of the UBE in February 2021. The law schools are willing to assist the BLE in the administration of such a course.
2. Many of us have serious misgivings about the concept of a provisional license with future testing. Such a solution will leave our graduates in a zone of uncertainty and require them to take a bar exam well down the road from their law school graduation. This appears to impose an undue burden that impacts the Class of 2020 disproportionately to any other Texas bar takers in the past or in the future. The current circumstances are not of their making and they should not be positively burdened as a result. Also, the employability of a graduate with a provisional license raises issues if the graduate does not subsequently achieve licensure.

We recognize that none of these three solutions is perfect; indeed, there is no perfect solution at present. Each of us nevertheless is confident that, at this serious inflection point in the Covid-19 pandemic, these options would appropriately balance the needs of the public and the hardships faced by bar takers.

Thank you for considering these proposals. We look ahead to discussing these matters with you.

Please reach out to any of us with any questions.

Sincerely,

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Texas Tech University School of Law

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****When copying and pasta data from these sheets for comparison values, please note that from year to year, schools names may have changed and new schools may have been added. It may be prudent to copy and paste the Law School column as well to make sure that the data rows line up correctly. The extra Law School column can be deleted after the comparison is completed.**

Bar Pass Outcomes for Calendar 2017 Graduates within Two Years of Graduation (Source: <http://www.abarequreddisclosures.org/BarPassageOutcomes.aspx>)

This table contains data on the bar pass outcomes within two calendar years of graduation

School Name	2017 Graduates		2017 Takers		2017 Passers		% That Passed		2017 Graduates with no information		2017 Graduates who did not take the bar		% not taken	
	Total	1,973	1,914	1,726	90.18%	16	0.81%	43	2.18%					
BAYLOR UNIVERSITY	136	136	132	97.06%	0	0.00%	0	0.00%						
HOUSTON, UNIVERSITY OF	236	226	200	88.50%	3	1.27%	7	2.97%						
SOUTH TEXAS COLLEGE OF LAW HOUSTON	278	269	230	85.50%	1	0.36%	8	2.88%						
SOUTHERN METHODIST UNIVERSITY	248	241	228	94.61%	1	0.40%	6	2.42%						
ST. MARY'S UNIVERSITY	209	205	172	83.90%	0	0.00%	4	1.91%						
TEXAS A&M UNIVERSITY	177	171	153	89.47%	0	0.00%	6	3.39%						
TEXAS AT AUSTIN, UNIVERSITY OF	323	311	301	96.78%	10	3.10%	2	0.62%						
TEXAS SOUTHERN UNIVERSITY	131	128	102	79.69%	1	0.76%	2	1.53%						
TEXAS TECH UNIVERSITY	195	188	174	92.55%	0	0.00%	7	3.59%						
UNT DALLAS COLLEGE OF LAW	40	39	34	87.18%	0	0.00%	1	2.50%						