

The COVID-19 crisis has disrupted ordinary life in a seemingly infinite number of ways. Like others in this time of unprecedented upheaval, the Utah Supreme Court is endeavoring to temporarily adjust some of its rules and practices to address the reality we currently confront.

One area the Court must address involves those who have applied to take the July 2020 Bar Examination. At present, the Court cannot guarantee the Bar's ability to safely administer the Examination in July. Nor is the Court in a position to predict when it may be able to offer the Examination. This creates hardship, risk, and uncertainty for a range of individuals and organizations – for law school graduates whose professional plans and future livelihood depend on receiving a license to practice law, for the public and private entities who have factored these graduates into their plans, and for the clients these new law graduates could serve at this crucial time.

To address this situation, the Utah Supreme Court considered a number of options, including postponing the Bar Examination and allowing those with pending applications to work under the supervision of a licensed lawyer under the “third-year practice rule” until the Bar Examination can be administered safely. The former option seems untenable, however, in light of the increasing and ongoing uncertainty about when we will be in a position to safely convene a large group of people in the confined space in which the Bar Examination is offered. And the latter option raises a range of other concerns – principally in the disruption it would cause to law school graduates, their employers, and their would-be clients, all of whom need certainty about the timing of impending licensure.

One additional difficulty law school graduates will face is the need to prepare for the Bar Examination. The coming weeks and months are the period in which these graduates typically would invest substantial time and money in extensive bar preparation courses. And they will need advance notice of a date certain of the Bar Examination in order to know when to begin their bar preparation.

The Court is of course also concerned with protecting the interests of the would-be clients of applicants to the Utah Bar. We are also committed to preserving excellence and high ethics in the practice of law, and to protecting the public, whose lives and livelihoods may be in the hands of licensed lawyers. These are important concerns. And the Court is committed to finding the means of protecting these interests.

Supreme Courts in other states are facing these same challenges and seeking ways to balance the above concerns. A few states are considering a model long embraced in the State of Wisconsin – a so-called “diploma privilege,” which considers a diploma from a law school with a proven track record as an adequate substitute for a passing score on the Bar Examination. This approach is premised on the idea that the material the Bar

Examination covers is also taught in law school, and a diploma from a well-regarded law school is a sufficient indication of an applicant's competence over the course of an intensive, three-year experience in which the applicant has demonstrated analytical capability and substantive knowledge of broad areas of the law through written examinations, practice-oriented exercises, and hands-on internship experiences.

The Utah Supreme Court sees wisdom in this model at this historically challenging time. In addition to the other challenges noted above, the Court is keenly aware of this pandemic's potential to increase the need for legal services while simultaneously widening the existing access-to-justice gap in our community. That said, the Court is also committed to assuring the public that our newly licensed lawyers can provide competent legal services. With this in mind, the Court has concluded that a diploma privilege alone may be insufficient, and should be supplemented by a second model with deep historical roots – the model of a period of law practice supervised by a licensed attorney. In centuries past this was the only model of “passing the bar” – new lawyers were admitted upon completion of an apprenticeship with a licensed attorney.

We also see wisdom in this model, particularly when combined with a form of diploma privilege. Candidly, we see no perfect solution to the unprecedented list of challenges highlighted above. But at this time of historic upheaval and challenge, we are convinced of the need to establish a temporary substitute for a passing score on the Bar Examination. And we have voted unanimously to accept the following as such substitutes for a passing score on the July 2020 Bar Examination for recent law school graduates who have already applied to become members of the Utah Bar: a diploma from an established law school with a proven track record of success on the Bar Examination *plus* a period of supervised practice under the direction of a licensed attorney.

This will open a new path for bar licensure for a limited group of applicants to the Utah Bar at this difficult time. Some applicants will not qualify. Others may prefer to await the time when we will be able to offer the Bar Examination. For any and all who fall into these categories, we commit to providing the Bar Examination at the earliest date at which it can be safely offered. But for now, we are committed to also providing a limited path to bar licensure for a select group of applicants who can qualify under our criteria.

The Court's goal is to identify criteria for licensure that will balance all of the above concerns – providing certainty and clarity for applicants and their employers, enhancing access to justice, and assuring a high standard of competence for those who are admitted to the Utah Bar. The criteria on which admission will be based are designed to ensure that those admitted will possess the same level of professional competence as those admitted in prior years through successful completion of the Bar

Examination. Applicants who meet the new criteria will be eligible to be licensed without passing the Bar Examination if they so choose. All other applicants will be required to fulfill our traditional, established criteria, and to take and pass the Bar Examination as soon as it is safe and feasible to offer it.

Applicants admitted without taking the Bar Examination will need to, among other things, show that they are of good moral character, demonstrate a proven record of ethical, civil, and professional behavior, have graduated within the last year from an ABA-accredited law school that recorded a 2019 first-time taker bar examination passing rate of 86% (the pass rate of first time takers of the Utah Bar Examination in 2019), and submit proof to the Utah State Bar that they have performed 360 hours of supervised legal services.

The Utah Supreme Court is circulating a draft Order to solicit comment from the Bar and public about the criteria on which admission will be based. Because of the time sensitivity surrounding this decision, the comment period will close on April 16, 2020.