August 11, 2020

Chief Judge Blackburne-Rigsby
Associate Judge Glickman
Associate Judge Fisher
Associate Judge Thompson
Associate Judge Beckwith
Associate Judge Easterly
Associate Judge McLeese
Associate Judge Deahl
D.C. Court of Appeals
430 E Street, N.W.
Washington, D.C. 20001

RE: Comment Supporting Diploma Privilege to District of Columbia Court of Appeals
      Notice No. M-269-20

Dear Chief Judge Blackburne-Rigsby, Associate Judge Glickman, Associate Judge Fisher, Associate Judge Thompson, Associate Judge Beckwith, Associate Judge Easterly, Associate Judge McLeese, and Associate Judge Deahl:

We write to you in our capacity as Deans of the undersigned American Bar Association accredited law schools (some of whom are members of the DC Bar). Our law schools send several students to take the bar exam in the District of Columbia each year, and we are working to protect our students and our profession in this time of global crisis. We are seeking to be helpful in any way we can.

We acknowledge and applaud the efforts to protect public safety, and we recognize that holding a bar exam at this time causes significant risks. But we also want to make clear that any significant delay in bar licensure harms all graduating students and increases their debt burdens, while creating additional hurdles to future bar passage. In addition, the delay runs the risk of harming subsequent classes, as the class of 2020 and the class of 2021 may end up competing for jobs in the nearly the same cycle. This could have a continuing and lasting negative effect on law students and the legal profession.

Even the delay to October creates hardship for those who need licensure for their jobs, and the realities of the environment in which bar applicants are studying for the exam are challenging. The lack of access to quiet study space, not to mention daycare, make bar preparation challenging. Continuously moving exam dates has created stress and uncertainty that make a difficult exam even more challenging. And the financial burden of delaying certification serves only to increase debt loads for far too many students, particularly those who are already among the most vulnerable.

There is not uniformity among our faculties, the bench and bar, or likely even our students, about what the best path forward should be for expediting licensure; however, we do think there is agreement that sooner is better than later. As you consider what is best for the District of Columbia given all that we have learned in the past few months, we strongly urge you to adopt diploma privilege for all of the fall 2020 bar applicants.

The Council of the ABA Section of Legal Education and Admissions to the Bar recently approved a major change in the bar passage rates in Standard 316 that now requires 75% of a law school's graduates who sit for the bar to pass it within two years. The most recent year for which complete data is available,

is 2017. The national average for ABA-accredited law schools was 89.47%.[1] With a nearly 90% passage rate, this means that bar exams filter approximately 10% of all bar applicants over two years, which means that the majority of those who sit for a bar exam pass that bar exam. The vast majority of people who sit for a bar exam eventually pass it. Thus, even if the bar exam is a proper screening device for the legal profession, we see no substantial risk in granting diploma privilege to all Class of 2020 graduates.

In addition, because character and fitness requirements would remain in place, there is still the ability to protect the public from those unfit to be members of the bar. The bar exam, as a test, does little to provide this protection. Although some have found that prior failures of the bar exam correlate with future misconduct, the bar exam clearly did not serve as a protection in those circumstances. Thus, character and fitness issues can remain a priority outside of the bar exam content itself.

Finally, if the court were to provide diploma privilege for this class of applicants, additional continuing legal education (CLE) requirements could be used to ensure that applicants have skills they need to practice before the DC-bar. As legal educators, our law schools would commit to developing CLE programs to support additional education to help these new members of the bar.

In these challenging times, there are no easy decisions, and we appreciate the complexity of your deliberations. We thank you for your efforts and your service to our profession. Please let us know if you have any questions or if we can be helpful in any way.

Sincerely,

Joshua P. Fershée
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Boston University School of Law

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[1] A spreadsheet providing the overall average as well as each law school's bar pass outcomes can be found at https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2020-barpass-consumer-info-ult2017.xlsx.

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