

## **Bar Examination Update - July 23, 2020**

Over the past several months, the Board of Law Examiners worked to achieve a safe administration of the Uniform Bar Examination on September 9-10. However, on July 16, having determined that the plan for a socially-distanced in-person examination, developed with the support and generosity of the New York law school deans, had become impractical, the Board made the difficult decision to cancel the September administration of the exam. Because public health conditions across the country have not adequately abated and the pandemic remains an active and ongoing threat to public health in a growing number of states, at this juncture an in-person examination is not a viable option.

In anticipation of this possibility, working with the Presiding Justices of the Appellate Division, the Court of Appeals developed a temporary practice authorization program permitting eligible law school graduates to engage in the supervised practice of law, which is now up and running in each of the Appellate Division Departments.

Additionally, Chief Judge DiFiore assembled a Working Group, chaired by retired Court of Appeals Judge Howard A. Levine, to study the future of the bar exam in New York. As its first undertaking, members of the Working Group were tasked with studying whether immediate, emergency measures are necessary to address the disruption experienced by aspiring attorneys in New York. Under the leadership of Judge Levine, the Working Group has issued a comprehensive report and several recommendations addressing these urgent issues.

Initially, the Working Group evaluated the necessity of alternative pathways to licensure, noting the availability of the temporary practice authorization program and expressing a preference to postpone examination until February 2021. But this alternative was rejected because of the uncertainty associated with holding an in-person examination at that time. Ultimately, in light of the exigencies presented by the pandemic, the Working Group recommended that New York administer, on a one-time basis, the emergency remote testing option to be offered by the NCBE on October 5-6. While acknowledging the shortcomings of the remote exam - including its experimental nature - the Working Group, in consultation with technology, security and psychometric experts, discussed proactive measures to ensure broad access, mitigate security risks and establish a reliable grading methodology. In addition, although it did not take a position on the issue, the Working Group recommended that the Court and the Board evaluate the wisdom of reciprocity arrangements that would permit candidates to transfer their remote exam scores across jurisdictions. The Working Group rejected a temporary diploma privilege option, noting that the bar exam provides critical assurance to the public that admitted attorneys meet minimum competency requirements, emphasizing New York's immense candidate pool as well as the degree of variation in legal curricula across the country.

The Court commends the Working Group for its prompt and thoughtful consideration of how best to address the pressing challenges posed by the health crisis and has accepted these recommendations. New York will participate, with appropriate safeguards, in the remote bar examination to be administered on October 5-6. Candidates registered for the September exam will be automatically registered for

the October remote exam. The Court and the Board will also give careful consideration to waiver requests by JD candidates who graduated in 2019 or later, previously took the bar examination in New York and failed no more than two times and who wish to sit for the online examination. Further, the Board will make reasonable efforts to address technological or testing space issues for candidates who promptly seek assistance in advance of the examination.

Further information regarding the remote exam will be posted as it becomes available. Please continue to monitor this website, as well the Board of Law Examiners' website, for additional updates.

## **Bar Examination & Temporary Practice Order Update - July 16, 2020**

On July 16, 2020, the Board of Law Examiners made the difficult decision to cancel the September 9-10 administration of the bar examination in New York. The Board arrived at this decision after careful consideration of current conditions and with a singular focus on the health and safety of all participants. Unfortunately, the global pandemic presents a persisting threat in a growing number of states and therefore, at this juncture, an in-person exam is not yet a safe or practical option in New York.

The Court of Appeals commends the members of Board of Law Examiners, ably lead by Diane Bosse, for their tireless efforts to administer the bar exam under these difficult circumstances and for their considered decision to suspend the September exam. The Court is also appreciative of the input and cooperation of the Deans of New York's fifteen law schools, who generously offered their facilities in order to make possible the Board's redesigned exam administration.

Because suspension of the September exam has always been a real possibility, the Court has proceeded on dual tracks: working towards a safe administration of the exam while simultaneously developing contingencies to ameliorate the effects of further postponement. As previously announced, the Chief Judge has approved a program designed to provide temporary authorization for qualified law graduates to engage in the supervised practice of law. To formally implement the program, the Court has amended its rules, effective July 22. As provided in the Court's amended rules, the temporary authorization program is available to all first-time takers of the bar examination employed in New York, including both J.D. and LL.M. candidates, irrespective of their graduation year. Once authorized, eligible candidates will be permitted to work under a qualified supervising attorney prior to their admission to the bar and to perform, subject to supervision, many of the functions of admitted attorneys across the State. Candidates may remain in the program through their formal admission to the bar, so long as candidates pass their first bar examination no later than 2021 and promptly seek admission to the bar following the release of exam results. The Court's order can be [accessed here](#).

A standardized and streamlined application process has been developed to enable candidates to swiftly secure temporary authorization to practice. Qualified candidates may apply for authorization through the department of the Appellate Division in which they expect to be certified for admission by the New York State Board of Law Examiners. Application forms and related information can be found on each Department's website. The Appellate Division will begin processing applications on July 22, when the Court's amended rules take effect.

In addition, the Chief Judge has assembled a Working Group, to be chaired by retired Court of Appeals Judge Howard A. Levine, to study the future of the bar exam in New York. The Working Group has been tasked with evaluating, in a comprehensive manner, the primary assessment tool for New York bar applicants (presently, the Uniform Bar Examination) as well as other proposed metrics for bar admission -

including a fully remote bar exam and a diploma privilege, among other alternatives. Relevant considerations will include health and safety, feasibility, equality, security, and the reliability of each proposed alternative as an accurate measure of an applicant's proficiency. As its first priority, the Working Group will evaluate the emergency remote testing option to be offered by the NCBE on October 5-6 and endeavor to reach a recommendation by early August. This important work will explore innovative methods of adapting our professional licensure process in a responsible manner as we emerge from the most acute stages of this crisis.

## **Academic & Bar Dispensations – June 4, 2020**

The Court of Appeals has approved a number of dispensations to alleviate the challenges presented by the public health crisis. On April 21, the Chief Judge signed a comprehensive order providing for, among other things, a programmatic waiver of distance learning limitations that enabled law students to continue their coursework virtually. That waiver applied broadly to all categories of students, including J.D. students, LL.M. students, and students who have completed fewer than 28 credit hours. Pursuant to the distance learning waiver, any classroom-based course that has been converted to a virtual course as a result of the public health crisis will count fully as a classroom-based course - not a distance education course.

Today, the Chief Judge signed an order extending the waiver of distance learning limitations through the Fall 2020 term. The extended waiver similarly applies to all categories of students, including J.D. students, LL.M. students, and students who have completed fewer than 28 credit hours. The order can be [accessed here](#).

Given the unique considerations presented by LL.M. programs, and the critical nature of the Court's residency requirement for LL.M. students, law schools and students are advised that the Court does not expect to extend the distance learning waiver for LL.M. students beyond the Fall 2020 term. However, to allow increased flexibility, the Chief Judge's order also includes a waiver of the limitation on the number of credit hours that may be earned towards an LL.M. degree during the Summer 2021 term. This additional waiver will enable law schools to offer fully residential LL.M. programs that begin at the start of the Spring 2021 term and continue through a full Summer 2021 term.

The Court is mindful of the disruption and stress felt acutely by law students and law school representatives, and remains committed to addressing each issue in a manner that balances the concerns of affected students and institutions, the interests of the public, and the integrity of the legal profession.

## **Chief Judge Approves Temporary Authorization Program – April 28, 2020**

As previously announced, the New York bar examination is presently scheduled for September 9-10, 2020. New York historically hosts, by far, more test-takers than any other UBE jurisdiction, and efforts are ongoing to safely accommodate as many test-takers as possible in September.

However, as the current epicenter of the pandemic in the United States, New York is facing unprecedented constraints. The Court of Appeals is communicating closely with public health officials to ensure that all prudent precautions are observed, and that the health of all participants is appropriately safeguarded. Prevailing guidance indicates that, in September, New York will be affected by ongoing travel restrictions, limitations on large gatherings, and social distancing mandates - constraints that prevent us from maximizing space in our larger testing venues across the state. Seating capacity for the September examination is likely to be limited.

As a result, the application period for the September exam, opening on May 5, will proceed on a rolling basis. Given the significant public health concerns and consequent restrictions that we face, candidates are encouraged to consider taking the Uniform Bar Examination at a later date or in other jurisdictions that may be better positioned to accommodate test-takers. While we understand the considerable stress and uncertainty caused by these limitations, the health and safety of all participants must remain our top priority. Further updates concerning registration for the September exam will be communicated by the Board of Law Examiners in advance of the application period.

To alleviate the hardship on bar applicants, on April 28 the Chief Judge approved a comprehensive and streamlined program designed to provide temporary authorization for qualified law graduates to engage in the limited practice of law. Practice orders promulgated by the Appellate Division departments will allow all covered candidates employed in New York to work under the supervision of a qualified attorney in good standing who has been admitted to practice law in New York for at least three years. Temporary authorization will be available to all first-time takers of the bar examination, including both J.D. and LL.M. candidates, irrespective of their graduation year. The temporary authorization program is intended to carry qualified candidates through their swearing-in date, so long as those candidates pass their first bar examination no later than 2021 and promptly seek admission to the bar following the release of exam results. This program will supplement existing practice order programs that authorize specified candidates to engage in the supervised practice of law, which will be unaffected by this temporary measure. Formal authorization and implementation of the program will follow in the near future.

Our goal is to conduct a safe administration of the bar examination as soon as possible and to facilitate candidates' swift admission to the bar thereafter. In the interim, the temporary authorization program should provide some assurance and stability for law students and recent law graduates eager to join the workforce. The Court is confident that New York employers will continue to exercise patience and flexibility as bar candidates navigate the obstacles presented by this crisis.

## Academic & Bar Admission Dispensations – April 21, 2020

This unprecedented public health crisis has introduced considerable uncertainty and disruption into the delivery of legal education, the bar admissions process, and our State's justice system. The Court of Appeals recognizes that the weight of these issues has been felt acutely by law school representatives, recent graduates, and current students, particularly those nearing the completion of their studies. The global pandemic has upended traditional law school instruction, interrupted the bar admissions process, and delayed the administration of the July bar examination.

The Court of Appeals has instituted a number of measures in response to these challenges. On March 31, the Court announced a programmatic waiver of distance learning limitations to enable law students to continue their coursework virtually. That waiver applies broadly to all categories of students, including J.D. students, LL.M. students, and students who have completed fewer than 28 credit hours.

Pursuant to the distance learning waiver, any classroom-based course that has been converted to a virtual course as a result of the public health crisis will count fully as a classroom-based course - not a distance education course. If necessary, the Court is prepared to further extend the waiver of distance learning limitations, including into the Fall 2020 term.

On April 21, the Court considered and approved a number of additional dispensations related to law school instructional requirements and the bar admissions process. First, the Court is implementing a programmatic waiver of the full-time pro bono work requirement and the corresponding academic component of the Pro Bono Scholars Program (22 NYCRR 520.17 [c] [2] and 520.17 [c] [3]) for those enrollees expected to graduate in Spring 2020. The feasibility of the Pro Bono Scholars Program for the 2020-2021 academic term will be evaluated at a future date.

The Court also decided to temporarily waive several additional bar admission requirements for Spring 2020 graduates, including the Pro Bono Requirement for Bar Admission (22 NYCRR 520.16) and the Skills Competency Requirement for Admission (22 NYCRR 520.18). While applicants must still successfully complete the New York Law Course (NYLC) and the New York Law Examination (NYLE), the requirement that applicants complete the NYLC and pass the NYLE no earlier than one year before sitting for the Uniform Bar Examination (22 NYCRR 520.9 [a] [2] [ii] and 520.9 [a] [3] [ii]) will be temporarily waived for any applicant who fulfilled the NYLC and NYLE requirements after July 2019 and who first sits for the Uniform Bar Examination no later than 2021. The order can be [accessed here](#). The Court has also approved the relaxation of specified application guidelines, including certain notarization requirements, original document requirements, and timing requirements. Those changes will be implemented through the Board of Law Examiners and the four Departments of the Appellate Division. A statement from the Appellate Division Presiding Justices on changes to bar admission practices in accordance with April 21, 2020 announcement of the Court of Appeals can be [accessed here](#).

## **Academic & Bar Admission Requirements – 2020**

### **April 9, 2020 Update: Contingency Planning**

As previously announced, the July 2020 bar examination is presently rescheduled for September 9-10, 2020. Every effort is being made to ensure the safe and smooth administration of that examination.

The Court of Appeals recognizes, however, the possibility that persisting public health concerns may prevent the administration of a fall bar examination in New York. We share the concerns expressed to us by the valued members of our legal community - law students, law school representatives, legal employers, and clients, among others - regarding lingering uncertainties and the immense challenges that may result from further postponement. We value your input and remain committed to addressing your concerns in a manner that balances the interests of the public, the integrity of the legal profession, and the needs of recent law school graduates eager to join the workforce.

To that end, we are actively considering a number of contingencies in the event that further postponement of the bar examination becomes necessary. The Chief Judge has convened a working group, led by Associate Judge Michael J. Garcia, to evaluate potential solutions and prepare for possible eventualities. The working group is exploring the possibility of expanding the use of practice orders, among other means of providing temporary authorization for recent graduates to engage in the limited practice of law. We expect to communicate further developments as expeditiously as possible.

**March 31, 2020:** The Court of Appeals met and decided to seek to have the rescheduled July Bar Examination administered in early September, shortly before or after the September 7, 2020 Labor Day holiday. While every effort will be made to reschedule the Bar Examination in early September, the Court recognizes that logistical and other challenges may prevent administration at that time, which may in turn delay the ability of spring 2020 law graduates to engage in full legal employment. Therefore, the Chief Judge on behalf of the Court will also explore the expansion of authority for practice orders that allow law graduates who meet specified criteria to engage in certain law practice under supervision of licensed attorneys. The expansion contemplated would allow private sector attorneys and law firms, as well as government offices and legal aid organizations, to apply to the Appellate Division for practice orders, and to allow such orders to include law graduates who are awaiting the administration of the first bar examination following their graduation, as well as law graduates who are awaiting results of the Bar Examination and meet the required criteria.

### New York State Bar Exam Rescheduled for Fall 2020

On March 27, 2020, the Court of Appeals announced that the New York State Bar Examination will not be administered on July 28-29, 2020 as previously scheduled. The Bar Examination will be rescheduled for dates in the fall, to be determined. When available, the Board of Law Examiners will announce the rescheduled dates for the examination and for the application filing period. The full notice can be accessed [here](#).

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