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VIA ELECTRONIC COPY ONLY

Wisconsin Supreme Court
State Capitol
Madison, Wisconsin

Re: Emergency Petition to Modify SCR 40.03

Dear Chief Justice Roggensack and Justices of the Court:

Marquette University Law School respectfully submits this letter pursuant to the Court's invitation. The Law School is deeply sympathetic to the unique challenges confronted by 2020 law school graduates. The challenges include the apparent likelihood that Wisconsin, like other states, will not administer a bar exam this summer. If the bar exam is simply deferred to the fall, the circumstances are far less disruptive than if the exam cannot be offered this year at all. In the event that a fall bar exam is not possible, the Law School makes the following observations.

First, Wisconsin's longstanding diploma privilege, going back scores of years, has little relevance here, as it rests on premises distinct from those on which petitioners seek relief. Those premises include the following: (a) The Wisconsin Supreme Court is deeply familiar with both of the law schools in the state, historically, today, and even their unfolding futures. (b) During their years of law school, in various courses, students at these schools have studied Wisconsin law, as has been extensively documented. (c) In important other respects as well, such as through clinical and pro bono activities and their relationship with the state bar more generally, the students in these schools have been part of the Wisconsin legal profession since they began their studies at the schools, thereby becoming immersed in its customs and values. In short, it is clear that SCR 40.03 offers little policy justification for the relief sought.

Second, if the Court elects to grant interim relief to petitioners or others similarly situated, it should follow principles that appropriately protect Wisconsin residents and that depart temporarily from the Court's existing policy to the

minimum extent necessary to address, with fairness and compassion, the current circumstances:

- (a) Admission under this approach should not be allowed for anyone taking a bar exam or seeking admission elsewhere in 2020. This requirement is important and appropriate to ensure that any individual so admitted has a sufficient stake in the profession and community of the State of Wisconsin. It is consistent with the fact that, in the usual year, a new law school graduate taking the July bar exam in Wisconsin would not have the opportunity to take another state's bar exam that year (with Louisiana sometimes being the rare exception).
- (b) Anyone admitted on an emergency basis (i.e., through interim relief granted by the Court) should be required to take and pass the Wisconsin bar exam in its next administration in order to continue to practice law.

Finally, the Court may wish to consider the extent to which various of its relatively recently adopted rules already speak to the relief essentially sought by the petition. *See, e.g.*, SCR 23.02(2)(L) (making clear that “[a]cting as a nonlawyer advocate under the direction or supervision of a lawyer” is not engaging in the unauthorized practice of law) and 23.02(2)(m) (the same is true of “[a]cting as a nonlawyer assistant under the supervision of a lawyer in compliance with SCR 20:5.3 of the Wisconsin Rules of Professional Conduct for Attorneys”).

Thank you for inviting our views.

Respectfully submitted,



Joseph D. Kearney
Dean and Professor of Law