

Dear Chief Justice and Justices:

Thank you for giving us the opportunity to respond to the responses from the Board of Bar Examiners, Marquette University Law School, the State Bar of Wisconsin, and University of Wisconsin Law School.

Petitioners are asking the Court to grant a temporary, emergency modification of SCR 40.03 due to the COVID-19 pandemic. This is not a permanent modification of the Supreme Court Rules. The Proposal's goal is not to devise a perfect alternative to the current diploma privilege requirements, but rather to develop a fair alternative to out-of-state applicants, their prospective employers, and clients given the extraordinary circumstances created by COVID-19. The Petitioners take no issue if the Court chose to grant the proposed relief under a separate, "specific emergency rule[], denominated and numbered differently" as suggested by Dean Raymond. Such relief would be very similar to Utah's recent decision to grant diploma privilege to qualified out-of-state graduates and applicants upon the completion of 360 hours of supervised practice.¹

Delays in administering the bar exam (by 60–90 days) may not be "unreasonable" at first glance, but—as stated in the memorandum accompanying our proposal—they will financially harm out-of-state graduates whose jobs require them to be admitted to the Wisconsin Bar. They may not be able to start their jobs, earn an income, or pay their student loans. The Respondents fail to address the serious hardship that a delay will impose on students if they are unable to start their jobs on time. These are graduates who have already committed to helping the Wisconsin economy. They will not be able to serve clients who need their help during this challenging time.

Further, it is uncertain whether the Wisconsin Bar Examination can be safely administered in September, and if not then, when it could be administered after that. Relying on a September examination date, without any indication that it will be safe to administer the examination then, leaves an unacceptable amount of uncertainty for applicants. Yet, the Board of Bar Examiners would prefer to "leav[e] the existing examination requirement intact" without providing any plan for if the examination is further postponed. They argue that canceling the July Bar Examination with short-notice creates additional challenges but fail to note that the exact same issues surround a potential September administration of the exam. Experts predict another, perhaps worse wave of COVID-19 this coming winter, potentially delaying administration even further if the February administration must also be postponed. The Proposal allows the State to admit out-of-state applicants to the Bar in a safe, timely manner, relying on a proactive solution instead of chance.

¹ Order for Temporary Amendments to Bar Admission Procedures During Covid-19 Outbreak, In re: Matter of Emergency Modifications to Utah Supreme Court Rules of Professional Practice, Rules Governing Admission to the Utah State Bar (Apr. 21, 2020), <https://images.law.com/contrib/content/uploads/documents/292/Utah-Bar-Exam-order.pdf>.

Temporary licensure or supervised practice under SCR 23.02(2)(L)–(m) creates other issues. Allowing graduates to practice under the supervision of a Wisconsin-licensed attorney until an exam can be safely administered would force those applicants to study while working full time. This may interfere with the applicant’s ability to successfully study for the Wisconsin bar exam and their ability to effectively serve their clients’ needs.

The Board of Bar Examiners misstates that the Proposal does not require a Supervising Attorney to be actively licensed in Wisconsin. Section III(f)(1) of the Proposal states a Recent Graduate must “[o]btain the consent of a *Wisconsin* licensed and qualified attorney to act as a supervising attorney.” Petitioners recognize Section III(g)(1) states the supervising attorney must have an “[a]n active Bar license”; this was intended to mean an attorney holding an active *Wisconsin* bar license. Given that this proposal modifies SCR 40.03, this language mirrors Chapter SCR 40’s existing language, which repeatedly refers to the Wisconsin bar as the “bar.” See, e.g., Chapter SCR 40 (“Admission to the Bar”); SCR 40.06(1); SCR 40.075.

Regarding the State Law Education requirement, it was left unspecified in the Proposal because Petitioners are not the appropriate parties to develop such a requirement. Additionally, no State Law Education requirement, however administered, will be the same as attending a Wisconsin law school. However, this requirement was added to ensure this Proposal is as similar as possible to existing diploma privilege under SCR 40.03, out of respect for the Wisconsin law schools and their graduates. Petitioners also acknowledge that developing a state law course would be a costly and time-consuming endeavor for all involved parties. But if it could be done, it likely would be at least equal, if not more extensive, to what is required under normal circumstances for out-of-state graduates to learn Wisconsin law—that is, studying for and taking the Wisconsin-specific portion of the bar exam within a two-and-a-half-month span of time. Alternatively, if the Court is unsatisfied with the idea of a State Law Education course, it could be replaced with: (1) an extended period of supervised practice required by a later date (i.e., at least 800 hours of supervised practice within the applicant’s first 6 months of admission); and (2) additional required CLE hours in the subject areas listed in SCR 40.03(2) (i.e., at least 30 additional CLE hours in the first reporting period).

Petitioners also note the concerns with the definition of Qualified Recent Law School Graduate. One such concern is that the definition does not account for the satisfactory academic standing required of Wisconsin law school graduates seeking diploma privilege. But Petitioners emphasize that SCR 40.03(1)’s requirement that applicants’ law schools certify “satisfactory completion of not less than 84 semester credits” is exceptionally similar to what most out-of-state law schools require of their students in order to graduate.²

² See, e.g., Curriculum & Requirements, University of Minnesota Law School, <https://www.law.umn.edu/academics/degree-programs/jd/curriculum-requirements> (last visited Apr. 28, 2020) (requiring students to “[s]atisfactorily complete 88 credits of Law School work” to graduate); 1.1 J.D. Program Degree Requirements, University of Chicago: The Law School,

Finally, Petitioners recognize that the Proposal did not cover every individual who could sit for the July 2020 Bar Examination. This Proposal focused primarily on Qualified Recent Law School Graduates because, unlike attorneys licensed in other states or individuals who have previously failed the Wisconsin Bar exam, those applicants have never had an opportunity to take a bar exam and now the exam for which they intend to sit cannot be safely administered before their jobs begin in the fall. However, Petitioners realize there are applicants other than Qualified Recent Law School Graduates who are similarly situated. Thus, Petitioners encourage the Court to also allow certain “Qualified Applicants”—first-time Wisconsin Bar Exam test-takers who graduated from an ABA approved law school, are admitted to practice in another jurisdiction, and in good standing—to also be granted admission through this Proposal’s procedures.³

As stated in Section V of the Proposal, those who do not qualify under this Proposal, a minority of applicants,⁴ could be admitted through a later bar examination. This could include a Fall 2020 exam, which would be far easier and safer to administer because significantly less people would be taking the exam when it is administered, allowing more than sufficient distancing between test-takers and proctors.

All interested parties recognize that we are facing unprecedented times. There is a great amount of uncertainty for Recent Graduates who are dedicated to having a legal career in Wisconsin. This Proposal aims to remedy just some of the uncertainty that they are facing. Again, the Petitioners thank the Court for granting their response and look forward to beginning a long legal career in Wisconsin.

Respectfully,

Paige Papandrea, Corissa Pennow, and Tommy Hansfield

<https://www.law.uchicago.edu/students/handbook/academicmatters/degree-requirements> (last visited Apr. 28, 2020) (requiring a “minimum of 105 total credit hours completed and passed” to graduate).

³ This mirrors Utah’s inclusion of certain qualified applicants who are licensed in another jurisdiction. Utah included these applicants after receiving public comments on its proposed order; similarly, after receiving comments from the other interested parties, Petitioners believe the Proposal should also include such persons.

⁴ 81 of the 121 test-takers for the July 2019 Wisconsin Bar Exam were first time test-takers from ABA approved law schools. See [Persons Taking and Passing the 2019 Bar Examination](https://thebarexaminer.org/2019-statistics/persons-taking-and-passing-the-2019-bar-examination/), The Bar Examiner (last visited Apr. 28, 2020), <https://thebarexaminer.org/2019-statistics/persons-taking-and-passing-the-2019-bar-examination/>; 2019 First-Time Exam Takers and Repeaters from ABA-Approved Law Schools, The Bar Examiner (last visited Apr. 28, 2020), <https://thebarexaminer.org/2019-statistics/2019-first-time-exam-takers-and-repeaters-from-aba-approved-law-schools/>.