



April 24, 2020

Wisconsin Supreme Court
State Capitol
Madison, WI
Delivered by electronic mail

Dear Chief Justice Roggensack and Justices of the Court:

I write in response to the Supreme Court's invitation to address the Emergency Request for Modification of Supreme Court Rule 40.03 Due to COVID-19, filed with the Court on April 17, 2020. I appreciate the opportunity to address this motion on behalf of the University of Wisconsin Law School.

We at the Law School find ourselves in a unique position; the relief sought in this Request would not apply to our own graduating students, who are already eligible for the diploma privilege under Rule 40.03. I accordingly view this as an opportunity to express some thoughts as to the institutional, structural and logistical concerns that the Court might wish to reflect upon in considering this Request.

There is no question that the situation confronting new law graduates this spring is profoundly problematic and that invitations to devise creative solutions to the difficulties they are facing are appropriate and welcome. The Court is well-positioned to consider not just what has been suggested in the Emergency Request, but to use its experience, knowledge and the consultative resources at its disposal to consider a range of possibilities that will help to support these new law graduates and enable them to serve clients at a very challenging time for our State. In particular, the sort of temporary, conditional ability to practice under the supervision of a licensed Wisconsin attorney proposed in the Request might ameliorate at least some of the concerns new graduates face. That relief could stand separately from the decision about whether that supervised practice should substitute for a bar examination, or simply make it possible to cope effectively with delays in the examination's administration.

I see four concerns that the Court would wish to consider in addressing this Request.

First, the motion envisions that a "Wisconsin state law educational requirement" could be created that would supplement the educations of candidates who seek this emergency relief and justify their being granted admission to the State Bar of Wisconsin without examination. How that requirement could be created, administered, or assessed is a complex burden that the Court should consider. The Request suggests that this requirement could be met by "an online state law course similar to the New York Law Course." This New York Law Course (and its

accompanying open-book online exam) predates the COVID-19 pandemic, and was created when New York opted to adopt the Uniform Bar Examination, to assure applicants had sufficient knowledge of state law. Creating such a course is a substantial undertaking, particularly if it envisions putting together a one-off set of state law educational modules for this one-time purpose only.

Second, the motion permits all “Qualified Recent Law School Graduates” to receive this benefit, regardless of coursework taken or academic performance. Accordingly, and ironically, it is possible that this would be a more permissive pathway to admission to practice in Wisconsin than our own diploma privilege graduates receive; students seeking the traditional diploma privilege have both detailed substantive educational requirements set out in Supreme Court Rule 40.03, and a requirement of satisfactory academic standing.

Third, the motion suggests basing new graduates’ eligibility for this emergency relief on whether the school from which they graduate has a “first-time taker bar examination passage rate of 80% or greater.” It’s not clear how that would be assessed, and not clear whether it’s a fair assessment. First, a school’s first-time pass rate may have more to do with where the graduates of a school take the bar examination than about their strength. As the Court well knows, some states have considerably lower bar pass rates than others by virtue of setting higher cut scores. Query whether this identifies a fair way of identifying schools from which graduates should receive the emergency benefits intended here. And query whether the school’s performance should be a proxy for the qualification of the individual applicants.

Last, it is worth noting that this relief, if granted, would not solve any of the admittedly perplexing problems relating to the administration of the bar examination this fall. This relief is for brand-new graduates only, who have never taken a bar examination. It would not obviate the need to administer a bar exam; attorneys from other jurisdictions who are not in a position to satisfy the competency requirements of Supreme Court 40.05 through proof of practice, and any law graduate who graduated before the spring of 2020, or has failed a bar examination (Wisconsin’s or elsewhere), would still need to pass the bar examination to seek admission to practice in our State. Accordingly, the Request does not resolve the complex issues posed by scheduling and administering a bar examination under the constraints and uncertainty posed by the coronavirus pandemic, which will remain to be managed.

One last thought. Modifications to existing Supreme Court rules based on one-off, short-term concerns seem ill-advised and problematic. Should the Court wish to proceed with new rules for the COVID pandemic, it seems the better course to devise specific emergency rules, denominated and numbered differently, that can be deleted once our current difficulties are behind us.

Once again, I am grateful for the opportunity to address the Court on this matter. As I am stepping down from the deanship at UW, this is likely to be my last interaction with the Court in this role. I would like to take this moment to express my appreciation to the Court for its consideration, courtesy and collegueship with regard to the legal education enterprise in our state. We all are the better for it.

Yours very truly,



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