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March 17, 2026

VIA ELECTRONIC COPY ONLY

Bridget Schoenborn and Timothy M. Barber
Wisconsin Supreme Court Commissioners
c/o Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, Wisconsin 53701

Re: Rule Petition 25-04

Dear Ms. Schoenborn and Mr. Barber:

I submit this letter in response to your memorandum, dated March 13, 2026, concerning the above-listed rule petition. Your inquiry concerns the number of Wisconsin law and practice educational credit hours that an applicant for admission to the bar by examination will have to complete. To answer the specific question posed in the March 13 memorandum, I do not have "any concerns with th[e] revision to the rule petition in light of the diploma privilege."

An earlier letter from me to the Director of the Board of Bar Examiners, on March 2, 2023, also at the request of the Court, provided somewhat broader comments about the diploma privilege and the bar exam or the Wisconsin bar admission system more generally. I enclose it together with this letter because its observations may remain helpful in future considerations. Yet no part of my including the earlier letter is to qualify, or in any way to subtract from, my statement in the previous paragraph here; indeed, I will add that the incorporation of the Uniform Bar Exam, in the general way envisioned, continues to make sense to me.

I am grateful for your inquiry. Please let me know if I am incorrect in my understanding that my submitting this letter by email is sufficient.

Respectfully,

A handwritten signature in blue ink that reads "Joseph D. Kearney".

Joseph D. Kearney
Dean and Professor of Law



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March 2, 2023

Director Jacquelynn B. Rothstein
Board of Bar Examiners
110 E. Main St., Suite 715
Madison, Wisconsin 53703

Re: *Chief Justice Ziegler's Letter of February 20, 2023*

Dear Director Rothstein:

I write concerning Chief Justice Ziegler's inquiry to you as to "how Wisconsin could adopt the NextGen bar exam and still satisfy the Wisconsin element such that there would be no jeopardy to the Wisconsin diploma privilege." Letter of Feb. 20, 2023. I am grateful for the Chief Justice's interest in "input from the Deans of the two Wisconsin law schools."

To begin, permit me to note some uncertainty concerning the "NextGen bar exam." As I understand it, a number of important details are not yet available concerning this forthcoming product of the National Conference of Bar Examiners. In all events, however, reliance on such an exam, *as the sole testing device*, would be hard to square with the tradition in Wisconsin, in which our Supreme Court has always taken quite seriously its responsibilities concerning bar admission and thus engaged in more of a "hands-on" approach than seems the case in some other jurisdictions. To state the matter at a level of generality: the Justices have historically made it a point to maintain close contact with the lower courts, the bar, the state's law schools, and, of course, the Board of Bar Examiners (BBE) and the Office of Lawyer Regulation, the agencies whose members the Court itself appoints. Such engagement and oversight have allowed the Court to make informed judgments about the standards being applied—and appropriately to be applied—for bar admission.

To make a more specific statement: the process of the development and grading of key portions of the Wisconsin bar exam by members of the BBE and other Wisconsin lawyers has provided the Court with access to direct evidence of the relevance and rigor of those portions of the exam. By contrast, entire reliance on national producers of bar exam components for judgments about the relevance and rigor of the exam would seem necessarily to diminish the standards-setting role that our Supreme Court and the BBE traditionally have played in regulating the profession of law in Wisconsin.

Director Rothstein

March 2, 2023

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In short: Testing expertise from the National Conference of Bar Examiners is a valuable tool, but it will not serve all of the same purposes as the informed judgment about the competence of bar-exam takers that the Supreme Court is currently able to exercise. A mix of Wisconsin and national components of the Wisconsin bar examination likely serves the Wisconsin public better than would a strictly national exam. That is the current approach, and it seems to me a wise way to proceed.

I turn now to a matter where, after some twenty years as dean and during that time having had successful involvement in both federal litigation and a rules-petition proceeding concerning it, I may be thought to have particular expertise: the diploma privilege. The diploma privilege reflects our Supreme Court's judgment as to appropriate public policy for one means of bar admission in Wisconsin. Most basically, it rests on the Court's confidence in the education received by graduates of the law schools at Marquette University and the University of Wisconsin.

This confidence is well placed, for it draws on the knowledge and experience of the Justices from their innumerable engagements with the Wisconsin legal community. Given the inquiry here, it may suffice to say this: the diploma privilege recognizes that graduates of the two schools learn a material amount of Wisconsin law and that they substantially engage with Wisconsin lawyers in their studies. (Certainly, true and important as those things are, they only begin to describe the strong justification for the diploma privilege.) In these circumstances, the diploma privilege should face no "jeopardy" (Letter of Feb. 20, 2023) as long as the Court has the confidence noted, and the use of a nationally based exam for admission of new graduates of non-Wisconsin law schools, if such is the Court's judgment, should not undermine the diploma privilege.

To be sure, the adoption of an entirely national exam could be *claimed* by some to support the rejection of state-based standards for bar admission, to the detriment of the diploma privilege. Yet the circumstances described in the Chief Justice's February 20 letter—where out-of-state law school graduates seeking admission by examination using the "Next Gen bar exam" also continued to encounter a "Wisconsin element" (in particular, some questions developed under the Court's supervision)—would help defeat any such claim.

I am grateful for the opportunity to provide input.

Sincerely,



Joseph D. Kearney

Dean and Professor of Law

cc: Hon. Annette Kingsland Ziegler,
Chief Justice, and Justices of the
Wisconsin Supreme Court