

JOSEPH T. YOST
1212 Crockett Lane
Silver Spring, Maryland 20904
Joeyost321@msn.com

August 11, 2020

via electronic mail

Office of the Clerk
D.C. Court of Appeals
430 E Street, N.W.,
Washington, D.C. 20001
rules@dcappeals.gov

RE: Proposal for granting a diploma privilege or expanding the scope of temporary practice

Dear Clerk of the D.C. Court of Appeals,

I am an inactive member of the DC Bar; I appreciate the opportunity to present comments on the above-referenced issues.

I oppose the proposal to grant a diploma privilege to recent law school graduates. While necessity dictated that the July bar exam be cancelled, the decision to offer a remote bar exam on October 5 and 6, 2020, is a reasonable alternative given the unprecedented challenges caused by the COVID-19 pandemic.

I do not think that an online bar exam is technically unworkable. I understand that law schools routinely administer online exams. Thus, there is ample precedent for successfully conducting an online bar exam.

I can understand the frustration of recent law school graduates having to wait two additional months before they can take the exam, and ultimately be admitted to the bar and begin earning their livelihood as attorneys. Thus, I recommend that the Court consider granting recent graduates the right to temporarily practice law, but only if they do so under the direct supervision of a licensed and active member of the D.C. Bar.

Respectfully,

/ S /

Joseph T. Yost

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



August 12, 2020

Via Electronic Mail

Clerk of the Court
District of Columbia Court of Appeals
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700
rules@dcappeals.gov

Re: Notice No. M-269-20

Dear Clerk of the Court:

As the chief legal officer for the District of Columbia, I write to urge the Court to amend D.C. Court of Appeals Rule 48 to allow some recent law school graduates to practice law under supervision until an in-person bar examination can safely be administered in the District of Columbia. This letter responds to the July 29, 2020 notice seeking public comment on requests that the Court: (a) establish a procedure to admit law-school graduates without requiring them to take and pass a bar exam (“diploma privilege”); and/or (b) broaden the circumstances in which law-school graduates who have not yet been admitted to the D.C. Bar (or perhaps any bar) can temporarily practice law. Authorizing recent law school graduates to practice under supervision for a limited time will ensure they will provide quality legal services while mitigating the financial hardship on these prospective lawyers.

I. Requiring recent graduates to take the bar examination in October will create financial hardship that disproportionately will affect minority applicants.

For many graduating law students, delay in entry to the legal profession will result in extreme financial hardship. Adding to the high cost of living in the Washington, D.C. metropolitan area, many have enormous student loan debt, childcare or other familial expenses, or health care needs for which they need adequate health insurance. At the same time, studying for the bar during the COVID-19 crisis has become a near impossibility for many. That childcare currently is expensive and risky, if it is available at all, means many prospective lawyers are balancing childcare and whatever paid work currently is available to them with preparing for the examination. The need to remain home to stop the spread of the virus means many do not have a quiet place to study—children, other family members, or roommates all are home together almost all the time, and libraries and other facilities are not available. Many also lack

internet, a computer, a webcam, or other technology that is needed to study and sit for the on-line bar examination in October. Compounding this is the ever-present anxiety and fear that accompanies living through this world-wide public health and economic crisis.

For members of minority communities, which have been hardest hit by this disaster, these difficulties tend to be more common and more severe. For example, Black applicants are more likely to know or be caring for someone who is infected and have reason to be fearful for their lives and the lives of their loved ones. One out of every three Black Americans personally know someone who has died as a result of COVID-19.¹ Here in the District, African Americans make up half of COVID-19 cases, and 74% of the people who have died of COVID-19 were Black.² The wide and persistent wealth gap between white and minority Americans means that minority law school applicants also are more likely to face economic hardship by delayed entry to the Bar and the difficulties in studying and sitting for the October bar examination. According to the Pew Research Center, “[a]mong lower- and middle-income households, white families have four times as much wealth as black families and three times as much as Hispanic families.”³ In Washington, D.C., white households have a net worth 81 times greater than Black households.⁴

Delaying bar entry would compound the hardship faced by those unable to enter the legal field. Allowing otherwise qualified recent graduates of ABA-accredited law schools to practice under the supervision of an experienced attorney until the pandemic is under control will allow these prospective lawyers to obtain legal employment while ensuring the legal services they provide are high quality.

II. Temporary practice under supervision appropriately balances the need for graduates to obtain legal employment with the duty to ensure legal work is high quality.

District of Columbia Court of Appeals Rule 48, which allows some law students to engage in the limited practice of law under supervision, could be amended to allow recent graduates to practice law without risk that the quality of legal services in the District will be compromised. Such an amendment is in line with the recent policy resolution of the American Bar Association (“ABA”), which “strongly urges” state licensing authorities to adopt rules to allow

¹ See Amy Goldstein and Emily Guskin, *Almost One-Third of Black Americans Know Someone Who Died of Covid-19, Survey Shows*, Wash. Post (June 26, 2020), https://www.washingtonpost.com/health/almost-onethird-of-black-americans-know-someone-who-died-of-covid-19-surveyshows/2020/06/25/3ec1d4b2-b563-11ea-aca5-ebb63d27e1ff_story.html; See also Ana Sandoiu, *Racial inequalities in COVID-19 — the impact on black communities*, Med. News Today (June 5, 2020), <https://www.medicalnewstoday.com/articles/racial-inequalities-in-covid-19-the-impact-on-black-communities#Making-sense-of-incomplete-data>.

² Coronavirus Data for August 8, 2020, <https://coronavirus.dc.gov/release/coronavirus-data-august-5-2020>.

³ See Rakesh Kochhar and Anthony Cilluffo, *How wealth inequality has changed in the U.S. since the Great Recession, by race, ethnicity and income*, Pew Research Center (Nov. 1, 2017), <https://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/>.

⁴ Kilolo Kijakazi et al., *The Color of Wealth in the Nation’s Capital*, A Joint Publ’n of the Urb. Inst., Duke Univ., The New School, and the Insight Ctr. for Cmty. Econ. Dev., Nov. 1, 2016, at VII.

2019 and 2020 graduates (and others who have been clerking since graduating) of ABA-accredited law schools to practice under the supervision of a licensed attorney if the bar exam in their jurisdiction is canceled or postponed.⁵ Several states, including California⁶, Delaware⁷, New York⁸, New Jersey⁹, and Ohio¹⁰, are developing such programs.

This Court should allow recent graduates to practice under the supervision of a qualified attorney, as it does for law students, and limit those allowed to participate in the program to recent graduates of ABA-accredited law schools who never have failed a bar exam and who had planned to take the examination this summer. Limiting the program to first-time bar takers who already had registered for the examination will not create a windfall for graduates who previously had failed the examination or had not planned to apply for admission. For those applicants who may have failed the examination had it been administered in the absence of COVID-19, supervision by a qualified attorney will ensure their law practice is of adequate quality. And for those graduates who have spent years preparing to enter the legal profession and relied upon the prospect of taking and passing the examination this summer, the program will offset the difficulties of not being able to do so.

I urge this Court to amend DCCA Rule 48 as recommended by the ABA to allow otherwise qualified law school graduates temporarily to practice under supervision if they have:

- (a) not previously taken the bar;
- (b) graduated from an ABA-accredited law school;
- (c) graduated in 2019 or 2020 have been clerking since graduation; and
- (d) registered for the October 5-6, 2020 bar examination as of the July 10, 2020 registration deadline.¹¹

⁵ ABA Comm. on Bar Activities & Servs. L. Student Div., *Report to the Board of Governor's Resolution*, https://www.abajournal.com/files/2020_law_grad_limited_practice_resolution.pdf, approved by the Board of Governors on Apr. 7, 2020.

⁶ Letter from Jorge E. Navarrete, Clerk and Executive Officer of the California Supreme Court, to Alan K. Steinbrecher, Chair of the State Board of Trustees of the State Bar of California (July 20, 2020), https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20206/SB_BO_T_7162020_FINAL.pdf, (directing the California State Bar “to implement, as soon as possible, a temporary supervised provisional licensure program — a limited license to practice specified areas of law under the supervision of a licensed attorney”).

⁷ Delaware Courts, <https://courts.delaware.gov/bbe/> (last visited Aug. 7, 2020).

⁸ Jack Newsham, *NY Law Grads Can Do 'Limited' Legal Work Under Supervision, Chief Judge Says*, New York Law Journal (Apr. 28, 2020), <https://www.law.com/newyorklawjournal/2020/04/28/ny-law-grads-can-do-limited-legal-work-under-supervision-chief-judge-says/?slreturn=20200709113026>.

⁹ Order Signed by Chief Justice Rabner, N.J. (Apr. 6, 2020), <https://images.law.com/contrib/content/uploads/documents/399/41467/Law-Grads-Order.pdf>

¹⁰ See Anne Yeager, *Law School Graduates Can Apply for Temporary Supervised Practice*, Court News Ohio (May 14, 2020), http://www.courtnewsOhio.gov/happening/2020/tempLawPractice_051420.asp#.Xy1z9ihKhPY.

¹¹ Order Extending Bar Application Deadline, D.C. (June 10, 2020), https://www.dccourts.gov/sites/default/files/2020-06/DCCA_Remote_Bar_Exam_Order_6-10-2020_1.pdf.

Given the difficulties in preparing and sitting for a bar examination while COVID-19 continues to disrupt all aspects of life, I recommend that this emergency order remain in effect until it is safe to sit for an in-person bar examination. At that time, those temporarily authorized to practice should be required to take and pass the bar examination the first time it is administered.

Thank you for seeking comment on this important issue and for considering my recommendation.

Sincerely,

Karl A. Racine/by JD

Karl A. Racine
Attorney General for the District of Columbia



August 12, 2020

Julio Castillo
Clerk, District of Columbia Court of Appeals
430 E Street, N.W.
Washington, D.C. 20001

Dear Mr. Castillo:

Thank you for the opportunity to provide comments to the Court about broadening the circumstances in which law school graduates who have not yet been admitted to the D.C. Bar (or perhaps any bar) can temporarily practice law. We are grateful for the Court's thoughtful consideration of options that would balance the needs of law school graduates with the Court's duty to protect the public and the integrity of the profession. To achieve this balance, the D.C. Bar proposes that the Court specifically authorize a limited legal practice program pursuant to its authority under Rule 49(c)(10) by building upon the existing exception to the unauthorized practice of law reflected in Rule 49(c)(9)(C)-(E).

The Current Plans for the Bar Exam

The global pandemic has caused personal, economic, and physical stress, suffering, and uncertainty for everyone, everywhere. The D.C. Bar is sensitive to the serious disruptions and daily challenges faced by the Court in serving litigants, attorneys, and the residents of the District of Columbia during these unprecedented times. We are aware that plans concerning the manner in which the D.C. bar exam is to be administered have evolved over time and that the Court and Committee on Admissions ("Committee") have worked tirelessly to ensure that it is done in a safe and equitable manner.

Several months ago, the Court made the difficult decision to cancel the in-person July bar examination. The Court ultimately rescheduled the examination to be an on-line exam on October 5 and 6, 2020 — ten weeks after the July in-person bar exam

would have been given. There is no limit on the number of applicants who can sit for the on-line exam. Although the exam will test Uniform Bar Exam (UBE) topics, it is not a UBE exam that will automatically result in a portable score to another UBE jurisdiction. However, as of this date, the Committee has secured reciprocity agreements for the portability of scores from the October 2020 Remote Bar Examination with seven other jurisdictions — Connecticut, Kentucky, Maryland, Massachusetts, New Jersey, Tennessee, and Vermont — and it continues to seek agreements with others. We understand that the Committee is committed to expeditiously grading the bar exam, and applicants can help expedite the process by starting the character-and-fitness portion of their applications prior to taking the exam. In addition, even in the absence of reciprocal arrangements with other jurisdictions, applicants who are admitted in D.C. are qualified to practice as in-house counsel or federal government attorneys in all 50 states.

Notwithstanding all of the above, the D.C. Bar appreciates that there remains uncertainty among the applicants who depend on bar licensure to secure employment. In June, law school deans of the District of Columbia law schools submitted a letter proposing a limited practice rule for law school graduates in 2019 and 2020 and for graduates of prior years who have been serving as judicial law clerks since graduation and have not yet taken a bar examination. *See* Proposal for Limited Practice Rule (June 2020) (“Deans’ Proposal”). On July 13 and July 15, recent law school graduates and others filed petitions with the Court seeking what is commonly referred to as a “diploma privilege,” or the privilege to practice law on a law school diploma alone. These petitions cited concerns involving the ability of law school graduates to practice because of the delayed exam. And just last week, the ABA’s House of Delegates passed Resolution 10G, urging states to make temporary accommodations to “expeditiously” license recent law school graduates and other applicants, but it warned against taking a “one size fits all” approach.

The D.C. Bar’s Proposal

After careful consideration, the D.C. Bar proposes that, to the extent that applicants may be disadvantaged by the delay in processing their applications for admission, the Court consider authorizing a limited practice program under D.C. Court

of Appeals Rule 49(c)(10) that builds upon the existing exception in Rule 49(c)(9)(C)-(E). That exception currently allows for pro bono practice by applicants waiting for bar exam results and who are supervised by an active D.C. Bar member in good standing. The limited practice program we propose would simply extend that exception to all applicants who take the October 2020 Remote Bar Exam, a UBE administered by another jurisdiction, or a bar exam administered by a jurisdiction with which the Committee has reached a reciprocal agreement, regardless of the nature of the legal work the applicants seek to perform.¹ The applicants would be subject to the same requirements that are contained in Rule 49(c)(9)(C)-(E), including:

- (1) they must have graduated from an ABA-approved law school;
- (2) they must have been certified by the dean of the law school from which they graduated that they are of good character and competent legal ability;
- (3) they must have taken either the October 2020 Remote Bar Exam, a UBE administered in another jurisdiction, or a bar exam administered by a jurisdiction with which the Committee has reached a reciprocal agreement;
- (4) they must be trained and actively supervised by a licensed D.C. Bar member in good standing;
- (5) they must agree to be subject to the District of Columbia Rules of Professional Conduct and the disciplinary enforcement procedures applicable to those rules, *see* Rule 49(c)(9)(D); and
- (6) they must give notice on all business documents that they are “practicing pursuant to a special order of the Court under the supervision of [NAME &

¹ While the Deans’ Proposal is restricted to law school graduates in 2019 and 2020 and to those who have served as judicial law clerks since graduation, the D.C. Bar’s proposal is not so limited. It would apply to anyone who takes the October 2020 Remote Bar Exam, a UBE administered by another jurisdiction, or a bar exam administered by a jurisdiction with which the Committee has reached a reciprocal agreement, regardless of the year in which they may have graduated from law school. Given the specific problem we are seeking to solve — i.e., the hardship resulting from the potential delay in grading the bar examination and in admitting applicants to the bar during the current pandemic — the D.C. Bar believes that the relief offered in its proposal should be afforded to anyone who would be directly affected by such a delay.

DC Bar Number], an active member of the D.C. Bar in good standing,” *see* Rule 49(c)(9)(E)(i). And any applicant who appears in court must file a completed Form 9 with the person’s praecipe of appearance and to submit electronically a copy of the completed Form 9 to the Committee on Admissions, *see* Rule 49(c)(9)(E)(ii).

We propose that practice under this exception would be available for individuals for as long as it takes their 2020 bar exam results to be reported and for the successful applicant to be sworn-in as a member of the Bar.² Candidates whose applications are not successful would immediately lose their privilege to practice under this proposal.

This is a limited exception for a limited time that addresses the concern that the delay in the exam will adversely affect the ability of law school graduates to practice. While it will not address the needs of those who cannot work under the supervision of a member of the D.C. Bar, it substantially addresses the practical needs of most applicants and balances the Court’s responsibility to the public to ensure competent legal representation.

The D.C. Bar’s Concerns Regarding The Deans’ Proposal

Although the Deans’ Proposal is similar to what the Bar is proposing here, there are some important differences that counsel against adopting it. First, the Deans’ Proposal would have the applicant “register with the D.C. Bar” as a condition of practicing under some temporary authority, whereas there is no registration requirement as part of the Bar’s proposal. Such a registration requirement raises a host of questions: What are the criteria under which graduates would be eligible for registration with the Bar and how would their status be identified and recorded in the

² The authorization to practice under this limited legal license program would expire for any applicant who is successfully admitted to practice in another jurisdiction, after having taken either a UBE or an examination in a jurisdiction with which the Committee has reached a reciprocal agreement. At that point, because the applicant would be entitled to practice under Rule 49(c)(8) — subject, of course, to satisfying the requirements of that exception — the temporary authorization contemplated by the D.C. Bar’s proposal would no longer be necessary.

Bar's records? Is there a license fee associated with such a registration, and, if so, how much would that license fee be? If it is to be less than the normal fee for active members, how would the Bar justify having existing members "subsidize" the fees of non-licensed members? What kind of "membership" status should such a temporary registrant have within the Bar? The Bar's proposal obviates the need to address many of these logistical concerns. There would be no need to issue temporary bar numbers, or create and implement for these applicants a new structure for registration, membership status, or fees while they wait for their bar exam results. Under the Bar's proposal, these applicants would be temporarily authorized to practice under the supervision (and bar number) of a licensed D.C. lawyer.

Second, the Deans' Proposal envisions a role for the D.C. Bar to partner with the Committee and area law schools to identify attorneys admitted to practice in the District of Columbia who are willing to supervise law school graduates. Although the Bar can readily identify who qualifies as a member in good standing, and it could generally publicize the need for supervising attorneys, it goes well beyond the Bar's normal role to identify and match up attorneys who would be willing and appropriate to serve in a supervisory role with hundreds or several thousand law school graduates. Indeed, playing such a role would likely overwhelm the Bar's resources. It would also pose a serious organizational risk by creating the perception that the Bar has "vetted" attorneys to serve in a supervisory role as contemplated under Rule 49.

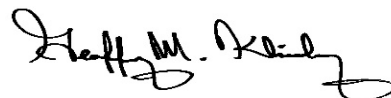
Finally, the Deans' Proposal would allow for applicants to practice law under this temporary authorization until the end of 2021. While none of us knows, of course, how long the current pandemic will last, the Bar believes that any temporary authorization to practice should last only so long as it takes for the results of this year's application process to be completed. Should it prove necessary to extend the limited legal practice program beyond the time period for reaching admissions decisions for all those who take the bar examination in 2020, the Court certainly can consider such an extension as appropriate.

Conclusion

The D.C. Bar urges the Court to consider adopting a limited licensing program under D.C. Court of Appeals Rule 49(c)(10) that would be based on the existing exception in Rule 49(c)(9)(C)-(E). Such a program would authorize applicants who take the October 2020 Remote Bar Exam, a UBE administered in another jurisdiction, or a bar exam administered by a jurisdiction with which the Committee has reached a reciprocal agreement to practice under the supervision of a licensed D.C. Bar member in good standing until the applicant learns the results of the bar examination and is thereafter either successfully sworn-in as a member or required to reapply. This solution has the advantage of responding to an unprecedented crisis by building on an existing framework. We believe that this proposal to authorize a limited licensing program, together with the steps the Court and the Committee have already taken to assist law school graduates, offers a reasonable solution to law school graduates while ensuring the protection of the public.

Please contact me at (202) 326-7928 or gklineberg@kellogghansen.com if you have any questions.

Sincerely,



Geoffrey M. Klineberg
President, D.C. Bar (2020-21)

cc: The Honorable Anna Blackburne-Rigsby
D.C. Bar Board of Governors
Robert J. Spagnoletti, Esq.