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Letter from NY Law Faculty in Support of Diploma Privilege

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By electronic mail

July 21, 2020

Chief Judge Janet DiFiore
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20 Eagle Street
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Honorable Carl E. Heastie
Speaker, New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

Honorable Andrea Stewart-Cousins
Temporary President and Majority Leader, New York State Senate
Legislative Office Building, Room 310
Albany, NY 12247

Dear Chief Judge DiFiore, Speaker Heastie, and Temporary President and Majority Leader Stewart-Cousins:

We are over 300 full-time faculty teaching across all disciplines at New York State's fifteen law schools, and we are writing in support of New York Senate Bill S8682A/A10794 to institute a one-time emergency "diploma privilege" to practice in New York for any person who is otherwise qualified for admission, provided that they demonstrate compliance with section 520.9 of the Rules of the Court of Appeals.¹ We also ask the New York Court of Appeals to exercise its authority to grant diploma privilege pursuant to N.Y. Judiciary Law § 53. We commend the Court of Appeals for responding to this unprecedented crisis by canceling the in-person bar exam scheduled for September. But because the Court has not yet decided what will replace the canceled exam, 2020 law school graduates and others who planned to sit for the September bar are now in an extremely difficult position.

Our support for diploma privilege is driven by many considerations. First, given the current COVID-19 global pandemic, authorizing a diploma privilege is the most prudent and equitable option for our state. Diploma privilege is not new. Wisconsin has granted diploma privilege to graduates of in-state schools since 1870, and in light of the ongoing pandemic, three states — Washington, Oregon, and Utah — have already granted diploma privilege to 2020 law school graduates.

Second, while administering an on-line exam mitigates some of the serious health concerns posed by in-person administration, it will only amplify the inequities that have been laid bare by the COVID-19 pandemic. Law students in New York and across the country had to finish their law school careers remotely, sometimes under dire home circumstances due to COVID-19. While finishing law school, some students home-schooled their children; others suffered job loss; and still others coped with family members who fell ill, became unemployed, or even died. And, because our campuses and other states' campuses were closed to students during the latter part of the spring semester, many of our students

¹ The bill requires applicants to take and pass the New York Law Course, the New York Law Examination, and the Multistate Professional Responsibility Examination; satisfy the requirements for good moral character and general fitness as required by section 90 of the Judiciary Law; and intend to practice law primarily in the State of New York.

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could not find a quiet place to study, as some struggled to find sufficient internet connections to even attend class. These same struggles will only be amplified in preparation for—and the actual taking of—this ultimate, high-stakes test.

With New York in a state of emergency, our campuses have been closed for months and only some have begun to reopen, and then only partially. Graduates have thus been unable to access quiet study spaces, quality internet access, in-person workshops or counseling with faculty members, or other resources that are routinely provided to our bar studiers. Graduates of color, who are disproportionately at risk of contracting the virus and suffering adverse consequences, are perhaps the most challenged in their bar preparation due to the increased health risks and inequality of access. Similarly, graduates whose families are struggling economically are much less likely to obtain these important services so long as campuses remain closed. This is true not only for graduates of New York law schools but also for all graduates who will be required to sit for the bar exam if they wish to practice law here.

In addition to the extreme stresses of this unprecedented pandemic, our state and nation are also reeling from the senseless and outrageous killings of George Floyd, Ahmaud Arbery, Breonna Taylor, Tony McDade and Rayshard Brooks—to name but a few who are the most recent victims of ingrained racism and violence toward people of color in our country. Those killings have prompted a massive ongoing effort to force a reckoning with the reality of structural racism in America, including protests throughout New York State. The profound impact of the protests, and the tragedies that led to them, do not fall equally upon all members of our community but put a significant burden on our communities of color, who experienced them on a very personal level.

Finally, our graduates are preparing for an exam that may not occur. With the postponement of the July exam and now the cancellation of the September exam, uncertainty abounds, only adding to the stress current bar applicants now face. Even if the bar exam goes forward at some unknown time, the applicants' ability to perform as well as possible will have been seriously undermined by the historic, disruptive circumstances under which our applicants are preparing, as well as the constant uncertainty and extraordinary conditions under which they will have to take the exam.

Given the turmoil our nation has endured over the past three months, the continued disruptions in the daily lives of our graduates, and the continued threat of COVID-19 throughout the United States, it is difficult to imagine how any bar examination in the coming months could be considered either prudent or fair. Allowing our graduates to engage in limited supervised practice is an insufficient substitute because many will be unable to secure work until licensed. Even those who can secure work would be tasked with studying for a postponed examination while actively representing clients. Furthermore, there is no guarantee the health crisis will have resolved by the next bar exam.

As law school faculty, we are confident that our graduates are practice ready. Graduates today are required to engage in practical skills while in law school and many students exceed the American Bar Association's requirements for experiential learning in clinics, simulation and skills classes, externships and clerkships. Moreover, the purpose of the bar exam — to ensure that licensed attorneys are competent to represent the interests of their clients — can be fulfilled through other means. For example, the Court of Appeals could impose heightened or specialized continuing legal education requirements for individuals who enter the profession through diploma privilege.

Diploma privilege is the most humane response for aspiring attorneys. And, with provisions such as enhanced continuing legal education requirements, the public can have great confidence that our newest New York attorneys will be more competent than ever to serve our community well.

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Our state needs well-trained, compassionate lawyer-leaders—now. Each day that passes in this new reality uncovers a host of important and novel legal issues. Our graduates can assist on the front lines, helping to address the complex and evolving legal needs of New York’s citizens. Under these unprecedented circumstances, we strongly support the above-mentioned bill and also ask the Court of Appeals to exercise its authority to afford diploma privilege for our 2020 graduates.

Very truly yours,

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