

SUPREME COURT OF LOUISIANA

O R D E R

Acting under the authority of Article V, Section 1 of Constitution of 1974, and the inherent power of this Court, and considering continuing need to modify the administration of the Louisiana bar examination in light of the spread of Coronavirus Disease 2019 (COVID-19),

WHEREAS, the Court previously issued an Order dated May 13, 2020 amending Part I of the written examination required by Section 7 of Supreme Court Rule XVII;

WHEREAS, the Court acknowledges that the COVID-19 pandemic has placed an unprecedented and extraordinary burden on applicants registered for the July and October 2020 Louisiana bar examinations;

WHEREAS, on July 11, 2020, Governor John Bel Edwards announced additional Phase 2 mitigation measures in Proclamation Number 89 JBE 2020;

WHEREAS, on July 15, 2020, the Court announced the cancellation of the July 2020 in-person and remote bar examination due to the rising coronavirus infection rate;

WHEREAS, the Court considered input from the Louisiana Supreme Court Committee on Bar Admissions and the deans of the four Louisiana law schools relating to the bar examination and the impact the COVID-19 virus is having on its administration;

IT IS HEREBY ORDERED THAT:

- I. Prior Order. This Order shall supplement the Order of this Court dated May 13, 2020.

II. Emergency Admission of Qualified Candidates.

1. Part I of the multi-part written examination required by Section 7 of Supreme Court Rule XVII, as modified by this Court's May 13, 2020 Order, is hereby waived for "Qualified Candidates."
2. A person shall be considered a Qualified Candidate if the person has:
 - a. Already completed registration for either the July or October 2020 Louisiana bar examination in accordance with the instructions issued by the Louisiana Supreme Court Committee on Bar Admissions;
 - b. Graduated in December, 2019 or later from an ABA-accredited law school; and
 - c. Not previously sat for any bar examination in any state or territory in the United States and will not be taking the bar examination in any state or territory in the United States in 2020.
3. Qualified Candidates must satisfy all other requirements for admission outlined in Supreme Court Rule XVII, including demonstrating requisite character and fitness and passing the Multi-State Professional Responsibility Examination. Upon completion of all requirements, the admission will be effected as soon as practically possible by the Louisiana Supreme Court Committee on Bar Admissions and the Clerk of the Louisiana Supreme Court.
4. In addition, Qualified Candidates who are admitted upon emergency waiver of the written examination pursuant to Section II.1 above must fulfill the additional requirements set forth below no later than December 31, 2021. Failure to complete these requirements shall result in a Qualified Candidate being certified ineligible to practice law in Louisiana until such requirements are fulfilled:

a. Complete 25 hours of CLE. 12.5 of the credits shall be obtained in accordance with the requirements set forth in Supreme Court Rule XXX(3)(b), and the remaining 12.5 hours may be in any other approved subject matter.

b. Complete all requirements of the Louisiana State Bar Association's "Transition Into Practice" program.

III. Remote Bar Examination.

1. No in-person bar examination shall be administered in Louisiana in 2020.

2. There shall be two remote administrations of the previously announced 1-day bar examination: August 24, 2020 and October 10, 2020.

3. The content and scoring details of the 1-day remote bar examination shall be the same as previously announced in this Court's May 13, 2020 Order. Applicants shall be permitted to use "scratch paper" during the remote examination.

4. Applicants who were currently scheduled to sit for either the July or October 2020 bar examination who are not Qualified Candidates may elect one of the following options for proceeding with their applications:

a. Withdraw the application for a full and complete refund of all application fees paid;

b. Transfer the application and fees, without further charge, to the (i) August 24, 2020 1-day remote bar examination; (ii) October 10, 2020 1-day remote bar examination; (iii) February, 2021 bar examination, or (iv) July 2021 bar examination.

c. Maintain a pending application for the October 10, 2020 1-day remote bar examination.

IV. Nothing in this Order shall prohibit a Qualified Candidate from sitting for any administration of the Louisiana bar examination; however, if such Qualified Candidate does not receive a passing score on the examination, he or she shall no longer be eligible for the Emergency Admission set forth in Section II above.

Given under our hands and seal this 22nd day of July A.
D., 2020, New Orleans, Louisiana.

FOR THE COURT:


Chief Justice Bernette J. Johnson

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HUGHES, J., dissents.

I must disagree with the majority's decision to award what is commonly referred to as the "diploma privilege" to recent law school graduates. It is an overreaction, to the earlier overreaction to the virus, whereby the scheduled July bar examination was canceled.

We have entrusted the Committee on Bar Admissions to administer the bar examination, yet have ignored their objective recommendations, while expecting the Committee to oversee the window dressing for automatic admission, a thankless task.

I respectfully dissent.

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GENOVESE, J., dissents and assigns the following reasons:

I vehemently disagree with and dissent from the Order of this Court dispensing with the taking of the July 2020 written examination (bar exam) by granting a “diploma privilege” solely on the basis of the seriousness and uncertainty of the Coronavirus affecting our nation, as there are alternatives.

Initially, I would like to point out that our Louisiana Supreme Court Rules require the taking and satisfactory completion of a written examination. There is no provision for a dispensation or waiver of said written examination. A significant number of states have opted for an online/remote bar exam which will insure the health and safety of any and all of its bar applicants; yet, this Court, by virtue of granting this “diploma privilege,” has improvidently chosen to waive and forego any testing at all of any and all bar applicants. This means that the class of 2020 gets a free pass and a law license with no bar exam, not even an online/remote one-day bar exam, and is virtually given a license to practice law with no testing at all. This privilege was not afforded the class of 2019 and undoubtedly will not be afforded the class of 2021, or any other class.

This Order labels this free pass as an “emergency admission.” And I ask, “Just what is the emergency?” There are over 22,000 lawyers licensed to practice law in Louisiana, all of which have taken a bar exam and are available for use by the public in general; but now, a majority of this Court will simply allow over 500 bar applicants to be given a license to practice law without any testing under the auspices of an “emergency.” Certainly, there is no shortage of attorneys nor is there any

emergency. The emergency, if any, is not allowing over 500 applicants into the practice of law without testing and a proof of competency. It should also be noted that the statistics show that approximately 25% of bar exam applicants fail the bar exam. That system of checks and balances will not be had. All bar applicants are let in, and over 100 bar applicants will be given a license to practice law when they should not have been. What other professions are allowing a professional license without testing?

Bar exam testing is sacrosanct and should be adhered to in order to insure competency in the practice law and for the protection of the public in general. As stated herein, there is presently available competent online/remote testing presently being used by several other states which, at the very least, should be required before giving out law licenses under the guise of a deemed emergency. I would require, at the very least, a test of some sort, and not a “give-away” license to practice law.

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CRAIN, J., dissents with reasons.

Today we follow. We follow a small group of students who organized to advocate that they not be tested for minimal competency. We follow conflicted interests. We follow “the deans of the four Louisiana Law Schools” whose students, for the first time, would have been tested by someone other than their respective law schools. And today we follow three other states, Washington, Oregon and Utah, who prefer to gift a law license rather than test competency. Make no mistake about it, today we follow.

Without testing for minimal competency, the majority today grants “emergency” admission, or licenses to practice law, to over 500 new lawyers holding law degrees from both in-state and out-of-state law schools. As noted by my colleague, Justice Genovese, where is the “emergency” to admit over 500 new lawyers to practice law without testing minimal competency? If anything, removing the sole competency filter for admission to the practice of law will *create* an emergency, not eliminate one. The bar examination acts to protect the public from basic incompetency. Are our counterparts in the medical and accounting professions handing out licenses to practice medicine and certificates of public accounting without testing competency? We owe a responsibility to the public that an individual certified as a legal professional be actually qualified for the certification.

This court explained the origin and the importance of requiring passage of the bar exam in *Bester v. Louisiana Supreme Court Comm. on Bar Admissions*, 2000-1360 (La. 2/21/01), 779 So. 2d 715, 718:

The Louisiana Legislature has specifically recognized this Court's authority to regulate bar admissions. Some 77 years ago, the Legislature, in an effort to “promote legal education by requiring better qualifications of candidates for admission to the Bar ...” called upon this Court to establish procedures for examining the competence of persons to practice law. 1924 La. Acts 113. In that Act, the Legislature provided:

Be it enacted by the Legislature of Louisiana, That every applicant for admission to the Bar of this State, whether holding a diploma from a Law School or not, before being licensed to practice law shall be required to pass a satisfactory examination before the Committee of Bar Examiners of the Supreme Court, on such subjects and under such rules and regulations as are now, or may hereafter be, prescribed by the Supreme Court ...

In 1999, the provisions concerning bar admission were moved from the Articles of Incorporation of the Louisiana State Bar Association to the Supreme Court Rules. Nonetheless the requirement to take and satisfactorily pass the bar examination remains. *See* La. S. Ct. Rule XVII Sect. 3(F).

Based upon historical performance, at least twenty percent, and likely more, would not have passed our bar examination. The excuse for gifting licenses to applicants who have not proven their competency is the COVID-19 pandemic. Will we allow that as an excuse against the victims of incompetence? Further, the decision to forego the bar examination was not because we are incapable of administering the test safely. The Committee on Bar Admissions has taken monumental steps, partnering with medical and other interests throughout the state to construct a safe environment in compliance with Centers for Disease Control (“CDC”) guidelines for in-person testing. The majority rejected their efforts and advice, the very committee entrusted to “regulate the admission of qualified applicants to the Bar of this state.” *See* Sup. Ct. Rule XVII.

On the other hand, we recently lifted the ban on jury trials and are now ordering Louisiana citizens to courthouses throughout the state to perform their civic duty. Our citizens are doing their critical part to keep our justice system functioning.

They should be applauded. In contrast, these applicants are being gifted a license to practice law because the majority concluded they cannot safely show up for the test. However, once practicing they will be required to go to court like everyone else.

It is not my intent to minimize either the pandemic or the challenges these students have faced and overcome to get to this point. The pandemic is a challenge and its risks are real. But, the virus is not going away. We must adapt to living with it, and we can. The majority ignored the practical solutions to confront the health concerns. The examination, which is typically given over a three-day period, was to be administered in one day, giving the applicants the option of testing in July or October and in person or remotely. While skeptical of the necessary rigor of a one-day exam, I voted to give the one-day test, seeing it as a reasonable alternative to a “diploma privilege.”

After our court approved that plan in April, the Committee on Bar Admissions began implementation. Locations were obtained across the state. Medical screening was arranged. Directives and guidelines from the CDC were complied with, including requiring masks and social distancing. The applicants began preparing for the test. They could test remotely if at risk or symptomatic on the date of the test. But, despite these sensible solutions, the majority has now chosen to gift a license to practice law to untested applicants. Membership in the profession of law has always been characterized as a privilege, not an entitlement. Today that appears to have changed, and I fear we may unintentionally be joining a broader effort to eliminate such high-stakes testing.

The inequities and inconsistencies spawned by this decision are too many to number. Why is taking the bar examination not safe for those “qualified candidates,” but safe enough for those who are not “qualified candidates”? The latter will be tested in August and October. Are they not affected by the pandemic? Why should a person who took the bar previously, but failed due to unfortunate events that

undermined their preparation, now be denied a “diploma privilege” when we know at least twenty percent of these 2020 applicants would have also failed? As applied, the order rendered by the majority is unfair and results in disparate and random treatment— the type of injustice the judicial system should seek to prevent and remedy. Equity does not demand that a select few applicants be admitted, but that *all* be tested.

Today our court stands nearly alone. Unfortunately, I do not believe we have distinguished ourselves in a positive way. Given the opportunity to be an example for overcoming challenges, we lost our will to persevere. When Hurricane Katrina hit, this state became well-known for its fight and grit during those near hopeless times. Numerous test results from the bar examination administered in the summer prior to Hurricane Katrina’s landfall were destroyed. Still, we did not forego the requirement of a bar examination. The affected applicants had the opportunity to *retake* portions of the exam. Not even in the face of flood-induced homelessness, near complete displacement, and death did we eliminate this prerequisite. Those students took the examination, or at least parts of it, *twice*. Those applicants rose to the occasion and proved themselves worthy of a law license and the public’s trust. I have no doubt the current applicants could do the same.

We have the constitutional authority to define and regulate all facets of the practice of law. Draped with this authority, and at a time when our leadership is most needed, we followed. As stewards of our third branch of government, we have done an incalculable disservice to the public, our profession, and these otherwise deserving students. Gifting a license to practice law is wrong. Consequently, I dissent.