

July 6, 2020

Dear members of the North Carolina Board of Law Examiners, Governor Cooper, and Justices of the North Carolina Supreme Court:

Thank you for your service to our state and our profession during this unprecedented time. We appreciate the measures you have taken to keep North Carolinians safe and the court system open and accessible to all. We also recognize and appreciate the hard work that the Board of Law Examiners has put into developing plans for the administration of the bar exam during the COVID-19 pandemic. We know that, like so many things in the COVID-19 era, you are faced with complex problems that have no perfect solutions.

We are a group of North Carolina lawyers and law professors¹ concerned about our graduates, alumni, and future colleagues currently scheduled to sit for the July 2020 bar exam. Most of us are also members of the North Carolina Bar. We write to express our concern over the current plans for the North Carolina bar examination and to offer alternatives that would better minimize risk of illness for bar exam takers and the people of North Carolina.

As you know, passing a bar exam is required to receive a law license which, in turn, is critical to the ability to earn a salary, particularly in the middle of a devastating recession. But to take this month's in-person bar exam, test-takers must "acknowledge[] and voluntarily assume[] all risk" of COVID-19 exposure and infection.

We understand that the BLE has tried to lower this risk through substantial precautions designed to minimize the spread of COVID-19 at the bar exam. We appreciate these measures. They are not enough.

As we write this letter, Governor Cooper's executive order dated May 20, 2020 prohibits indoor gatherings of ten people or more.² Chief Justice Beasley's Emergency Directives for North Carolina Courts prohibit jury trials through at least the end of July and direct judicial officers to "minimize large gatherings and face-to-face interactions between court personnel and the public

¹ This letter is also supported by medical professionals, as well as concerned citizens, whose signatures appear below.

² N.C. Exec. Order No. 141 (May 20, 2020), <https://files.nc.gov/governor/documents/files/EO141-Phase-2.pdf>.

to the greatest extent possible.”³ Guidance from the CDC indicates that highest-risk events are “large, in-person gatherings where it is difficult for individuals to remain spaced at least six feet apart and attendees travel from outside the local area.”⁴

The current bar examination plans contradict these directives. They contemplate people travelling from across the state to gather by the hundreds at a time when North Carolina’s COVID-19 metrics--percentage of positive tests and hospitalizations--are going in the wrong direction.⁵ The Chair of the BLE has stated that she expects approximately 390 applicants in one building and 300 in another.⁶ Even with rigorous precautions, including the BLE’s plans to use multiple exits and entrances, test-takers could end up taking COVID-19 back home with them to cities and towns across our state.

Current bar examination plans place significant burdens on prospective test-takers that disadvantage them as a group compared with prior years’ examinees. These burdens often fall most heavily on Black, Latinx, and Native American people, who are disproportionately at risk of contracting COVID-19. The current plans also disproportionately affect test-takers at higher risk of contracting COVID-19, those at higher risk from suffering from COVID-19 complications, and those who live with or care for someone in one of those categories. The BLE website acknowledges that the BLE cannot provide appropriate accommodations--isolation--for all applicants who may be at higher risk of COVID-19 infection, which includes some with documented disabilities. And the BLE’s procedures do not seem to provide accommodations for test-takers who live with someone in a medically vulnerable population, leaving those takers with only bad options and a difficult decision. Still other test-takers have mental health issues that will severely affect their ability to take--and perform well on--the exam under present conditions. Finally, many simply do not want to participate in an indoor gathering of up to four hundred people that, despite the BLE’s best efforts, might end up being a mass spread event.

³ Order of the Chief Justice of the Supreme Court of North Carolina (June 20, 2020), <https://www.nccourts.gov/assets/news-uploads/20%20June%202020%20-%207A-39%28b%29%282%29%20Extension%20Order%20for%20Emergency%20Directives%209-16%20%28FINAL%29.pdf?BFx89k8V3CLISIT9Qq7mUzRSfUGWt6u7>.

⁴ *Considerations for Events and Gatherings*, Ctrs. for Disease Control & Prevention, https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcommunity%2Flarge-events%2Fmass-gatherings-ready-for-covid-19.html (last updated June 12, 2020).

⁵ *COVID-19 North Carolina Dashboard*, N.C. Dep’t. of Health & Human Servs., <https://covid19.ncdhhs.gov/dashboard> (last visited July 6, 2020).

⁶ *See State Bar Exam to be Given Amid Pandemic*, Spectrum News (July 2, 2020, 12:16 PM), <https://spectrumlocalnews.com/nc/triangle-sandhills/capital-tonight/2020/07/02/state-bar-exam-to-be-given-amid-pandemic>.

As it stands, many test-takers will feel compelled to take a bar exam under conditions they feel are unsafe. Some bar applicants will reluctantly be forced to forego the exam entirely, or will leave North Carolina in favor of taking an exam in a state with safer exam conditions.

Asking applicants to jeopardize their own health--as well as the welfare of their families and members of the public--as the price of admission to our profession is problematic, to say the least. All of us must do what we can to ensure that this cohort of prospective lawyers has a fair chance at safely and swiftly obtaining a North Carolina law license.

During these unprecedented times, we ask you to work together to ensure the safety and wellbeing of this year's bar takers and their loved ones. At the very least, we encourage you to ensure safer testing conditions for the July exam by adding additional, local testing sites that would minimize the number of people per room and minimize the travel required for test-takers to sit for the exam. We understand that several North Carolina law schools have offered the use of their facilities at no cost. We are certain that many North Carolina law firms would similarly offer their conference rooms at no charge. There are many options if we are willing to be flexible and creative.

Additionally, we ask that the Board and the Court also consider expanding the available paths to timely licensure, especially for test-takers who do not need transferable scores. Some of these alternatives, as well as a proposal to adjust the cut score of any exam to account for this year's unique circumstances, are laid out in the test-takers' own heartfelt and powerful letter [here](#). We encourage you to read the letter and think creatively about a variety of options that balance the public health concerns described above with the needs of those who are willing to take an in-person exam under safe conditions, especially those who need a transferable score. To the extent that other applicants--and perhaps many other applicants--could be licensed by alternative means, that would additionally allow in-person examinations to be administered in a safer manner.

We know that there are difficult decisions to be made. But we also know that time is of the essence. Test-takers are preparing for perhaps the most important and stressful test of their lives in a situation where they are also anxious about their safety. At the very least, these applicants need to know that they will be able to take that test in the safest possible environment.

Thank you very much for your ongoing leadership and attention to this pressing issue.

Sincerely,

**If you would like your signature to be added to this letter, please fill out [this form](#). Thank you!

NC Supreme Court Justice

Justice Robert F. Orr (retired)

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Michele Okoh, Senior Lecturing Fellow of Law

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Sean Bickford, The Lawyers' Committee for Civil Rights Under Law
Megan Bishop
Ethan Blumenthal, CEO, Good Solar
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Megan Broad, Contracts Specialist, PRA Health Sciences
Carol Brooke, Senior Staff Attorney, NC Justice Center
Jonathan E. Broun, Senior Staff Attorney, Prisoner Legal Services
Kelly Brown, Senior Attorney, Akin Gump
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Marian Burroughs, Clerk on NC Court of Appeals, Raleigh, NC

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Frances C. Castillo, Contract Development Consultant
Cheyenne N. Chambers, Attorney, Tin Fulton Walker & Owen, PLLC
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Kelley DeAngelus, Assistant Public Defender, 10th Judicial District
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Sheri Dickson, Staff Attorney, Legal Aid of North Carolina
Doris Dixon, Partner, Schell Bray PLLC
Mark Dorosin, Managing Attorney, Lawyers' Committee for Civil Rights Under Law
Kerry Dutra, Attorney, Hall, Render, Killian, Heath & Lyman, LLP
Nicole Edwards, Staff Attorney, North Carolina Prisoner Legal Services
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Ryan Fairchild, Attorney, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Kelly Fairman
Sarah Jessica Farber
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Emma Ferriola-Bruckenstein, Restoration Legal Counsel, Orange County Criminal Justice
Resource Department
Maria Flanagan, Senior Counsel & Corporate Secretary
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Lydia Gabbard, Senior Compliance Associate, Fairview Investment Services
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Allison Hawkins, Associate, Covington & Burling, LLP
Christopher J. Heaney, Board Certified Specialist in Criminal Law, N.C. Prisoner Legal Services
Samuel J. Hightower III, Staff Attorney, Legal Aid of North Carolina
Blakely Hildebrand, Staff Attorney, Southern Environmental Law Center
Amanda Hitchcock, Assistant Appellate Defender, NC Office of the Appellate Defender

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Aaron Thomas Johnson, Assistant Appellate Defender
Charles Johnson, Staff Attorney, North Carolina Prisoner Legal Services
Cydney Joyner, Attorney, Asheville, NC
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James Wudel, Associate, Dechert LLP
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Inc.

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