

June 10, 2020



The Honorable Chief Justice Debra L. Stephens
Washington Supreme Court
415 12th Ave SW
Olympia, WA 98501

Dear Chief Justice Stephens:

I write on behalf of the Seattle University School of Law faculty, who today voted unanimously to request that the Court afford a diploma privilege to law graduates who are currently registered for the July or September UBE administration in Washington. We are, thus, asking the Court to reconsider its May 13, 2020 decision via letter to proceed with the Summer 2020 administration of the bar exam. We urge the Court to announce that those law graduates who meet such eligibility requirements as the Court might set be admitted to the Washington State Bar without being required to take the bar examination. Our reasoning for this request for reconsideration of the Court's prior decision is explained below.

We are appreciative of the considered and thoughtful approach the Court took in studying and originally deciding the question of whether to proceed with administration of the Summer 2020 bar exam despite the obstacles posed by the COVID-19 pandemic. Since then, the stresses of dealing with the pandemic have continued unabated. Graduates of color and their families are disproportionately at risk of contracting the virus. Many of them or their families have lost jobs. And, not having secure and quiet places to study is undermining graduates' ability to prepare for the bar examination. Up until now, our university has not been able to provide a place to study for or take the examination. Many graduates are struggling with the uncertainties regarding the administration of the exam, making a challenging preparation all the more difficult.

While the challenges posed by the pandemic were at least somewhat known at the time of the Court's decision in May, what we didn't know was that the world would be turned upside down again as our communities and country have reacted to the senseless killings of George Floyd, Ahmaud Arbery, and Breonna Taylor. These recent racial killings and the resulting unrest and social action and activism have further affected our graduates, particularly those of color. Some of our students have said they have trouble sleeping, with the sound of helicopters overhead,

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the thunder of flash bang grenades nearby, and the stench of tear gas drifting indoors. The emotional toll of the killings is high and taxing the graduates' ability to effectively prepare for the bar exam. What we once described as an unprecedented situation with the pandemic has become almost surreal. We believe that the exponential impact of this crisis on top of the already stressful pandemic warrants re-looking at the decision to require bar exam passage for this set of graduates.

All of us who have passed one or more bar examinations know the significant challenge that two months of constant study poses in "normal" times. For those who have spent the final months of law school going to class online, who have had their living and working conditions disrupted, who have coped with supervising home schooling for their children, and who have helped family members who have become gravely ill from the virus and/or lost their jobs, the public health emergency has increased that challenge exponentially. With the tragedies of the past two weeks and the societal response to them, the stresses for some of our graduates have become overwhelming.

In making this request for a diploma privilege, we are mindful of the Court's deeply appreciated and moving recent statement on racial justice. The Court wrote, "Too often in the legal profession, we feel bound by tradition and the way things have 'always' been. We must remember that even the most venerable precedent must be struck down when it is incorrect and harmful." We are asking that you apply this same reasoning to the July and September administrations of the bar exam. While requiring a bar exam for licensure is supported by long precedent, doing so now may be insupportable given the extraordinary circumstances these graduates are facing. The burdens of the coronavirus pandemic and the racial unrest we are experiencing are being disproportionately borne by our graduates of color as they struggle to prepare for the bar exam. Removing the exam barrier to admission would be a step in responding to our graduates' concerns and in bringing "greater racial justice to our system as a whole."

In asking the Court to grant a diploma privilege, we recognize that our Seattle University School of Law 2020 graduates are not the only ones impacted by this decision. While we do not know the graduates of other schools as we know our own, we are certain that many of them are facing the same kinds of stresses as our graduates. The Court could take the position that Wisconsin does, providing admission to the Bar for graduates of Washington schools. Or, the Court could admit graduates of all accredited law schools who registered for the exam here and who otherwise meet the conditions for admission. The Court could also choose to limit the diploma privilege to those who have not previously taken the UBE in Washington.

In terms of readiness for practice, we are proud of the dedication and resilience of our Seattle U Law students and graduates and of the education we have provided to them, which as you know, includes significant externship and clinical experiences for most. Our graduates are ready and able to be excellent practitioners; we need them now more than ever to be able to provide our communities with the access to justice that motivated them to go to law school in the first place.

For the reasons articulated above, and in recognition of the extraordinary circumstances surrounding the administration of the bar exam in July and September, our faculty respectfully requests that the Court provide this diploma privilege.

Finally, looking to the future, our faculty also unanimously recommended that we ask the Court to establish a study group to evaluate whether the bar examination is the best way to determine admission to the bar. We recognize, informed by our experience particularly with our Access Admission program, that there are significant additional challenges faced by our graduates of color and those who experience economic disadvantage. We are aware of studies that suggest there are biases in testing and that there are more reliable ways to determine admission to the bar. And, we have faculty members who would readily participate in a study group that the Court or the WSBA might establish.

Thank you for your consideration of our time-sensitive request, and please don't hesitate to let me know if you have any questions. We deeply appreciate the Court's care for this next generation of lawyers and your leadership on matters of racial justice.

Sincerely,

A handwritten signature in black ink, appearing to read "Annette Clark". The signature is fluid and cursive, with the first name "Annette" being more prominent than the last name "Clark".

Annette E. Clark
Dean and Professor of Law