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July 21, 2020

The Honorable Nathan B. Coats
Chief Justice
Colorado Supreme Court
Ralph L. Carr Colorado Judicial Center
2 East Fourteenth Avenue
Denver, CO 80203

Dear Chief Justice Coats:

The COVID-19 pandemic has disrupted plans for administrations of the bar exams in many states. You have likely heard directly from many recent graduates of law schools, including my own, who are anxious about whether and how they may take a bar exam and enter the legal profession. I write to offer you my perspective as the dean of a law school and to share the steps that I and the other law deans in my state have taken in the hope that Colorado will also take them.

It is essential for the legal profession to welcome new members. The important work of law and justice, as well as the clients attorneys represent, need top talent. As a dean of a law school, I see directly how a regular and predictable path to licensure through a bar exam is necessary to attract able people to the profession. Students in J.D. programs study for three years in reliance on the availability of a bar exam shortly after their graduation in the jurisdictions of their choice. At the same time, the public must be protected, and the bar exam has been the traditional means of assuring minimum competence in practice.

Since the pandemic began, I and the deans of the other law schools in Illinois have advocated for two changes that we believe balance these important considerations during this unusual time. I write to share them with you in the hope that Colorado will consider adopting them, too. As the Dean and as a faculty member, I am proud that the University of Chicago Law School has graduates practicing in Colorado. Currently, one or more recent graduates of our Law School are registered to take the Colorado bar. I hope that these graduates and many future generations of our graduates will join your legal community and serve your state.

The first of the two steps that the law deans in Illinois sought is temporary supervised practice. We are grateful that the Illinois Supreme Court has adopted this

temporary measure.¹ Under a new subsection of the state's practice rules, 2019 and 2020 graduates of ABA-accredited law schools who have applied to take the Illinois bar exam in September 2020 or February 2021 may practice under the supervision of an attorney until they enter practice through the usual means of a bar exam. Other provisions, such as disclosure and ethical requirements, ensure that supervision is meaningful and protects the public.

I note that some recent law graduates have petitioned various states for diploma privilege, and some states, including Illinois, have declined these petitions. In recent decades, diploma privilege has existed in a small number of states, and in the past few weeks, a group of states have adopted versions of it. These new versions of diploma privilege have a variety of requirements, some of which, such as attorney supervision, are similar to what Illinois has required in extending supervised practice. The University of Chicago Law School is fortunate that its graduates have historically passed bar exams across the country at high rates. If the administration of bar exams becomes infeasible for the near future, other emergency routes to licensure, whether an expanded supervised practice or some version of diploma privilege, on a temporary basis would be sensible. These could be crafted in ways that again balance the attraction of talent to the profession and the protection of the public.

Second, I and the other Illinois law deans have asked for a remote administration of the bar exam in October 2020. When it became clear this spring that an in-person administration of the Illinois bar exam in July 2020 would not be feasible, we worked with the Illinois Board for Admissions to the Bar (IBAB) to plan an in-person seating in September 2020. Many deans volunteered the use of space at their law schools or universities to create in-person testing sites that would comply with social distancing requirements. In some cases this meant rescheduling academic activities or renting space from other units in our universities. Many of us assembled volunteer proctors from the ranks of our staff and alumni, groups who have already given so much to keep our normal activities proceeding at this challenging time.

Despite these preparations, recent weeks have given us reasons to question whether the plans for an in-person exam in September 2020 will be feasible. The public health situation in many states has worsened in recent weeks. The City of Chicago has imposed a 14-day quarantine on visitors from a list of other states, a list that continues to evolve over time. This requirement makes it impractical for test-takers from outside Chicago to take a bar exam here. Several public officials have raised the possibility that recently-lifted restrictions on gatherings and other activities may be re-imposed. Some states, including New York and California, have now cancelled their in-person September examinations.

These developments made the Illinois law deans concerned that an in-person seating of a bar exam in our state may become infeasible and our graduates could be left without an opportunity to take a bar exam in the state for the foreseeable future. We therefore asked the Illinois Supreme Court and IBAB to hold a remote bar exam in

¹ Ill. Sup. Ct. R. 711(g) (eff. July 2, 2020).

October 2020, even if it meant cancelling the in-person exam scheduled for September 2020. We believe that a remote exam would have integrity and could be safely administered. It would best balance the needs of welcoming new talent to the profession and protecting the public. Our letter to the Illinois Supreme Court and IBAB is attached for your reference.

In addition, we hope that a commitment to a remote exam can be made quickly. Many new graduates have had the date of the exam, its location, and the portability of scores changed already. These uncertainties, when combined with the broader public health and economic challenges, impair their preparation for the exam and endanger their employment prospects. Prompt notice of a remote bar exam and its timing would impart confidence that there will be route to licensure this year.

With that in mind, I write to you today to share with you the step Illinois has taken in adopting a temporary supervised practice and my and the Illinois law deans' request for a remote administration of bar exam in October 2020. I respectfully ask that Colorado consider adopting these two approaches as well. I appreciate that these requests are unusual, even unprecedented, but given the extraordinary uncertainties we all face at this time, I believe they are a sensible and measured response. If I can provide more information or assist as you respond to this challenging time, I am pleased to be available.

Thank you for your consideration, and thank you for your service to the legal profession and the people of Colorado.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas J. Miles".

Thomas J. Miles