

NEW YORK
STATE
SENATE



SENATOR MICHAEL N. GIANARIS
12TH DISTRICT
DEPUTY MAJORITY LEADER

July 13, 2020

Hon. Janet DiFiore, Chief Judge
The New York Court of Appeals
20 Eagle Street
Albany, New York 12207

Dear Chief Judge DiFiore,

I write today in response to the Court of Appeals' announcement that an in-person New York State Bar Exam will be held September 9-10, 2020. Though the Court of Appeals rightly decided to suspend the July examination out of concern for public safety in light of the coronavirus pandemic, just delaying an in-person exam to September poses a number of risks to test-takers. Preparing for the bar exam is itself a stressful venture, made more intense by the threat of a global pandemic. This further necessitates that test-taking conditions be as comfortable and safe as possible. For the following reasons, I urge the Court of Appeals to consider alternatives to an in-person exam in light of the current pandemic, and to take a more transparent approach with any future decisions regarding changes to the bar exam.

There is a real possibility, acknowledged by the New York Board of Law Examiners in an email to candidates on June 30th, that the September exam may again need to be postponed. With cases already spiking in multiple states across the country, we must be prepared for this eventuality. To again postpone the bar exam would be financially damaging for candidates who already have legal jobs paying a lower rate until bar exam passage. Others may not be able to attain employment to begin with until they have taken and passed the exam. Because there is so little information about the potential for the continued spread of COVID-19, another postponement of the July exam would push the test back a second time and be devastating for those waiting to take the exam.

Even if the spread of COVID-19 cases in New York remains manageable enough to make an in-person exam possible for September, there remains an immense public health risk to test-takers. Those taking the exam will have to sit in an indoor environment with numerous others. In the past, the July New York bar exam has attracted upwards of 10,000 people. Given that New York State is still hesitant to open large indoor spaces such as malls and gyms, any form of the test that requires test-takers to remain in one large indoor space is potentially hazardous. Further, those traveling to New York State from elsewhere, which typically consist of 30% of out-of-state law school graduates, not only pose a health risk to others, but also may first



face an impractical mandatory quarantine for 14 days under Executive Order No. 205 before taking the exam in person. These considerations, paired with the fact that applicants choosing to withdraw from the exam must do so by July 15th to receive a fee credit and are not entitled to refunds, will force candidates to take unnecessary risks at a perilous time.

Other states have substituted other measures for an in-person exam. At least five states (Massachusetts, Michigan, Indiana, Louisiana, and Nevada) and Washington, D.C. will be offering online exams while Utah, Washington, and Oregon have agreed to grant “emergency diplomas” to certain law school graduates. Though the Task Force on the New York Bar Examination expressed reservations about these alternative methods, the risks associated with a further postponement or the holding an in-person exam in September 2020 are too great to be ignored.

I urge you to consider practical alternatives to holding an in-person September 2020 bar exam, and that you demonstrate transparency in subsequent decision-making regarding changes to the bar examination.

Sincerely,



Senator Michael Gianaris

Deputy Majority Leader