How Law Schools Can Help Young Lawyers Practice During Bar Exam Uncertainty

Written by Damien Riehl

Things are never easy for a law school graduate. After three years of stressful study and hundreds of thousands in student loans, they now face the next hurdle in their slog to become a lawyer. All graduates must pass the bar exam. This is a test held just twice a year where law graduates must spend days regurgitating legal analysis and taking multiple choice exams. The tests are always held in large gatherings, overseen by lawyer proctors.

Ten to twelve weeks later, graduates will be informed if all their work, stress, and debt have paid off. If they pass the bar exam, they become lawyers. If they fail, they often disappear from the legal industry all together.

That's a normal bar exam. In 2020, law school graduates are facing hard choices and impossible situations.

The National Conference of Bar Examiners (NCBE) has been keeping track of how states are handling their bar exams as COVID-19 continues to spread across the country.

Credit: NCBE July 2020 Bar Exam: Jurisdiction Information

For the July 2020 exam, 22 states went ahead with in-person exams. Students had to choose between their health and their careers. Should they take the exam and risk their health? Many graduates choose to do so. The inevitable news of some test-takers being positive for the coronavirus has led to a wave of recriminations against bar examiners who choose to go forward. Many states have disastrously attempted to put their bar exams online. Other states have postponed their exams repeatedly. All of this leaves law school graduates in a limbo described in one article as a '"literal hell"'.

Despite graduating from law school last May, many recent law school graduates do not know when, if ever, they can practice law. In response, some law school graduates have called for 'diploma privilege.'

What is diploma privilege?

States offering diploma privilege will waive the bar exam requirement for a period. Law school graduates in those states can practice law in limited circumstances right now.

Four states have authorized diploma privilege. (Update: As of September 24, the District of Columbia adopted diploma privilege as well, albeit with restrictions). No other state appears eager to do so soon. **What's odd is that many law school graduates could also obtain a license to limited practice right now under legal intern programs.**

Getting recent graduates practicing with legal intern licenses

Fifty states and the District of Columbia allow law students to practice law in limited circumstances while under supervision. Legal interns are law students granted a limited license to advise clients and make appearances before courts and tribunals. To get this license, students have to be certified as fit for this service by their law school dean and operate under the supervision of a qualified attorney. If the students meet these conditions, their state court or board will issue a legal intern license.

Forty-two states allow recent law school graduates to continue limited practice under legal intern licenses. Graduates in these states can practice law with the requirement of supervision up until their first eligible bar exam. Many states allow bar exam takers' licenses to continue until the posting of the tests' results and the admission of passing graduates to the bar.

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Alaska	Georgia	Maine	Nevada	Oregon	Virginia
Arizona	Hawaii	Maryland	New Hampshire	Pennsylvania	Washington
Arkansas	Idaho	Massachusetts	New Jersey	Rhode Island	West Virginia
California	Illinois	Michigan	New Mexico	South Carolina	Wisconsin

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Colorado	Indiana	Minnesota	New York	South Dakota	Wyoming
Connecticut	Iowa	Mississippi	North Carolina	Tennessee	
Delaware	Kansas	Missouri	North Dakota	Texas	
District of Columbia	Kentucky	Montana	Ohio	Utah	
Florida	Louisiana	Nebraska	Oklahoma	Vermont	

There are limitations to legal intern practice. Legal interns cannot help just any client. Most states only allow legal intern licenses to help indigent clients. Legal interns also cannot charge or accept payment directly from those people they serve. This does not mean that legal interns must work for free. Thirty-five states expressly permit legal interns to be paid wages for their services. Only 4 states—Louisiana, Massachusetts, South Carolina, Wyoming—expressly forbid any type of remuneration. Within these limitations, a supervised legal intern can accomplish a lot and get paid.

If they're not doing so already, law school graduates waiting for a bar exam that keeps getting postponed could be practicing right now as legal interns. This does not solve the problem of postponed exams, but gives graduates a place to apply their bar prep until there is greater certainty.

How law schools should help graduates succeed during bar exam uncertainty

The first step in a legal intern certification is the law school dean certifying a graduate is fit to serve. Law school deans should be flooding their admissions offices with mass-produced certificates for each recent graduate right now. Entire classes should be certified to begin acting as legal interns.

Law schools should also consider hiring those certified graduates for legal clinics. For several years, law schools have been required to disclose how much post-graduate employment is funded by the law school. Funding too many graduates was seen as deceptive and bad behavior in which to engage for law schools. This is not the time to be concerned with that issue. 49% of recent law school graduates surveyed tell of having job offers rescinded.

Law school deans should be seeking access to justice grants and salary aid to cover wages. Legal clinics could be operating round the clock to help with the looming eviction crisis, unemployment insurance debacle, and the myriad of legal issues happening right now. Law schools running graduate legal intern clinics can take advantage of Clio's Academic Access Program for free, just like they do for law student clinics.

Law school graduates may not know if they'll ever sit for the bar exam, but we could let them know where their next client and paycheck are coming from. As legal interns, they could have access to both.

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