

12-1-2020

2020 BAR EXAMINATION: Judicial Order by the Supreme Court of Georgia Providing for Provisional Admission to the Practice of Law

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Recommended Citation

Jessica M. Luegering & Gabby Wimley, *2020 BAR EXAMINATION: Judicial Order by the Supreme Court of Georgia Providing for Provisional Admission to the Practice of Law*, 37 GA. ST. U. L. REV. 51 (2020).

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2020 BAR EXAMINATION

Judicial Order by the Supreme Court of Georgia Providing for Provisional Admission to the Practice of Law

JUDICIAL ORDER:	Order <i>In re</i> : Provisional Admission to the Practice of L. in Ga.
EFFECTIVE DATE:	June 1, 2020
SUMMARY:	The Supreme Court of Georgia issued the Judicial Order to postpone administration of the July 2020 Georgia bar examination to September 2020. The Order provided for the provisional admission to the practice of law of recent law school graduates and lawyers new to Georgia—those most affected by the postponement.

Introduction

As of October 10, 2020, the Centers for Disease Control and Prevention (CDC) reported 7.6 million COVID-19 cases in the United States.¹ COVID-19's highly infectious nature and the social distancing measures implemented to combat the spread of the virus caused major disruptions across all aspects of life.² The legal community was no exception—one of the major disruptions of the legal cycle was the rescheduling of the Georgia bar exam.³

1. United States COVID-19 Cases and Deaths by State of *CDC COVID Data Tracker*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> [<https://perma.cc/6XPG-8AMD>].

2. *See generally* Daily Activities and Going Out of *Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/activities.html> [<https://perma.cc/R55Z-B6RW>] (describing the various ways to protect oneself while engaging in activities such as going to nail salons, visiting the library, and using the gym).

3. STANDING COMM. ON BAR ACTIVITIES & SERVS. L. STUDENT DIV., AM. BAR ASS'N, RESOLUTION AND REPORT TO THE BOARD OF GOVERNORS 4, 6 (2020) (on file with the Georgia State

COVID-19 and the Bar Exam

Many aspects of the bar exam administration make it a fertile breeding ground for a COVID-19 outbreak. First, the bar exam is, at its core, a large gathering inside one room that takes place over two full days.⁴ Even if examinees are spaced out as recommended by the CDC, the six-foot measurement could be ineffective under many indoor conditions where air conditioning circulates.⁵ Masks that examinees could wear, though better than no protection at all, may not meet the standards that can appropriately filter virus particles.⁶

Second, the traditional Georgia bar exam takes place only in Atlanta.⁷ Hundreds of examinees need to travel to downtown Atlanta, find accommodations in Atlanta, and be able to safely stay in Atlanta as they take the bar exam.⁸ With such a large gathering in one location, the risk of an outbreak increases.⁹ In addition, those examinees could potentially bring the virus either to the test site or back to their communities after the end of the bar exam.¹⁰ The virus will not simply stay in Atlanta where the bar exam occurs—families and colleagues of examinees could be at risk if examinees return to their homes after contracting the virus during the bar exam.¹¹

University Law Review) [hereinafter STANDING COMMITTEE].

4. Virtual Interview with Andrea Curcio, Professor of L., Ga. State Univ. Coll. of L. (May 22, 2020) (on file with the Georgia State University Law Review) [hereinafter Curcio Interview]; GA. OFF. OF BAR ADMISSIONS, RULES, PROCEDURES AND INSTRUCTIONS FOR THE BAR EXAMINATION 9 (2019).

5. Kimberly A. Prather et al., *Reducing Transmission of SARS-CoV-2*, 368 SCI. 1422, 1423 (2020); Jianyun Lu et al., *COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020*, 26 EMERGING INFECTIOUS DISEASES 1628, 1629 (2020).

6. Tara Parker-Pope, *What's the Best Material for a Mask?*, N.Y. TIMES (Apr. 20, 2020), <https://www.nytimes.com/article/coronavirus-homemade-mask-material-DIY-face-mask-ppe.htm> [<https://perma.cc/RLB4-UEU5>].

7. GA. OFF. OF BAR ADMISSIONS, *supra* note 4, at 1.

8. Curcio Interview, *supra* note 4.

9. *Id.*

10. *The Health Risks of In-Person Bar Exams*, BARCOVID19: THE COLLABORATORY BLOG, <https://barcovid19.org/the-health-risks-of-in-person-bar-exams/> [<https://perma.cc/D9CA-S48T>].

11. Travel During the COVID-19 Pandemic of *Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> [<https://perma.cc/M3LV-8HDQ>].

Finally, the bar exam already places an enormous amount of stress and pressure on future lawyers.¹² The bar exam, which represents the final barrier one must cross to become a licensed attorney, takes place only twice a year.¹³ Examinees study for two months or more to prepare for a two-day test that determines their ability to practice law.¹⁴ The stakes are high; the pressure is immense; and examinees are fatigued and stressed—the perfect recipe for weakened immune systems.¹⁵ In addition, the 2020 examinees are subject to the unique stressors presented by the pandemic and thus may be unable to focus on such a large exam.¹⁶ For these cumulative reasons, law students from across the United States petitioned their respective state’s supreme court to provide alternate licensing procedures.¹⁷ The petitions proposed many alternative options in light of the surrounding circumstances, some of which were more successful than others.¹⁸

Alternative Licensure and Provisional Admission

The option most advocated for by students was an “emergency diploma privilege.”¹⁹ Diploma privilege, once common throughout

12. See, e.g., Alison Monahan, *Managing Stress and Anxiety While Studying for the Bar Exam*, NAT’L JURIST (May 30, 2019, 4:15 PM), <https://www.nationaljurist.com/national-jurist-magazine/managing-stress-and-anxiety-while-studying-bar-exam> [https://perma.cc/TH2H-JWQ9].

13. GA. OFF. OF BAR ADMISSIONS, *supra* note 4, at 2, 11.

14. Ashley Heidemann, *How Much Time Is Needed to Study for the Bar Exam*, NAT’L JURIST (Dec. 28, 2017, 9:52 AM), <http://www.nationaljurist.com/content/how-much-time-needed-study-bar-exam> [https://perma.cc/644J-MWWU].

15. *The Health Risks of In-Person Bar Exams*, *supra* note 10.

16. Letter from Law Students, New York L. Schs., to C.J. DiFiore, New York State Ct. of Appeals (Apr. 3, 2020) (on file with the Georgia State University Law Review) [hereinafter DiFiore Letter].

17. See, e.g., Letter from Jesse Kurtz, Law Student, Suffolk Univ. L. Sch., to Massachusetts Board of Bar Examiners (Mar. 30, 2020) (on file with the Georgia State University Law Review) [hereinafter Kurtz Letter]; Letter from Law Students, New York L. Schs., to Task Force on the New York bar examination, New York State Bar Ass’n (Mar. 26, 2020) (on file with the Georgia State University Law Review) [hereinafter N.Y. Bar Letter]; Letter from Law Students, L. Students for the Equitable Responses to COVID-19, to Pennsylvania Bd. of L. Exam’rs (Apr. 18, 2020) (on file with the Georgia State University Law Review) [hereinafter Pa. Bar Letter].

18. See discussion *infra* Section *Alternative Licensure and Provisional Admission*.

19. See, e.g., Kurtz Letter, *supra* note 17; N.Y. Bar Letter, *supra* note 17; Pa. Bar Letter, *supra* note 17; Meena Venkataraman, *Upcoming Texas Bar Exam Has Law Students, Deans Asking for*

the United States, now only remains in Wisconsin.²⁰ In Wisconsin, this privilege grants licenses to most graduates of the state's law schools without a bar exam.²¹ However, Wisconsin requires students to complete a specific number of credits in standard doctrinal areas of law, and half of such credits must come from specific subjects as defined within the state's rules.²² Since a similar system may be unfair to those students who took alternate paths during law school, New York students advocated for a "Diploma Privilege-Plus" system that would require students to complete some online courses or programs to demonstrate legal competency.²³ However, only a few states—Oregon, Utah, Louisiana, and Washington—have implemented an emergency diploma privilege as of August 2, 2020, suggesting that such an approach may not generate much support.²⁴

In addition to students concerned about their own future, scholars of alternative licensure pathways also offered solutions to the COVID-19-caused interruption of bar exam administration.²⁵ These alternative licensing procedures were not novel suggestions but rather

In-Person Testing to Be Scrapped, KSAT.COM, <https://www.ksat.com/news/texas/2020/07/01/upcoming-texas-bar-exam-has-law-students-deans-asking-for-in-person-testing-to-be-scrapped/> [https://perma.cc/F2B3-JPE7] (July 2, 2020, 7:00 AM); Kelsey J. Griffin, *Harvard Law School Students Advocate for Licensing Without Bar Exam*, HARV. CRIMSON, <https://www.thecrimson.com/article/2020/4/3/Harvard-coronavirus-law-school-petition-bar-exam/> [https://perma.cc/DX9M-TKWC] (Apr. 3, 2020, 4:26 PM).

20. Beverly Moran, *The Wisconsin Diploma Privilege: Try It, You'll Like It*, 2000 WIS. L. REV. 645, 646 (2000).

21. Claudia Angelos et al., *The Bar Exam and the Covid-19 Pandemic: The Need for Immediate Action 5* (Ohio State Univ. Ctr. for Interdisc. L. & Pol'y Stud., Working Paper No. 537, 2020).

22. WIS. SUP. CT. R. 40.03(2)(a)–(b) (requiring a total of sixty credits that "may be satisfied by combinations of the curricular offerings in each approved law school in [the] state," thirty of which "shall have been earned in regular law school courses" as defined within the rule).

23. DiFiore Letter, *supra* note 16.

24. Order Approving 2020 Att'y Admissions Process, No. 20-012 (Or. June 30, 2020) (on file with the Georgia State University Law Review); Order Granting Diploma Privilege & Temporarily Modifying Admission & Practice Rules, No. 25700-B-630 (Wash. June 12, 2020) (on file with the Georgia State University Law Review); Andrea Gallo, *Louisiana Supreme Court Grants 'Diploma Privilege' to Let Recent Grads Practice Without Bar Exam*, NOLA (July 22, 2020, 11:00 AM), https://www.nola.com/news/courts/article_411d4088-cb94-11ea-88cd-c74f58da6f9f.html; Stephanie Francis Ward, *Utah Is First State to Grant Diploma Privilege During Novel Coronavirus Pandemic*, A.B.A. J. (Apr. 22, 2020, 11:05 AM), <https://www.abajournal.com/news/article/utah-first-state-to-grant-diploma-privilege-during-the-coronavirus-pandemic> [https://perma.cc/G39M-R2J7].

25. Angelos et al., *supra* note 21, at 1 n.1.

were ideas that had been considered previously and, in some cases, implemented.²⁶ For example, the University of New Hampshire School of Law implemented the Daniel Webster Scholar Honors Program, a practice-based program with constant feedback from faculty and the Board of Law Examiners.²⁷ Upon satisfactory completion of the program, graduates earn admission to the New Hampshire Bar without needing to sit for a bar exam; graduates of the program have even earned the reputation of being “far more client-ready than non-participants.”²⁸ Though a system like this may seem too retrospective for a COVID-19 response, it demonstrates a practice-based method for licensing lawyers, as opposed to an exam-based method that seems less practical moving forward in light of the COVID-19-created disruptions.²⁹

Most states ultimately postponed their respective bar exams to the fall period, requiring the states to consider how to accommodate graduates who could not work in the interim.³⁰ In April 2020, the American Bar Association (ABA) issued a resolution that strongly encouraged licensing officials to institute emergency rules that would allow for provisional practice for recent graduates.³¹ The ABA emphasized that bar exams should remain the standard measure for licensure, and such provisional measures should be “available only for a specified time.”³² At the same time, however, the ABA acknowledged the need to mitigate the “unprecedented financial burden” graduates would face with the additional months of job

26. See Andrea A. Curcio et. al., *Testing, Diversity, and Merit: A Reply to Dan Subotnik and Others*, 9 U. MASS. L. REV. 206, 244 (2014).

27. *Id.* at 245–47.

28. *Id.* at 245, 247.

29. Curcio Interview, *supra* note 4.

30. See Karen Sloan, *Bar Exam Set for July, but Many States Still Delaying*, LAW.COM (May 5, 2020, 1:36 PM), <https://www.law.com/2020/05/05/bar-exam-set-for-july-but-many-states-still-delaying/> [<https://perma.cc/S484-AJY6>].

31. Manny Marotta, *ABA Encourages States to Adopt Emergency Bar Authorization due to Ongoing COVID-19 Pandemic*, JURIST (Apr. 8, 2020, 9:54 AM), <https://www.jurist.org/news/2020/04/aba-encourages-states-to-adopt-emergency-bar-authorization-due-to-ongoing-covid-19-pandemic/> [<https://perma.cc/FFQ8-4XCQ>].

32. STANDING COMMITTEE, *supra* note 3, at 1.

delay.³³ The Supreme Court of Georgia heeded the call of the ABA's resolution, ultimately issuing a provisional admission Order effective June 1, 2020.³⁴

Background

Passage of the Order

In April, the Supreme Court of Georgia undertook the task of determining, for logistical reasons, whether the bar exam could take place in July as originally scheduled, or if a September exam date presented a more feasible alternative.³⁵ Justices Blackwell and Peterson liaised with the Georgia State Bar, the Office of Bar Admissions, the Board of Bar Examiners, and the Georgia Department of Public Health.³⁶ The Court did not consider a specific rescheduling date for the exam, however, because the specific alternative date was provided by the National Conference of Bar Examiners.³⁷ The Court's chief consideration was "whether public health conditions would be more conducive" to a bar exam in either July or September.³⁸ Based on the input from public health authorities that the justices consulted, the Court determined that it was "more likely that a bar exam would be feasible in September."³⁹

The public health status still did not improve following the initial rescheduling of the Georgia bar exam.⁴⁰ Due to continuing

33. *Id.* at 5.

34. Order *In re: Provisional Admission to the Practice of L. in Ga.* (Ga. June 1, 2020) (on file with the Georgia State University Law Review) [hereinafter Provisional Admission Order].

35. Electronic Mail Interview with JJ. Blackwell & Peterson, Sup. Ct. of Ga. (June 1, 2020) (on file with the Georgia State University Law Review) [hereinafter JJ. Blackwell & Peterson Interview].

36. E-mail from Jane Hansen, Pub. Info. Officer, Sup. Ct. of Ga., to Jessica Luegering, Student Writing Ed., Ga. State U. L. Rev. (May 12, 2020, 12:12 EST) (on file with the Georgia State University Law Review) [hereinafter Hansen Email].

37. JJ. Blackwell & Peterson Interview, *supra* note 35.

38. *Id.*

39. *Id.*

40. See Nick Robertson, *Georgia's Coronavirus Case-Count Total Tops 190K on Saturday, As Hospitalizations Near 19K*, SAVANNAH MORNING NEWS (Aug. 1, 2020, 3:19 PM), <https://www.savannahnow.com/news/20200801/georgiarsquos-coronavirus-case-count-total-tops-190k->

COVID-19 concerns, on July 20, 2020, the Court cancelled the in-person bar exam scheduled for September, allowing applicants the opportunity to take an online exam in October.⁴¹ As of August 31, 2020, the Board of Bar Examiners had not set a date for the release of the online exam's scores—without some kind of emergency rule, recent graduates and out-of-state lawyers would find their ability to practice delayed even further than first expected.⁴²

Fortunately, when the bar exam was first rescheduled, the Court discussed the needs of recent graduates and out-of-state lawyers affected by the postponement of the exam and determined some relief would be warranted.⁴³ In determining the best kind of relief, the Court consulted State Bar leadership, Georgia law school deans, and the Board of Bar Examiners.⁴⁴ Ultimately, what became of those discussions was the Court's Provisional Admission Order filed on April 17, 2020, and effective on June 1, 2020.⁴⁵

The Order

The Supreme Court of Georgia included five separate provisions in the Order that define the provisional license, the process for attaining it, and other limitations.⁴⁶ The Order states that it “is a temporary emergency measure intended to mitigate economic hardships arising in connection with the postponement of the July 2020 Georgia Bar exam.”⁴⁷ Part One of the Order limits the provisional license to (1) recent law school graduates and (2) lawyers admitted to practice in

on-saturday-as-hospitalizations-near-19k [https://perma.cc/6463-8DCE].

41. *October 2020 Online Examination Frequently Asked Questions*, GA. OFF. OF BAR ADMISSIONS (Aug. 31, 2020) [hereinafter *Georgia Online Bar Exam FAQs*], <https://www.gabaradmissions.org/october-2020-exam-faqs> [https://perma.cc/8CYE-63S7].

42. *Id.*; see also Angelos et al., *supra* note 21, at 4 (noting that exam-takers would be affected by an additional rescheduled bar exam when they “would have already weathered a summer of intense study—many without employment or pay—and would then face additional months of unemployment and uncertainty”).

43. Angelos et al., *supra* note 21, at 4.

44. *Id.*

45. Provisional Admission Order, *supra* note 34.

46. *Id.*

47. *Id.* at 8.

other jurisdictions.⁴⁸ Recent graduates of law school must have graduated from an ABA-accredited school within eighteen months of their application to sit for the bar exam.⁴⁹ The Board of Bar Examiners must certify the applicant's fitness to practice law.⁵⁰ The dean or a member of the faculty at the applicant's law school must certify that the applicant is competent to practice law under supervision.⁵¹ Additionally, the applicant must not have failed a bar exam in any other jurisdiction to be eligible for the provisional license.⁵²

Lawyers admitted to practice in other jurisdictions have different eligibility requirements.⁵³ First, they must have been admitted in another U.S. jurisdiction, where they remain in good standing, and not face any pending disciplinary proceedings in that or any other jurisdiction.⁵⁴ Second, the Board of Bar Examiners must also certify their fitness to practice law.⁵⁵ Third, they would be "ineligible for admission upon motion without examination under Part C of the Rules Governing Admission to the Practice of Law."⁵⁶ Part C of the Rules Governing Admissions to the Practice of Law outlines the eligibility requirements of attorneys from other jurisdictions to practice law on motion, which include that the attorney never be denied certification of fitness and that the attorney must be active in his or her practice for five of the seven years immediately preceding the date of the application.⁵⁷

Part Two of the Order explains the application process for those eligible for provisional admission.⁵⁸ The applicants must send the

48. *Id.* at 2.

49. *Id.*

50. *Id.*

51. Provisional Admission Order, *supra* note 34, at 2.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. See SUP. CT. OF GA., RULES GOVERNING ADMISSION TO THE PRACTICE OF L. pt. C, § 2 (2018), <https://www.gabaradmissions.org/rules-governing-admission> [<https://perma.cc/28K5-BYGX>].

58. Provisional Admission Order, *supra* note 34, at 3.

applications, created by the Board of Bar Examiners, and supporting documents to The Office of Bar Admissions.⁵⁹ Additionally, the application must include an acknowledgement that the applicant will follow the rules set forth in Part Three of the Order or face disciplinary action.⁶⁰ The State Bar of Georgia or the Supreme Court of Georgia maintain the right to institute necessary disciplinary action, such as suspension or revocation of the applicant's certification of fitness.⁶¹ The Order provides that once the Board of Bar Examiners' determines an applicant's eligibility, "the Office of Bar Admissions shall issue a certificate for provisional admission to the applicant."⁶²

After receiving the certificate for provisional admission, the applicant must execute a written oath and register with the State Bar of Georgia.⁶³ Applicants must also pay a registration fee, but the Order limits the fee to an amount not exceeding the "annual membership dues for inactive members of the State Bar [of Georgia.]"⁶⁴ Registration also requires a declaration by a lawyer qualified to supervise the applicant that the declaring attorney is "eligible, willing, and able to supervise" the applicant and that the declaring attorney recognizes his or her obligations as a supervising lawyer.⁶⁵

Part Three outlines the limitations and terms of provisional admission to practice under the Order.⁶⁶ Applicants granted provisional licenses under the Order are admitted to practice law, including appearing in courts, drafting legal documents, and representing clients.⁶⁷ However, the provisional license remains subject to certain limitations.⁶⁸ First, the provisionally admitted

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. Provisional Admission Order, *supra* note 34, at 4.

65. *Id.*

66. *Id.* at 5.

67. *Id.*

68. *Id.*

licensee must be supervised at all times by a lawyer who has practiced law in Georgia for at least five years.⁶⁹ The supervising lawyer must also be an active member of, and in good standing with, the State Bar and remain in good standing.⁷⁰ Additionally, the supervising lawyer must never have been the subject of any public discipline.⁷¹

All clients of the provisionally admitted licensee must receive a disclosure of the provisional admission stating the provisionally admitted licensee can only practice law under supervision.⁷² The disclosure must take place at the outset of such representation and must also include information about the supervising lawyer, such as the supervising lawyer's name, address, phone number, and Bar number.⁷³ Additionally, documents filed in any court by the provisionally admitted licensee must expressly disclose that the person is provisionally admitted to practice law and disclose information about the supervising lawyer.⁷⁴ When appearing in court, the provisionally admitted licensee must expressly disclose their provisional admission to the judge.⁷⁵ The judge maintains the ability to require the supervising attorney's personal attendance in the court.⁷⁶ The Supreme Court of Georgia and the court of appeals may authorize a provisionally admitted licensee to appear within such a court only by leave of the court.⁷⁷

Part Four of the Order limits the duration of the provisional license.⁷⁸ The provisional license expires thirty days after the release of results for the second bar exam that the applicant could have taken following graduation.⁷⁹ Further, if the applicant becomes eligible for

69. *Id.*

70. Provisional Admission Order, *supra* note 34, at 5.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* at 6.

76. Provisional Admission Order, *supra* note 34, at 6.

77. *Id.*

78. *Id.*

79. *Id.*

full admission prior to the expiration of provisional admission, then the applicant must promptly complete the necessary steps for full admission.⁸⁰ A provisionally admitted licensee may become eligible for full membership either through passing the bar examination or by a granted motion for admission without examination.⁸¹ Further, Part Four outlines three events that automatically terminate the provisional license, including failure to register for the second bar exam after application, revocation or suspension of certification of fitness, or failure of the Georgia bar exam.⁸² The Supreme Court of Georgia may also revoke or suspend any provisional admission for good cause.⁸³

Part Five of the Order explains requirements and obligations of supervising lawyers.⁸⁴ First, the supervising lawyer must exercise authority over the provisionally admitted licensee and assume responsibility for the licensee's clients consistent with Rule 5.1 of the Georgia Rules of Professional Conduct.⁸⁵ Rule 5.1(a) of the Georgia Rules of Professional conduct states that a supervising lawyer "shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Georgia Rules of Professional Conduct."⁸⁶ The supervising lawyer must also be prepared to assume personal responsibility for the provisionally admitted licensee's clients.⁸⁷ Such liability may arise in the event the provisional admission expires or is suspended.⁸⁸ Additionally, the supervising lawyer must notify the State Bar if the supervising lawyer determines that the provisionally admitted licensee is not competent to practice law, has violated a rule of professional conduct, or has violated Part Three of the Order.⁸⁹

80. *Id.*

81. *Id.*

82. Provisional Admission Order, *supra* note 34, at 6–7.

83. *Id.* at 7.

84. *Id.*

85. *Id.*

86. GA. RULES OF PRO. CONDUCT r. 5.1 (STATE BAR OF GA. 2020).

87. *Id.* at cmt. 8; Provisional Admission Order, *supra* note 34, at 7–8.

88. Provisional Admission Order, *supra* note 34, at 7–8.

89. *Id.* at 8.

Second, the supervising lawyer must notify the State Bar in writing of a withdrawal of supervision if the supervising lawyer becomes ineligible, unwilling, or unable to continue his or her supervisory obligations as defined within the Order.⁹⁰ Third, where there are multiple eligible supervisory lawyers, the Order requires only one supervising lawyer to submit the Part Two declaration to the State Bar.⁹¹ Supervisory lawyers may also delegate the duty of supervision to other eligible supervising lawyers in the same office or firm.⁹²

Analysis

The Supreme Court of Georgia's provisional license gave graduates the opportunity to practice while waiting to return to the usual biannual bar exam schedule.⁹³ The provisional license produced similar effects to that of the Student Practice Rule, which allowed law students to practice law under the supervision of licensed attorneys.⁹⁴ The benefit of the provisional license was that it simply paused operations and preserved the existing system of licensure.⁹⁵ The prolonged practice of law by recent graduates did, however, raise some questions about the connection between the bar exam and competency.⁹⁶ Additionally, if students already had a certification of fitness and were to be trusted as licensed attorneys following the bar exam, the Order prompted a further conversation of whether an online option could be feasible moving forward.⁹⁷

90. *Id.*

91. *Id.*

92. *Id.*; *see also* GA. RULES OF PRO. CONDUCT r. 5.1 (STATE BAR OF GA. 2020).

93. Provisional Admission Order, *supra* note 34, at 2.

94. GA. SUP. CT. R. 92.

95. Provisional Admission Order, *supra* note 34, at 2.

96. *See generally* Curcio et al., *supra* note 26.

97. Stephanie Francis Ward, *As Some Law Grads Prepare for an Online Bar Exam, Academic Support Experts Offer Advice*, A.B.A. J. (June 16, 2020, 8:00 AM), <https://www.abajournal.com/web/article/as-some-law-grads-prepare-for-an-online-bar-academic-support-experts-offer-advice> [<https://perma.cc/FF3J-WWPD>].

The Order gave a provisionally admitted licensee the ability to take the second Georgia bar exam after their application.⁹⁸ Assuming that no further postponements occurred, this could have resulted in nearly nine months of law practice prior to sitting for the bar exam if recent graduates took the February exam.⁹⁹ Further, the Order specified that only graduates of ABA-accredited institutions were eligible for provisional admission.¹⁰⁰ The Court showed a general confidence in the competency of ABA-accredited schools by allowing students from those schools to practice law for an extended period of time without passing the bar exam.¹⁰¹ However, the provisional admission was still ultimately limited by the students' eventual testing on the bar exam.¹⁰² Thus, logic indicates that the bar exam must be a reliable method to weed out the competent lawyers from those that are not. Yet research contradicts this notion.¹⁰³

Scholars doubt the connection between daily law practice and the skills assessed by the bar exam.¹⁰⁴ For example, the bar exam requires the completion of numerous multiple choice questions in an extremely time-sensitive setting.¹⁰⁵ Further, the bar exam is traditionally a closed-book exam, meaning that it requires memorization of applicable rules and concepts.¹⁰⁶ Focusing on time-sensitive response and memorization highlights skills that some scholars view as disconnected from the daily practice of law.¹⁰⁷

Some argue that the time-crunched pace of the bar exam showcases a future lawyer's efficiency.¹⁰⁸ However, research also

98. Provisional Admission Order, *supra* note 34, at 6–7.

99. *Fitness Application Filing Deadlines*, GA. OFF. OF BAR ADMISSIONS, <https://www.gabaradmissions.org/deadlines-and-fees> [<https://perma.cc/K76Y-AE65>].

100. Provisional Admission Order, *supra* note 34, at 3.

101. *See id.*

102. *Id.* at 3.

103. *See generally* Curcio et al., *supra* note 26.

104. *Id.* at 269. *But see* Dan Subotnik, *Does Testing = Race Discrimination?: Ricci, the Bar Exam, the LSAT, and the Challenge to Learning*, 8 U. MASS. L. REV. 332, 369 (2013) (stating that the bar exam measures one's ability to learn).

105. Curcio et al., *supra* note 26, at 231.

106. *Id.* at 232.

107. *See id.* at 269.

108. *Id.* at 238.

suggests that speed does not equate to efficiency.¹⁰⁹ In a study, Professor William Henderson compared time-pressured, in-class exams to longer take-home exams.¹¹⁰ He concluded that time-pressured exams are not an effective measure of efficient writing ability or high performance in oral advocacy.¹¹¹ This conclusion is particularly applicable to the bar exam because test takers spend an average of only 1.8 minutes per question.¹¹²

Additionally, the bar exam's closed-book nature and the focus on memorization are distinct from the practice of law.¹¹³ In daily practice, attorneys analyze the issues of their clients by using all resources available to service them.¹¹⁴ Such a need to perform in-depth research and analysis distinguishes the needs-based approach of client advocacy from the need to memorize select rules across a variety of practice areas.¹¹⁵ Writing a brief or advising a client on a transaction does not depend on the ability to cite specific rules at a rapid pace.¹¹⁶ However, the legal writing, advocacy, clinics, and doctrinal classes that the ABA requires develop a variety of skills associated with those used on a daily basis in legal practice.¹¹⁷ These requirements support arguments for a diploma privilege model or an apprenticeship model for licensure. The implementation of consistent standards, however, may prove difficult for both of these models.

Due to the emergence of virtual workplaces during the COVID-19 pandemic, several states announced an online option for the bar exam as an alternative to postponement.¹¹⁸ This option mitigated the

109. *Id.*

110. See generally William Henderson, *The LSAT, Law School Exam and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed*, 82 TEX. L. REV. 975 (2004).

111. Curcio et al., *supra* note 26, at 239.

112. *Id.* at 235.

113. See Ward, *supra* note 97.

114. *Id.*

115. *Id.*

116. *Id.*

117. See Joseph Marino, *Ask the Professor: Training to Pass the Bar Exam vs. Skills Building*, ABOVE THE L. (Feb. 12, 2015, 5:03 PM), <https://abovethelaw.com/2015/02/ask-the-professor-training-to-pass-the-bar-exam-vs-skills-building/> [<https://perma.cc/6E85-BKJB>].

118. See Ward, *supra* note 97. Some states, including Georgia, implemented online testing in addition to postponing the bar exam. See, e.g., *Georgia Online Bar Exam FAQs*, *supra* note 41.

economic hardship of postponement and allowed recent graduates, along with attorneys from other jurisdictions, the opportunity to stay on track for licensure.¹¹⁹ Critics, however, expressed concern about misuse of an online bar exam even in light of the availability of online proctoring programs.¹²⁰ Critics believed that an online test could have led to rampant cheating and could have encouraged unethical behavior.¹²¹ However, all applicants eligible to sit for the bar exam had already been certified by the Board of Bar Examiners as fit to practice law. Further, licensed attorneys constantly run into situations in daily practice that test their compliance with ethical rules and obligations.¹²² Attorneys are expected to act ethically even when dealing with clients behind closed doors, shielded from the public eye.¹²³ Thus, the certification of fitness should lend support for an individual's ability to sit for a proctored online test and not cheat, even when taking the exam within the solitary confines of their own home.¹²⁴

Conclusion

The Supreme Court of Georgia's provisional license provided temporary relief from the potential economic hardship that many individuals who planned to initially sit for the July 2020 bar exam could have faced. Although the Court did not have to provide this relief for recent graduates, it recognized that failing to do so would cause additional stress to an already burdened group of people. Despite efforts to maintain the status quo and provide stability in uncertainty, the COVID-19 pandemic raised serious concerns and questions about the potential opportunities of bar exams for future years. Indeed, the pandemic brought to light questions about the underlying notions of administering a bar exam at all. Such questions

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *See Ward, supra* note 97.

will likely continue to be a topic of discussion long after the pandemic subsides.

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