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IN THE NEBRASKA SUPREME COURT

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CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

PETITION FOR WAIVER OF THE BAR EXAMINATION REQUIREMENT FOR
ADMISSION TO THE BAR AND PROVISION OF EMERGENCY DIPLOMA PRIVILEGE

David W. Sears and Jessica Gilgor, May 2020 J.D. graduates of the Creighton University School of Law, and Dave Gottschalk, May 2020 graduate of University of Nebraska College of Law (“Petitioners”), on behalf of all May 2020 graduates of Creighton University School of Law and University of Nebraska College of Law, and all other timely applicants of the July 2020 and September 2020 administrations of the Nebraska Bar Examination who graduated from an ABA-accredited law school (collectively “Applicants”), hereby petition the Nebraska Supreme Court to waive the bar examination requirement for admission to the bar and grant Applicants emergency diploma privilege.

In support of this petition, Applicants state the following:

A. The Nebraska Supreme Court is Vested with the Sole Authority to Consider This Petition and Grant the Relief Requested.

1. “The Nebraska Supreme Court is vested with sole power to admit persons to the practice of law in Nebraska and to fix qualifications for admission to the Nebraska bar.”¹

2. To that end, the Nebraska Supreme Court has adopted rules governing the admission of Applicants to the Nebraska bar² and has delegated the administrative authority to the

¹ *In re McDonnell*, 299 Neb. 289, 293 (2018), 908 N.W.2d 32; see *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. 1018, 841 N.W.2d 167 (2013) (“The practice of law is so intimately connected and bound up with the exercise of judicial power in the administration of justice that the right to define and regulate its practice naturally and logically belongs to the judicial department of our state government.” *Id.*) (citing *In re Integration of Nebraska State Bar Ass’n*, 113 Neb. 283, 289, 275 N.W. 265 (1937)).

² See Neb. Ct. R. §§ 3-100 et. seq.

Nebraska State Bar Commission (“Commission”).³ “The court has the power, under appropriate circumstances, to waive the application of its own rules regarding the admission of attorneys to the Nebraska bar.”⁴ “The Supreme Court exercises jurisdiction over all matters involving the licensing of persons to practice law in the State of Nebraska.”⁵

3. The Nebraska Supreme Court has the authority to hear this petition as an original action.⁶

4. Because the Nebraska Supreme Court has the “sole power to fix qualifications for admission to the bar,” this Court has the sole authority to hear this case.⁷ Lower courts would be unable to grant the relief requested, therefore filing an original proceeding with this Court is proper.⁸

5. By granting the relief requested, this Court has an opportunity to be a leader and set an example as an innovator for other similarly situated states to solve a unique problem faced during this ongoing public health crisis.

³ See Neb. Ct. R. §§ 3-100 et. seq.; *In re McDonnell* at 293; *In re Brown*, 270 Neb. 891, 708 N.W.2d 251 (2006) (noting the Commission lacks the authority to waive the requirement that an applicant have a Juris Doctor from an ABA-accredited law school).

⁴ *In re Doering*, 275 Neb. 1004, 1009, 751 N.W.2d 123 (2008) (citing *In re Collins-Bazant*, 254 Neb. 614, 578 N.W.2d 38 (1998)).

⁵ Neb. Ct. R. § 3-100.

⁶ See *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska* (petition by Attorney/State Senator granted in part and denied in part filed as an original action); *Integration of Nebraska State Bar Ass’n* (petition by Attorney and committee of the Nebraska State Bar Association granted as an original action); See also *In Re McDonnell* (waiver of admission requirements granted as original action); cf. *State ex rel. Counsel of Discipline of Supreme Court v. Jorgenson*, 302 Neb. 188, 922 N.W.2d 753 (2019) (stating that “attorney discipline cases are original proceedings before this court”).

⁷ See *In re McDonnell* at 293.

⁸ See *Smeal Fire Apparatus Co. v. Kreikemeier*, 271 Neb. 616, 626, 715 N.W.2d 134 (2006) (noting this Court does not hear cases as an original action without good cause shown why application was not made to an appropriate lower court).

B. The Coronavirus Pandemic continues to adversely impact Nebraska, eliciting unprecedented government action, and created substantial barriers for Applicants.

6. On January 30, 2020, the World Health Organization’s Director-General declared the outbreak of SARS-CoV-2, the virus that causes COVID-19, to be a Public Health Emergency of International Concern pursuant to the binding authority of International Health Regulations and issued temporary recommendations to all nations.⁹

7. On March 11, 2020, the World Health Organization described COVID-19 as a “global pandemic.”¹⁰

8. On March 13, 2020, Governor Pete Ricketts declared a state of emergency related to the Coronavirus pandemic.¹¹

9. As of July 9, 2020, that emergency declaration is still in effect and has not been terminated.¹²

10. On March 19, 2020, Governor Pete Ricketts issued the first Directed Health Measure (“DHM”) to control the spread of COVID-19. This DHM placed enforceable limits on public gatherings.¹³

⁹ VERTIC, *COVID-19 as a Public Health Emergency of International Concern (PHEIC) under the IHR*, <https://extranet.who.int/sph/covid-19-public-health-emergency-international-concern-pheic-under-ihp>.

¹⁰ Helen Branswell, *WHO Declares the Coronavirus Outbreak a Pandemic*, STAT NEWS (March 11, 2020), <https://www.statnews.com/2020/03/11/who-declares-the-coronavirus-outbreak-a-pandemic/>.

¹¹ *Proclamation* (March 13, 2020),

<https://www.dropbox.com/s/64xel8oha2gw22h/2020%20State%20of%20Emergency%20-%20Coronavirus%20.pdf> (recognizing “[t]he emergency can strain the abilities of state and local government to meet the needs of the citizens and respond to the pandemic”).

¹² *See* Neb. Rev. Stat. 81-829.40(3) (noting that emergency declarations remain in effect until terminated by either the Governor or Legislature).

¹³ *Media Release: Gov. Ricketts Announce Directed health measure for Cass, Douglas, Sarpy, & Washington Counties* (March 19, 2020), <https://governor.nebraska.gov/press/gov-ricketts-announces-directed-health-measure-cass-douglas-sarpy-washington-counties>.

11. As of July 6, 2020, all Nebraska counties are under Phase III of the directed health measures. Phase III of the DHMs restrict the occupancy of restaurants, bars, child care centers, and gyms, limiting the number of people gathered indoors to 50% of rated occupancy and outdoors to 75% of rated occupancy, with groups made up of no larger than eight individuals in order to slow and prevent the further spread of the Coronavirus.¹⁴

12. Also on March 13, 2020, Governor Pete Ricketts issued the first of thirty-one executive orders related to the Coronavirus pandemic.¹⁵ These orders recognized that the Coronavirus pandemic presents a threat to the citizens of Nebraska, the essential services provided by Nebraska Government, and the essential services provided by private parties.¹⁶

13. Since 1988, no Governor of Nebraska has issued more than 12 executive orders in any given year.¹⁷ Governor Pete Ricketts has issued more executive orders related to the Coronavirus pandemic than the prior 11 years, combined.¹⁸

14. Throughout the pandemic, Applicants have experienced substantial hardships creating profound inequity. Applicant Impact Statements demonstrating these hardships—which

¹⁴ See, e.g., Nebraska Department of Health and Human Services, *Directed Health Measure Order 2020-WCHD-005* (July 2, 2020), <http://dhhs.ne.gov/Documents/WCHD-DHM-July6.pdf>.

¹⁵ See Neb. Exec. Order No. 20-01, <http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/20-01.pdf> (Mar. 13, 2020) (waiving certain hauling requirements to ensure adequacy of food supply chain).

¹⁶ See, e.g., Neb. Exec. Order No. 20-01, <http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/20-01.pdf> (Mar. 13, 2020) (waiving certain hauling requirements), Neb. Exec. Order No. 20-02, <http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/20-02.pdf> (Mar. 16, 2020) (prohibiting out of state travel for state employees), Neb. Exec. Order No. 20-03, <http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/20-03.pdf> (Mar. 17, 2020) (granting relief for governing bodies allowing meetings via teleconference), & Neb. Exec. Order No. 20-04, <http://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/20-04.pdf> (Mar. 17, 2020) (directing the Commissioner of Labor to treat unpaid workers as unemployed for any reason related to exposure or illness due to COVID-19 as being temporarily unemployed).

¹⁷ See Nebraska Library Commission, *Nebraska Officer of the Governor, Executive Orders*, <http://govdocs.nebraska.gov/docs/pilot/pubs/eoindex.html> (listing executive orders).

¹⁸ See *id.*

reflect hardships that many other Applicants face—are attached as Exhibit A and described below.

Such hardships include, but are not limited to:

- a. Financial stress and loss of income creating housing uncertainty during the pandemic as well as loss of future income;
- b. increased child care responsibilities due to school closures and limited child care availability;
- c. obligation to support family members and friends who have suffered loss of income;
- d. mental health impacts, such as anxiety, depression, and grief resulting from the death of family members by COVID-19 and social isolation from compliance with public health recommendations; and
- e. lack of adequate study space resulting from required quarantine procedures, prolonged closure of public places, and family members working from home.

The virus and these challenges create profound inequalities among Applicants.

15. Notably, the Coronavirus pandemic has disproportionately affected Black, Latinx, and Native American communities in Nebraska.¹⁹ This disparate impact on communities of color is exacerbated due to the increased risk of exposure many Black, Latinx, and Native Americans face as essential workers. “One reason for the concentration is that people living in the eastern part of Omaha often provide service-oriented, blue-collar labor that cannot be done from home.”²⁰ But detecting the disparate impact in Nebraska is difficult because the Nebraska Department of Health

¹⁹ Erin Grace, *Erin Grace: South Omahans Confused, Scared as Coronavirus Hits; ‘I Don’t Want to Die’*, OMAHA WORLD-HERALD (May 12, 2020), https://www.omaha.com/news/local/erin-grace-south-omahans-confused-scared-as-coronavirus-hits-i-dont-want-to-die/article_09e75bbb-4a66-553a-9960-6d3dfc7c5cb4.html (“Douglas County is mostly white: 69%. Yet known COVID-19 cases in the county are mostly nonwhite: 77%.” *Id.*).

²⁰ *Id.*

and Human Services, along with many local health departments are not tracking cases by race or ethnicity.²¹

16. Nationally, Black, Latinx, and Native Americans are four to five times more likely to contract COVID-19.²² Rates of hospitalization for those same groups are approximately 221.2, 178.1, 160.7 per 100,000 for Native Americans, Blacks, and Latinx, respectively, compared to 40.1 for White Americans. Black Americans are twice as likely to die from COVID-19 than their White counterparts.²³ Disproportionately black counties account for around 30% of the U.S. population, but were the location of 56% of COVID-19 deaths.²⁴

17. In Nebraska, 81 people have tested positive for COVID-19 on the Omaha Tribe's Reservation.²⁵ This is from 2,233 Native American residents on the Omaha Reservation, representing around 3.63% of the reservation's residents.²⁶ The Winnebago Public Health Department, who serve Winnebago Tribal Citizens, reported 74 positive tests for COVID-19.²⁷ This is from 1,923 Native American residents on the Winnebago Reservation, representing around

²¹ Erin Duffy, *Minorities Hit Hard by Coronavirus in U.S., But Nebraska Isn't Tracking by Race, Ethnicity*, OMAHA WORLD-HERALD (Apr. 24, 2020), https://www.omaha.com/news/state_and_regional/minorities-hit-hard-by-coronavirus-in-u-s-but-nebraska-isn-t-tracking-by-race/article_df8a4fc8-add0-56ec-824a-f5828454df7e.html.

²² Centers for Disease Control, *COVID-19 in Racial and Ethnic Minority Groups*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (June 25, 2020).

²³ Maria Godoy & Daniel Wood, *What Do Coronavirus Racial Disparities Look Like State by State?*, NPR (May 30, 2020), <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state>.

²⁴ *Id.*

²⁵ Carl T. Curtis Health Education Center, FACEBOOK, (Jul. 7, 2020, 5:28 PM) <https://www.facebook.com/carltcurtishealtheducationcenter/posts/2335352763441023>.

²⁶ U.S. Census Bureau, 2018 American Community Survey <https://data.census.gov/cedsci/table?q=tribal%20reservation&g=2500000US2550,4625&tid=ACSDT5Y2018.B02014&vintage=2018> (search "American Indian and Alaska Native Alone", filter results by "Geography", then "American Indian/Alaska Native Area (Reservation or Statistical Entity Alone)" then select both "Omaha Reservation, NE-IA" and "Winnebago Reservation and Off-Reservation Trust Land, NE-IA".)

²⁷ Winnebago Public Health Department, FACEBOOK, (Jul. 4, 2020, 4:46 PM) <https://www.facebook.com/WbagoPHD/posts/405318953727917>.

3.85% of the reservation's residents.²⁸ The impact on Native Americans communities of Nebraska is substantially higher compared to the 1.05% of all Nebraskans who have tested positive for COVID-19.²⁹

18. To preserve fairness and equity in provision of attorney licensure in light of the substantial hardships experienced by Applicants, substantial inequitable impacts, and lingering uncertainty around the July 2020 administration of the bar exam, this Court should waive the bar exam requirement and grant emergency diploma privilege to Applicants.

C. The Planned Examination is Uncertain, Unsafe, and Disparately Impacts Petitioners.

19. COVID-19 and the public health crises regarding the spread remain unabated in Nebraska and nationwide. During the two-week period from June 25, 2020, to July 8, 2020, 2,208 Nebraskans were diagnosed with COVID-19, accounting for approximately 8% of the total cases in Nebraska. Twenty-eight Nebraskans during that same period died as a result of COVID-19, equating to approximately 10% of all deaths in Nebraska related to COVID-19.³⁰ Across the United States on July 8, 2020 alone 59,453 new cases were diagnosed during a 68% increase from two weeks earlier.³¹ This is the highest number of cases diagnosed in a single day.³²

20. Nebraska has been disproportionately impacted by COVID-19. On July 8, 2020, Nebraska had a per capita incidence of 1,068 diagnosed cases of per 100,000 residents. This is the

²⁸ U.S. Census Bureau, *supra* note 26.

²⁹ See The New York Times, *Nebraska Coronavirus Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/nebraska-coronavirus-cases.html>.

³⁰ See The New York Times, *Nebraska Coronavirus Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/nebraska-coronavirus-cases.html>.

³¹ See The New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

³² *Id.*

thirteenth highest incidence per capita among U.S. States, which is higher than the incidence rate for all neighboring states.³³ Nebraska immediately follows Florida in diagnosed cases per capita.³⁴

21. Nearly half of all cases in Nebraska were located in either Douglas or Lancaster Counties, the locations of Nebraska's two ABA-accredited law schools.³⁵

22. The dramatic and quickly-changing nature of the Coronavirus pandemic may change at any moment. Some states have seen cases triple in a two-week period. Cases have increased so much in Texas and Florida both states have begun rolling back their "reopening" plans.³⁶ A Medical expert at the University of Nebraska Medical Center noted the possibility of Nebraska reimposing stricter regulations if cases increase.³⁷ There is no guarantee that the DHMs in Nebraska will continue loosening restrictions in time for the July 2020 bar exam.

23. The Coronavirus pandemic has created unique challenges for the legal profession. Administering the July 2020 bar exam as planned remains uncertain and unsafe. The pandemic is shown to have a disparate impact based upon race, ethnicity, age, health status, family status, and tribal citizenship.³⁸

³³ See The New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (click "Cases by state" and sort by "Cases per 100,000").

³⁴ *Id.*

³⁵ See The New York Times, *Nebraska Coronavirus Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/nebraska-coronavirus-cases.html> (click "By county").

³⁶ Robert T. Garrett & Allie Morris, *Texas Gov. Greg Abbott Closes Bars, Dials Back Restaurants to Half-capacity, Shuts River Rafting*, DALLAS MORNING NEWS, <https://www.dallasnews.com/news/public-health/2020/06/26/texas-gov-greg-abbott-closes-bars-dials-back-restaurants-to-half-capacity-shuts-river-rafting/>; Associated Press, *Florida Joins Texas in Rolling Back Reopening of State Economy as COVID-19 Cases Spike*, MARKETWATCH, <https://www.marketwatch.com/story/florida-joins-texas-in-rolling-back-reopening-of-state-economy-as-covid-19-cases-spike-2020-06-26>.

³⁷ Julie Anderson, *UNMC Expert: Don't be Like Texas. We Want to Avoid Rolling Back Nebraska's Reopening*, OMAHA WORLD-HERALD, https://www.omaha.com/livewellnebraska/health/unmc-expert-dont-be-like-texas-we-want-to-avoid-rolling-back-nebraskas-reopening/article_38e24f5a-5665-56a9-9af5-7842732f2c49.html.

³⁸ See Centers for Disease Control, *supra* note 22.

24. Before the onset of the pandemic, the Commission, pursuant to Nebraska Court Rules, adopted an Emergency Preparedness Plan. This plan addresses disruptions to the examination, including flooding of the venue, bomb-threats, odors, temperature, and incorrect setup but does not address communicable diseases, and provides no guidance for the current pandemic.³⁹ The Emergency Preparedness Plan does provide for situations concerning an applicant's illness that arises during the testing but not serious enough to require immediate medical attention, but the "plan" is limited to moving the applicant closer to the restroom and contacting the site supervisor.⁴⁰

25. On May 7, 2020, this Court issued an administrative order modifying the examination schedule.⁴¹ This Court ordered an additional examination session to take place in September 2020 and to split the applicant pool between the July and September testing dates. The assignment of testing date is not appealable, absent good cause shown. Further the Court ordered that the ". . . Commission shall take into account all State Directed Health Measures or other directions of national, state, or local health officials in ensuring the health and safety of examinees, proctors, and staff during the examination[.]"⁴² If the July examination is unable to take place, an additional examination date in October 2020 will replace the July 2020 administration. However, any delay beyond July 2020 "operate[s] in such a manner as to deny admission to a qualified applicant for a reason unrelated to the essential purpose of [the Court's] rules."⁴³

³⁹ See Neb. Ct. R. § 3 App'x D.

⁴⁰ *Id.* at 8.

⁴¹ *Administrative Order Regarding July 2020 Bar Examination* (Neb. May 7, 2020).

⁴² *Id.*

⁴³ *In re McDonnell* 299 Neb. at 297-98.

26. The Commission is currently requiring an array of measures in an attempt to mitigate the risk of contracting COVID-19, including: following all social distancing guidelines in the 60 days prior to the exam as recommended by the authorities where the applicant is located, keeping a temperature log in the five days leading up to the exam, required COVID-19 testing prior to the examination, and wearing a mask provided by the commission during the administration of the exam. These requirements were disseminated as part of Code of Conduct to Applicants promulgated by the May 7, 2020, order of this Court.⁴⁴ Any failure to comply with the Code of Conduct may be seen as a failure of an applicant's character and fitness, disqualifying said applicant from admission to the practice of law in Nebraska.⁴⁵

27. On June 22, 2020, approximately one month before the scheduled examination, the Commission emailed Applicants that a spike in cases had been reported due to young people going to bars and restaurants that have reopened.⁴⁶ This email included a copy of the current Directed Health Measures in place in Lancaster County and reminded Applicants that failure to comply with the DHMs will raise character and fitness issues.⁴⁷ The Commission chided Applicants to avoid exposure, as contracting COVID-19 in the weeks before the exam will disqualify Applicants from sitting for the July administration.⁴⁸

28. On June 29, 2020, the venue hosting the examination, the Cornhusker Marriott, notified Applicants who booked rooms at the hotel that it cancelled room reservations during the

⁴⁴ E-mail from Stephanie Ferris, Assist. Dir. of Admissions, Att'y Servs. Div. (May 19, 2020, 2:46 PM) (*Infra* Exhibit B, Email 2 – May 19, 2020)

⁴⁵ *See* E-mail from Stephanie Ferris, Assist. Dir. of Admissions, Att'y Servs. Div. (Jun. 26, 2020, 3:27 PM) (*Infra* Exhibit B, Email 3 – June 26, 2020) (“This is a reminder that failure to follow all health measures will be a character and fitness issue.” *Id.*).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

days of the examination due to fears of spreading the Coronavirus. The hotel will be open to guests no sooner than August 1, 2020, for the same reason. This disproportionately impacts Applicants from outside Lincoln, Nebraska, along with severely disadvantaging Applicants from far-western Nebraska and out-of-state Applicants. The Commission urged students to make other hotel arrangements and notified Applicants more than 48 hours later of a block of rooms available at another hotel during the exam.⁴⁹

29. On July 6, 2020, three weeks before the exam, the Commission emailed Applicants that they must obtain COVID-19 testing on July 24, 2020, in Lincoln, Nebraska at their own expense, followed by quarantining and logging symptoms until the beginning of the examination.⁵⁰ In several emails sent privately to individual Applicants with questions, the Commission noted that testing in Lincoln was required and may not be conducted at any other time or location.⁵¹ This testing requirement eliminates at least one-half of a day of test preparation for students outside Lincoln. No information was provided publicly as to whether an Applicant who tests positive can defer until the September administration or if the Applicant must wait until the February 2021 administration. Additionally, no information was provided as to whether an Applicant who tests positive may immediately appeal that test due to the possibility of a “false positive” COVID-19 test and still have the opportunity to sit for the July 2020 administration.

⁴⁹ See E-mail from Stephanie Ferris, Assist. Dir. of Admissions, Att’y Servs. Div. (Jul. 1, 2020, 2:20 PM) (*Infra*, Exhibit B, Email 5 – July 1, 2020).

⁵⁰ See E-mail from Stephanie Ferris, Assist. Dir. of Admissions, Att’y Servs. Div. (Jul. 6, 2020, 4:13 PM) (*Infra*, Exhibit B, Email 6 – July 6, 2020)

⁵¹ See E-mail from Stephanie Ferris, Assist. Dir. of Admissions, Att’y Servs. Div. to Undisclosed Recipient (Jul. 6, 2020, 4:24 PM) (*Infra*, Exhibit B, Email 7 – July 6, 2020)

30. In this same email, the Commission also required a liability release for Applicants to sit for the July examination.⁵² The release purports to relieve the Commission, this Court, the Nebraska Health Department, the testing venue, and all agents and representatives of all four from all liability associated with inherent risks of Applicants' contracting the coronavirus.⁵³ The Commission noted that the failure to sign this release by July 17, 2020 would result in deferral of the examination date.⁵⁴ However, the Commission notes that: "[f]urther information regarding testing specifics will be provided to you before July 24th."⁵⁵ This requires that applicants waive liability for testing specifics that Applicants have no knowledge of. It is still unknown if the release will be required for the September examination. This deferral negatively impacts Applicants who have employment offers to begin work before the September administration by forcing Applicants to choose a risk of contracting COVID-19 or beginning their long-awaited careers. This delay "operate[s] in such a manner as to deny admission to a qualified applicant for a reason unrelated to the essential purpose of [the Court's] rules."⁵⁶ The Virginia Board of Law Examiners reversed course and is no longer requiring a similar liability waiver to be signed by bar applicants there.⁵⁷

31. On July 7, 2020, the Commission clarified the email of the previous day, noting that payment of the testing can be waived in some cases upon proper application.⁵⁸ Further, the email

⁵² See E-mail from Stephanie Ferris, Assist. Dir. of Admissions, Att'y Servs. Div. (Jul. 6, 2020, 4:13 PM) (*Infra*, Exhibit B, Email 6 – July 6, 2020, *Authorization and Release*)

⁵³ *Id.*

⁵⁴ See E-mail from Stephanie Ferris, Assist. Dir. of Admissions, Att'y Servs. Div. (Jul. 6, 2020, 4:13 PM) (*Infra*, Exhibit B, Email 6 – July 6, 2020)

⁵⁵ *Id.*

⁵⁶ *In re McDonnell* 299 Neb. at 297-98.

⁵⁷ See Robert Chang (@KorematsuCtr) TWITTER (Jul. 8, 2020, 1:44 PM), <https://twitter.com/KorematsuCtr/status/1280935761588768770>; Bar Exam Tracker (@BarExamTracker) TWITTER (Jul. 8, 2020, 9:59 AM), <https://twitter.com/BarExamTracker/status/1280879247482068993>.

⁵⁸ See E-mail from Carole McMahan-Boies, Administrator, Att'y Servs. Div. (Jul. 7, 2020, 4:13 PM) (*Infra*, Exhibit B, Email 8 – July 7, 2020)

notes the Nebraska Health Department has “been extremely supportive of our efforts to deviate from directed health measures . . . ”,⁵⁹ seemingly contravening this Court’s order of May 7, 2020.⁶⁰ The Commission attempted to allay fears of surprise costs associated with the bar exam by noting that the Commission’s expense for food and venue fees have been less expensive than past years, but these alleged cost savings in food and venue fees have not been conveyed to Applicants. Both Creighton University School of Law and University of Nebraska College of Law have started funds to assist Applicants to pay for the surprise costs.⁶¹ Applicants from other ABA-accredited law schools may not have access to similar emergency funds.

32. No information has been conveyed to Applicants as to whether proctors will be tested for COVID-19 and masked for the July examination.

33. The Commission’s plans, despite its best good-faith efforts, places examinees at undue risk of contracting or spreading COVID-19 amongst examinees, proctors, and family members of both.⁶² This undue risk presents serious concern to Applicants at increased risk of severe illness from COVID-19 or who live with or care for immunocompromised and at-risk persons.⁶³

⁵⁹ *Id.*

⁶⁰ *See supra*, note 41.

⁶¹ Joshua Fershee (@jfershee) TWITTER (Jul. 8, 2020, 3:01 PM), <https://twitter.com/jfershee/status/1280955092255080448>; Richard Moberly (@Richard_Moberly) TWITTER (Jul. 7, 2020, 8:10 PM) https://twitter.com/Richard_Moberly/status/1280670635732205568.

⁶² Terry Gross, *Amid Confusion About Reopening, An Expert Explains How To Assess COVID-19 Risk*, NPR (June 17, 2020) <https://www.npr.org/2020/06/17/879255417/> (comparing indoor and outdoor settings and risk of COVID-19, where in an indoor setting, the viral aerosolized particles a “person is breathing in that conference room is going to build up over time. And so, yes, you are going to be a greater risk in that kind of a setting.”).

⁶³ Centers for Disease Control and Prevention, *Coronavirus Disease 2019: Groups at Higher Risk for Severe Illness* (last updated May 14, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

34. The Commission's mitigation proposals fall short of full protection. The Commission's lack of transparency and delay in providing information concerns the Applicants, who fear a change will delay their careers and exacerbate the substantial hardships currently faced by the Applicants.

35. COVID-19 is highly infectious. The disease spreads quickly throughout the population.⁶⁴ The disease transfers through widespread infection among people in large gatherings⁶⁵ and in areas of prolonged air exchange,⁶⁶ particularly those indoors. It is for precisely these reasons that the Governor, through the Health Department, limited gatherings and closed places of public accommodation.

36. Local Medical Professionals noted that Nebraska is currently reporting a similar number of cases that Arizona, Florida, and Texas reported two to four weeks ago.⁶⁷ All three States are now reporting thousands of new cases each day. Along with the statewide numbers, Lancaster County, the location of the bar exam, has begun reporting a surge in new cases which is likely to climb after the Fourth of July weekend.⁶⁸

37. The Commission, only by order of this Court, modified the bar exam administration in light of these concerns. However, the modifications are insufficient to ensure safe administration and mitigation of COVID-19's disparate impact on Applicants. The Commission's plan is not

⁶⁴ Saira Baloch, et al., *The Coronavirus Disease 2019 (COVID-19) Pandemic*, 250(4) TOHOKU J. EXP. MED. 271-278 (2020).

⁶⁵ Brian McCloskey, et al., *Mass Gathering Events and Reducing Further Global Spread of COVID-19: A Political and Public Health Dilemma*, THE LANCET 395, 1096-1099 (March 2020).

⁶⁶ Lisa Brosseau, *COMMENTARY: COVID-19 Transmission Messages Should Hinge on Science*, CIDRAP NEWS (March 16, 2020) <https://www.cidrap.umn.edu/news-perspective/2020/03/commentary-covid-19-transmission-messages-should-hinge-science>; see also Gross, *supra* note 62.

⁶⁷ Bob Rauner, FACEBOOK (Jul. 6, 2020, 7:22 PM), <https://www.facebook.com/bob.rauner.94/posts/2937470763146462>.

⁶⁸ *See id.*

supported by public health guidelines or current scientific knowledge of the disease's spread. In fact, the Commission has noted that it is working with the Nebraska Department of Health to deviate from the DHMs. Large groups pose a risk to public health, particularly in an indoor setting.⁶⁹ While a cloth-mask requirement is intended to reduce the likelihood of spreading the virus, a cloth mask is insufficient to mitigate the risk of COVID-19 during prolonged periods of air exchange.⁷⁰ Applicants are required to use masks provided by the Commission. However, it is unknown if these masks will be sufficient, whether they will be sized to fit different face shapes adequately, or even meet current recommendations of health experts.

38. The requirements create a dire situation for Applicants. Applicants must choose between risking contracting a potentially deadly disease (with long-term health implications that are unknown to the medical community) or delaying their ability to practice law for an unknown amount of time to safely take the bar exam without risk of infecting themselves or others.

39. It is unclear when COVID-19 will subside. Research suggests COVID-19 will persist in waves.⁷¹ Such uncertainty renders administration of even the September bar exam impractical, unsafe, and likely to have disparate impacts among Applicants.

⁶⁹ Gross, *supra* note 62 (noting that a longer presence indoors with others leads to greater risk of infection).

⁷⁰ World Health Organization, *Advice on the Use of Masks in the Context of COVID-19* (June 5, 2020), WHO Reference Number: WHO/2019-nCov/IPC_Masks/2020.4 (recommending non-medical fabric masks should have a minimum of three layers of differing materials, and promptly changed when soiled or wet); Center for Infectious Disease Research and Policy, *The Osterholm Update: COVID-19: Special Episode on Masks and Science* (June 3, 2020) https://www.cidrap.umn.edu/sites/default/files/public/downloads/special_episode_masks_6.2.20_0.pdf (“currently there is inadequate information to answer critical questions about how well cloth masks protect anyone from being infected or infecting others.”).

⁷¹ See Sam Whitehead & Carrie Feibel, *CDC Director On Models For The Months To Come: ‘This Virus Is Going To Be With Us,’* NPR (Mar. 31, 2020), <https://www.npr.org/sections/health-shots/2020/03/31/824155179/> (quoting CDC Director, Dr. Robert Redfield, on the need to prepare “most likely, for another wave that we would anticipate in the late fall, early winter where there will still be a substantial portion of Americans that are susceptible”); Kristine A. Moore, et al., *COVID-19: The CIDRAP Viewpoint - Part 1: The Future of the COVID-19 Pandemic: Lessons Learned from Pandemic Influenza*, CIDRAP at 6 (April 30, 2020) https://www.cidrap.umn.edu/sites/default/files/public/downloads/cidrap-covid19-viewpoint-part1_0.pdf.

40. Courts across the country, including the Nebraska Supreme Court,⁷² recognize physical safety is of utmost importance during this time. Notably, the Oregon, Utah, and Washington Supreme Courts granted emergency diploma privilege due to these exceptional, dangerous, and unjust circumstances. Applicants should never be forced to risk their physical health and safety, nor that of their families and communities, to take this examination when emergency diploma privilege is a safer alternative.

D. Emergency Diploma Privilege is necessary to ensure safe, expedient, and equitable attorney licensure to address exceptional circumstances.

41. Diploma privilege is sufficient for bar admission.⁷³

42. The Nebraska Court Rules regarding admission to the bar, including the bar exam required by the Rules, “are intended only to weed out unqualified applicants.”⁷⁴ The Court may waive any requirement of admission to the bar.⁷⁵ The Court does “not require a strict application of our admission rules if, in doing so, it would operate in such a manner as to deny admission to a qualified applicant for a reason unrelated to the essential purpose of our rules.”⁷⁶

43. The American Bar Association’s accreditation of law schools and the Nebraska Rules of Professional Responsibility are the state’s primary and secondary safeguards against unfit practitioners. The bar exam filters out only a small fraction of practitioners.⁷⁷ The Office of the

⁷² See *Administrative Order Regarding Novel Coronavirus and COVID-19 Disease* (Neb. Apr. 6, 2020); *Administrative Order Regarding Novel Coronavirus and COVID-19 Disease* (Neb. June 30, 2020).

⁷³ See Wis. Sup. Ct. R. 40.03 (1979); Order Granting Diploma Privilege and Temporarily Modifying Admission Practice & Practice Rules, No. 25700-B-630 (Wash. Jun. 12, 2020); Order for Temporary Amendments to Bar Admission Procedures During COVID-19 Outbreak (Utah Apr. 21, 2020); Order Approving 2020 Attorney Admissions Process, No. 20-012 (Or. June 30, 2020).

⁷⁴ *In re McDonnell*, 299 Neb. at 298.

⁷⁵ See *In re Collins-Bazant*, 264 Neb. 614, 619, 578 N.W.2d 38 (1998) (“This court has the power to waive the application of its own rules regarding the admission of attorneys to the Nebraska bar.” *Id.*).

⁷⁶ *In re McDonnell* at 297-98.

⁷⁷ See *In re Budman*, 272 Neb. 829, 724 N.W.2d 819 (2006) (stating that:

Counsel for Discipline and this Court sufficiently enforce the Nebraska Rules of Professional Conduct to protect the public and ensure public trust and accountability in the judicial system. The current pandemic and hardships experienced by every Applicant negatively impacts candidates who are otherwise qualified and fit to practice law and are unrelated to the essential purpose of the rules.⁷⁸

44. The requirement to hold a Juris Doctor from an American Bar Association accredited law school “guarantees to Nebraska clients that Nebraska lawyers possess a certain minimum understanding of the law, because they have taken basic, core legal courses deemed ‘minimally necessary to be a properly-trained attorney.’”⁷⁹ This educational requirement is relevant to determining the applicant’s abilities as a lawyer and, combined with the Nebraska Rules of Professional Responsibility, ensures the continued duty to protect the citizens of Nebraska.⁸⁰ The completion of a Juris Doctor from an ABA accredited law school ensures that Applicants meet the essential eligibility requirements for practice of law.⁸¹

“the use of ABA approval as a criterion allows courts to evaluate an applicant’s legal education effectively and expeditiously without imposing a burden on the court’s resources, a court must also ensure that applicants are treated fairly, because any qualification for admission to the bar ‘must have a rational connection with the applicant’s fitness or capacity to practice law’”).

⁷⁸ See *In re McDonnell* at 297-98 (citing *In re Budman*, 272 Neb. 829, 724 N.W.2d 819 (2006); *In re Brown*, 270 Neb. 891, 708 N.W.2d 251 (2006); *In re Gluckselig*, 269 Neb. 995, 697 N.W.2d 686 (2005) (Applicants who have attained an education equivalent to that at an ABA-accredited law school are “otherwise qualified and fit to practice law”).

⁷⁹ *Id.* at 298 (citing *In re Budman*, 272 Neb. 829; *In re Brown*, 270 Neb. 891; *In re Collins-Bazant*, 254 Neb. 614, 578 N.W.2d 38 (1998)); See *In re Doering*, 275 Neb. 1004, 751 N.W.2d 123 (2008) (“The ABA’s standards are an appropriate, effective, and objective means of measuring the quality of a law school and provide assurance that applications to the bar have experienced a generally uniform level of appropriate legal education.” (internal quotation marks removed)).

⁸⁰ See *id.* (noting that “an applicant’s proof of education is relevant to determining the applicant’s abilities as an attorney.”).

⁸¹ See Neb. Ct. R. § 3-112.

45. The standard articulated in *In re McDonnell* for waiving the requirements for admission to the bar are discretionary by virtue of this Court’s “sole power to admit persons to the practice of law in Nebraska and to fix qualifications for admission to the Nebraska bar.”⁸²

46. A super majority of Nebraska law school graduates pass the Nebraska Bar Exam on their first attempt.⁸³ 90.81% of 2017 graduates of Creighton University School of Law and 98.90% of 2017 graduates of University of Nebraska College of Law passed the bar in some jurisdiction.⁸⁴ The bar exam therefore “weeds out” just 5% of those who sit for the bar exam. The Commission is otherwise competent to assess the essential eligibility requirements for the practice of law to weed out those who are unfit or unqualified to practice law.

47. Alternatives are insufficient to address both these exceptional COVID-19 circumstances and the immediate need for legal practitioners to respond to such circumstances.

48. An online examination in July could mitigate safety concerns related to COVID-19 exposure.⁸⁵ However, an online examination would not mitigate the emotional and physical hardships described herein. It would also raise new concerns on access to reliable technology for

⁸² *Id.* See, e.g., *In re Budman* (granting a waiver for requirements for admission to the bar for foreign-educated student with LL.B. and LL.M. from an ABA-approved law school); *In re Brown*, 270 Neb. 891 (granting a waiver of requirements for admission to the bar granted for foreign-educated student as functionally equal to that of an ABA-approved law school); *In re Gluckselig*, 269 Neb. 995 (granting a waiver of requirements for admission to bar for foreign-educated student as functionally equal to that of an ABA-approved law school); *In re Collins-Bazant*, 254 Neb. 614 (granting a waiver of requirements for admission to the bar granted for foreign-educated student as functionally equal to that of an ABA-approved law school).

⁸³ *First Time Exam Takers and Repeaters in 2019*, THE BAR EXAMINER, <https://thebarexaminer.org/2019-statistics/first-time-exam-takers-and-repeaters-in-2019/>.

⁸⁴ See *Ultimate Bar Passage*, Creighton University, https://law.creighton.edu/sites/law.creighton.edu/files/bar_pass_report_feb2020.pdf?fbclid=IwAR1jXzMzldslg38MohdD-N1wODHW4pQeBo9BuB_tKLZANbYwHu27aHinKYQ; *Ultimate Bar Passage*, University of Nebraska, https://law.unl.edu/BarPassage-2020.pdf?fbclid=IwAR2-XmnCF1rt-Z2IEtkP7AqIjHH0W0byp6CcGYPXLKQoJZaCST_iH9lXhOA.

⁸⁵ Indeed, Indiana, Michigan, Pennsylvania, and Nevada provisioned an online examination. Yet, the Commission failed to facilitate an online examination. It is now unlikely an online examination could be provisioned in time for the July administration.

Applicants. Further, an online examination is unable to be transferred as a valid UBE score in many jurisdictions. Moreover, it is too late to pursue this option without adverse impacts on Applicants.

49. Furthermore, delaying the examination is unlikely to mitigate the risk of COVID-19 exposure. Experts have expressed the likelihood of reemergence of the disease in future waves.⁸⁶ This makes the scheduled September administration equally as uncertain and dangerous. Likewise, delaying the examination would cause community hardships such as delayed employment for Applicants and a shortage of new lawyers at a time when legal counsel is desperately needed.

50. Extended supervised practice is an insufficient substitute to bar admission and the full privileges and responsibilities of a licensed, practicing attorney. Supervised practice is unnecessarily burdensome on current practitioners, particularly those engaged in rapid-response legal services providing access to justice to Nebraskans with the least access to representation.

51. Moreover, current supervised practice rules in Nebraska do not relieve the requirement of bar passage to obtain attorney licensure. Supervised practice in lieu of full licensure is an insufficient substitute for graduates of an ABA-accredited law school, who will still be required to study for and pass the bar exam in the midst of active client representation facilitated by the supervised practice rules.

52. Supervised practice is also insufficient for Applicants whose bar admission is a prerequisite for military service in defense of the State of Nebraska and the United States.⁸⁷

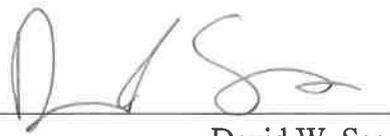
⁸⁶ See Whitehead & Feibel *supra*, note 71.

⁸⁷ E.g. *Congratulations on Your Selection For Appointment into the Judge Advocates General's Corps!*, U.S. Army Judge Advocate General's Corps Personnel, Plans, and Training Office, <https://www.jagcnet.army.mil/Sites/jaro.nsf/homeContent.xsp?open&documentId=4BE9FEB4D00CA36B85258030004229C6> (“[You] are required to submit your certificate of good standing from the highest court of the State, Territory, Commonwealth, or D.C. in the USA.” *Id.*).

53. More importantly, the Commission offers insincere assurance that an expedient, equitable path to full licensure will be offered should the July and September administrations be canceled due to COVID-19.

For the foregoing reasons, Applicants pray that this Court grant relief by waiving the bar exam requirement for admission to the bar for all May 2020 graduates of Creighton University School of Law and University of Nebraska College of Law, and all other timely applicants of the July 2020 and September 2020 administrations of the Nebraska Bar Examination who graduated from ABA-accredited law schools, provided that they earned a satisfactory MPRE score and meet Character and Fitness standards as determined by the Nebraska Bar Commission.

Respectfully submitted,

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EXHIBIT A

Applicant Impact Statements

Impact Statement 1

“I have family members who are in high- risk groups, and I am worried that no matter what precautions are taken, that it will be possible to contract COVID and infect those that I care about. However, I did not have the ability to push back my testing date, because loan payments will begin before I’m able to take the test and start my employment and therefore will run out of money to pay for rent, utilities, etc. I am signing a disclaimer to take the exam because I do not have any other financial choice but to take the exam, not because I feel that it is safe to take the exam. I would welcome diploma privilege as relief from the anxiety and stress that this uncertain time has caused me, while also being mindful that many of my classmates are impacted in much larger ways and this would benefit them too.”

Impact Statement 2

“Watching the country’s response to the COVID-19 situation has left everyone, including myself, in a state of wonder. Wondering if the country will go through another shutdown. Wondering if there will be a second spike in active cases. Wondering if we are even going to have a bar exam at all. The fact that the Nebraska Supreme Court and the Attorney Services Division administering the examination cannot seem to make up their minds in a way that is conducive to the students taking the exam is highly frustrating. As I sit here writing this, I know I am not alone in my feelings to where I am taking the night off in order to protect my mental health from plummeting. We are in a constant state of flux, not knowing from one day to the next if we are even

going to be able to take an exam we have worked so hard to take. The Nebraska Supreme Court and the Attorney Services Division waited until the last minute in May to let examinees know a test was even going to happen. And then told us our preference couldn't be guaranteed. Now, we are having to sign away liability for possible illness just to take a test to be guaranteed a chance to start a career we have put ourselves hundreds of thousands of dollars into debt for. And then, on top of that all, you expect us to PAY for a COVID-19 test to be performed and leave us with more questions than answers. Especially when the Test Nebraska initiative allows anyone to garner a test. Then, you make it mandatory that we have our tests done in Lincoln, when some of us live in Omaha or, even worse, out of state. As students scheduled to sit for a bar exam, we are watching other states make changes (diploma privilege, online exams, further delays) wondering when we are going to be next to make a change. And here we are, three weeks until our scheduled bar exam and the Supreme Court and Attorney Services Division are making all these changes that are so limiting and frustrating - making it seem almost impossible to even take the bar exam to begin with - and making us choose between our health or careers in a time where we should be focusing on the home stretch. But now, we're now even more stressed out than we were before the July 4th holiday.

“We are here - as fathers, mothers, brothers, sons, sisters, daughters, grandsons, granddaughters, aunts, uncles, cousins, friends, students, aspiring lawyers - asking for your help. Please don't make us have to choose between our health or our careers when it's not something you would do yourself. Look at all the limitations the courts in Nebraska still have in place through a time beyond the scheduled exam. The bar exam violates those court rules that you have in place. The limitations you are requiring be placed on the July 2020 examination are limitations other bar examinees in other states find to be ridiculous and borderline dangerous. We have worked so hard

to get where we are at this time and we hope you see that and allow us this one time request for diploma privilege in these uncertain and incredibly stressful times.”

Impact Statement 3

“The uncertainty of the pandemic has been extremely detrimental to my mental health. The fear of potentially testing positive for COVID-19 after many weeks of studying is terrifying. I have been forced to study at home and all throughout my academic studies, both undergrad and law school I focused best when I was at the library, in a quiet area. I live in an apartment complex and due to schools being out of session and a large number of people working from home, or laid off, the noise has been extremely distracting. The bar exam is extremely stressful in times of normalcy, however this catastrophic world-wide pandemic has increased the stress exponentially.”

Impact Statement 4

“I recently contracted COVID-19 while I was in Lincoln visiting my girlfriend. I showed some mild flu-like symptoms a few days after I returned. I was joking that I probably had COVID-19. On a whim, I decided to be tested knowing that I probably didn't have it. A few days later, I was shocked when I heard I had COVID-19. I had recently been in contact with my mother (who has a lower immune system) and was worried that my mother would contract the virus. Thankfully she did not.

“My story details how silent this virus can be. Many precautions are being taken in advance of the bar exam, but what about when the test takers are outside of the exam location? Tuesday night, many test takers could contract the virus and bring it with them (unbeknownst) and infect

the test takers. After the exam, many of us will celebrate with family members and the possibility of infecting them is high.

“Every lawyer has had to suffer through the bar exam, but none like the class about to take the bar exam in July 2020. No class has had to worry whether their mother was going to contract and succumb to COVID-19. No class has had to scrape up money to pay for a mandated COVID-19 test before the exam. No class has had to go through as many hurdles and mandates as us.

“The bar exam, as scheduled, is not safe, and people will contract COVID-19. Have they warranted the proctors, the workers in the hotel, etc. will social distance and quarantine before the test. Nope. But will I take the exam? Absolutely. Why would I wait? My employer is depending on me. The rural citizens of Nebraska are depending on me. I haven’t worked for many weeks and I need to be licensed as soon as possible to get income flowing.

“Diploma privilege is the safest means at this point, and I support it 100%.”

Impact Statement 5

“I have always been a mentally healthy person. I anticipated the stresses of bar exam preparation and was ready for them. However, when COVID-19 came about, my mental health deteriorated dramatically. I not only have a difficult time even waking up in the morning, but the sheer fear and dread associated with potentially contracting COVID has caused me to struggle to focus on studying.

“Due to my husband’s work, I cannot study at home since we live in a small house with no private space for just me. Therefore, I have to go study outside my home and risk exposure every single day in order to study for the bar exam. I literally have to choose between my own health and

safety and passing the bar exam each and every day, thus putting my mental health in constant decline throughout this process. Such decision-making is not conducive to quality studying or maintaining my personal well-being.

“In late May and June I had two essential (non-elective) surgeries that required staying overnight at UNMC. In the following weeks after each procedure, I constantly lived in fear that I had contracted COVID-19 and would pass the illness to my husband or his parents, one of whom is immunocompromised. We needed to help them with various tasks they could not accomplish alone or with just my husband, and I lived in fear that I would be the reason for my father-in-law’s demise. Since my surgeries, I have been required to return for post-operative procedures and check-ups, and each time I leave the hospital, I have to wait in fear to find out if I contracted and passed along COVID-19 to my husband. While I knew my surgery and bar preparation would have to coincide with each other and would be challenging, I was prepared for both of those events. I did not, however, anticipate the dread that accompanied my mandatory procedures and follow-up appointments, nor did I anticipate the continued immense and unavoidable apoplexy that would follow and disrupt my bar preparation for the next two months.

“Additionally, I have ample questions and concerns about the process for the July bar exam, but nearly every email that has been sent to us applicants flippantly continues to hold over our heads that our Character and Fitness applications are not decided until after we take the bar exam. As such, I am terrified to ask questions, sound critical, or even voice my concerns to the Commission, which is apparently no longer responsible for our safety throughout the remainder of this process since we were required to sign liability waivers in order to take the exam. I am petrified that any negativity or criticism on my end will put my character at issue simply for voicing my

opinions. When the Commission has responded to any of our questions, it is short and even chooses to ignore questions completely. That is why I, along with many of my cohorts, have chosen to remain anonymous in these statements - for fear of the Commission's backlash and its withholding of our livelihoods."

Impact Statement 6

"2020 will be a year that no one forgets. Coronavirus has already taken some much away from graduates this year. There was no in-person graduation or hooding ceremony. There were no family/friend celebrations. Coronavirus does not and should not take away or hinder our ability to practice law. Studying for the bar is no easy task and the Coronavirus has not made it any easier. In fact, the Coronavirus has vastly hindered my ability to study for the bar exam. Both my fiancé and I are trying to work/study from home, which means lots of distractions. Yes I could go to a community space to study but then I risk infection which means not being able to sit for the July exam. I knew that I would not be working between graduation and the bar exam and I budgeted accordingly. However, I did not budget enough to last until after the administration of the September exam. Additionally, my insurance will lapse at the end of July and I had planned to get on my employers insurance in August. I will not be able to obtain insurance through my employer if I am not working full-time. If I were to contract COVID during the administration of the July exam my start date would be pushed back and I would risk being uninsured with COVID. Yes I can obtain a short-term insurance plan but that is more expensive and something I did not budget for. I worry that if I do not pass the July exam because of the impact of COVID or the exam is postponed until September (or October) that I will default on student loan payments."

“Further, the lack of transparency with the Bar Commission has caused added stress and concern. There is no indication of how applicants will be distanced at the hotel, whether those proctoring the exam will be required to obtain a negative test before the exam and/or are required to quarantine at home. It is difficult to have trust in the system when there are so many questions that continue to be unanswered.”

Impact Statement 7

“I would like to emphasize the severe setbacks that could occur given the requirement that students must test negative for COVID-19 within a few days prior to administration of the bar exam. To my understanding, these would be rapid-response tests. I have doubts as to the accuracy of rapid tests rather than tests that undergo longer and more thorough procedures. Particularly, I am concerned about the injustice that could result for examinees whose test results generate false positives. Examinees have been studying hard for several months, investing time and effort into being ready to take the exam at a particular time. The rapid-response test creates the possibility that examinees who do not have COVID-19 (or had COVID-19 weeks or months ago but are no longer able to spread it) will be denied admission to the exam and forced to delay work as an attorney until the September administration or even the February administration. I realize why testing is something the bar commission feels is important. But I implore you to consider this particular consequence, in addition to the many other concerns of my fellow examinees. Obviously there are many other concerns to be considered - I do not assert that this concern is above others. I just wanted to get it into the narrative on the chance that it hasn't yet been discussed.”

Impact Statement 8

“I am taking the bar exam in September but my two roommates are taking it in July. I am concerned about my roommates contracting COVID-19 during the July test. Furthermore, I do not know how we can comply with social distancing measures given that my roommates will move out after the test. My nearest family is 12 hours away, and I have nowhere to stay in Lincoln if I can’t be around my roommates.”

Impact Statement 9

“The COVID-19 pandemic heavily impacted my studies during the last semester of law school and currently hinders my ability to focus while studying for the Bar exam. I cannot adequately prepare while worrying whether I’m subjecting myself to unreasonable and dangerous health risks just so I can take the Bar exam. Further, for myself and many others not taking the exam is not an option. If we do not take the July 2020 bar exam we will lose our jobs. I never thought by entering this profession that I would be placed in a situation where I had to choose between my health and my job. The lack of empathy is disconcerting.”

Impact Statement 10

“Even under ‘normal’ testing conditions, this is an inherently stressful time. To be taking the most important test of our lives during this time takes the stress to an unprecedented level for all test takers.

“There are three areas of my life that COVID has had a direct and substantial impact on my ability to study for the bar exam. I have significant concerns about my health and the health of my

family members. My elderly grandfather has a pre-existing condition impacting his lungs and other underlying health complications that would make it difficult for him to survive if he were to contract COVID. Additionally, the extreme isolation that has resulted from quarantine has caused unanticipated stress and anxiety that makes it difficult to study and focus. Furthermore, if I had to postpone taking the exam until it was truly safe to do so, my job offer would be rescinded.

“I believe that the Nebraska Bar Commission and the Nebraska Supreme Court should allow 2020 bar examinees and graduates to be granted diploma privilege in the state of Nebraska. I am uncomfortable and scared to take the bar exam under these conditions. While the mandatory mask and distance requirements create a safer environment to take the bar exam, all examinees will be in close proximity and indoors for an extended period of time over two days. This significant risk will be in the back of my mind throughout the entire exam. In addition to being in the same room, we will be using the same common spaces such as bathrooms. Giving individuals the option to take the exam at a later date does not address the inherently dangerous nature of conducting an exam in this format or the practical realities of finding a job. There is no guarantee that the conditions will be better in September and it is likely that there will be more reported cases at that time.

“Those with pre-existing conditions are effectively required to choose between maintaining their health and safety and taking a test that is required for their employment.

“Finally, courts all across this country, including the Nebraska Supreme Court, are hearing cases virtually because it is unsafe to do so in person. The number of people that would have been present for those hearings are a fraction of the individuals that will be taking and administering the

bar exam in one room. If it is unsafe for the Nebraska Supreme Court to hear oral arguments in person, it is unsafe for examinees to take the bar exam in person.”

Impact Statement 11

“I am quite sure that studying for the bar examination is always a stressful experience. However, studying for the bar examination in the midst of an ongoing global respiratory pandemic, a breathtakingly toxic political climate, and an ongoing civil rights movement significantly adds to the stress experienced by test-takers. What's more, the Nebraska Bar Commission has consistently ignored input from examinees and law school faculty members regarding the administration of the bar examination, choosing instead to add additional requirements for test takers at every turn.

“Personally, I have found the process of bar preparation to be a profoundly demoralizing experience. However, that stress is dramatically overshadowed by the additional (and completely unnecessary) stress that accompanies every new email I receive from the Bar Commission. Each day brings with it the possibility of additional requirements -- additional tasks, forms, restrictions, and expectations -- which further disrupt a study routine already crippled by self doubt, self isolation, and concern for the state of the world.

“I understand the need to comply with guidance from the health department. I understand the necessity of social distancing requirements. I understand the logic behind a mask requirement and the COVID tests. I understand that the Bar Commission is trying. What I do not understand is why the bar commission insists on making things harder than they need to be.

“Permitting COVID tests to be taken in Omaha would be a helpful and rational solution.

“Permitting the examination to be taken online would be better still.

“Permitting examinees to receive emergency diploma privilege in this unprecedented time would be best.”

Impact Statement 12

“Over the past 3 years of law school, I have admittedly tried to hammer into my head the mentality that the Bar Commission, the NE Supreme Court, and many Nebraska practicing attorneys want me to have about the bar exam. The idea being ‘regardless of whether the countless hours of preparation you put into taking the bar exam has anything to do with what you need to know about actually practicing law, you do it anyway because... well, because you have to. Because we had to.’

“Admittedly, this mentality has never rung true to me, but it has never felt more wrong than it does now, during a global pandemic. No other graduating class has faced uncertainty like we have faced it. The daily uncertainty of which heightened requirements the Commission is going to require of us. The daily uncertainty of watching other state bar commissions taking action to protect their incoming colleagues of the legal profession, but seeing no action from ours. The daily uncertainty of thinking, ‘If I go get groceries today (taking all recommended precautions, but seeing few other shoppers do the same) I could contract COVID.’ And if I can somehow skip past in my mind how this necessary errand could pose dangerous consequences for my roommates and my family, I’m also concerned that, ‘As a result of simply going grocery shopping, I could complete all this studying and not be able to take the July Bar Exam because I contracted COVID through no fault of my own. Not to mention going to get the test done in a location where all my fellow classmates will also be and contaminating everyone without even having any symptoms. And who

knows if my future employer will be able to hold my job for me any longer, since this is already a big burden on them to hire me prior to taking the bar, but especially so during a pandemic? Who am I kidding, I couldn't afford to wait to take the next exam anyway.' These are the thoughts running through my head on a daily basis any time I leave the house.

"I realize that some of these anxieties and fears have always plagued those who have attempted to tackle this beast of a bar exam. But many of them are new, and they are legitimate.

"This pandemic has impacted my mental health greatly. My therapist has to remind me how unrealistic these bar exam expectations are at the beginning of each of our Zoom sessions so I don't blame myself for how terrible studying is going.

"This pandemic has impacted my finances. I have worked part time since graduation even though most attorneys I talked to advised studying full time. I decided against their advice, even though I knew it was not in my long-term best interests because I didn't want to take out yet another loan. I decided this because something could happen with my future employment as a result of the pandemic. Companies are closing down or laying employees off every day.

"This pandemic has impacted my family in countless ways. My amazing sister works as a nurse at UNMC treating COVID patients. And my brave brother joined the military recently. He wanted a way to help pay his tuition and student loans, since he was laid off from his other employment as a result of the pandemic.

"If the Commission and the Supreme Court choose to grant flexibility about the bar exam during this unprecedented time, it wouldn't erase all of the mounting problems of the pandemic. But it would demonstrate a strong example for the rest of Nebraska's legal community. It would reflect that although things will never be the same, there are actions we, as the legal profession,

won't hesitate to take to keep each other safe and wholly healthy when we have a say in the matter. Chief Justice and Members of the Court, you have a say in the matter. I respectfully and strongly urge you to take action.”

Impact Statement 13

“Like many 3Ls, COVID upended my academic, professional, and personal life in ways I never could have imagined. We left for spring break and never stepped foot in a classroom again. The loss of milestones like hooding seems trivial in comparison to the sudden deprivation of the support network we relied on for the last three years, the absence of a structured classroom environment, compounded by the unanticipated adaptation of integral skill-based classes that were designed for courtrooms instead of zoom-lectures. Like a lot of my classmates, I worked full-time in addition to finishing a full-time course load, and the culmination of my academic career and entrance into my professional career hinged on my ability to perform the same deadlines equally as effectively from my living room couch. Unlike a lot of my classmates, I was lucky enough to have a quiet place to study, and I don't know how many of my fellow students managed to balance equal or greater workloads as well as they did under those circumstances. That said, the isolation that made this semester manageable took an enormous toll on my mental health, and substantially impeded my ability to prepare for the most important examination of my life from the outset. I can count on one hand how many of my classmates I have seen in five months, I cannot track how many I never got to see before they moved away to study for their respective bar exams. The irony is not lost on me that we were denied a graduation for (very legitimate) safety reasons, yet the first reunion with my class will be under circumstances of an examination that feels completely out of

our control. A choice between our physical safety and our ability to earn a living (not to mention insurance coverage, which many of us will otherwise lose) is no choice at all. If the legal profession thinks that a grab-bag multiple choice test is a better indication of our abilities as attorneys than our demonstrated capacity to graduate in the midst of a global pandemic, adjust the entirety of our academic and professional routines in our final semester, in addition to meeting familial obligations, applying for jobs in the absence of legal licenses (or assurances of testing conditions), moving out of state, all the while facing looming financial student loan debts, paying thousands of dollars for bar prep courses that we are left to self-administer, and being reminded that COVID restrictions are a character and fitness issue (meanwhile the only bar we've left the house for involved trips to a notary), they are unaware of the magnitude of what our class has accomplished so far.”

Impact Statement 14

“2020 has been a trying year. From classes abruptly being moved online to the entire world shutting down amidst 540,000 global deaths to date to civil unrest worldwide, this year has been nothing but complicated and has required leaders to act in a positive and progressive manner. Some of their actions have been helpful, but many have been unbelievable disappointments. Among the disappointing actions has been the Nebraska legal community’s response. There have been no concessions given by the Nebraska Supreme Court or the Nebraska State Bar Association, excepting the opportunity to remain senior certified for a longer period of time. Time and time again, the future attorneys of Nebraska have requested empathy and understanding, whether that be through the granting of diploma privilege or some provisional practice of the law until a bar exam

can be safely administered and examinees can effectively study (e.g., without fear of family members being sick, without spending time with dying loved ones, or without worrying about how the increasing civil unrest will affect overall futures, etc.). However, those requests have been left unheeded while examinees suffer sickness and death, both within their family and friend groups. Empathy is said to be a cornerstone of the legal community, yet it appears that empathy does not apply to those already within its ranks.

“Each examinee today has been backed into a corner with no choice but to subject themselves and their loved ones to sickness or potential death due to COVID-19. Many examinees, like myself, also have employment tied to the passage of the July bar exam. Without taking the exam, we would be out of jobs in an ever-worsening legal job market. The stress of finding worthwhile employment combined with the current state of the nation is immense, and is far more than any other examinee has ever dealt with before. With this clear understanding, Nebraska’s response has been to enact a mandatory liability waiver and COVID-19 test, which has shown how little the Nebraska Supreme Court and Bar Association cares for its future attorneys. In no way has the bar exam ever been subject to so much uncertainty or additional requirements, such as spending more money attempting to get a COVID-19 test, watching civil unrest within our own communities, or signing a liability waiver in the likely case we get sick during the exam. The liability waiver itself shows that examiners understand the danger posed by having a July bar exam. So why continue to hold the bar exam? Why risk the lives of Nebraska’s future attorneys and their families, especially if they live with members of their family? Instead of working with its future attorneys, Nebraska has continuously worked against them - setting up hurdle after hurdle and deliberately creating an unsafe environment that none of us have a choice but to enter into. The best course of

action for Nebraska to take now would be to postpone the bar exam until it is safe to take it and to grant a temporary diploma privilege for those graduates of ABA accredited law schools so that we can freely practice and keep employment. Such action is entirely against the Nebraska Supreme Court's and Nebraska State Bar Association's desires, but the current environment we all live in requires it. The well-being, both financial and physical, of Nebraska's future attorneys requires it. And, most of all, the Nebraska legal community requires it because thus far its actions have done nothing but alienate an entire class of attorneys who were monumentally let down during a great time of need."

Impact Statement 15

"Studying for the bar exam is bound to be a stressful time, but this stress should not include the fear that we will contract COVID-19 during the administration of the exam. I am hopeful that my fellow applicants are abiding by the social distancing and safety guidelines set out by the NSBC. However, there is no guarantee that the other individuals that we will be in proximity to, such as proctors and hotel staff, will be abiding by these same guidelines. Further, as the Marriott is no longer accepting hotel guests during the dates of the exam, the examinees who must stay in a hotel are now spread out among other hotels in Lincoln, exposing themselves to even more individuals whose COVID-19 status is unknown.

"I appreciate the measures the NSBC has implemented to make testing safer for examinees. Mandatory mask wearing does decrease the risk of transmission, but as new evidence of airborne transmission of the virus, especially in closed rooms with air conditioners, is

discovered, it is apparent that the only way to effectively prevent transmission is by avoiding large gatherings.

“The ability to defer to a later exam date is not a viable option. First, there is no guarantee that the situation will have improved by the date of the next exam. There are still active cases in Nebraska. While we are not seeing the spike that many other states are experiencing right now, there is no guarantee that cases will not increase as businesses continue to reopen. The situation in the fall could be the same as it is today, if not worse. Second, for many applicants like myself, the financial strain of being unable to begin full-time work as an attorney until later than planned is too great. Going into my final year of law school I was aware that I would not be working during the time between graduation and the bar exam and budgeted accordingly. The thought of taking the exam this month while the pandemic is largely uncontrolled is uncomfortable and anxiety-inducing, but I am not financially able to delay full-time work until after the administration of a September exam.

“It is unreasonable for examinees to be forced to make the decision between acting in the interest of their health or of their future careers.”

Impact Statement 16

“Not super impactful regarding studying because Themis is all online for me anyway. However, the additional restrictions constantly coming up and being put on us to complete prior to being able to sit for the exam is constantly taking away from my studying and increasing my stress level and having an impact on my mental health as I do not handle stress as well as I should. I’m barely finding time to study and get through the vast amount of material I need to review prior

to the exam and the constant interruptions and requirements I have to fulfill due to the coronavirus pandemic to sit for the exam is becoming burdensome and disadvantageous.”

Impact Statement 17

“I am considered a high risk patient for COVID, and have had to move home to save money while studying for the bar. Instead of being able to work while studying to offset costs, I have been isolated in western Nebraska since May. It is incredibly stressful to begin with, and the lack of real help, consideration or even real communication from the Bar Commission isn’t helping. It all sincerely makes me question coming home to practice law.”

Impact Statement 18

“I first want to start by saying that I am afraid of backlash from speaking out against the Nebraska Bar Commission. It has been made abundantly clear that our Character and Fitness decisions are made after the administration of the bar. This makes it impossible for students to voice legitimate concerns over the health and safety of the administration of the exam for fear that they will be unable to practice law. At this point, I have sunk over \$100,000 into a legal career that is being held ransom by the NCBE and the NSBC. I have been asked to choose between taking an exam which allows me to begin paying back my debt OR exposing myself to a virus that has already killed 130,000 Americans and over half a million individuals worldwide. I have never had a ticket or been arrested; I have never been fired from a job. I am a law-abiding, rule-following person. However, I must speak up for inequity when I see it; this is what law school has taught me. Please

do not make me choose between a career helping others and my family's physical health and my own mental and physical wellbeing.

“I am from out-of-state, and my immediate family are all essential workers. I have spent 4 months alone in my apartment here in Lincoln worrying about their health and wellness. I worry that my parents (who are in the high risk category) and my sister will come down with COVID and need immediate medical attention. This causes me immense worry and stress as I would need to travel 14 hours to be with them and to give them aid. This stress and worry has caused me to lose sleep, forget to eat, have panic attacks, and cry often. I even reached out to administration at the law school to ask for help. I decided to come to Nebraska to study law because Nebraskans were empathetic and kind individuals, the law school was supportive, and I knew I would get a great education. However, I have been deeply disappointed by the callous response and lack of communication from the Nebraska Bar Commission and the Nebraska Supreme Court. While other states are advocating for the health and well-being of their law students (and future legal professionals), Nebraska has remained silent. We are taught to zealously advocate for clients and pursue justice. I feel there has been no advocacy and NO JUSTICE here.

“The bar examination is supposed to be an exam which tests "minimum competency" in the legal profession. However, this year, it will be a test of who has the strongest immune system, the resources to study from home, the environment conducive to study, and the ability to disregard the many distractors that are occurring outside our door. This year, it is inequitable.

“We students have had to face hardships unknown to other graduating classes. Yes, the 2008 class faced a crippled economy and fear of losing their jobs while they studied for the exam. However, we are facing a crippled economy, a renewed civil rights movement, political unrest, and

a global pandemic. Each of these stressors alone is enough to distract a student from studying. However, all four taken together have caused undue hardship to many students studying for the bar exam. I must decide whether the health of my family and myself are more important than the legal education I have received. I will lose my health insurance on July 31st and worry that I will come down with COVID-19 as a result of attending the July bar examination. If I refuse to sign the waiver and refuse sit in July, then I lose my job (which is contingent upon bar passage) and the only way to begin slowly paying back my crippling debt. I am put between two impossible choices. Further, I must worry about whether I can pass, given all of the distractions that we have faced over the past few months of studying. Despite studying for over eight hours every day, my brain is so overwhelmed that I cannot recall information.

“I implore you to acknowledge our struggles and to find an equitable way to determine our ‘competency.’ The bar examination is not it this year. I do not ask that you give us diploma privilege. I understand that it is generally looked at with suspicion among legal professionals who had to take the bar. However, I urge you to consider other options, such as allowing us to practice with supervision until the COVID-19 crisis has ended. Ultimately, you have the power to embrace the displaced and unduly burdened 2020 class or to alienate an entire class of law students. Please remember, ‘the law must be stable, but it must not stand still.’ -Roscoe Pound.”

Impact Statement 19

“In early March my four children’s schools cancelled in person classes. Since that time there have been no childcare providers or camps available for me to send my children to. My husband is the Vice Chairman for our Tribal Council, the chairman for our Tribe’s pandemic task

force, and is also an essential worker (law enforcement). For the most part, he must work outside of our home. As a result, while studying for the bar exam I have had to take on the lion's share of childcare responsibilities.

“Not only am I required to study for the bar exam primarily at home while taking care of my children (which is definitely not an environment conducive to quality bar prep), but I also have anxiety about our increased financial burden because all meals and entertainment must now be solely provided at home. I had planned to work up to ten hours per week while studying but am unable to because I cannot leave my children at home unsupervised. We cannot have any family members help us due to the risk of potentially exposing one another to COVID-19. Additionally, I have to manage the stress and anxiety my children are dealing with during this time. They are confused and isolated because they are unable to see friends or family, have not been able to attend school, and cannot participate in regular summer recreational activities. Even our seasonal ceremonial and cultural events have been cancelled.

“I live in a tribal community with a large population of vulnerable tribal members with high health risks. My family is very careful about minimizing our chances of being exposed to COVID-19 for our own safety as well as for the well-being of our community. The stress of studying for the bar exam, in addition to dealing with the burdens that COVID-19 has placed on our country and families is overwhelming. On top of the already extraordinary difficulties the pandemic has placed on studying for the exam, I will now have to drive four hours roundtrip to Lincoln just four days before the bar exam to get tested for COVID-19. The extra precautions required to sit for the bar, coupled with the risk of possible exposure to COVID-19 associated with traveling to the testing site, staying in Lincoln, and taking the test in an enclosed space for several hours with so many

people places additional stress upon, and largely inconveniences, those already struggling during this time.

“Granting diploma privilege would enable me to keep my family and community safe, minimize the stress my family is under, and allow me to begin earning a salary working from home for the law firm with which I have secured employment.”

Impact Statement 20

“COVID-19 has impacted my bar preparation significantly. Due to COVID concerns, I had to leave my home and move in the middle of the summer, greatly impacting my study time. I had to find a new place and make major life adjustments due to the virus. There have also been many mental health concerns. The existence of COVID and the increasing likelihood that I or a loved one will contract it adds stress onto the already extremely stressful summer of bar prep. The conditions we are being asked to take the bar exam under are unfair, unethical, and shows a lack of empathy and compassion from the bar examiners. We have been forced to choose between our job and our health. Employers have pressured us to take the July bar exam. They do not want to wait any longer than necessary to have a full time attorney working for them. Many of us would not have gotten job offers if we decided not to take the July bar, and most of us will be fired if we do not take the July bar. For most of us, September, or waiting until February, is not an option. By continuing to host the July bar, the Nebraska Bar Association has enabled our employers to force us to take the July bar, which puts us all at a higher risk of contracting the virus. There are bar takers who are immunocompromised, have asthma, live with high-risk families members, and dozens of other

situations that make it risky for them to be in a room with over 100 people. But the pressure to take the July bar leaves us with no choice.

“There have also been many added barriers to taking the Nebraska bar. We were more or less forced to sign a waiver agreement. We have to keep a temperature log five days before the bar exam, when thermometers are sold out at nearly every store. We must travel to Lincoln the Friday before to take a COVID test, even though many of us (including myself) do not live in town. That COVID test costs additional money, and many test takers can barely afford to live through the summer and pay for the bar as is. For some test takers, this Friday requires them to come into Lincoln three days early, and pay to stay additional nights in a hotel. Staying at a hotel has been ranked as a “high risk” activity, and test takers from out of town have to stay a minimum of two nights in a hotel, more if they need to arrive early for a COVID test. One of the most frustrating and unjust aspects of this is that the Nebraska Bar can make whatever rules they see fit, they can change as many dates as they like, and they can charge us whatever they decide, because we have no other option. This is true regardless of whether we take the exam in July or September.

“Even if we ignore the fact that July is really the only option, the September bar is not any better. Cases continue to rise across the country and Nebraska has not taken many of the recommended procedures. We’re seeing thousands of new cases per day with no sign of slowing down. Waiting one month, which might have seemed helpful in May or June, is clearly not going to be enough time. The numbers and statistics have changed, but the Nebraska Bar Examiners’ plans have not. It’s time to consider the health, both physical and mental, and safety of Nebraska’s test takers. It is fundamentally unfair and unjust to make test takers risk their lives to take this test. There has been a consistent lack of understanding and empathy from the bar examiners. I was

hoping to soon be entering a profession that prides themselves on helping others, for providing important representation, and one that shows compassion to the individuals we serve. Based on the actions of the Nebraska Bar Examiners, I do not feel like I am entering that profession.”

Impact Statement 21

“COVID-19 has affected my life in three main ways, and has caused an extraordinary amount of additional stress during bar prep. First, my fiancé and I had to move our wedding due to COVID-19 and throughout the summer have had ongoing complications with the changing circumstances. We very recently decided to limit our wedding to immediate family to prevent any possibility of the spread of covid for our guests. This has created a lot of extra stress and worry on top of an already stressful time. Second, my fiancé works at a prison and my sister, who lives with us, is a pharmacy technician. Both have to go to work daily and are exposed to COVID. I have been isolating at home since March and very rarely go out since I have a higher risk of contracting the disease. However, it has caused me an immense amount of anxiety thinking that if one of them contracts the disease before the test date, it means that I would not be able to sit for the exam, even though I have done everything I was supposed to do. Additionally, if I am unable to sit for the exam, it is likely I will lose my job offer, be unable to afford rent, utilities, etc. Third, I have had a family member contract COVID in the last few months, and she was in the hospital on a ventilator for a month due to complications. This was incredibly difficult to experience while attempting to memorize as much as possible before this test. On top of the already stressful time having to study for the bar exam, we have had to deal with the global pandemic and social upheaval in our communities. We have additional stresses not experienced by previous examinees, and it is all

magnified by the potential risk that we may be exposed to COVID during our exam period. For some of us with pre-existing conditions, that could be life threatening. It is almost impossible to put into words how anxiety-inducing the last two months have been for bar examinees and how unfair the conditions are for current testing. It is silly to expect us to utilize the mental health resources available to us once we become lawyers if the state of our mental health goes unnoticed while trying to become licensed.”

Impact Statement 22

“Studying for the bar exam during the pandemic has been a challenge. Not only have I had to adapt the study habits that have worked for years to be at home, but I have also had to do that while knowing that any day between now and the exam, it could be cancelled or delayed. I have resigned myself to the fact that I may not be licensed until 2021.

“I am also dealing with the constant anxiety about the state of the world. I would be lying if I said I wasn’t afraid of COVID-19. I am afraid of catching it during the bar and being unable to work even longer than I have. I am afraid of catching and facing lifelong complications. I am afraid of passing it on to someone I love. The truth is we don’t know what this disease does to the human body. Young people are dying. People are sick for months. Previously healthy individuals now have lungs that look as if they had been smoking for 50 years.

“But what other choice do I have? Making the 2020 class of test takers choose between their health and their career is unconscionable. Where is the empathy? There is no real “choice” here. Most aren’t working, and many can’t start until after they take or pass the bar—myself included. We are running out of money. After going tens (or hundreds) of thousands of dollars in

debt for school, applying for the bar, paying thousands for bar prep, we are now being asked to pay for testing. I am fortunate to not have to arrange a hotel for this, but many are not. Asking people to come to Lincoln five days before the test and quarantine there until the exam will cost hundreds more.

“Further, the act of going to get tested puts us at risk. I have taken quarantine very seriously, and the thought of going somewhere with people who think or know they have COVID-19 is terrifying.

“This is a profession I previously held in very high regard. I have wanted to be a lawyer for as long as I can remember. However, seeing how bar examiners have treated test takers in Nebraska and around the country has made me rethink my decision. Diploma privilege is the only equitable solution.”

Impact Statement 23

“‘Dad, can I tell you an interesting fact about Africa?’”, my oldest daughter asks me after I’ve settled down in a makeshift desk on my bed to read another bar prep outline. I’m supposed to say, no, right? It’s hard to say no. It’s hard to explain to two kids that their dad can’t see them or play with them for eight hours per day, every day for two months, when he’s right there. It’s just hard.

“And I understand. The bar exam isn’t supposed to be easy despite the assurances of every single bar prep company reassuring every single graduate that it’s only a test of minimal competence. Every single lawyer who has had to take the bar exam has complained. There’s nothing new. Every year, every law school graduate believes that he can’t do it this year. Every

year, I'm sure, law school graduates explain why their situation is different than it has been in years past. And I understand the hesitancy to determine that this time, it really is different and do something about it.

“But it is.

“I'm sitting here typing this while my youngest daughter is attempting to take a nap. My oldest daughter is in the room next to me, playing. I can hear every word she is saying, and she's talking pretty softly. My wife, their mother, just worked a 12-hour shift as a nurse and is trying to go to sleep. And it would be nice to have a few hours of silence to review an outline, answer questions, or write an essay. But as soon as I start reading another question about partnerships or about family law, I know someone with a little voice will ask me for help to dress a Barbie or get a snack down. And that brief time will make it hard to focus for the next assignment or the next question.

“When I signed up for law school, I knew the culmination of law school is the bar exam. I had a plan. I studied in the library all throughout law school. It was nice and quiet. I could get my work done. But that's impossible now. If I needed to get work done when my wife was working, I could have a playdate for my kids or have someone watch them. But I can't really do that now. So I'm studying in a two-bedroom apartment with two kids constantly here. And even at their quietest and even when they're on their best behavior, it is impossible to do the work that I could do in the library.

“I could go on and on about how tough it is to get anything accomplished when there are two kids running around, begging for your attention. I could tell you everything you wanted to know about how to plan out the bar prep videos in a day so that the lectures can fit within a nap

time. I could send you detailed blocks of my time that I've set up so that I can write a practice MPT after I put the kids down for bed. I could tell you exactly how to watch a lecture on your phone and how to do multiple choice practice questions on your phone because the internet is so poor in your apartment that the children can't watch a Disney movie to give you time to catch up on where you're supposed to be in the bar prep course and you have to use the data on your phone.

“But ultimately, that doesn't matter. These are the choices I've made.

“I could tell you about diploma privilege. I could cite to the relevant law review articles about how it's been applied. And the efficacy of the program. And whether it's appropriate here. But ultimately, that decision is out of my hands. And those articles and studies are there whether I provide them or not.

“What does matter is this: In about three weeks, I'm going to drive down to Lincoln to take the most important test of my life. One that's been looming over me for three years. One that I've been preparing for, really, since August of 2017. And my biggest concern isn't what I score on the exam. My biggest concern is that I'm going to get COVID-19 from one of my fellow grads or from someone administering the exam in some capacity, and I'm going to get my kids sick. Because they're young enough and have been relatively healthy, we don't know if they have an underlying condition that will be exacerbated from this. And every single question that I get right or wrong pales in comparison to my responsibility as a parent to them, to keep them safe. Ultimately, regardless of how I do on the exam or when I take it, what matters is, my children.”

Impact Statement 24

“The requirements and conditions of the July 28-29 exam burden and disadvantage all examinees where I would suggest that almost all have no true choice of whether or not to sit. I have no choice because my job offer and finances require me to take the July Bar exam and necessitate choosing the Bar over personal health. The nature of the pandemic and the Board’s honest attempts to alleviate potential exposure and risk still disadvantage examinees, as wearing a mask during the entirety of the exam may have a negative impact on performance on many, including myself, where I have breathing issues. It is also worrying that all these months of studying may result in not being able to take the exam in July due to a positive or false-positive COVID test result through no fault of my own and result in financial hardship and loss of an otherwise-obtained job (especially in the uncertain legal market onset by this pandemic). It is apparent that the vast majority of first time test takers in Nebraska pass the bar exam and the concern of “minimum competence” (arguably students graduating from an accredited law school indeed have already demonstrated this) is overshadowed by the reality of this situation. Cancelling the exam for September does not address the financial impact nor the potential prolonged COVID health concerns. I ask for consideration of granting diploma privilege; or in the alternative a lowered required UBE score to pass (although this does not address the risk of testing positive and not being able to take the July bar).”

Impact Statement 25

“I am excited to take and pass the bar exam. My law school experience and my current preparation suggest, statistically, that I will perform well. However, I do not want to take this exam

now. I am ready. I have busted my tail preparing. I want to get this over with and jump into the practice of learning to serve my fellow Nebraskans. But I should not. Nor should I be forced to right now. And if not now, then not ever. Postponement would not only prejudice me later, but also any clients I would have to abandon at that point to reacclimate to an exam that tests law largely irrelevant to the bulk of my anticipated Nebraska state law practice.

“The Commission must not feel as though its duty to the public of safeguarding the community from malpractice will in any way be breached by making appropriate circumstantial accommodations. First, there are already safeguards for our community in place, gates well kept by the courts, the laws, and not the least of which, ABA-accredited degrees. Second, the most relevant aspect of tending to admission is not whether we know the Rule against Perpetuities but rather whether we possess the character and fitness this field demands. Lawyers do not injure the community or damage the field’s reputation by forgetting antiquated federal common law (which can and should always be easily researched anyhow). They endanger this profession when they choose to act out of accord with proper character and fitness. Regardless, it is unfortunately ironic that the most important gatekeeping function of admission to the practice (character and fitness) is currently imposing the exact detriment on the community that the gate is designed to prevent. For example, just today several articles ran locally about the shortage of adequate COVID-19 testing supplies and the backlogs on test results. It is unfortunate that requiring the Lincoln community to part with a hundred-some test kits on July 24 will deprive other residents (who seek testing because they actually have symptoms) of those tests, and further burden the backlog on their test results. How unfortunate it would be if in the rush to push an extra hundred or so tests through the already-taxed Lincoln infrastructure were to result in a legitimately symptomatic

resident being denied timely results that could save their life. It seems as though that would certainly taint the legal profession in the community's image more grievously than were I to forget the Rule against Perpetuities some day.

"I appreciate that the Commission is dutifully working to ensure that a select group of examinees can safely participate in the exam. However, I am afraid that such measures miss the bigger picture. Frankly, if last-minute liability waivers strike the Commission as necessary, perhaps it is a good indication that what the Commission is doing poses a high risk. Indeed, it does. But mitigating liability is unnecessary. Diploma privileges and careful scrutiny of the character and fitness of our applicants would negate the need for such extreme measures.

"Further, suffice it to say that I concur and sympathize with the other testimonials which have but only scratched the surface of the personal struggles we are all facing in these unique times. In this most-stressful time of bar-prep, I should be embracing my family, girlfriend, and friends. Instead, I have abandoned them. In fact, I am so paranoid about getting sick at this point, and consequently losing my job offer, that when my father showed up unannounced at my house recently to deliver a care package, I nearly yelled at him to get out of the house and get a mask. That is the antithesis of normal behavior for me, and it was a wake-up call that the risks associated with this exam will—and indeed already have—impacted my ability to prepare for this exam in a healthy way.

"In the event that the Commission continues to find necessity in delivering the exam, at the very least it is fair to offer a reduced passing score, or modification of the curve somehow, to account for the fact that this year's exam will undoubtedly reflect the realities of many personal struggles that underscore otherwise dutiful bar-prep. Honestly I do not say that for my own benefit,

but for those classmates of mine whose concerns and personal challenges at this point weigh more heavily on them than my own do on me. However, I want to log that option here, as I suspect most students will disregard the point since it seems inherently and particularly self-serving.

“Regardless, I want to lastly address one issue of concern related to the suspended character and fitness reviews. Certainly the Commission is aware of the chilling effect it has had on many applicants. While undoubtedly well-intentioned to ensure the safest possible testing environment for all applicants, the suspension has in fact caused many applicants to be fearful of raising legitimate questions about the exam and its circumstances for fear of “raising flags” as to their character. For example, we have not been told how many applicants there will be; how the recently-announced mandatory test will be conducted; how false positives may be challenged (some tests are known to have a 15% FP rate); what the fate of legitimate positive-tested applicants will be; what testing conditions will be like; what safety measures the proctors are taking, etc. These are just a few of the many legitimate questions test-takers have, but which applicants are currently discouraged from seeking answers to. The best solution to this concern is to grant permanent diploma privileges, subject to adequate character and fitness screening, which would preclude the necessity for addressing many of these issues.

“I write this testimonial not because I am not legitimately excited to take and pass the exam, but because I feel that it is selfish and irresponsible for me to do so. However, when forced to choose between my physical and emotional health (and the health of those around me) on one hand, and my entire contingent career on the other, of course I am forced to choose my career. Personally, I do not feel that the choice is necessary. I do not believe that it adequately serves the purposes of ensuring a high regard for the legal profession, or of protecting Nebraska residents. To

me, the forced decision seems to work to the contrary. Thank you for your consideration during this unprecedented time.”

Impact Statement 26

“Our nation is in the worst phase of the worst pandemic in 100 years. The Class of 2020 graduated into the worst economic recession since the Great Depression. The nation is in political and social turmoil. At a time when other states are granting diploma privilege, moving the bar exam online, considering lowering bar exam score requirements, or otherwise accommodating their students, the Nebraska Bar Commission is running in the opposite direction. Almost every day, the class of 2020 receives an email posing additional requirements on examinees.

“Setting aside the fact that the bar exam has a racially discriminatory impact and has virtually no correlation to one’s success as an attorney, it is infuriating that bar commissioners are intent on administering this meaningless exam when inequities are further exacerbated by disproportionate access to study locations, potential COVID-19 contraction and underlying health conditions, increased burdens on parents with spouses and children, mental health issues affecting even the most resilient individuals, and countless other discrepancies. So far, the Nebraska Bar Commission’s only acknowledgement of these concerns is (1) A mandatory disclosure of private healthcare information following a COVID-19 test with an additional \$150 cost to students, and (2) a mandatory waiver in which we discard our rights to raise legitimate concerns if we contract COVID-19 during a two-day exam spanning 12 hours in a room with over 200 people. COVID-19 tests have been shown to have both false positives and false negatives. To any other citizen, maybe this is not a great risk. To a bar examinee in Nebraska in 2020, a false positive or a positive test for

an asymptomatic individual renders two months of studying on a program which cost \$2,000 essentially useless, jeopardizes employment opportunities by postponing the ability to practice by at least one month, and subjects students to anxiety and stress that they may not test negative in time for the September exam either.

“The greatest irony in all of this may be the fact that the Nebraska Bar Commission felt the need to send an email containing a veiled threat to examinees who fail to properly social distance, while at the same time securing a self-described "deviation" from Lancaster County's directed health measure to host the exam in violation of current indoor occupancy limits in the first place. The lack of empathy and reason from the Nebraska Bar Commission throughout this pandemic has soured my view of the legal profession and made me skeptical that those in power truly have the best interest of Nebraska's attorneys in mind. I hope that the Bar Commission and the Nebraska Supreme Court realize that the burdens placed on the Class of 2020 are extraordinary and require an extraordinary response. The justification that "I took the bar exam, so you have to, too" is frankly juvenile, and in the current environment, dangerous.

“I implore the Nebraska Supreme Court and the Nebraska Bar Commission to grant diploma privilege to the Class of 2020. In the alternative, it is fully within the Court's powers to at least move the exam online, decrease the score requirement, or use more testing locations to decrease the risk of infection. The Class of 2020 will not forget how we have been treated throughout this process. However, there is still ample opportunity to make proper decisions to protect the safety of 2020 examinees and to maintain the legitimacy of a legal community that we all hope to help prosper and advance, if we are only given the chance. “

Impact Statement 27

“Much like many of the Class of 2020, I have been extremely affected by Covid-19.

“I haven't been able to see or interact with my family at all since lockdown occurred, as my two youngest brothers as well as my father are all at high risk of COVID-19 complications. As they live out of state, I have not been able to see them in person or engage with them in any meaningful way since I last saw them in December. Having a good support system is invaluable to studying for the Bar and not being able to even see my family in person has been extremely disheartening and difficult to cope with. By forcing examinees to take the exam in the current conditions, it will delay seeing them even longer, as I will be forced to self-isolate for at least two weeks following the administration of the exam. Taking the exam at a later date does not alleviate these concerns and will force me to travel across state lines and potentially have to stay in a hot zone state.

“I have also had a close relative die yesterday, and two of my cousins are still sick right now. I am grieving for their loss and suffering and can't help but wonder: Am I next? Will I be the next person in my family who dies alone, gasping for air because I had to choose between my life and my career? It makes me sick with terror, and deferring to the later date will not alleviate these fears, as the growing number of COVID-19 cases across the country demonstrates that the virus is here to stay.

“Simply taking the exam at a later date or allowing for attorney supervision is not only unfair, it will greatly prejudice many members of the 2020 class whose employment either rests on passing this exam (and thus exposing themselves to potential death or long term complications) or those who are looking to serve in our armed forces as Judge Advocates. This is the situation I am in. I have to be bar licensed to even have my application reviewed, but if I contract COVID-19 as a

result of this exam, it is entirely possible that I will suffer from complications that will bar me from my desired military service. While I recognize that this is likely a small portion of the examinees, it is still a catch-22 that causes undue stress and anxiety in already tumultuous times. I and other examinees who wish to serve our country should not have to worry about not being able to do so due to an exam being conducted that will place that ability in jeopardy.

“It is becoming increasingly more likely that Covid-19 is airborne and spreads extremely effectively in enclosed places or large gatherings. Indeed, as the Nebraska Bar Commission has reminded us time and time again via email, we are expected to follow the DHMs established by the state, and they themselves have not been in their offices in Lincoln due to increased risk of COVID contraction.

“So why is it acceptable that we are expected to waive any liability and expose our health to take an exam that will likely be a superspreader event? The Bar examiners argue that they are making this as safe as possible, and yet, we know that false negatives are common for rapid result exams. We know that negatives can occur due to lack of virus samples in the upper respiratory system, and we know that even asymptomatic victims can spread the virus.

“What we don't know is if our proctors, staff, or anyone besides the examinees are subject to the same restrictions we are. We don't know if the tests we are required to get will actually protect anyone, let alone stop a sick examinee from being in the testing center. We have no idea if everyone who has a negative test will properly or even have the ability to properly quarantine themselves following the COVID test. This entire summer's preparation can best be summed up with: 'I don't know.' And that is terrifying.

“Finally, I’m sure questions will be raised as to why have 2020 test takers not spoken up sooner? Why have they not said anything sooner? How could we have known they had these concerns? The answer is simple: we are scared to. For every person who submits an impact statement, I can almost guarantee that another has not out of fear of being hit with a Character and Fitness violation. As we have been reminded time and again, Character and Fitness is not done until after the exam.

“We’re scared that by asking questions or speaking out that we are putting a target on our back. It’s entirely possible that that belief is unfounded, but the language used in many of the emails we have received make it hard to see it any other way.

“Knowing we can be found to be in violation of Character and Fitness should we contract COVID has caused me so much stress every time I so much as cough or even have to venture out of my apartment to get groceries. It makes studying difficult, knowing that simply one slip-up, something I may not even know happened, could cost me my career.

“No group of examinees has ever faced the level of uncertainty and risk that the 2020 class is currently facing, and if the exam is administered as planned, it will not be a fair indication of our competency as attorneys. As such, I implore the Nebraska Supreme Court and the Nebraska bar Commission to grant the Class of 2020 Diploma Privilege.”

Impact Statement 28

“It’s upsetting that I have to take time to write this. I could be spending time to prepare for an exam that will determine whether I have the competency to practice law. But this examination is unlikely to be a fair and accurate judgment of any applicant’s competency. We’re in the middle

of a global pandemic. Every bar applicant is handling the stress differently. Our living situations, our finances, our families, and our health are diverse. Yet we share the common goal of becoming licensed attorneys. Unfortunately, we're being asked to risk the health and safety of ourselves and those that we love in order to obtain that license. No practicing attorney today can say the same thing.

"I like to think I'm quite capable in my ability to control my stress levels, handle anxiety, and face adversity. The spread of COVID-19, the closing down of law schools, and the self-isolation required in a global pandemic broke down that confidence. Since March, I have felt stress and anxiety that I've never felt. At times, these feelings manifest physically leading to hives and uncontrollable itching. At any given time, the dread, helplessness, and vulnerability brought on by this pandemic will hit me like a wave and it is difficult to focus.

"It's difficult to focus when I realize that the office of the Attorney Services Division is closed due to the health and safety concerns posed by the novel coronavirus. When bar applicants are told that examination procedures deviate from the direct health measures, and we have to sign a waiver of liability, it makes me angry. The consistent reminder that Character and Fitness decisions are reserved for after the exam suggests that we should remain silent regarding our health and safety concerns. We can be heard, but we should expect consequences. We are going into the most important exam of our lives, and the very people we seek approval from have acknowledged that it's reckless and dangerous. The scheduled administration of the July 2020 bar examination is disrespectful to those who hope to practice as attorneys in Nebraska.

"We know the bar examination is stressful. It comes with the territory, and we spent our law school careers dreading this very period. We accepted the challenge when we applied for

admission to the bar. Normally, I wouldn't have to take time to write this. These are not normal times. Treat this moment with the seriousness it demands.”

Impact Statement 29

“Studying for the bar exam under ‘normal’ or non-pandemic conditions can probably be described as stressful. Studying for the bar exam under pandemic conditions can be described as terrible, ridiculously stressful, and anxiety-inducing.

“I am a single mom to a 9-year-old girl. I relied upon camps in Omaha this summer so that my daughter would be out of our apartment having fun but mostly so that I could study in peace and quiet. It has been a nightmare trying to navigate which summer camps had been cancelled completely, which ones moved online for half-days, and which ones I could get my daughter in last-minute that were still open and accepting registrations. At the same time of wanting (needing) to send my daughter to camp, I also had to grapple with that decision, which made me wonder if I was compromising her health and safety.

“Unfortunately, my stress with my personal studying and attempts to retain the requisite information, as well as ensuring my health and safety and my daughter's health and safety, has made me feel very on-edge. I know that my daughter can feel my tension, even when I try my best to relax and enjoy my time with her in the evenings.

“I understand that nothing about COVID-19 has been easy. But it's my opinion that Nebraska bar takers have not really been given any sort of reasonable alternatives. Ultimately, the pandemic has been about adapting. I do not like the phrase ‘new normal’ but that really speaks to how people have been adapting: to a new normal. It is my hope that the Nebraska Bar Commission

can also adapt to this ‘new normal’ and empathize with what recent law school graduates are grappling with. I’m not entirely sure what that looks like, but one reasonable alternative could be granting 2020 law students emergency diploma privilege.”

Impact Statement 30

“I was supposed to stop work to study for bar prep this summer and start back up at my job post bar. However, my husband works in the restaurant industry and was put on furlough for 10 weeks. While he works for a national chain and was able to get some pay, it was not enough to support us throughout the summer. I had to take out another loan (my school loan debt is now more than \$100,000) and continue working throughout the summer to be able to pay our bills. This has had a significant impact on my study time and mental bandwidth. My husband is also a high risk COVID patient, so the stress of everyday life and trying to keep him as isolated as possible has been extremely stressful.

“I am seriously concerned about my ability to perform on the exam, not because I haven’t put in the time or effort, but because of outside forces which are constantly coming at me. The handling of communication about requirements for sitting for the exam in Nebraska has been disappointing. There seems to be limited regard about the realities the examinees are facing at this time; it is, at the very least, poorly communicated if any such regard exists. To drop a testing and isolation requirement on us three weeks before the exam that is to take place over the four days leading up to the actual exam was inconsiderate and the delivery cold and unconcerned. I respect the need to be careful and keep people safe, but the Bar Commission had the choice to make other plans and accommodations to adjust if the need arose. The choice not to do so has created a

situation where a lack of planning on the Commission's part has apparently constituted an emergency on our part. It is frustrating and disappointing behavior for the organization that we are supposed to rely on as professionals.”

Impact Statement 31

“As with the majority of my peers, COVID-19 has detrimentally impacted my preparation for the bar exam. Its primary impact has been the lack of access to an environment conducive to effective studying.

“Prior to COVID-19, my plan was to spend the majority of the summer at my law school's library to prepare with my fellow bar takers. Unfortunately, this was never an option as my law library has been closed to students since mid-March. Initially, the law library was supposed to open back up to students on June 1. However, this was pushed back to June 15 as it became clear COVID-19 would not ‘go away with the heat’ as predicted by some members of our country's leadership. On June 15, our law school informed us the library would remain closed for the duration of the summer despite earlier statements that it would be open.

“While I use this example to demonstrate the lack of access to a proper study environment, it also demonstrates the high level of uncertainty associated with bar preparation during a pandemic. While preparing for the bar exam under ‘normal’ conditions is a stressful endeavor in its own right, the Nebraska Board of Law Examiners' lack of transparency and seeming indifference to the plight of future attorneys compound the stress of an already stressful time.

“The ‘solution’ provided by the Nebraska Board of Law Examiners is to provide additional administrations of the exam. At first blush, this solution may seem like a step in the right direction.

However, my health insurance is provided by my law school and expires at the end of July. Furthermore, I cannot afford to forgo working for an additional two months while continuing to prepare for an exam that may be just as impacted by additional waves of COVID-19. This 'choice' forces me to make a decision between sacrificing my health or sacrificing my economic well-being. Believe me when I say no reasonable bar applicant is taking advantage of the global pandemic as a way to skirt the bar exam - we are genuinely concerned about the health and safety of ourselves, our families, and our communities. I only ask that you acknowledge the unprecedented situation we are living in and to make accommodations that will realistically benefit bar examiners. Thank you for your consideration.”

EXHIBIT B

Emails from The Nebraska State Bar Commission

Email 1 - May 8, 2020

1 attachments (64 KB)
5-7-20 SC Order.pdf

From: Ferris, Stephanie <stephanie.ferris@nebraska.gov> on behalf of nsc, attyadmissions <nsc.attyadmissions@nebraska.gov>
Sent: Friday, May 8, 2020 8:51 AM
Subject: Nebraska Bar Exam

Dear July 2020 bar examinees,

Attached is an Order of the Nebraska Supreme Court regarding the conduct of the July 2020 bar exam in Nebraska. In compliance with the Order, you will be assigned to one of the bar exam sessions, either July 28 and 29 or September 9 and 10 (both of 2020).

To assist in making the assignments please respond to this e-mail by Tuesday, May 12, 2020, by responding to the following and select which session you prefer to be assigned.

July 28-29, 2020 (Tuesday & Wednesday)
OR
September 9-10, 2020 (Wednesday & Thursday)
OR
Indicate if you have no preference

****If you choose a particular exam date, please indicate in your email why you choose this session.**

Let us know if you have questions. Thank you.

Stephanie Ferris | Assistant Director of Admissions | Attorney Services Division
Administrative Office of the Courts and Probation
3806 Normal Boulevard | Lincoln, NE 68506
P: 402.471.3092 (Direct), 402.471.3137 (MCLE Help Desk) | F: 402.471.2512
stephanie.ferris@nebraska.gov | www.supremecourt.ne.gov



Email 2 – May 19, 2020

1 attachments (134 KB)
Code of Conduct.pdf

From: Ferris, Stephanie <stephanie.ferris@nebraska.gov> on behalf of nsc, attyadmissions <nsc.attyadmissions@nebraska.gov>
Sent: Tuesday, May 19, 2020 2:46 PM
Subject: July 2020 bar exam

Dear July 2020 bar examinees,

Although we will confirm your actual bar exam date at the end of the week, you are most likely assigned to take the exam on July 28 and 29, 2020. We are awaiting final approval from the Court for that assignment. Be sure to contact us now if that date concerns you.

Attached is the Code of Conduct you need to sign and return to us no later than 10 days from now. Please read it thoroughly.

Let us know if you have any questions. Thank you.

Stephanie Ferris | Assistant Director of Admissions | Attorney Services Division
Administrative Office of the Courts and Probation
3806 Normal Boulevard | Lincoln, NE 68506
P: 402.471.3092 (Direct), 402.471.3137 (MCLE Help Desk) | F: 402.471.2512
stephanie.ferris@nebraska.gov | www.supremecourt.ne.gov



Nebraska State Bar Commission

Code of Conduct for candidates for the Summer of 2020 Bar exam

As a candidate to sit for the bar exam in the summer of 2020 you agree to the following code of conduct. Violation of the code will be considered a matter of character and fitness and may result in a finding that you may not be licensed in Nebraska and may be excluded from participation in the bar exam.

I. In accordance with Centers for Disease Control and Prevention (CDC) and Lancaster County Health Department guidance and to prevent the spread of COVID-19, applicants for the July 2020 examination will not be allowed into the testing area if they:

- a. traveled to any foreign country within the 20 days prior to the exam;
- b. reside or have close contact with someone who traveled to any foreign country within the 20 days prior to the exam;
- c. have been asked to self-quarantine by any doctor, hospital or health agency within the 30 days prior to the exam;
- d. have a fever or are sick;
- e. Suffer from the loss of the sense of taste or smell;
- f. have been diagnosed with, or have had contact with, anyone who has been diagnosed with COVID-19 within the 20 days prior to the exam; or
- g. reside in a jurisdiction outside of Nebraska that is subject to an official travel advisory in effect within 30 days of the scheduled date of the bar examination. Official travel advisories include, but are not limited to, those issued by the CDC, World Health Organization, or state and local governments.

II. Applicants agree to the following practices to maximize their own safety and the safety of those participating in the bar exam:

- a. During the sixty days leading up to the exam you will follow all social distancing requirements in effect where you are located.
- b. You will keep a temperature log for five days leading up to the start of the bar exam and you will convey the log to the State Bar Commission by e-mail or fax no later than noon the day before the first day of the exam.
- c. You will comply with any requirements for COVID 19 testing imposed by the State Bar Commission prior to the July exam. With the nature of testing evolving a final decision on the method of testing will be made at a later date.

d. You will have your temperature taken by representatives of those administering the bar exam prior to the start of the bar exam each day. A temperature of 100.4 or above will exclude you from participation in the exam.

e. You will follow all social distancing requirements imposed at the location of the bar exam.

f. You will wear a mask provided by the State Bar Commission throughout the administration of the bar exam.

g. You will secure a COVID-19 test at any time during the sixty days prior to the exam if any of the following apply to you:

1. You have unresolved or new onset shortness of breath or difficulty breathing
2. You have new onset of sustained persistent nonproductive cough (a dry cough lasting longer than 24 hours)
3. You have **two or more** of the following prolonged (symptom(s) lasting for longer than 24 hours) and unexplained (no other reasonable cause) symptoms

- Sore throat
- Sustained (longer than 2 hours) chills or repeated shaking with chills
- New onset of loss of taste or smell
- Headache
- Muscle pain

If the test is positive you shall report it to the State Bar Commission

h. You will not bring anything into the bar exam site other than those items specifically allowed by the State Bar Commission.

Applicants denied admission to the exam due to illness will be allowed to carry forward the application fee to the next scheduled examination without assessment of additional postponement fees.

By signing below and returning the executed form to the State Bar Commission you agree to follow all terms contained herein. You further agree to abide by any additional terms imposed prior to the bar exam if there are changes to the Code of Conduct.

Date this _____ day of _____, 2020

Printed Name of applicant

Email 3 – June 26, 2020

1 attachments (7 MB)
LLHD-DHM-June22.pdf;

From: Ferris, Stephanie <stephanie.ferris@nebraska.gov> on behalf of nsc, attyadmissions <nsc.attyadmissions@nebraska.gov>
Sent: Friday, June 26, 2020 3:27 PM
Subject: July 2020 Bar Exam Reminder

Dear July 2020 bar examinees,

We have been notified by the health department that there is a spike in COVID-19 cases due to those under 40 years of age going to bars and restaurants. This is a reminder that failing to follow all health measures will be a character and fitness issue. It is imperative that you minimize your chance of infection between now and the bar exam. If the disease is contracted between mid-July and the exam you likely will not be able to qualify to sit for the exam. Be sure to check and follow current directed health measures in effect in your location. The attached DHM is for Lancaster County (Nebraska). Going to bars and restaurants is currently a risk factor for contraction of the virus.

Carole McMahon-Boies, J.D.
Administrator Attorney Services Division
Nebraska Supreme Court
3806 Normal Blvd.
Lincoln, NE 68506
402-471-3091

Email 4 - June 29, 2020

From: Ferris, Stephanie <stephanie.ferris@nebraska.gov> on behalf of nsc, attyadmissions <nsc.attyadmissions@nebraska.gov>
Sent: Monday, June 29, 2020 11:24 AM
Subject: July 2020 Bar Exam

Dear July 2020 Bar Examinees,

You may have received a notification from the Cornhusker Marriott regarding their plans to open their hotel. Please rest assure that the bar exam is still going to be held at the Cornhusker Marriott in downtown Lincoln for the bar exam July 28 & 29, 2020. However, at this time they are not planning to open hotel rooms until after August 1st. For you, this means you will need to find a new space to stay at if you need a hotel room during the two exam days. The following downtown hotels may have space available: Courtyard by Marriott, Hilton Gardens, Hyatt Place, and Embassy Suites. There are also many more surrounding hotels that also could have availability.

Parking will be similar to prior exams where the parking garages fill on a first come first serve basis. There is a parking garage attached to the Cornhusker Marriott and there are parking garages close by as well.

Thank you.

Stephanie Ferris | Assistant Director of Admissions | Attorney Services Division
Administrative Office of the Courts and Probation
3806 Normal Boulevard | Lincoln, NE 68506
P: 402 471 3092 (Direct), 402 471 3137 (MCLE Help Desk) | F: 402 471 2512
stephanie.ferris@nebraska.gov | www.supremecourt.ne.gov



Email 5 - July 1, 2020

From: Ferris, Stephanie <stephanie.ferris@nebraska.gov> on behalf of nsc, attyadmissions <nsc.attyadmissions@nebraska.gov>
Sent: Wednesday, July 1, 2020 2:20 PM
Subject: July 2020 Bar Exam- Hotel Notification

Dear July 2020 Bar Examinees,

We received word that the Kindler Hotel in downtown Lincoln (216 N 11th St, Lincoln, NE 68508) can offer hotel rooms to our bar examinees at the rate of \$129.00/night over the dates of 7/27/20 - 7/29/20. To secure a room, you will need to call the hotel directly to receive that rate. Their phone number is (402) 261-7800.

Here is a link to the Kindler Hotel website if you would like to see more info: https://thekindlerhotel.com/?gclid=Cj0KCQjw6PQ3BBOPARIsAN8pHuEplvcA7Rma5IErJLd5j7gZHE8P5oHnyEVWTZwBlj5uUwgt8U2saAunZEAUw_wcB

Thank you.

Stephanie Ferris | Assistant Director of Admissions | Attorney Services Division
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stephanie.ferris@nebraska.gov | www.supremecourt.ne.gov



Email 6 – July 6, 2020

2 attachments (126 KB)

Temperature-Symptoms Log.pdf; July 2020 Bar Exam Release.pdf

From: Ferris, Stephanie <stephanie.ferris@nebraska.gov> on behalf of nsc, attyadmissions <nsc.attyadmissions@nebraska.gov>
Sent: Monday, July 6, 2020 4:13 PM
Subject: July 2020 Bar Exam- Testing, Logging, Release

Dear July 2020 bar examinees,

We have been notified by the health department that COVID-19 testing will be available for all examinees on **Friday, July 24th at North Star High School in Lincoln (5801 N 33rd St, Lincoln, NE 68504)**. Testing is required for you to be able to sit for the bar exam. You will need to indicate you are there to be tested for the Nebraska bar exam. Further information regarding testing specifics will be provided to you before July 24th. The cost of the COVID-19 test is \$157.00 which most insurance policies cover. There is also assistance available if your insurance does not cover this. If claiming self-pay, the cost of the test is around \$70.00. After completion of the COVID-19 test, you must quarantine through the completion dates of the bar exam.

In addition to testing, as per the Code of Conduct that you all signed, you will need to begin logging your symptoms and temperature 5 days before the exam. I have attached a log for you to use. This should be returned to us by noon on Monday, July 27th. There are no exceptions to this.

Lastly, we have attached a Release that will need to be signed and returned to us no later than Friday, July 17, 2020. If you are concerned about pandemic risks and not wanting to execute a Release, we will allow for deferral of your pending application to a later exam session. This needs to be relayed to us ASAP.

Thank you.

Stephanie Ferris | Assistant Director of Admissions | Attorney Services Division
Administrative Office of the Courts and Probation
3806 Normal Boulevard | Lincoln, NE 68506
P: 402 471 3092 (Direct); 402 471 3137 (MCLE Help Desk) | F: 402 471 2512
stephanie.ferris@nebraska.gov | www.supremecourt.ne.gov



AUTHORIZATION AND RELEASE

I, (Name) _____

born at (City) _____ (State) _____ (Country) _____

(DOB) _____, having filed an application for admission to the bar of Nebraska, state that I understand that the bar exam is being administered during the time of a pandemic and that I am voluntarily participating in the exam knowing there is a risk of infection. I agree to follow all safety protocols as outlined by the Nebraska State Bar Commission associated with the rendition of the bar exam at the Lincoln Marriott on July 28 and 29, 2020 and I assume all risk associated with taking the bar exam.

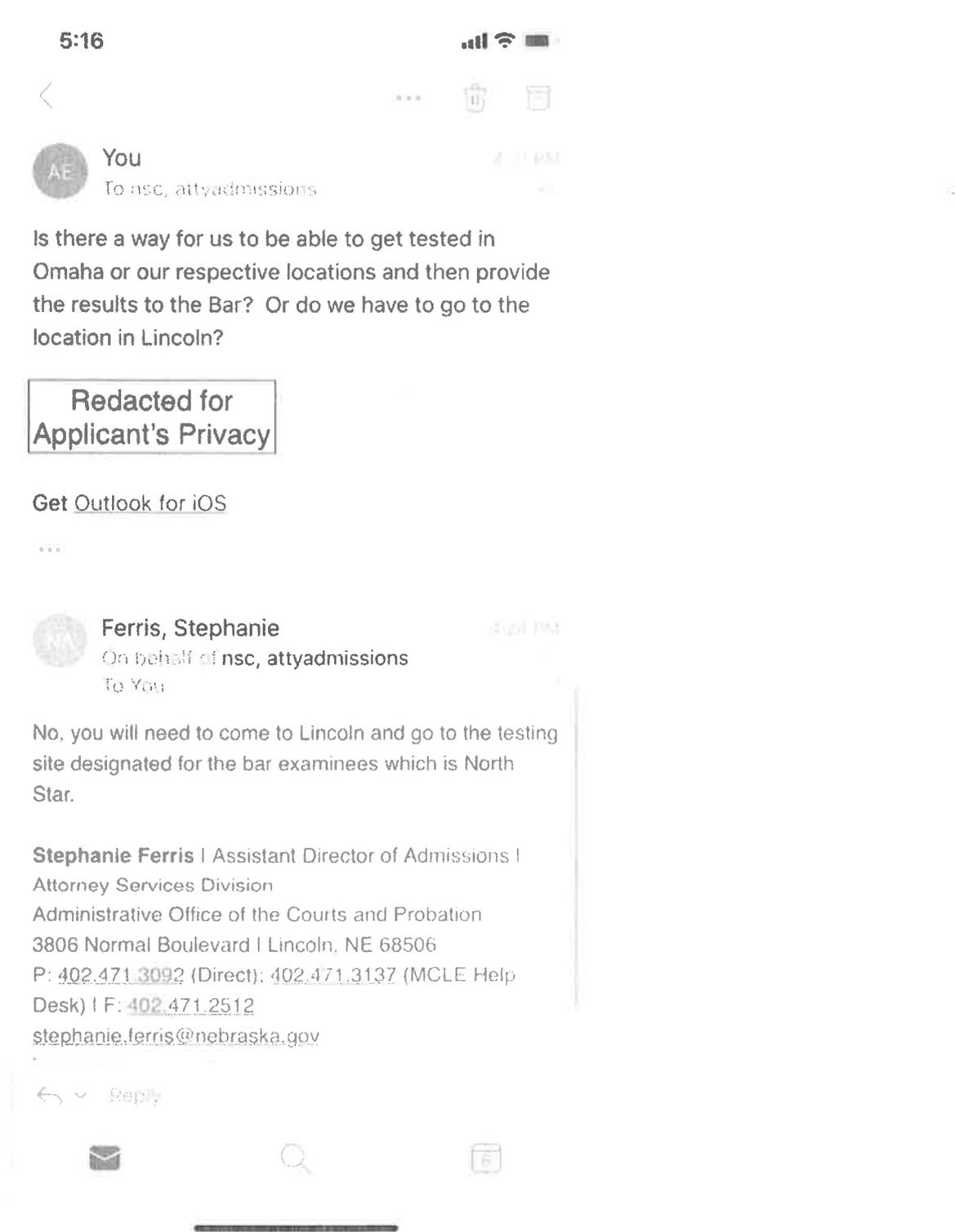
I hereby release, discharge and exonerate the Nebraska State Bar Commission, its agents and representatives, the Nebraska Supreme Court its agents and representatives, the Lincoln Nebraska and State of Nebraska Health Departments and all affiliated entities of the Lincoln Marriott where the bar exam is held from any and all liability of every nature and kind arising out of the rendition of the bar examination.

Signature of Applicant

Printed name

Date

Email 7 – July 6, 2020



Email 8 - July 7, 2020

From: McMahon-Boies, Carole <Carole.Mcmahon-boies@nebraska.gov>
Sent: Tuesday, July 7, 2020 9:49 AM
To: Ferris, Stephanie <stephanie.ferris@nebraska.gov>
Subject: bar exam COVID-19 testing requirements

Good Morning

In an effort to clear up what seems to be a misunderstanding I want to clarify the testing requirements for the bar exam:

As indicated to you at the time the Code of Conduct was issued the health department is requiring certain precautions so that we may conduct the July bar exam and minimize exposure risks. They have been extremely supportive of our efforts to deviate from directed health measures and make it possible for us to have a bar exam in July.

One requirement is that all must be shown to have a negative test on the Friday before the exam. Although if there is no health insurance the exam fee is \$70.00, that fee may be waived if you cannot pay. A form can be filled out at the time that the exam is taken that will allow a charitable waiver of the \$70.00. Every effort has been made to keep costs of the exam as low as possible. Indeed the charges for food and hotels is lower than we have had for the exam in some time.

For those not able to test in Lincoln an alternative testing plan that ensures we have a test taken between July 24 and July 27 may be submitted along with the explanation as to why testing can't take place in Lincoln. All will need a negative test taken during that period to sit for the exam.

All test takers will need to cooperate with this effort to keep the group safe by honoring the distance restrictions and directions you are given at the exam, wearing masks and following directions during breaks. Sack lunches are being provided free of charge courtesy of UNI and Creighton. All will be asked to eat independently to minimize exposure risks.

By no means is there a requirement that you quarantine in Lincoln at any time. Once you are tested the expectation is you will stay home if you can and do what is possible to avoid the risk of exposure.

As always feel free to contact us at any time if you have concerns due to your particular circumstances.

Carole McMahon-Boies J.D.
Administrator Nebraska Supreme Court Attorney Services Division
Administrative Office of the Courts and Probation
3806 Normal Blvd./Lincoln, NE 68516
402-471-3091

CERTIFICATE OF SERVICE

I, David W. Sears, hereby certify that on July 10, 2020, a copy of the foregoing Petition for Waiver of the Bar Examination Requirement for Admission to the Bar and Provision of Emergency Diploma Privilege, with the attached Exhibits described therein, was sent by certified mail to the Nebraska State Bar Commission, c/o Attorney General Doug Peterson, 2115 State Capitol, Lincoln, NE, 68509 pursuant to Neb. Rev. Stat. § 25-510.02 (1), and a courtesy copy of the same was delivered by email to Ryan Post, Assistant Attorney General, Chief of the Litigation Bureau, Nebraska Department of Justice at Ryan.Post@nebraska.gov.

By: _____



David W. Sears
8106 North Ridge Dr. E
Omaha, NE 68112
(636) 751-4128
DavidSears@Creighton.edu