RESOLVED, That the American Bar Association strongly urges the highest court or bar admission authority of each jurisdiction to immediately adopt emergency rules that would authorize

(1) 2019 and 2020 law graduates, and

(2) graduates of prior years who have been since graduation serving as judicial law clerks, who have not yet taken a bar examination, and who apply for admission to the bar, to engage in the limited practice of law, if the July 2020 bar examination in their jurisdiction is cancelled or postponed due to public health and safety concerns arising from the coronavirus pandemic.

FURTHER RESOLVED, That this authorization to engage in limited law practice should apply only if the applicant is a graduate of a law school accredited or provisionally accredited by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association and the applicant has successfully completed all requirements to be eligible to take the July 2020 examination.

FURTHER RESOLVED, That this authorization to engage in the limited practice of law would extend through licensure of the applicant, or until further order of the court or bar admission authority.

FURTHER RESOLVED, That this limited authority to practice law should be an emergency measure, available only for a specified time, as necessary to accommodate public health and safety concerns arising from the coronavirus pandemic.

FURTHER RESOLVED, That in adopting such an emergency rule, the court or bar admission authority should consider requiring that:
(1) The applicant register with the jurisdiction’s bar admissions authority (or other appropriate agency) and comply with all applicable registration requirements;

(2) The applicant be directly supervised by a lawyer authorized to practice in the jurisdiction whose license is active and in good standing; the supervising lawyer confirms in writing to the appropriate agency that he or she will directly supervise the practice of the applicant; and the supervising lawyer is identified as such in all papers submitted to a court, government agency or authority, or alternative dispute resolution tribunal, on which the applicant’s name appears;

(3) The applicant be subject to the disciplinary authority of the jurisdiction in which the applicant is practicing and the applicant comply with all ethics and related rules of the jurisdiction, including specifically but not limited to rules requiring truthful and non-misleading advertising or other public statements concerning his or her limited authority to practice;

(4) The applicant and the supervising lawyer disclose, in a clear and prominent manner, the applicant’s limited authority to practice to any client for whom the applicant does any work, and the supervising lawyer, by direct contact with the client, obtain the client’s consent to be represented by the applicant and provide the client with the supervising lawyer’s name and contact information;

(5) The applicant disclose, in a clear and prominent manner, the applicant’s limited authority to practice to any person with whom he or she interacts in the practice, including any court, government agency or authority, or alternative dispute resolution tribunal;

(6) The applicant adhere to any conditions set by the emergency rule as to limitations on the authorization given to appear before any court, tribunal, governmental agency, or alternative dispute resolution tribunal.

(7) The applicant take the bar examination by the end of 2021; and

(8) The applicant's limited authorization will terminate if the applicant fails the bar examination.

FURTHER RESOLVED, That nothing in the Resolution shall be construed to amend, limit, or call into question, the historic and longstanding policy of the American Bar Association supporting the use of a bar examination as an important criterion for admission to the bar.
REPORT¹

As this Resolution and Report are written, the United States and the world are in the midst of a deadly coronavirus pandemic, and no U.S. community appears to have reached the peak of new infections or deaths. All business and government activities other than those involving health care and public safety have slowed dramatically, and much ordinary business activity has ceased. The primary focus of virtually all government and business has turned to health and safety.

Still, the judicial system, law schools, and the legal profession are today attempting to continue operations, as best they can, while complying with public health and safety orders and guidance that, for example, ban almost all in-person activities like in-person court proceedings, law school classes, and meetings with clients.

In recent days, several jurisdictions, in an effort to comply with public health and safety orders and guidance have decided to cancel or postpone the traditional July administration of the bar examination in 2020. As of this writing, at least four jurisdictions have canceled or postponed the July 2020 bar examination – Connecticut, Hawaii, Massachusetts, and New York.² Other jurisdictions have acknowledged they are contemplating the same action.³ No one can doubt these decisions are necessary to public health and safety. This Resolution in no way questions the necessity for such decisions.

Yet there also can be no doubt that canceling or postponing a bar exam will significantly affect the lives, careers, and immediate personal plans of law graduates, their families, and the lawyers or other organizations with whom they

¹ This Report was prepared and was current as of its submission to the Board of Governors on April 6, 2020. Between that time and approval by the Board, both Arizona and New Jersey have adopted rules similar to the kind proposed in the Resolution.


³ Tennessee has not yet canceled or postponed the July 2020 bar examination, but its high court entered an order extending its current rule allowing law students to engage in limited practice to law graduates. (Order Temporarily Modifying Certain Provisions of Tennessee Supreme Court Rule 7 Related to The July 2020 Bar Examination, In re: Covid-19 Pandemic, No. ADM2020-00428 (entered April 2, 2020), available at: http://tncourts.gov/sites/default/files/docs/ble_covid-19_order.pdf (copy of order and underlying amended rule attached as Exhibit A).
might otherwise practice. Every law graduate in this country has planned and worked for years toward the goal not only of graduation from law school, but admission to the bar and licensure. The inability of a law graduate to take the bar examination in July 2020 would mean a delay, at the very least, of months in their ability to begin the practice of law. This delay may lead not only to tangible financial and family hardship, but disruption in the plans and operations of the organization and clients for whom these law graduates may already be planning to work.

Cancelling or postponing a bar examination for public health and safety reasons is not without consequence. The livelihoods, families, and careers of 2019 and 2020 law graduates may be uprooted, and financial security immediately threatened, with even a delayed exam. Upon graduation, the average 2020 law graduate will bear a debt load of $142,870.4 That debt load remains unchanged while their job prospects disappear or diminish in part were their jurisdiction to deny them the opportunity to take the exam in July 2020 and begin to practice law. Public health and safety and the professional and financial security of law graduates need not be mutually exclusive.

This Resolution strongly encourages jurisdictions’ supreme courts and bar admission authorities to adopt emergency rules that would mitigate these hardships and disruptions.5 One state (Tennessee) has recently adopted such a rule;6 another state (Arizona) has published a proposed rule that would accomplish what this Resolution proposes now pending before its high court;7


6 See Tennessee Order, supra fn. 2 (copy attached as Exhibit A).

and a third state (New York) appears to be considering such a rule. There may also be some states whose rules already permit limited practice of this kind. Arizona’s petition, for example, asserts that its rule “currently allows recent law graduates to engage in a limited practice of law until the first offering of the Arizona bar examination, [but] the rule was drafted in a way that downplayed or masked this opportunity for recent law graduates,” and thus the petition seeks to clarify and add important elements to the grant of limited practice authority. This Resolution strongly supports these efforts and sets out a number of necessary and appropriate criteria that should be considered by jurisdictions in considering such rules.

Arizona’s pending petition for a rule change notes that at least sixteen jurisdictions allow recent law graduates to engage in the limited practice of law post-graduation and pre-bar admission. While these existing programs do share some common features, not all directly or clearly address the currently anticipated issue of the cancellation or postponement of the July 2020 bar examination. For example, as noted above, Tennessee recently acted to expand its program for this reason. Whether a jurisdiction chooses to use this approach to achieve limited practice authority for recent graduates pending admission in this context is, of course, a matter for each jurisdiction.

The Effects of Cancelling or Postponing the Bar Examination

Without adoption of a rule to mitigate the effect of the cancellation or postponement of the July 2020 bar examination, a delay in law graduates’ eligibility to practice law will place an unprecedented financial burden on thousands of law graduates. During this unexpected delay in admission, job security will be in question; reduced salaries are likely; and law student debt remains. Law graduates and their families have invested tens of thousands of dollars into their education with the expectation of promptly graduating, passing the bar exam, and entering the practice of law. Those expectations have been uprooted by an act of God. Without action, this financial burden will fall

---

8 See Ward, supra n. 1. Indeed, the deans of all fifteen New York law schools have urged the New York high court to adopt “a broad and universal system of provisional, temporary authorization for 2020 graduates to practice law under the supervision of an attorney admitted to practice in New York” (original emphasis). See Letter, New York Law Deans to Chief Judge Janet DiFiore, dated April 3, 2020, at 3 (original emphasis), available at https://www.albanylaw.edu/coronavirus/law-dean-letter-to-court-of-appeals.

9 See supra, fn. 5.

10 Petition, supra fn. 5, at 4-5.

11 Order, supra fn. 4.
disproportionately on law graduates who had grounded their futures on taking the 2020 bar examination.

Further, law graduates are by no means the only ones affected. The immediate legal needs of individuals and businesses, from small to large, as a result of this pandemic, are already enormous and will continue to grow. Tens of thousands of graduating law students stand ready to help with those needs, if they are given the regulatory permission to do so. This resolution encourages states to permit these trained law graduates to help serve the public in this crisis.

**Components of the Rule that the Resolution Advocates**

This Resolution calls for the immediate adoption of an emergency rule, regulation, or policy. The Resolution recognizes that the problem is one of immediate concern and should be addressed as soon as possible. At least one state (Tennessee) has wisely addressed this issue *before* making any decision on whether its bar examination will be offered in July 2020. The Resolution calls for immediate action.

The Resolution also advocates for adoption of a rule that would be considered an emergency rule. The current public health and safety environment is changing daily, and a rule such as this might well need to be adapted to changed conditions in a few months. The Resolution does not advocate for adoption of any change in policy that would be permanent or survive the current challenges created by the coronavirus pandemic as it presents itself today.

Examples of rules of the type advocated by this Resolution include the rules very recently adopted by the supreme courts of Arizona and Tennessee, copies of which are attached to this Report.

A number of the specific features of the type of rule advocated by this Resolution bear comment. The Resolution urges that the following would be the most important features of a rule:

- The rule would cover law graduates from both 2019 and 2020. Some law graduates do, for legitimate reasons (such as judicial clerkships), delay taking the bar example for a time after their graduation.

- The rule would only apply to first-time takers of the bar examination, consistent with its emergency nature. Thus, a law graduate who had taken either the bar examination of the jurisdiction adopting the rule or any other jurisdiction, whether the law graduate passed or failed the exam, would not qualify under the rule.
• The rule would only cover 2019 and 2029 law graduates who apply for admission to the bar, again consistent with the narrow, emergency nature of the relief granted by the rule.

• Applicants must also be graduates of law schools accredited or provisionally accredited by the Council of the Section of Legal Education and Admissions to the Bar of the ABA.

• The limited authority to practice law would extend through an applicant’s licensure, including the taking of the bar examination, the time needed for the examination to be graded and results known, and any time after that ordinarily needed for the bar admission authority to complete its normal licensure process.

The Resolution also advocates that adopting jurisdictions should seriously consider the following features be included as part of such a rule:

• A requirement that the applicant register with an appropriate regulatory authority and comply with any appropriate registration requirements, ranging from completing an application to paying fees associated with the process. The Resolution contemplates that a jurisdiction might decide to impose certain fees associated with the regulation of the profession, as they might deem appropriate.

• Direct supervision of the applicant’s limited practice by an identified lawyer already admitted in the jurisdiction. The Resolution contemplates that this supervision be consistent with that required by ABA Model Rule of Professional Conduct 5.1(b) concerning the responsibility of a lawyer with “direct supervisory authority” over another lawyer. The supervising lawyer would be required to commit in writing to the requirements of this role as a part of the applicant’s application for this limited authority.

• Disclosure to clients, courts, and others of the limited nature of the applicant’s authority to practice law would be required, as would appropriate disclosure of the same limitations in any interactions with others or the public.

• The rule would allow court appearances by the law graduate, but each jurisdiction should consider what conditions it wishes to set on this authorization, such as court permission or attendance by the supervising lawyer.
• The rule would also require that the applicant actually take and pass the bar examination by the end of 2021.

This Resolution *does not* take any position on decisions that are appropriately within the authority and discretion of the highest court or bar admission authority of each jurisdiction, such as whether the July 2020 administration of the bar examination by any jurisdiction should be canceled or postponed, or whether the July 2020 administration of the bar examination by any jurisdiction should be administered online, remotely, or in small groups.

Finally, the Resolution does not intend in any way modify or limit the historic and longstanding policy of the ABA supporting the use of a bar examination as an important criterion for admission to the bar.