IN THE SUPREME COURT OF THE STATE OF NEBRASKA

IN RE PETITION FOR WAIVER OF THE BAR EXAMINATION REQUIREMENT FOR ADMISSION TO THE BAR AND PROVISION OF EMERGENCY DIPLOMA PRIVILEGE.	)	S-20-0495 ORDER

FILED
JUL 13 2020
NEBRASKA SUPREME COURT
COURT APPEALS

PER CURIAM.

This matter is before the Court on the application for leave to commence an original action. The applicants' primary request is to waive the bar examination requirement and grant emergency diploma privilege. We understand the application as seeking to invoke our original jurisdiction under art. V, § 2 of the Nebraska Constitution; however, the requested relief is not authorized by art. V, § 2. We have instead considered the application under our constitutional authority pursuant art. II, § 1 and art. V, § 1, of the Nebraska Constitution, as well as our inherent authority pursuant to *In re Integration of the Nebraska State Bar Association*, 133 Neb. 283, 275 N.W. 265 (1937). We also take up this matter pursuant to our rule authority under Neb. Ct. R. § 3-121, regarding waiver of admission provisions. And further, insofar as the applicants are not licensed attorneys, we do not consider the application to the extent it was purportedly filed on behalf of others. See Neb. Rev. Stat. § 7-101 (Reissue 2016). As we explain below, the requests are denied.

The Nebraska Supreme Court continues to carefully monitor the evolving circumstances presented by the spread of the novel

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coronavirus and the COVID-19 disease. The court is mindful of the challenges inherent in studying for and taking the bar examination in ordinary times, and our decision is not intended to diminish the additional challenges of doing so during a pandemic. But the administration of justice does not stop in a public health emergency. During these unprecedented times, Nebraska lawyers, judges, and court staff have continued to innovate and adapt in order to provide access to our courts and its essential services. They have demonstrated ongoing strength, calm, flexibility and creativity in adapting to the challenges of operating differently in administering justice. We expect no less of the applicants who sit for the bar examination.

After thoughtful discussion, including appropriate consultation with the deans of the two Nebraska law schools, regarding the surrounding circumstances of COVID-19, on May 7, 2020, the Supreme Court entered an Administrative Order setting dates for the summer bar examination for July 28 and 29, 2020, along with an additional session on September 9 and 10, 2020.

Further, on May 28, 2020, the Supreme Court extended senior certified law student status to all May 2020 graduates of a Nebraska law school who have not yet taken the Bar Examination in order to ensure graduates could keep senior certified law student status during the pendency of the exam and grading period.

The Nebraska State Bar Commission will allow any current examinee to defer his or her Bar Examination to a future examination date, with no financial penalty. Additionally, the Bar Commission will allow any current examinee to obtain a refund of the application fee if the examinee elects not to take a 2020 Bar Examination.

The Bar Commission has implemented a plan for the exam site facility, which includes continuing guidance and cooperation from local and state health officials. As to required social distancing, the Commission has obtained testing space to dramatically expand the space to accommodate occupancy requirements, COVID-19 testing, temperature checks, wearing of masks, cleaning and hygiene of the facility, testing rooms, and any materials or hand-outs. Additional precautions have been put into place to ensure safety and security of all examinees, proctors, and staff involved with administering or taking the exam, including hiring additional test proctors and law enforcement. In addition to safety measures, the Bar Commission has obtained financial assistance to cover COVID-19 tests for examinees who cannot afford testing.

We agree with our colleagues in Missouri who recently denied a similar petition and balanced the needs of this year's law school graduates with the ongoing obligation to protect the public and the integrity of the profession through oversight of the profession and its practitioners. The purpose of the bar examination is to ensure minimum competence of those admitted to the practice of law. With regard to the request for diploma privilege, the average pass rate for the last two Nebraska Bar Examinations was 63 percent overall, with an average pass rate of 72.2 percent for those who obtained diplomas from Nebraska's law schools. Granting the diploma privilege would place the public at risk from lawyers who did not meet the minimum qualifications.

Conditions in the State of Nebraska at this time do not warrant changing or cancelling the July 28 and 29, 2020, or the September 9 and 10, 2020 examination sessions. Currently, no reliable or secure options exist to administer the 2020 Bar

Examination remotely and provide a Uniform Bar Exam-transferrable score.

The application for leave to docket an original action is denied and any request for waiver of admission requirements under Neb. Ct. R. § 3-121 is also denied. The 2020 Bar Examination will be administered as set forth in the Court's May 7, 2020 Order on July 28 and 29, 2020, as well as September 9 and 10, 2020.

LEAVE DENIED AND REQUESTS FOR WAIVER DENIED.

Dated this 13th day of July, 2020.

BY THE COURT.