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### **A NEW LAW SCHOOL? Backers of Purdue proposal say it will foster civic health by expanding legal representation. Critics worry about lower standards.**

*The following report was written for The Indiana Citizen by veteran Indiana legal journalist Marilyn Odendahl.*

*March 24, 2023*

Patrick Ryan represents a dwindling resource in Indiana.

The attorney in Kentland, population just over 1,600, is among a declining number of lawyers who practice in small towns and rural communities around the state. His workload alone illustrates that decrease as he handles just about any legal matter that walks in his office—in addition to serving as a part-time deputy Newton County prosecutor and attending a public meeting at least once a week to provide legal counsel for the county, the school corporation or one of the local towns.

In the 25 years he has practiced, Ryan said the level of residents second guessing the advice of local attorneys has noticeably risen. Yet, he maintained, lawyers are still vital to rural places because beyond helping individual clients, they foster their communities' civic health.

According to Ryan, they “preserve, protect and develop” the community as a whole by educating the public about the law, demonstrating how to debate differing views in a civil manner and listening when local residents speak out at public meetings.

“The opportunity to preserve the way of life up here,” he said, “will slowly drain away without having the guidance and assistance of lawyers.”

Indiana is not the only state grappling with a lawyer shortage. However, about a year ago, Purdue University approached the Indiana Supreme Court with a proposal that the school says might boost the number of attorneys in rural parts of the Hoosier state. Purdue is asking the rules for admission to practice law in Indiana be tweaked to allow the graduates of its online institution, Concord Law School, to apply for an Indiana law license.

Concord, founded in 1998, became part of Purdue when the West Lafayette school acquired Kaplan University in 2018 and formed Purdue University Global. Billing itself as the first law school in the country to offer an online J.D. program, Concord is based in California, but its faculty and students are sprinkled across the country.

#### **A question of standards**

In the Hoosier state, the admission process to practice law includes a grueling two-day bar exam that tests the applicants' legal skills and knowledge and a character and fitness evaluation. The purpose of the multi-step entrance procedure is to protect consumers while ensuring licensed attorneys have the competence to handle legal matters.

A key to Indiana's admission standard is that applicants for the bar must have a juris doctorate degree from a law school accredited by the American Bar Association. Since Concord does not have ABA accreditation, Purdue is seeking to relax that standard. The proposed changes to three admission and discipline rules are so significant that a special committee convened by the Indiana Supreme Court to review the proposal could not reach a consensus.

The Purdue University Global Concord Law School Working Group submitted its findings to the Supreme Court Feb. 15, and earlier this week, the Supreme Court posted the [report](#) online along with a request for [public comment](#). Since it was not able to agree on whether the rule revisions should be adopted, the working group listed the pros and cons of Purdue's proposal and made a series of recommendations if the rules are changed.

Indiana Chief Justice Loretta Rush said the Supreme Court is doing the due diligence necessary to determine if the state can maintain its high admissions criteria while increasing the pool of attorneys.

Rush acknowledged the public may question the need for more lawyers.

"It's a big deal that you have somebody to represent you with regard to your liberty rights, with regard to standing before you as you're facing criminal charges," she said in an interview with *The Indiana Citizen*. "We've got a real issue with regard to access to justice and the increased number of unrepresented litigants."

The number of first-time takers of the Indiana bar exam shows the decline—in 2021 and 2022, a total of 898 individuals compared to 1,333 in 2011 and 2012.

This decline has an impact that ripples across entire communities. Lawyers provide an expertise that is an important resource for individuals, nonprofits, businesses and governmental groups. As Rush noted, lawyers often serve on boards of different organizations; some universities have lawyers as their presidents; and hospitals have tapped lawyers to be their CEOs.

"We're going to need lawyers," Rush said. "We're going to need lawyers with regard to representing individuals."

Concord touts itself as an option for people who want to study the law but do not live near a law school or cannot attend regularly scheduled classes because of family or professional obligations. The law school asserts its online format in particular provides the opportunity for residents of underserved communities to obtain a J.D. degree and then practice in those same communities.

"Concord Law School has been delivering a quality online legal education for 25 years, so allowing its graduates to become licensed in Indiana means our state doesn't need to choose between increasing access and maintaining high standards," Steven Schultz, chief legal officer at Purdue University, said in a statement.

"This proposal seeks to supplement, not supplant, the many contributions of our state's existing law schools, and in this way help ensure more Hoosiers have access to legal education and legal services."

### **Pros and cons**

Still, the Indiana legal profession is undecided about welcoming Concord graduates to sit for the bar exam.

Among the positives highlighted by the working group: The law school's affiliation with Purdue and a lower sticker price than Indiana's three remaining accredited law schools, Notre Dame Law School, Indiana University Maurer School of Law and Indiana University Robert H. McKinney School of Law.

.In addition, nearly 60% of Concord's students identify as non-white and could increase the diversity of the Indiana legal profession.

On the other hand, the cons included Concord students' lower undergraduate GPAs and poorer performance on the California bar exam, plus the lack of a "law-school community" that typically supports students—especially those who are the first in their families to pursue a law degree—through study groups, access to internships, and interactions with attorneys and judges.

Members of the working group were also concerned that if the new rule were adopted, graduates from other non-ABA-accredited law schools could sue, seeking to join the Concord graduates in sitting for the Indiana bar.

The working group's report concluded with a list of recommendations to be implemented if the rule changes were approved. On the list were the suggestions that Concord change its name to Purdue University Global Law School and that students who are intending to sit for the Indiana bar exam be required to spend one long weekend each year at the university's West Lafayette campus.

Cynthia Baker, clinical professor at Indiana University Robert H. McKinney School of Law, was a member of the working group, as was Ryan, the Newton County attorney. Judge Nancy Vaidik of the Court of Appeals of Indiana chaired the special committee through six meetings that enlisted insight from attorneys, judges and bar admissions experts across the country.

### **Rules of admission**

The charge from the Supreme Court was to examine the quality of the Concord online program and to look at how Indiana could utilize that resource. Some members, Baker said, wanted the final report to recommend changing the court's rules for admission as Purdue asked, but others disagreed.

"I think the chair wisely thought, really, to get the best report, you've got to just put it in terms of pros and cons," Baker said.

The proposal from Purdue would relax the Hoosier state's requirement as presented in Admission and Discipline Rule 13 that applicants to the bar must have graduated from an ABA-accredited law school.

Indiana is one of 18 states that sets a hard line against non-ABA-accredited law schools, according to the National Conference of Bar Examiners. But as the report noted, 19 other states permit graduates of non-ABA-accredited institutions to apply for admission if they have passed the California bar and been practicing about five to 10 years.

However, Indiana has tinkered with Rule 13, amending it 20 times between 1954 and 1997. Most significantly, from 1977 into 1993, the Indiana Supreme Court did allow graduates of non-ABA-approved law schools to sit for the Indiana bar exam.

Purdue's proposed language does not mention Concord specifically. Instead, the rules would be changed to allow individuals to sit for the Indiana bar if they graduated from a law school that is ineligible for ABA accreditation because it is fully online and if the school is located in Indiana or is part of a university located in Indiana. The proposed rule change would not require the individuals to first be licensed and practicing in another state.

A footnote in the working group's report indicated a last-minute change to the proposal by Purdue removed the accreditation requirement. The original proposal enabled the graduates of a school accredited by a state or a regional or national body other than the ABA to sit for the Indiana bar. The footnote stated Purdue "seems to suggest" the accreditation language is not needed.

As a consequence, the report stated, "...the proposed rule amendment presented to the Working Group on February 7, 2023, is substantively different than the proposed rule amendment that the Working Group had been assessing since September."

Baker and some other members were concerned about the potential removal of the accreditation requirement. Accreditation is seen as indicating the quality of the legal education that comes before the bar exam.

"I think state supreme courts around our country feel that there's something more than just passing one high-stakes test to being a lawyer," Baker said. Indiana has deferred to the ABA accreditation process to determine "what is a quality legal education before somebody sits down for the bar."

Martin Pritikin, dean of Concord, said Concord will not be competing for students with Indiana's other schools, such as IU McKinney in Indianapolis. Individuals accepted to the Indianapolis law school's part-time program and are able to balance their personal and professional lives with their legal studies are still going to attend. IU McKinney, he continued, is ABA accredited, which will give graduates the flexibility to practice in other states.

"Our goal is not to horn in on IU McKinney's territory," Pritikin said. "Our goal is really to create new opportunities for people for whom that's just not a workable option for them. So we're not just looking to eat into the existing pie. We're really looking to expand the pie of opportunities for Indiana residents."

Karen Bravo, dean of IU McKinney, said she does not view Concord as competition. Her school, she said, was established as a night program 128 years ago and at that time was one of several law schools in Indianapolis. Also, IU McKinney is adapting to students' needs, having developed a new hybrid program that will expand the online curriculum for the part-time course of study.

"This will improve access, and that's our goal," Bravo said of the hybrid program. "Our mission is to educate lawyers for the state of Indiana and beyond. So they come in our doors, they are transformed over the three-year or four-year process into lawyers that go out to have wonderful careers and to contribute to the needs of Indiana."

### **ABA accreditation**

When Pritikin became dean of Concord in 2016, he approached other states with petitions to let his school's graduates sit for their bar exams. Those legal communities raised questions about online education, bar passage rates and accreditation.

At that time, Concord, still a part of Kaplan University, was not accredited by any regulatory body. The American Bar Association serves as the law-school accrediting agency for the U.S. Department of Education, but schools in California can seek accreditation from the state bar's committee of bar examiners. This enables J.D. graduates to sit for the bar and practice in the Golden State.

Concord gained California accreditation in 2019 after the state bar dropped its requirement that law schools must have a brick and mortar location. Although the ABA is relaxing its limits on distance education, the association continues to largely withhold accreditation from completely online J.D. degree programs.

Pritikin is confident that if Concord could at least apply for ABA approval, it could meet the association's other standards for accreditation.

Some Indiana legal scholars are not so sure.

Christiana Ochoa, dean of Indiana University Maurer School of Law in Bloomington, and Bravo highlighted the accreditation issue in a joint letter they sent to the Indiana Supreme Court about Purdue's proposal.



Among the ABA accreditation mandates, law schools must provide data—later posted online—about each entering class, including racial and gender composition, scholarship dollars, and median undergraduate grade point average and LSAT scores. Also, the schools have to provide a post-graduate accounting of the number of graduates who have passed the bar and whether they have landed jobs practicing law.

Indiana, Ochoa said, has long relied on ABA accreditation standards as a way to measure whether the applicants applying for a law license have been provided a quality legal education. Graduates of an ABA-accredited institution have devoted three years of their lives to doctrinal learning, skills training and practical experience. But the state could not be sure that graduates of non-ABA-accredited law schools have received the same level of education because those institutions are not required to report any data that indicates the quality of their curriculum.

“The training that law schools provide is substantial, and it is formative to young lawyers’ ability to practice law at a high level,” Ochoa said. “We believe it’s critical that the lawyers that are trained and licensed to practice law in Indiana have those foundational knowledge and skills.”

Of the data about Concord that is available, Ochoa pointed in particular to the law school’s high rate of students not completing the program and low number of graduates. Concord has an attrition rate of 50%. Also, while in recent years Concord’s first-time bar passage rate for the California bar exam has improved to reach about 50%, results from 2020 and earlier report passage rates hovered mostly in the 20% range.

Pritikin acknowledged the concerns about bar passage and the particular focus for Indiana since two other law schools in the state—Valparaiso Law School and Indiana Tech Law School—both closed within the past six years. The dean assuaged the working group’s fears by suggesting Concord be held to the ABA standard, which is that 75% of a law school’s graduates must pass a bar exam within two years of graduation.

He believes Concord’s effort to reach the ABA pass rate standard for the Indiana bar will be boosted by the lower score the Hoosier state requires. California applicants must score at least 278 to pass the state’s bar exam, but in Indiana, the so-called cut score is 264.

“I think that’s a reasonable thing to ask. If the state is going to open up this opportunity, they should want some reasonable assurances that people are going to have a decent chance of passing the bar,” Pritikin said of Indiana. “And I agree with that. We don’t want (Concord) to be a place that takes in people’s money and then they can’t pass the bar.”

### **Legal deserts**

Concord’s proposals submitted to Connecticut and Arizona in 2017 for admission to their respective bars echoed the same arguments made to Indiana. The school asserted the online option coupled with the opportunity to take the state bar exam would enable Hoosiers in rural areas to stay in their communities and not only earn a J.D. degree but practice there afterwards.

With the closing of Valparaiso Law School and the boom in demand for legal services, Indiana law firms, legal aid offices and government agencies have been struggling to fill vacant lawyer positions. A [2020 study](#) by the ABA found Indiana had just 2.3 lawyers per 1,000 residents, among the bottom 10 of states and lower than Indiana’s four neighboring states.

The demand appears likely to continue growing. A [2017 study](#) led by the Indiana Coalition for Court Access found 80% of Hoosiers living in poverty experienced at least one civil legal problem, for a total of more than 765,000 legal problems. On top of this, there are efforts to mandate that public defenders be assigned to represent individuals charged with misdemeanors and to assign attorneys to represent children who are wards of the state because they have been found to be victims of abuse or neglect.

“We have a shortage right now,” Chief Justice Rush said. “It’s critical.”

Pritikin said Concord has demonstrated some success in getting its graduates to serve rural communities. He cited statistics where overall, only 1.5% of lawyers in California practice in remote areas, compared to 4.5% of Concord graduates.

“The absolute numbers are small,” Pritikin conceded. “But we’re talking about three times as many Concord J.D. grads in rural areas than lawyers as a whole. The hope is that we will be able to do something similar in Indiana.”

Ryan, who according to the ABA study is one of 19 attorneys in Newton County, did not have a solution to the problem of Indiana having too few small-town attorneys. But he did point out that communities are not helpless in attracting lawyers or any other professionals. Attributes like being a safe place with economic opportunities, having parks and supporting a good education system can make a community, regardless of size, a place where people want to live and work.

Bravo also sees the problem of underserved areas not having enough attorneys as needing a holistic approach, since many factors are leading to a decline in rural lawyers. She pointed out that California is also struggling with a lawyer shortage despite the state offering many pathways to studying for a J.D., whether through an ABA- or state-accredited school, a non-accredited program or even an apprenticeship.

“So I think there needs to be more intentionality to understand what are the pressures in rural areas,” Bravo said. “If a graduate of IU McKinney from a rural area were to return there, are they able to make a living?”

While online legal education may provide the chance for rural residents to get a J.D., Ryan said using Zoom to meet with clients will not build a practice in rural counties. The practice of law, he said, is based on trust, and that is built by sitting across the table and looking a client in the eye as he or she talks about very personal problems.

In a small Indiana town, not only is being online too impersonal, it is also impractical.

“We have very limited broadband here,” Ryan said, “and almost none in our rural unincorporated areas.”

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