

# OREGON STATE BOARD OF BAR EXAMINERS

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16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, OR 97281-1935  
(503) 620-0222 or (800) 452-8260 • [www.osbar.org](http://www.osbar.org)

August 30, 2023

*Sent via electronic mail to:*

[Linda.L.Kinney@ojd.state.or.us](mailto:Linda.L.Kinney@ojd.state.or.us)

Ms. Linda Kinney  
Appellate Court Manager &  
Executive Assistant to Chief Justice Flynn  
Oregon Supreme Court  
1163 State St NE  
Salem, OR 97301

**Re: Oregon Board of Bar Examiners Recommendation to Adopt the  
Program Proposal and Proposed Rules of the Licensure Pathway Development  
Committee for the SPPE, with the program to begin on May 15, 2024.**

Dear Chief Justice Flynn:

At the request of the Oregon Supreme Court, the Oregon State Board of Bar Examiners (Board) established a committee to further develop the concepts presented to the Court in 2021 by the Alternatives to the Bar Exam Task Force. The current Committee is known as the Licensure Pathway Development Committee (LPDC). The LPDC previously approved rules for the Supervised Practice Portfolio Examination (SPPE) pathway, which were published for 60-days of public comment. The committee previously provided a report to the Court about this program back in March of this year. Subsequent to the March Report, the LPDC had public meetings in which they addressed all of the public comments provided, either through modification to the old rules or through responsive commentary. The LPDC has since then unanimously voted to approve the final draft of the SPPE Rules, and recommend that the Board vote to approve the rules for recommendation to the Oregon Supreme Court.

At the Board's public meeting on August 24, 2023, the Co-Chairs of the LPDC presented to the Board a thorough explanation of the SPPE Program and SPPE Rules. The presentation was in follow-up to a 32-page document entitled the Proposed Adoption of the Supervised Practice Pathway Examination, which is attached hereto as Exhibit A. Also included in the presentation was a final draft of the SPPE Rules, which are attached hereto as Exhibit B; and a document entitled "Notes and Explanations on Proposed Rules for the Supervised Practice Portfolio Examination (SPPE) Licensing Pathway, Revised 08/02/2023", which is attached hereto as Exhibit C.

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Following the presentations by the LPDC's Co-Chairs, the Board voted unanimously to approve the LPDC's proposal, and to submit all three of the LPDC's documents in support of the SPPE to the Oregon Supreme Court unedited. The Board further voted unanimously to recommend that the Court adopt the SPPE program as recommended by the LPDC, with the program to begin on the same date as the late filing deadline for the July 2024 Oregon bar exam, which currently is set to May 15, 2024. The Board instructed me to file this letter and attachments to the Court no later than today, so that the Court could consider, or take under advisement, the recommendations of the Board at its public meeting on September 7, 2024.

The following four panelists hope to be available for the presentation of this proposal to the Court at the September Public Meeting: 1) LPDC Co-Chair, Addie Smith; 2) LPDC Co-Chair, Joanna Perini-Abbott; 3) current Board Chair, Stephanie Tuttle; and 4) myself, as the administrator who will implement this program for the Board, should the Court approve it. Most panelists will be able to attend via Webex, but some might be able to attend in person. Joanna Perini-Abbott and I will attempt to attend the meeting in-person, especially if this is the preferred method of the Court.

Please let me know if you need anything else from the LPDC, the Board or my office.

Respectfully,



Troy Wood  
Regulatory Counsel

Enclosures

cc via email:

Helen Hierschbiel, Oregon State Bar Chief Executive Officer  
Ankur Doshi, Oregon State Bar General Counsel  
Lisa J. Norris-Lampe, Appellate Legal Counsel, Oregon Supreme Court  
Jason Specht, Staff Attorney, Oregon Supreme Court  
Stephanie Tuttle, Chair of the Oregon Board of Bar Examiners  
Dr. Anthony Rosilez, Vice-Chair of the Oregon Board of Bar Examiners  
Adrian Tobin Smith, Co-Chair of the LPDC  
Joanna Perini-Abbott, Co-Chair of the LPDC

# **Exhibit A**

# OREGON STATE BOARD OF BAR EXAMINERS

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August 2, 2023

Oregon State Board of Bar Examiners  
16037 S.W. Upper Boones Ferry Road  
Tigard, OR 97224

Re: Proposed Adoption of the  
Supervised Practice Pathway Examination

Dear Board Members,

As you know, on January 12, 2022, the Oregon Supreme Court expressed “approval in concept” of two pathways for admission along with the Uniform Bar Examination (UBE): the Supervised Practice Portfolio Examination (SPPE; then titled the Supervised Practice Pathway), and the Oregon Experiential Portfolio Examination (OEPE; then titled the Oregon Experiential Pathway). In response, the Oregon Board of Bar Examiners (BBX) convened the Licensure Pathways Development Committee to draft proposed rules for these two pathways.

The Committee convened in May 2022 and began working on the proposed parameters for both pathways. Since January 2023, the Committee has focused its attention exclusively on the SPPE. Accompanying this letter are the proposed rules for the SPPE, along with a set of explanatory notes.<sup>1</sup> We ask that the BBX forward these rules to the Court with a recommendation from the BBX that the Court adopt the SPPE as a pathway to admission in Oregon.<sup>2</sup>

The attached materials are a complete articulation of the proposed pathway as envisioned by the Committee. In this letter, we have summarized the process that led to

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<sup>1</sup> The rules are captioned, “The Oregon Supervised Practice Portfolio Examination.” The rules approved by the Committee are dated August 2, 2023. (The rules released for public commentary are dated March 8, 2023.) The explanatory notes are captioned, “Notes and Explanations on Proposed Rules for the Supervised Practice Portfolio Examination (SPPE) Licensing Pathway.” For clarity, we have added the August 2, 2023, date to the version submitted to the Board with this letter. (The version released for public commentary is undated.)

<sup>2</sup> We anticipate returning our attention to the OEPE in the Fall. We are hopeful that we will be able to release rules, along with explanatory notes for public comment by the close of 2023.

the proposed rules, a summary of the public commentary provided in response to the proposed rules, and a summary of the Committee's response to those comments.

## **I. Background and Process for Pathway Development.**

On September 14, 2020, following a flurry of emergency licensure reform taken in response to the COVID-19 pandemic, then Oregon Supreme Court Chief Justice Walters charged the BBX with advising the Court as to whether "Oregon should grant admission to the bar on some basis in addition to the passage of the Oregon Bar Exam or the Uniform Bar Examination (UBE), such as a form of 'diploma privilege.'"<sup>3</sup>

In response to the Court's charge, in January 2021, the BBX convened a task force. The Alternatives to the Exam Task Force had representatives from these organizations:

- Oregon Supreme Court;
- Oregon BBX;
- Oregon State Bar (OSB);
- Oregon Professional Liability Fund (PLF);
- Each Oregon Law School (administration and students);
- OSB Affinity Bar Sections; and
- OSB Practice Area Sections.<sup>4</sup>

The initial Task Force meetings took place between February and May 2021.<sup>5</sup> The Task Force meetings took place via Zoom and were open to the public.

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<sup>3</sup> A copy of the September 14, 2020, CJ Walters Letter to BBX is available at: <https://taskforces.osbar.org/files/2021/02/CJLetterReAdmissionsBBXTaskForces.pdf> (last accessed August 2, 2023).

<sup>4</sup> The roster of the Alternatives to the Exam Task Force is available at: <https://taskforces.osbar.org/files/ATERoster.pdf> (last accessed August 2, 2023).

<sup>5</sup> The meeting minutes and agendas are available at: <https://taskforces.osbar.org/ate/agenda/> (last accessed August 2, 2023).

The Task Force broke into three groups to study the models of licensure (other than the bar exam) in place in the United States and Canada at that time: (1) Supervised Practice, such as articling in Canada and the emergency policies put in place in Utah and Washington D.C. during the pandemic; (2) A Law School Portfolio Review, as done in the Daniel Webster Honors Program from University of New Hampshire Law School; and (3) Diploma Privilege, as employed in Wisconsin.

Each group focused on whether a pathway that increased accessibility to and equity in the profession by removing unnecessary barriers to admission could be developed in Oregon while still meeting the state's requirements for admission found in ORS 9.220. That statute, which is designed to ensure consumer protection provides, in relevant part:

An applicant for admission as attorney must apply to the Supreme Court and show that the applicant: \*\*\*\*\* [h]as the requisite learning and ability, which must be shown by the examination of the applicant, by the judges or under their direction.<sup>6</sup>

Since 2017, Oregon has offered the UBE, which is drafted by the National Conference of Bar Examiners (NCBE). In conducting its analysis of the other models, the study groups presumed that obtaining a passing score on the UBE would remain a path to admission in Oregon.<sup>7</sup> While both the Court and the BBX have long accepted that a passing score on the UBE demonstrates the requisite learning and ability for admission, the Task Force concluded that its purpose was not to look for a model that tested exactly what the UBE tests, either as the test exists now or as it will exist once the NCBE implements the NextGen Bar Exam.<sup>8</sup>

The Task Force agreed, instead, to review models with an eye toward identifying pathways that would permit the BBX (as directed by the Court) to measure applicants against the “Essential Eligibility Requirements” found in Oregon Rule for Admission

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<sup>6</sup> ORS 9.220(3).

<sup>7</sup> Currently, there are several components to admission in addition to securing a passing score on the UBE, including complying with Rule for Admission 3.05 (which most applicants accomplish by graduating from an ABA law school), and passing a character and fitness review. The prospective pathways are intended to address “the requisite learning and ability” component of the admission requirements found in ORS 9.220(3).

<sup>8</sup> See *Next Generation of the Bar Exam*, NCBEX.ORG, <https://www.ncbex.org/about/nextgen-bar-exam/> (last accessed August 2, 2023) (discussing the upcoming evolution of the UBE and noting that it is expected to be implemented in July 2026).

(RFA) 1.25<sup>9</sup> and the 12 core competencies identified by the Institute for Advancement of the American Legal System (IAALS) in its October 2020 publication on the Building Blocks of Minimum Competence.<sup>10</sup>

After around 4 months of study, the three study groups made recommendations to the Task Force:

- The Supervised Practice study group recommended that Oregon adopt a pathway that allowed for admission following a term of supervised practice provided that the applicant showed the requisite learning and ability to practice through a work-product portfolio assessment conducted by the BBX.
- The Law School Portfolio Review study group recommended that Oregon adopt a pathway for admission that is similar, substantively, to the Daniel Websters Honors Program in New Hampshire, with a goal of making the program one that could be implemented first at Oregon law schools and, eventually, at any ABA accredited law school that elected to implement it for an applicant. Again, the

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<sup>9</sup> A copy of Oregon's Rules for Admission for Attorneys is available at [https://www.osbar.org/\\_docs/rulesregs/admissions.pdf](https://www.osbar.org/_docs/rulesregs/admissions.pdf) (last accessed August 2, 2023).

<sup>10</sup> IAALS identified the following core competencies:

- The ability to act professionally and in accordance with the rules of professional conduct;
- An understanding of legal processes and sources of law;
- An understanding of threshold concepts in many subjects;
- The ability to interpret legal materials;
- The ability to interact effectively with clients;
- The ability to identify legal issues;
- The ability to conduct research;
- The ability to communicate as a lawyer;
- The ability to see the “big picture” of client matters;
- The ability to manage a law-related workload responsibly;
- The ability to cope with the stresses of the legal profession; and
- The ability to pursue self-directed learning.

Deborah Jones Merritt & Logan Cornett, Inst. For the Advancement of the Am. Legal Sys., *Building a Better Bar: The Twelve Building Blocks of Minimum Competence* 3 (2020) [https://iaals.du.edu/sites/default/files/documents/publications/building\\_a\\_better\\_bar.pdf](https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf) (last accessed August 2, 2023).

group expected that admission would ultimately be governed by a work-product portfolio assessment conducted by the BBX.

- The Diploma Privilege study group recommended that to meet the requirements of ORS 9.220(3), a Diploma Privilege pathway would need to include specific curriculum requirements and a BBX review of work product before admission. These changes brought the Diploma Privilege study group's recommendation almost exactly in line with what the Law School Portfolio Review study group recommended.

After further discussions and a vote, the Task Force voted to recommend adoption of what is now known as the Supervised Practice Portfolio Examination (SPPE) and the Oregon Experiential Portfolio Examination (OEPE). The Task Force drafted a summary report of its recommendations, which it forwarded to the BBX and the Court.<sup>11</sup> In June 2021, the Court released the Task Force report for public comment. Following the public comment period, the Court posed a series of questions stemming from the report and public comment back to the Task Force and asked for another report answering these questions.<sup>12</sup> The Task Force met several times in the fall of 2021 to discuss the public comments and provided a supplemental report to the Court in November 2021.<sup>13</sup>

At a public meeting held in January 2022, the Supreme Court considered the Task Force's report, supplemental report, and the public comment. The Court "approved in concept" the recommendations of the Task Force and asked the BBX to convene a new group to provide specific recommendations of how each program could be implemented.

The BBX determined that the voting body of this group should be smaller in number than the task force but that the voting members should be supported by an

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<sup>11</sup> The June 18, 2021, Alternatives to the Exam Task Force report is available at: <https://taskforces.osbar.org/files/Bar-Exam-Alternatives-TFReport.pdf> (last accessed August 2, 2023).

<sup>12</sup> The public comments received in response to the Task Force report are available at: <https://taskforces.osbar.org/files/Comments-Export-2021-ATE.pdf> (last accessed August 2, 2023.). The Court's September 2, 2021, letter to the Task Force sent in response to the public comment is available at <https://taskforces.osbar.org/files/Exhibit-1-2021.09.02-ltr-to-Task-Force.pdf> (last accessed August 2, 2023).

<sup>13</sup> The Task Force's supplemental report is available at: <https://taskforces.osbar.org/files/2021-11-29SupplementalReporttoJune182021ATEReport.pdf> (last accessed August 2, 2023).



advisory committee. The voting members of the newly formed committee were identified as:

- 4 members of the BBX;
- 1 representative from each Oregon law school (3 members total);
- 1 representative from the OSB Board of Governors;
- 1 representative practicing law outside the Willamette Valley;
- 1 representative from private practice;
- 1 representative from state-court criminal practice;
- 1 student or recent graduate representative; and
- The OSB Executive Director.<sup>14</sup>

A member of the Court was also invited to attend the group's meetings as a non-voting member.

The Committee then invited an expansive list of individuals to serve as members of an advisory committee. Those individuals include representatives from: the NCBE, the Institute for the Advancement of the American Legal System (IAALS), each affinity bar group in the OSB, each practice area bar group in the OSB, Disability Rights Oregon, and any other members of the bar or public who wished to join. Members of the advisory group were invited to attend and fully participate, except by voting, in all meetings. This group was invaluable to the progress of the Committee.

The Committee meetings have taken place via Zoom and have been open to the public. There have been around 19 meetings since the first meeting was convened in May 2022.<sup>15</sup>

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<sup>14</sup> The roster of the Licensing Pathway Development Committee is available at: <https://lpdc.osbar.org/files/LPDCRoster.pdf> (last accessed August 2, 2023).

<sup>15</sup> The meeting agendas and minutes are available at: <https://lpdc.osbar.org/meeting-agendas-and-minutes/> (last accessed August 2, 2023).

The Committee broke into three work groups: The SPPE group; the OEPE group (the law school portfolio model); and the outreach group. The SPPE group and OEPE group began work on drafting rules for each program. The outreach group coordinated presentations to nearly 20 groups throughout the state and other media outreach including an article in the Oregon Bar Bulletin to ensure the bar membership was fully informed during the process.<sup>16</sup>

The Committee decided to decouple the progress of the two pathways so that if one was ready for consideration first it could move forward. The SPPE group presented draft rules to the full committee and advisory group in January 2023. The full committee and advisory group then spent several meetings discussing the proposed SPPE rules in detail and debating any provisions raised for discussion by a meeting attendee.

In March 2023, the Committee presented the proposed SPPE rules, along with detailed explanatory notes that outlined the rationale for each of the rules, to the Oregon Supreme Court at a public meeting.<sup>17</sup> As discussed below, in early April 2023, the same proposed rules and notes were released for public comment.

In June 2023, at the close of public comment period, the full committee and advisory group met several times to review the public comment and revise the proposed rules based on the discussions that flowed from that review.

On August 2, 2023, the Committee voted to approve the final version of the proposed SPPE rules, along with the revised explanatory notes and this letter.<sup>18</sup> We ask

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<sup>16</sup> Shannon Gormley, *Expanding the Bar: OSB Applicants Soon May Choose From Bar Exam, Two Novel Examinations*, Oregon State Bar Bulletin (Feb/March 2023), <https://www.osbar.org/bulletin/issues/2023/2023FebruaryMarch/index.html> (last accessed August 2, 2023).

<sup>17</sup> The proposed rules and explanatory notes as they existed when circulated to the Court and to the public are available at: <https://lpdc.osbar.org/files/SPPEDraftRules-SupervisedPracticePortfolioExamination.pdf> (proposed rules; last accessed August 2, 2023) and <https://lpdc.osbar.org/files/SPPEDraftRules-ExplanatoryNotes.pdf> (explanatory notes; last accessed August 2, 2023). The revised rules and explanatory notes are included with this letter and will be made available on the OSB website at <https://lpdc.osbar.org> (last accessed August 2, 2023).

<sup>18</sup> With one abstention on the proposed SPPE rules themselves, the votes were unanimous. Associate Dean John Parry, representing Lewis & Clark Law School, abstained from voting on the proposed rules to avoid having his vote construed as the institutional position of Lewis & Clark, and he does not have the authority to speak on behalf of the law school in that

the BBX to consider these materials at your August 24, 2023, Board meeting. We also request that you forward them to the Oregon Supreme Court with a recommendation that the Court adopt the SPPE as a pathway to admission to practice in Oregon.

We note that, although Admissions staff and members of the BBX have been extensively involved in the work of the Committee, if the Court adopts the SPPE as a pathway for admission, the BBX and Admissions staff will then need to undertake the logistical steps necessary to implement the SPPE. We appreciate that the work left to be done to get the pathway up and running is substantial. Still, with these rules and explanatory notes, we have tried to provide a comprehensive outline of the program such that the implementation could occur in short order.

The Committee expects that work on the OEPE rules will resume in the fall, now with the benefit of the work of the SPPE group and the discussion of and comments on the SPPE drafts. When the OEPE rules are drafted, a similar process of full group consideration, public comment, and revisions will take place. We hope that work can be done by the close of 2023.

## **II. Summary of Public Commentary.**

As noted above, following our March 2023 presentation to the Oregon Supreme Court, we convened a 90-day public comment period. Members of the public could review the rules and leave a comment on the OSB website.<sup>19</sup> In addition, every OSB member received an email from the bar soliciting comment on the proposed rules.<sup>20</sup>

Forty-four comments were received.<sup>21</sup> Twenty-seven of the comments can be characterized as “in support” of the SPPE; seven can be characterized as against it; three

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way. He did vote in favor of the Notes and Explanations and the letter to the Board of Bar Examiners. Notably, after the rules were released for public comment, the outreach group gave a presentation for any Lewis & Clark faculty on the proposed SPPE. The impression of the Committee members presenting was that the Program was being favorably received and, to our knowledge, no Lewis & Clark professor submitted a negative public comment on the proposed rules.

<sup>19</sup> See OSB Licensing Development Pathway Committee, <https://lpdc.osbar.org> (last accessed August 2, 2023).

<sup>20</sup> A copy of the letter that was emailed to OSB members is available at: <https://lpdc.osbar.org/files/March132023BBXLettertoOSBMembers.pdf> (last accessed August 2, 2023).

<sup>21</sup> The public comments will be made available on the Committee website at <https://lpdc.osbar.org> (last accessed August 2, 2023).

comments were substantively unrelated to the SPPE.<sup>22</sup> The balance offered specific comments without offering a clear-cut for/against position on the overall concept.

None of the public comments related to the SPPE raised substantive considerations that were new to the Committee. The Committee reviewed a summary of the comments at the May 24, 2023, meeting. It then discussed issues raised by the comments at two meetings in June. A final discussion and vote occurred on August 2, 2023.

Below we have attempted to address public comments that raised specific points of concern. When we made a change in response to the comments, we noted it. When we did not, we tried to explain why not. While we have tried to provide context for each comment, as well as the Committee's response, the discussion below presumes the reader has read both the proposed rules and the explanatory notes.

**A. Summary of Reasons Commenters Supported the SPPE (27 Commenters).**

Twenty-seven people offered broad support for the SPPE; their stated reasons were—in summary—as follows:

- Individuals who participate in the SPPE will be better prepared to practice law because learning by doing under the tutelage of an experienced professional is a critical component of acquiring and demonstrating competency.
- The SPPE will bring the profession in line with the medical, accounting, architecture, and other fields that require supervised practices for a predetermined period at the outset of practice.
- The SPPE will be a better indicator of attorney quality than the bar exam.
  - SPPE seems harder than passing the bar, but that is good.

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<sup>22</sup> Three commenters did not express an opinion on the SPPE but, instead, expressed frustration with the OSB more broadly. One commenter indicated that bar dues were too high; another indicated that the OSB does not prioritize its members; and a third indicated that the OSB is not taking steps to promote inclusion and diversity or to protect its members.

- SPPE will provide a better assessment of one's abilities to practice law than the bar. (4)<sup>23</sup>
- The one-size fits all model of the bar exam is not the best entry into our profession.
- The bar exam doesn't effectively test an individual's ability to practice; the SPPE does. (3)
- The ability to communicate orally and in written form, listen and relate well to clients, to be organized and act professionally cannot be measured in a two-day exam, but can be measured in the SPPE.
- The bar exam is arbitrary and outdated.
- Removes the bias of testing that harms:
  - practitioners of color;
  - rural practitioners;
  - practitioners with disabilities; and
  - lower socioeconomic status practitioners (because you can earn an income while completing the program and it removes the cost of bar prep classes, as well as the waiting between exam and results).
- Removes barriers to "good people helping other[s] solve problems." (2)
- The plan is thoughtful and well-drafted and:
  - A little too stringent, but seems to "strike a good balance";
  - Comprehensive and well-considered;
  - Practical, thoughtful, and innovative guidance;

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<sup>23</sup> When a theme or idea was expressed more than once, the number of commenters who shared that view is included in parentheses.

- Balances the need for equity and consumer protection;
- A careful and thoughtful approach in line with recent studies and scholarship describing the need to “reshape the bar”; and
- Consistent with the plan for the Lawyer Justice Corps.

**B. Summary of Reasons Commenters Opposed the SPPE (7 Commenters)**

Seven commenters opposed the SPPE; their stated reasons were—in summary—as follows:

- The SPPE is inferior to the bar exam. More specifically:
  - Preparing for the bar requires us to deepen our learning of all major areas of the law and frankly make connections between different areas of the law that we hadn’t made completely in law school as we took courses over three years;
  - Lawyers need to know how to focus and synthesize information and the bar exam process required that “on steroids”;
  - Learning to be ready for a one-time exam is also an important skill for lawyers preparing for many “one time” stressful situations and to perform on demand;
  - If you can’t handle the stress of the bar exam, you can’t be a successful attorney;
  - Lacks the element of surprise;
  - Oregon Bar Exam is “one of the easier bar exams to pass and has a very high pass rate already (74%, 68%, 79%, 64% etc.), so why should we further lower the admission standards”;<sup>24</sup>

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<sup>24</sup> Oregon administers the UBE, which is a standardized exam administered by the NCBE in over 40 jurisdictions across the country. Each jurisdiction sets its own minimum passing score on this uniform exam; only two jurisdictions require a higher score for admission than Oregon, which requires a score of 270. NCBE UBE Minimum Scores at

- Too diffuse and could easily be “cut and pasted” or not the internal work of a prospective attorney.
- Would flood the state with attorneys; and
- “This proposal seems to me a solution in search of a problem. The effect will be to create a second-class tier of lawyers who will be seen as unable to pass the bar. Prospective clients with any sophistication will avoid them.”
- “I do not support the SPPE project as currently outlined. \* \* \* I would be very interested in the administration cost for the BBX to administer and review the work samples, versus the cost to administer the current Bar Exam.”

The Supreme Court considered these types of concerns, as well as the Task Force’s comprehensive response to them,<sup>25</sup> when it approved the SPPE and OPPE “in concept,” and directed the BBX to convene a committee to develop rules outlining these forms of examination. Accordingly, the Committee offers just a few additional observations in response.

The Court and the BBX’s task when making admission determinations is guided by ORS 9.220, which focuses on the character, fitness, and abilities of an individual applicant. A desire to avoid a surplus of new lawyers cannot justify denying admission to a qualified applicant. Once there is recognition that some *qualified* applicants are being excluded from admission because of there is only one way to demonstrate competence, fairness dictates an exploration of whether there are other viable ways to examine applicants for competence.

Beyond fairness, however, the notion that Oregon should fear a “flood” of attorneys is misplaced. Oregon is not only facing a well-known shortage of public defenders but is in the bottom tier of lawyers per capita nationally, with just 2.9 lawyers

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<https://www.ncbex.org/exams/ube/ube-minimum-scores>) (last accessed August 2, 2023).

Oregon’s “high pass rate” reflects the quality of the applicants, not the ease of the exam. The adoption of the SPPE is not related to Oregon’s bar passage rate for any specific UBE exam but, instead, is related to the recognition that—whatever the passage rate—there are applicants who do not pass for reasons unrelated to their competence to practice.

<sup>25</sup> See Footnotes 11, 13, *supra*.

per 1000 citizens.<sup>26</sup> Lawyers and adequate legal services are even harder for people to secure in parts of Oregon outside the Willamette Valley.

Thus, both individual applicants and the Oregon legal consumer are served by developing additional pathways for admission. And the relevant inquiry when evaluating a pathway is not how it compares to another pathway but whether it places the BBX—as the Court’s designee—in a position to make a fair assessment of whether an applicant has the “requisite learning and ability” to practice as required by ORS 9.220.

The SPPE does so. In 2022, the BBX implemented the Provisional Licensing Program (PLP), which is a portfolio review model, to assess applicants affected by the HVAC failure for the February 2022 bar examination and, through that process, it has confirmed its ability to assess the competence of the work product submitted using detailed rubrics.<sup>27</sup>

As proposed, the SPPE positions the BBX to assess an applicant’s analytical thinking skills, their ability to apply those skills in practice of law, and to apply other practical skills necessary for practice. The portfolio assessment over time aligns with the Oregon’s Essential Eligibility Requirements<sup>28</sup> and the competencies identified by IAALS<sup>29</sup> in a more authentic way than a standardized test focused on a single point in time. Because of the rigor of the pathway, as well as the meaningful experience SPPE Provisional Licensees will gain in practice before being admitted to the bar, we believe that Oregon employers and consumers will quickly come to see value in lawyers admitted via the SPPE.

For the reasons discussed in the Task Force reports, recognized by the BBX and Court when forming this Committee, and touched on above, we do not believe any of the comments in opposition should stop Oregon from moving forward with the SPPE.

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<sup>26</sup> The ABA Profile of the Legal Profession 2022 (Lawyers by State) is available at <https://www.abalegalprofile.com/demographics.php#anchor2> (last accessed August 2, 2023).

<sup>27</sup> Though the rules the Committee has put forth for the SPPE differ from the PLP program, the portfolio submission requirements are similar.

<sup>28</sup> RFA 1.25.

<sup>29</sup> See Footnote 10, *supra*.



**C. Summary of Specific Comments About SPPE with Committee Responses.**

**1. Consistency with PLF Terminology.**

The PLF reminded the Committee that the PLF requires “coverage” rather than “insurance,” and asked the Committee to change that terminology in the rules. The requested technical correction was made throughout the rules.

**2. Missing Definitions.**

**a. Affinity Bar Association (SPPE Rule 6.8).**

One commenter requested further clarification on what constituted an affinity bar association. SPPE Rule 6.8 requires individuals complete at least 10 hours of activities related “to diversity, equity, inclusion, or access to justice” which may include work with “affinity bar associations.” To address the concern raised by the comment, the rules were amended to add the underlined words: “an Oregon State Bar sponsored affinity bar association or affinity section.”<sup>30</sup> This clarifies the term and limits the activity to those associations and sections formally sanctioned by the OSB, which are listed on its website.<sup>31</sup>

**b. Non-Profit Organization (SPPE Rule 2.1).**

One commenter asked whether the reference in SPPE Rule 2.1 to a “Non-Profit Organization” included law schools. The reference to nonprofit organizations does include law schools. The question, however, prompted us to clarify SPPE Rule 2.2(C) by providing that to qualify as work within the pathway, an SPPE employer must hire the Provisional Licensee to perform paid “Legal Work,” as defined in SPPE Rule 1.2(J), rather than simply “work.” This means that a law school that hired a licensee to provide legal services (*e.g.*, as part of a law school clinic) could qualify under the rules if the other components of the SPPE were met (if there were a Supervising Attorney, etc.), but if a law school hired a licensee to perform other types of work, those hours would not qualify in the program.

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<sup>30</sup> SPPE Rule 6.8.

<sup>31</sup> A copy of the current list of affinity bar associations can be found at <https://www.osbar.org/diversity> (last accessed August 2, 2023).

**c. Immediate Family (SPPE Rule 2.4).**

One commenter requested that the SPPE Rules define “immediate family” to include spouses. Immediate family is a term used to limit who may serve as a Supervising Attorney. The Committee intended to prohibit a Provisional Licensee from being supervised by a spouse, along with other immediate family members. The Committee amended the rule to address this concern. SPPE Rule 2.4 now expressly includes spouses, former spouses, cohabitants, and former cohabitants as “immediate family members” who cannot serve as a supervising attorney for a Provisional Licensee.

**3. Requested Clarifications.**

**a. “workspace, tools, and technology” (SPPE Rule 5.2).**

SPPE Rule 5.2 provides that “Employers participating in the Program must: \* \* \* \* (C) Provide Provisional Licensees appropriate workspace, tools, and technology to accomplish the tasks assigned by the Supervising Attorney[.]” One commenter suggested that the rule should specify whether the Provisional Licensee can be required to cover some or all of these expenses. The Committee believes that the rule is clear that a licensee *cannot be required* to cover any of these expenses.

**b. Timing of Releases for Written Work Product (SPPE Rule 6.4(F)(2)).**

One commenter suggested that we clarify when a client must consent to the use of a work product in a Provisional Licensee’s portfolio. SPPE Rule 6.4(F)(2) states that when a work product relates to a client matter, “the work product must be redacted to protect the client’s interests; and the client must consent to inclusion of the work product in the Portfolio.” The Committee agreed and thus clarified in SPPE Rule 6.4(F)(2) by adding the underlined clause to the rule: “Before the Portfolio is submitted, the client must consent to inclusion of the work product in the Portfolio.”

**c. Applicant Participation Limited to those Authorized to Sit for the Oregon Bar Exam.**

**i. Applicants from Law Schools Located in a Foreign Jurisdiction (SPPE Rule 2.1).**

An inquiry was made as to whether applicants from law schools located in foreign jurisdictions were eligible to participate in the SPPE. SPPE Rule 2.1(A) provides that one

prerequisite to SPPE participation is that the applicant meets the qualifications set out in RFA 3.05(1), (2), or (3) to sit for the Oregon Bar Exam. While most applicants for admission meet those requirements by graduating from an ABA accredited law school,<sup>32</sup> there is also a provision that guides when an applicant who graduated from a law school in a foreign jurisdiction can sit for the Oregon Bar Exam.<sup>33</sup> Provided an applicant who graduated from a law school in a foreign jurisdiction is qualified to sit for the bar exam under that rule, that applicant will also qualify to seek admission via the SPPE.

**ii. Out-of-State Applicants and Long-Standing Law School Graduates (SPPE Rule 2.1).**

One commenter asked whether this program was only available to recent law school graduates. Another asked whether attorneys admitted in other jurisdictions would be eligible for licensure under the SPPE. And, finally, a third asked if an Administrative Law Judge licensed in another state could use the SPPE to seek licensure.

Under SPPE Rule 2.1(A), the SPPE is available to any individual who is eligible to sit for the Oregon Bar Exam, provided they meet the other qualifications identified in Rule 2.1. Thus, as with the exam, applicants interested in the SPPE do not have to pursue admission within a specified period after graduation. And, as with the exam, applicants may also pursue the SPPE if they have failed the bar exam.

Attorneys licensed in other jurisdictions may have other avenues for admission to the Oregon bar beyond either sitting and passing the Oregon Bar Exam or, should this program be approved, pursuing admission the SPPE, including completing a UBE score transfer<sup>34</sup> or seeking admission via comity.<sup>35</sup> That said, if a lawyer practicing in another United States jurisdiction is not admissible via those pathways but is eligible to sit for the Oregon Bar Exam under RFA 3.05, that lawyer can seek admission in Oregon via the SPPE.

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<sup>32</sup> RFA 3.05(1).

<sup>33</sup> RFA 3.05(3).

<sup>34</sup> RFA 19.05.

<sup>35</sup> RFA 15.05.

**d. Comments Relating to Supervising Attorneys.**

**i. State Circuit Court Judges Can Supervise Provisional Licensees (SPPE Rule 2.4).**

There was an inquiry about whether state circuit court judges could supervise Provisional Licensees. ORS 3.050 requires Oregon circuit court judges to be members of the Oregon bar. We thus believe that most Oregon circuit court judges will meet the qualifications outlined in SPPE Rule 2.4 to serve as a Supervising Attorney should they elect to act in that role. (And we hope that many will do so.)

A person who works with the Multnomah County Circuit Court asked whether judges in that courthouse could act as Supervising Attorneys even though, structurally, the court has a “Clerk Supervisor, as the official supervisor, [rather than] the Judge for whom the clerk works.” The Committee intended for this type of structure to work within the SPPE, as long as the attorney—here the judge—agreed to serve the Provisional Licensee’s Supervising Attorney as that position is envisioned within the program.<sup>36</sup>

When reviewing the rules to confirm that the structure was authorized by them, the Committee noticed an error: SPPE Rule 2.4, relating to the qualifications of Supervising Attorneys referred to the attorney being employed by the “same organization” as the Provisional Licensee and not the “same employer.” With that correction, the rules now provide as follows:

SPPE Rule 1.2(E): “Employer is a business entity, non-profit organization, or government agency (including instrumentalities thereof) that employs the Supervising Attorney and employs or has agreed to employ a Provisional Licensee.”

SPPE Rule 2.4(E): “An individual may participate in the Program as a Supervising Attorney if that individual meets the following requirements: \* \* \* \* (E) Is employed by the same employer as the Provisional Licensee.”

With that clarification, we believe that the rules are clear that employment structure asked about would be permitted under the rules.

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<sup>36</sup> See SPPE Rule 5.3 (Role and Duties of Supervising Attorneys).

**ii. Supervising Attorneys Can Have a Disciplinary History Provided They Satisfy All of the Provisions Outlined in the SPPE Rules, Including Board Approval (SPPE Rule 2.6).**

One commenter maintained that the rules should not permit an attorney with a disciplinary history to ever serve as a Supervising Attorney. The Committee disagrees. SPPE Rule 2.4 provides that to qualify as a Supervising Attorney, the attorney must have “no record of public discipline in any jurisdiction to which they are or have been members or satisfies the requirements of Rule 2.6.” SPPE Rule 2.6 lays out a multi-step procedure that, if followed, permits (but does not require) the BBX to authorize a person with a history of discipline to become a Supervising Attorney. SPPE Rule 2.6 contains a temporal requirement (no history of discipline in the past five years), a substantive requirement (the attorney must detail their rehabilitation), and, as mentioned, leaves the decision to the discretion of the BBX. We believe that a rehabilitated attorney who undertakes that procedure and who is approved by the BBX is not only one who should be permitted to be a Supervising Attorney but is likely a person who will take their role as a Supervising Attorney seriously.

**iii. Requiring Supervising Attorneys to Have a “Demonstrated Record of Experience and Competency” (SPPE Rule 2.4).**

One commenter thought a Supervising Attorney should be limited to those who have a “demonstrated record of experience and competency.” SPPE Rule 2.4 includes these requirements for supervising attorneys:

- (A) Is an active member of the Oregon State Bar;
- (B) Has been an active member of the Oregon State Bar for two or more years preceding the application to serve as a Supervising Attorney;
- (C) Has been an active member of the bar in at least one jurisdiction for at least three of the five years preceding the application;
- (D) Has no record of public discipline in any jurisdiction to which they are or have been members or satisfies the requirements of Rule 2.6;
- (E) Is employed by the same organization as the Provisional Licensee;

- (F) Is not an immediate family member of the Provisional Licensee they will supervise; and
- (G) Signs the “Declaration of Supervising Attorney” and files that document with the Admissions Department.

We believe that rule adequately balances the need for many and diverse Supervising Attorneys across Oregon with a requirement that the attorney “evidences a record of experience and competency.”

**iv. “There Should be An Avenue of Appeal for Supervising Attorney’s Negative Decisions.”**

One commenter asserted that there “should be an avenue of appeal for supervising attorney’s negative decisions.” SPPE Rule 17.1 provides for the appointment of two Ombudspersons to help administer the program. Provisional Licensees will be encouraged to contact them (or one of them) to address any concern relating to the program, including concerns with a supervising attorney.<sup>37</sup> The rules also provide a mechanism for a licensee to change Supervising Attorneys without being removed from the program.<sup>38</sup> Further, although interim decisions by a supervising attorney (whether to sign an hour sheet, or the determination of whether a writing assignment is minimally competent) may affect the BBX’s review of an applicant’s portfolio, it is the formal decisions of the BBX not a Supervising attorney that directly determines whether an applicant passes the SPPE. And, when an applicant’s portfolio or piece of writing is determined not to meet the standard of minimal competence, applicants may submit different pieces to demonstrate competence. Thus, while these rules do not directly provide an avenue for appeal, they do adequately address this commentator’s concerns.

**v. Burden on Supervising Attorneys / Incentives for Supervising Attorneys.**

A few commenters noted that the administrative burden on small practices and non-profits will be substantial and suggested that there should be incentives created for Supervising Attorneys to participate.

While the Committee worked to minimize unnecessary burdens that could dampen interest in participating in the program, because the BBX must document the applicant is

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<sup>37</sup> SPPE 17.2.

<sup>38</sup> SPPE 15.1.

completing the program requirements and Provisional Licensees must work within the confines of their limited licenses, there will, necessarily, be administrative burdens on Supervising Attorneys that cannot be “offset” by the OSB.

We are optimistic that participation in the program will provide significant benefits to employers, including the employer’s ability to have their chosen employee working (including work that can be billed to clients) during the time that person would otherwise have had to devote time to studying for the bar examination. Employers may also find that providing the supervision required by the program will enhance the productivity and proficiency of new hires, benefiting both employers and clients.

We do believe that it would be appropriate to offer Supervising Attorneys the type of incentives that are available to lawyers who act as mentors in the New Lawyer Mentoring Program: CLE credits. We urge the BBX to reach out to the appropriate entities within the OSB to encourage the adoption of rules that provide such an incentive for participation for Supervising Attorneys. If such rules are adopted, we urge the BBX to include a cross-reference to those rules in the SPPE rules and make the existence of that “benefit” a part of any FAQ created for employers who are considering participating in the program.

#### **e. Comments on Program Requirements.**

##### **i. Number of Practice Hours Required.**

SPPE Rule 6.1 outlines ten substantive requirements for participation in the SPPE along with an “hours requirement.” Specifically, the rules require that a Provisional Licensee document *at least* 675 hours of work within the program before they can seek admission via the SPPE. The parameters of the work that can be included in the 675 hours are detailed in SPPE Rule 6.12. As noted in that rule, each week, a licensee can log *at most* 40 hours of “Legal Work assigned by the Supervising Attorney.”<sup>39</sup>

Of the 44 public comments submitted, four expressly endorsed that number of hours as appropriate; two commenters indicated that the number of hours was too low, suggesting it be increased to 1800 to 2000 hours, and 2000 hours respectively.<sup>40</sup>

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<sup>39</sup> SPPE Rule 6.12.

<sup>40</sup> Two commenters spoke favorably about the program but, in so doing, referenced the 1000 to 1500 range initially proposed by the Task Force. One wrote: “I think that the alternative to the bar exam of 1000-1500 hours is a good idea, because you will be getting experience in a

Having reviewed the public comments and engaged in discussion anew, the Committee stands by its recommendation that the minimum hours requirement for successful completion of the SPPE pathway be set at 675 hours with a 40/week cap. If a Provisional Licensee does log 40 hours of qualifying work per week, the completion of the “hours” requirement—standing alone—would take just under 17 weeks.

While the Committee considers the hours worked in a “real” legal setting an invaluable part of ensuring that an attorney who gains admission via the SPPE is, indeed, competent, the BBX’s substantive assessment of the applicant’s learning and ability to practice is accomplished not through an assessment of those 675 hours but by the applicant’s satisfactory completion of the ten substantive requirements outlined in SPPE Rule 6.1. The successful completion of those substantive tasks must take place *while* the applicant is working under the supervision of a qualified and engaged Supervising Attorney. Most significant among those substantive requirements is the submission of eight pieces of work-product, evaluations of two negotiations, and evaluations of two client encounters; all of which must be deemed “qualified” by the BBX to count toward the program requirements. Because of the nature of the substantive requirements and the rigors of practicing law (even only provisionally), the Committee expects that most applicants will work more than 675 hours as a Provisional Licensee before they will be admitted via this pathway. In other words, we believe that for most licensees, they will be unable to complete the program requirements in four months.

But what about applicants who can complete the program requirements in 675 hours? The BBX’s task is to ensure an applicant has shown the “requisite learning and ability” to practice before being admitted. ORS 9.220(3). The key question, then, is: provided an applicant can complete all 10 of the substantive requirements for admission, including submitting eight pieces of competent work-product, and engaging in the required counseling and negotiation sessions, what is the minimum number of hours that applicant must complete before being eligible for admission?

As the rules reflect, the Committee landed on 675 hours. The Committee’s rationale for concluding 675 hours was appropriate is outlined in the explanatory notes on pages 12 to 13. At its core, however, the figure stems from the Committee’s conclusion that if a Provisional Licensee can competently complete all those requirements while engaged in the rigors of working in a real-world setting, the BBX and the Court should

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job that you are going to be doing rather than memorizing laws that you don’t actually need to know by heart.” The other called the SPPE an “exceptional” option as compared to the bar exam but, in so doing, referenced the proposal at hand as “this new passage of the 1000 to 1500 hours of apprenticeship under a supervised lawyer.”



feel comfortable that the applicant has the “requisite skills and learning” to be admitted to practice as required by ORS 9.220(3). Because of that conclusion, we did not change our recommendation.

**ii. Negative Impact that Current Law School Hours Rules Have on Applicants Who Attend Law School Outside Oregon (SPPE Rule 6.13).**

One commenter argued that SPPE Rule 6.13, which outlines the circumstances in which an applicant can receive credit in the SPPE for hours worked while in law school, was unfair to applicants from out-of-state law schools. Nothing in the rule explicitly prohibits a student attending law school outside of Oregon from earning hours during law school. That said, the rule requires (among other things) that the work must have been directed and supervised by a person qualified to act as an SPPE Supervising Attorney,<sup>41</sup> that the Supervising Attorney has signed the declaration for Supervising Attorneys required by the rules,<sup>42</sup> and that the student must have been certified under Oregon’s Law Student Appearance Program (RFA 13.05 through 13.30).<sup>43</sup> We appreciate that these requirements will make it harder (though not impossible) for a non-Oregon based law student to earn qualifying hours during law school.

In crafting this rule, however, the Committee considered it key that any hours earned were completed under circumstances similar to those a Provisional Licensee would face while working within the confines of the SPPE program. That includes a consciousness on the part of both the student and the supervisor that the work could be credited as “hours” in the SPPE should the student subsequently seek admission in Oregon via that pathway. We believe that this increased awareness will ensure that both the student and the supervisor will be thinking about the student’s work as it relates to the student’s future practice. These rules serve that goal. Moreover, just as with the post-graduation work, we believe that it is important that the Supervising Attorney is accountable to the OSB for any ethical violations during the relationship.<sup>44</sup> For those reasons, we declined to reconsider these requirements at this point.

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<sup>41</sup> SPPE Rule 6.13(A).

<sup>42</sup> SPPE Rule 6.13(B).

<sup>43</sup> SPPE Rule 6.13(C).

<sup>44</sup> SPPE Rule 2.5 provides that, “A federal judge, magistrate, or bankruptcy judge whose primary chambers are in Oregon may serve as a Supervising Attorney” without meeting the Oregon bar membership requirements found in SPPE Rule 2.4. The rules relating to supervising a student in Oregon’s Law Student Appearance Program (RFA 13.05 through 13.30) provide no

### **iii. Timing of Completion of Hours (SPPE Rule 6.14).**

SPPE Rule 6.14 provides that “At least three quarters of the work product described in Rules 6.4, 6.5, and 6.6 must have been scored as ‘qualified’ within 3 calendar years” of the final portfolio being submitted. One commenter contended that, instead, there should be a minimum and maximum amount of time in which the hours should be completed.

There is no time limit on when a person can seek admission via the UBE or the SPPE. Provisional Licensees are professionally motivated to complete the program as quickly as possible, and their employers are equally interested in their progression into fully admitted members of the bar. Consideration was thus given to putting strict time limits on when—once undertaken—the SPPE must be completed. But one can readily imagine that if such a rule were put into place, the BBX (or the Admissions Department) would regularly have to field requests for exceptions to the rule, and would thus be put in the position of assessing and comparing the merits of one request against another.

When crafting the SPPE, the Committee tried to keep the principles of Universal Design at the forefront, including the principle that programs should be designed in a manner that maximize the functionality of the program for people with various characteristics. Applying that principle here, the BBX considered whether there was a rule that would meet the goal of ensuring that the applicant had the requisite learning and ability to practice, without inviting concerns that the program was unfair to people who—despite the incentives to do so—did not complete the program within a set time.

We concluded that tethering the timing requirements to the work-product that will be assessed for competency by the BBX, rather than the completion of the “minimum hours” was the best way to accomplish that goal.

### **iv. Minimum Number of Words for Portfolio Submissions (SPPE Rule 6.4).**

As part of their Portfolio requirement, each Provisional Licensee must prepare and submit at least eight pieces of written work product for review by the BBX.<sup>45</sup> After a significant amount of debate and discussion, the Committee recommended that two

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such exception. If the Court adopts the SPPE, the BBX might consider whether a similar exception should be added to that program so that a student serving in an extern position with such a judge could seek to have the hours credited to the SPPE.

<sup>45</sup> SPPE Rule 6.4.

submissions had to be at least 1,500 words, and the balance of the portfolio submissions had to be at least 300 words.<sup>46</sup> Only one person commented on this word requirement, offering the position that the 300-word minimum was too low; that commenter suggested a 500-word minimum.

The word minimum was another topic the Committee discussed extensively both before and after the public comment period. The Committee’s reasoning is detailed in the explanatory notes on page 6. A successful written submission must competently address “some substantive aspect of a legal matter,” and include “a prediction, conclusion, or recommendation related to that issue.”<sup>47</sup> To meet that requirement, the Committee believes that Provisional Licensees may find that their “short” submissions must be significantly longer than the 300-word minimum.

That said, the Committee also believes that a quality written submission—whether it is a motion to the Court or an email to opposing counsel—can be accomplished within 300 words. Lawyers are rarely criticized for being succinct and often criticized for being verbose; we do not believe it is appropriate to discourage brevity if it does not detract from the quality of the submission and the submission meets the other requirements of the rule. We therefore did not change the word minimum for the six shorter submissions.

**v. Permitting Counseling and Negotiations to Occur in Writing (SPPE Rules 6.5, 6.6).**

To complete the SPPE, the Provisional Licensee must lead at least two client interviews or client counseling sessions and at least two negotiations.<sup>48</sup> Those sessions can take place orally or in writing.<sup>49</sup>

One commenter suggested that the client counseling and negotiation requirements should not be permitted to be completed in writing. After hearing from attorneys who practice in diverse areas, the Committee concluded that being able to competently negotiate and counsel in writing is central to many attorneys’ legal practice. Indeed, in a “post-Pandemic” world, it is often hard to get either opposing counsel or a client to participate in a live interaction. Examples of meaningful written negotiations provided were demand letters and responses, mediation statements, and discovery meet and confer letters. Examples of meaningful written client counseling included client emails and

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<sup>46</sup> SPPE Rule 6.4(A)(2).

<sup>47</sup> SPPE Rule 6.4(A)(1).

<sup>48</sup> SPPE Rules 6.1(D), (E).

<sup>49</sup> SPPE Rules 6.5, 6.6.

letters and case evaluation memoranda to clients. The Committee believes that for many new lawyers, these types of written negotiations are their primary responsibilities in practice and are how they grow their negotiation and counseling skills. In short, while the Committee recognizes the importance of oral negotiation and counseling skills, the Committee believes that written negotiations and counseling are equally important.

Moreover, as relevant to the BBX's task of determining for the Court whether an applicant has the "requisite learning and ability" to practice as required by ORS 9.220(3), there is no meaningful distinction between completing these tasks orally or in writing. Accordingly, we declined to change this rule.

#### **vi. Breadth of Program Requirements.**

One commenter asserted that applicants should be required to report on the type of work they are performing to ensure that they were working on several tasks daily. The Committee concluded that detailed reporting requirements would be unduly burdensome to Provisional Licensees and their supervisors, and that sufficient variety will be assured through the demands of practice combined with the portfolio requirements. It would also unreasonably burden Admissions staff who would be required to review and assess such logs.

One commenter suggested that Provisional Licensees be required to appear in court at least once as part of their supervised practice and portfolio. While many licensees will appear in court at least once as part of this process, the Committee decided that this went beyond what would be required to show minimum competence to practice law.

Three commenters expressed concerns about the lack of breadth of material tested through the SPPE. Two commenters praised the SPPE explicitly asserting that the breadth tested on the bar exam is limited when compared to the variety of practice in the "real world."

The breadth of the program was a topic the Committee revisited often. The Committee believes that the program as designed adequately addresses the issue. The program tests more of the core competencies identified by IAALS,<sup>50</sup> and does so more authentically than can be accomplished in a standardized test.

We expect that Provisional Licensees will interact with several areas of law throughout their practice. For example, a Deputy District Attorney ostensibly only

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<sup>50</sup> See Footnote 10, *supra*.

practices “criminal law” but regularly applies the rules of evidence, negotiates and drafts contracts in the form of plea agreements, and considers the constitutional implications of the actions of the investigating officers and the statutes they are enforcing. Similarly, a civil litigation associate must apply contract and torts law while also applying the rules of civil procedure and evidence. Additionally, the work-product that each would submit for review must address different legal questions, even if the questions all fall under a common area of law.<sup>51</sup>

The Committee concluded that the program’s requirements—which require demonstration of a deeper understanding and application of, perhaps, fewer areas of law—are at least as effective at demonstrating competence to practice law as the UBE which requires a more surface level understanding of more subjects. This conclusion by the Committee reflects broader licensure reform trends throughout the country. Contrary to the comment that suggested proficiency be required in “all areas of law” no bar examination has ever tested “all areas of law.” On the contrary, the number of subjects tested has continued to shrink. Most notably, the NCBE will be reducing the number of subjects tested on the UBE from 12 to 8 on the NextGen examination.

Professor Carol Chomsky, who teaches at the University of Minnesota Law School, attended many Committee meetings, and submitted comments in support of the proposed rules. Her comments on this provision largely capture the conclusion of the Committee:

Those who consider non-bar-exam-focused pathways to licensing sometimes express concern that the bar exam tests knowledge in a range of subject areas, while a supervised practice pathway may not. Even the bar exam only tests a limited number of subjects, however, and the number of subjects tested is slated to be reduced considerably in the NextGen examination. Moreover, the kind of knowledge demonstrated on the bar exam—surface knowledge of subjects, memorized for the exam and then mostly forgotten immediately afterwards—is not the hallmark of competence, especially because lawyers do not rely on memory in their work but at least refresh recollection and often research in order to familiarize themselves with new areas. Being a competent lawyer requires the ability to research, understand, and apply the law, and once a lawyer has that ability, they can use that ability to deal with any area of law. The proposed rules will require each document in the portfolio to represent discussion of a unique legal issue, which is a sufficient requirement of

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<sup>51</sup> SPPE Rule 6.4(A)(4).

breadth to ensure that the applicant has demonstrated minimum competence to practice.<sup>52</sup>

**vii. Use of Mock Exercises (SPPE Rules 6.4(G), 6.5(G), and 6.6(G)).**

The SPPE program is intended to work as a viable pathway for admission even if an attorney’s planned area of practice does not regularly require a practitioner to engage in the work required for a Provisional Licensee’s Portfolio. To that end, the rules provide that if a licensee cannot gather sufficient work product from legal work performed for their employer, the licensee can use mock exercises for their submissions.<sup>53</sup>

Two commenters suggested the use of mock exercises to provide a standardized portion of the portfolio examination while another commenter suggested that mock exercises should not be allowed at all. One commenter suggested that they not be mandatory but be available for applicants whose area of practice does not naturally lend itself portfolio assignments.

The Committee, with the input from the NCBE and IAALS, spent a long time—perhaps more than any other subject—debating the value of including a single, standardized, mock exercise in the substantive requirements of this pathway. Ultimately, we landed on the last approach mentioned above: mock exercises should be available but not required.

For some members of the Committee, the suggestion to incorporate a single standardized exercise that every participant in the SPPE would complete amounted to a “non-starter” because the genesis of the SPPE is the recognition that some applicants have the requisite knowledge and skills for admission but for whom standardized testing presents a barrier that is unrelated to the question of competence. It serves both those applicants and the public to permit them to prove their competence in a different way; to that end the SPPE measures competence not by completion of standardized exercises but through the documented, competent practice of law in the real world (albeit in a setting that has controls in place to protect consumers if the applicant is not competent). From that perspective, introducing a required, standardized, exercise is contrary to the SPPE’s design.

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<sup>52</sup> Professor Chomsky’s full letter in support will be included with the public comments and made available on the OSB website at <https://lpdc.osbar.org> (last accessed August 2, 2023).

<sup>53</sup> SPPE Rule 6.4(G) (simulated written exercises); SPPE Rule 6.5(G) (simulated client encounters); SPPE Rule 6.6(G) (simulated negotiations).

For other members of the Committee, the suggestion of adding a single standardized exercise was not inherently problematic, but when its perceived value was weighed against the logistics of coordinating such an exercise, the value in incorporating such an exercise diminished significantly. Presuming one could identify a logical “cohort” of SPPE Provisional Licensees to see how they did, comparatively, on a single mock exercise questions immediately arise as to how to make that insight meaningful on the question of any one individual’s competence to practice. For example, what insight is gained from learning that a Provisional Licensee working as a Deputy District Attorney did not perform as well when answering a mock exercise query about a business transaction as a Provisional Licensee who is working in a civil law firm? What value is there in requiring a DDA to undertake that project while working in a prosecutor’s office? The SPPE is premised on the conclusion that if a DDA submits, while working, eight documents that demonstrate their ability to identify, research and analyze areas of criminal law, one can feel confident that if the lawyer moved to a civil firm, they would have the skills necessary to engage in the legal research and analysis necessary to practice in that field.

For those who were drawn to the inclusion of such an exercise, the core appeal was not particularly related to the *applicants* but to the *examiners*. With a standardized exercise, the BBX could create a model answer and a library containing the relevant legal principles. One could have confidence that the examiner could make a substantive assessment of whether the submission was “qualified” or “not qualified” as it related to the legal principles espoused. That could create greater confidence in the pathway itself.

The Committee agreed that a better approach was to create explicit and implicit tools that examiners can use to ensure they are accurately assessing the submission. For instance, the rules provide that multiple examiners will “participate over time in grading components of each Provisional Licensee’s Portfolio,” and that, “[i]f practicable, at least two Examiners will grade each piece of written work product (Rule 6.4) included in the portfolio.”<sup>54</sup>

The BBX will also develop rubrics for each Portfolio component. These rubrics will focus graders on the specific criteria that demonstrate minimum competence within a component. Rubrics of this nature have proven valuable in other assessment contexts

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<sup>54</sup> SPPE Rule 9.1. When assessing portfolios submitted as part of the PLP, the BBX has found assignment of two examiners practicable and, thus, we anticipate that you would continue that practice if the SPPE is adopted.

(such as law school clinics and the PLP). We also expect that the BBX would hold training/calibration sessions to better ensure that graders apply the rubrics consistently.<sup>55</sup>

The rules also require Supervising Attorneys, who practice in the areas represented by a Provisional Licensee's Portfolio, to submit information that will help graders evaluate Portfolio components. For client encounters and negotiations, the Supervising Attorneys will complete rubrics evaluating the Provisional Licensee's work; those rubrics will include assessment of the Provisional Licensee's accuracy in describing legal principles. For each piece of written work product, the Supervising Attorney must "[a]ttest that the legal analysis is accurate" and "[i]ndicate if and how the Employer used the work product."<sup>56</sup> Supervising Attorneys will hesitate to make those attestations if the work product is inaccurate. Still, graders will have free rein to "spot-check" the law cited in any submission and both the Provisional Licensee and their Supervising Attorney will know that.

Finally, most submissions being assessed will be authentic work produced by attorneys in their everyday practice. The graders—all practicing attorneys or judges—regularly assess the type of documents that the applicants will submit. We believe that such attorneys can competently assess whether a submission reflects that the attorney submitting it is "qualified" or "not qualified." We believe that the Court and the BBX can feel confident that a Provisional Licensee who submits *eight* qualified submissions while engaged in the real-world practice of law and while completing all the other requirements of the program has established the "requisite learning and ability" to practice as required by ORS 9.220.

For these reasons, the Committee elected not to include a single, standardized mock exercise.

The Committee did, however, agree that mock exercises should be available for applicants to submit when their job does not provide them with an opportunity to complete an SPPE requirement as a part of their regular responsibilities in that position. To that end, we continue to recommend that the rules provide for mock written assignments,<sup>57</sup> simulated client encounters,<sup>58</sup> and simulated negotiations.<sup>59</sup>

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<sup>55</sup> SPPE Rule 14.1.

<sup>56</sup> SPPE Rule 6.4(C).

<sup>57</sup> SPPE Rule 6.4(G).

<sup>58</sup> SPPE Rule 6.5(G).

<sup>59</sup> SPPE Rule 6.6(G).



**viii. Time Spent on Access to Justice Activities (SPPE Rule 6.8).**

SPPE Rule 6.8 requires provisional licensees to devote at least 10 of their 675 practice hours “to activities related to diversity, equity, inclusion, or access to justice. These activities may include pro bono work, MCLE programs, volunteer work with affinity bar associations, and self-study.” One commenter suggested that this should not be required of SPPE applicants if applicants pursuing admission via the bar exam do not have a similar requirement. The Committee did not attempt to create a model that tested exactly what the UBE tests, either as the test exists now or as it will exist once the NCBE implements the NextGen Bar Exam. Instead, we worked to create a pathway focused on documenting that the applicant was competent in the core areas identified in Oregon’s Essential Eligibility Requirements<sup>60</sup> the IAALS 2020 Building Blocks of Minimum Competence study.<sup>61</sup> The former requires applicants to “demonstrate regard for the rights, safety, and welfare of others.”<sup>62</sup> The latter identifies skills such as “the ability to communicate as a lawyer,” “the ability to interact effectively with clients,” and “the ability to see the ‘big picture’ of client matters.”<sup>63</sup> We believe that all these skills are served by this requirement and did not change it.

**ix. Continuing Education Requirements (SPPE Rule 6.9).**

As released for public comment, SPPE Rule 6.9 required that a participant complete the “Learning the Ropes” CLE offered by the PLF. Because the timing and content of that program is not controlled by the BBX, the Committee concluded it was prudent to revise the rule as follows:

6.9 Practice Overview. The BBX will designate 15 hours of CLE programs that, taken together, provide an overview of doctrinal principles commonly encountered in entry-level law practice. The Provisional Licensee must attend or watch all 15 hours of these designated programs. As the Provisional Licensee attends or watches these programs, they must include their certificates of completion in their Portfolio.

With this rule, the BBX could make it explicit to Provisional Licensees that attending or watching the “Learning the Ropes” CLE could satisfy this requirement. If the SPPE is

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<sup>60</sup> RFA 1.25.

<sup>61</sup> See Footnote 10, *supra*.

<sup>62</sup> RFA 1.25(c)(4).

<sup>63</sup> See Footnote 10, *supra*.

adopted, the Committee further suggests that the BBX reach out to the appropriate entities within the OSB to consider whether attorneys admitted via the SPPE should have the same first-year CLE requirements as attorneys admitted following passage of the bar exam or should, alternatively, transition to the requirements applicable after one's first year in practice.

**x. *Pro Bono Work (SPPE Rule 2.3).***

SPPE Rule 2.3 permits Provisional Licensees to fulfill their hours requirements by providing pro bono services. One commentator worried that this “unpaid work is likely to be taken less seriously by candidates and employers.” Another felt that “Supervisees are likely to be taken advantage of when providing pro bono work”; consequently, this commenter suggested that only paid work should be considered as qualifying hours.

As to the former commenter's position, we disagree. An attorney's standard of practice cannot—while practicing ethically—vary depending on whether the attorney has agreed to accept payment or handle the matter *pro bono*. We do not believe that Oregon attorneys take their *pro bono* client representation less seriously than paid work.

As to the latter's comment, the Committee believes that providing *pro bono* representation—along with a Supervising Attorney—could provide an outstanding opportunity for a Provisional Licensee to gain experience outside the licensee's ordinary practice. There is also unquestionably a need for *pro bono* services; if that need can be met, at least in part, through a Provisional Licensee's drive to secure qualifying hours, it strikes the Committee as a situation that will be beneficial to all involved.

That said, we believe that the BBX should regularly review the SPPE to ensure that its rules are working as intended; that includes acting to ensure that applicants seeking admission via this pathway are not exploited. SPPE Rule 17.1 provides for the appointment of two Ombudspersons to help administer the program. Provisional licensees will be encouraged to contact them (or one of them) to address any concern relating to the program, including if they feel they are being exploited under this rule. Thus, the BBX should be alerted should this become an issue.

Given the value of such services and the procedural protections that are already in place in the rules, we believe that, at least at the outset of the program, the rule should be adopted as written.

**xi. Apprenticeship Instead of Law School.**

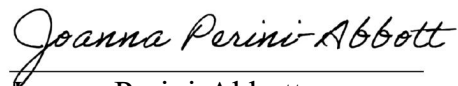
One commenter argued that a true apprenticeship program should be designed/included as a fourth pathway to admission in Oregon, and such a pathway should not require law school graduation as a prerequisite to admission. Whatever the merit of such an approach to admission to the bar, it is beyond the scope of the Committee's work.


**III. Conclusion.**

We come to the BBX almost exactly three years after the Oregon Supreme Court first asked the BBX to undertake an analysis of alternative pathways. Since that time, volunteers working with the Task Force, the Committee, and the BBX have devoted hundreds of hours to the inquiry. Those volunteers included many Oregon judges and lawyers, as well as thought leaders on bar admissions from across the country. All of them were interested in helping Oregon not just adopt a pathway that would make bar admissions more equitable in Oregon—without compromising our commitment to protect the legal consumer—but to help Oregon lead the way nationally. The rules, explanatory notes, and this submission follow from those countless hours.

After you have conducted your review of these materials, we ask you to forward them to the Court with a recommendation from the BBX that the Court adopt the SPPE as a pathway to admission in Oregon.

Thank you for your consideration and we look forward to discussing the matter with you on August 24, 2023.

  
\_\_\_\_\_  
Joanna Perini-Abbott  
Co-chair LPDC

  
\_\_\_\_\_  
Adrian Tobin Smith  
Co-chair LPDC

# **Exhibit B**

**The Oregon Supervised Practice Portfolio Examination  
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## Section 1 Background, Definitions, and Authorities

**1.1 Origin and Purpose.** The Oregon Supervised Practice Portfolio Examination (SPPE) offers an avenue for establishing minimum competence to practice law. Candidates who successfully complete the Program are eligible for admission to the Oregon State Bar without taking the Uniform Bar Examination or Model Professional Responsibility Examination. Those candidates, however, must satisfy all other requirements specified in the Rules for Admission.

### 1.2 Definitions.

- (A) **Admissions Department** means the Admissions Department of the Oregon State Bar.
- (B) **Board** means the Oregon State Board of Bar Examiners.
- (C) **Certificate of Eligibility** means a certificate issued by the Board under Rule 3.4.
- (D) **Employee** means any individual regularly providing work to an Employer and receiving compensation for that work, whether the individual is formally designated a partner, member, employee, of counsel, consultant, independent contractor, or other similar term.
- (E) **Employer** is a business entity, non-profit organization, or government agency (including instrumentalities thereof) that employs the Supervising Attorney, and employs or has agreed to employ a Provisional Licensee.
- (F) **Examiner** means a member of the Oregon State Board of Bar Examiners or a grader appointed by the Board to review and score Portfolios.
- (G) **Final Portfolio** means a final compilation of the Provisional Licensee's work, as described in Rule 8.1.
- (H) **Halfway Portfolio** is a Portfolio submitted to the Board after a Provisional Licensee has completed at least 350 hours of Program work, as further described in Rule 7.1.
- (I) **Interim Portfolio** is a compilation of the Provisional Licensee's work, submitted while still pursuing the Program, as further described in Rules 7.1 – 7.2.
- (J) **Legal Work** means work that is commonly performed by licensed attorneys in Oregon. Legal work may include activities that are also performed by unlicensed individuals, as long as newly licensed attorneys working for the Employer regularly incorporate those activities in their work.
- (K) **Minimum Competence to Practice Law** is defined by the essential eligibility requirements of RFA 1.25.
- (L) **Minimum Continuing Legal Education Activities** or **MCLE Activities** means any activities approved for credit under Rules 5.1 to 5.15 of the Oregon State Bar Minimum Continuing Legal Education Rules and Regulations.
- (M) **Ombudsperson** means an ombudsperson for this program appointed by the Board under Section 17.

- (N) **Program** means the Supervised Practice Portfolio Examination established by these rules.
- (O) **Provisional License** means the limited license to practice law conferred under the Supervised Practice Portfolio Examination Program.
- (P) **Provisional Licensee** means an individual practicing law within the Supervised Practice Portfolio Examination Program.
- (Q) **PLF** means the Oregon State Bar Professional Liability Fund.
- (R) **Portfolio** means either a Halfway Portfolio, Interim Portfolio, or Final Portfolio, as described in Rules 7.1 – 7.2 and 8.1.
- (S) **Program** means the Supervised Practice Portfolio Examination Program established by these rules.
- (T) **Program Manager** means the individual appointed by the Board to supervise the Supervised Practice Portfolio Examination Program. If the Board does not appoint a Program Manager, then the default Program Manager shall be Regulatory Counsel.
- (U) **Regulatory Counsel** means Regulatory Counsel to the Oregon State Bar.
- (V) **Rules for Admission** or **RFA** means the Rules for Admission of Attorneys published by the Oregon Supreme Court (Jan. 1, 2023) with any subsequent amendments.
- (W) **Supervising Attorney** means (1) an individual who has committed to supervising a Provisional Licensee under Rules 2.4 – 2.5; or (2) an active member of the Oregon State Bar to whom the Supervising Attorney has delegated responsibility under Rule 5.4.
- (X) **SPPE** means the Supervised Practice Portfolio Examination Program established by these rules.

**1.3 Regulatory Authority.** The Oregon Supreme Court delegates to the Oregon State Bar the administrative authority to oversee the Supervised Practice Portfolio Examination Program and all Program-related activities, so long as the Program and related activities are in accordance with SCO No. \_\_\_\_, and these rules.

## **Section 2**

### **Qualifications of Program Participants**

**2.1 Qualifications of Provisional Licensees.** An individual may participate in the Supervised Practice Portfolio Examination Program if that individual:

- (A) Satisfies the criteria in RFA 3.05(1), (2) or (3) (Qualifications of Applicants);
  - (B) Has applied for the Certificate of Eligibility described in Rule 3.4;
  - (C) Has secured a commitment of employment with a qualified Employer;
  - (D) Has secured a commitment from a qualified Supervising Attorney to serve in that role;
- and

- (E) Signs the “Oath for a Provisional Licensee” and files that document with Regulatory Counsel.

**2.2 Qualifications of Employers.** Any law firm, solo practitioner, business entity, non-profit organization, or government agency (including instrumentalities thereof) may serve as an Employer if that firm, practitioner, entity, organization, or agency:

- (A) Is authorized to practice law, do business, regulate, or otherwise operate within Oregon;
- (B) Regularly practices law, does business, regulates, or otherwise operates within Oregon;
- (C) Except as provided in Rule 2.3, employs (or has agreed to employ) a Provisional Licensee for at least 20 hours of paid Legal Work a week;
- (D) Except as provided in Rule 2.3, commits to providing the Provisional Licensee at least the salary and benefits provided to other recent law school graduates;
- (E) Employs an attorney who is qualified to serve as a Supervising Attorney and who has agreed to assume that role;
- (F) Provides Professional Liability Coverage for the Provisional Licensee (or obtains a waiver of that requirement), to the same extent as they would for another new lawyer, as required by Rules 4.1 – 4.4; and
- (G) Files the “Declaration of an Employer,” signed by an individual with authority to bind the organization, with the Admissions Department. The Declaration shall name an individual authorized to receive notices on behalf of the Employer.

**2.3 Exceptions to Hours and Pay Requirements for Employers.** An organization may qualify to serve as an Employer without meeting the requirements of Rule 2.2 (C) – (D) if:

- (A) The Provisional Licensee has a grant or stipend that will compensate them for work performed for the Employer; or
- (B) The Provisional Licensee volunteers to provide pro bono services to a client of the Employer and the Employer does not bill the client for those services.

Employers must also comply with federal, state, and local employment laws as applicable to the Provisional Licensee.

**2.4 Qualifications of Supervising Attorneys.** An individual may participate in the Program as a Supervising Attorney if that individual meets the following requirements:

- (A) Is an active member of the Oregon State Bar;
- (B) Has been an active member of the Oregon State Bar for two or more years preceding the application to serve as a Supervising Attorney;
- (C) Has been an active member of the bar in at least one jurisdiction for at least three of the five years preceding the application;



- (D) Has no record of public discipline in any jurisdiction to which they are or have been members or satisfies the requirements of Rule 2.6;
- (E) Is employed by the same Employer as the Provisional Licensee;
- (F) Is not an immediate family member of the Provisional Licensee they will supervise; and
- (G) Signs the “Declaration of Supervising Attorney” and files that document with the Admissions Department.

For the purposes of this rule, “immediate family member” means (1) a parent, child, or sibling, whether biological, adopted, foster, or related by marriage; and (2) a spouse, former spouse, cohabitant, or former cohabitant.

**2.5 Federal Judges as Supervising Attorneys.** A federal judge, magistrate, or bankruptcy judge whose primary chambers are in Oregon may serve as a Supervising Attorney without meeting subsections (A) – (C) of Rule 2.4.

**2.6 Rehabilitation from Public Discipline.** The general rule is that an individual who has a record of public discipline in any jurisdiction may not serve as a Supervising Attorney. This rule may be waived by the Board if the following criteria are met:

- (A) The latest disciplinary decision was entered more than 5 years before the individual’s application to serve as a Supervising Attorney;
- (B) No other disciplinary proceedings or investigations have been instituted against the individual since that time;
- (C) The individual submits a petition to the Board seeking waiver from the general rule stated in 2.4;
- (D) The petition explains their rehabilitation and fitness to serve as a Supervising Attorney; and
- (E) Following review of the petition, the Board waives the general rule.
  - (1) The Board or a subset thereof may, but need not, interview the individual to determine their fitness to serve as a Supervising Attorney.
  - (2) The Board’s decision on the individual’s fitness will be final, without any right of appeal.

### **Section 3**

#### **Application and Admission to Program**

**3.1 Application Forms/Publication.** The Board will develop forms governing admission to the Program and will publish those forms on its website.

- (A) The application form for applicants will parallel the Board's Bar Exam Application. In addition to seeking information about the applicant's identity and eligibility for the SPPE Program, the form will request information needed to determine whether the applicant has the good moral character and fitness to practice law prescribed by ORS 9.220(2). That information will be used to determine whether the applicant qualifies for the Certificate of Eligibility described in Rule 3.4.
- (B) Applicants and Provisional Licensees have a duty to update this application promptly and continuously under RFA 4.25(2). That duty lasts until the applicant is admitted to the Oregon State Bar, is denied admission to the State Bar, or withdraws their application for admission.
- (C) The application form for Employers will establish the Employer's identity and seek evidence establishing that the Employer meets the qualifications listed in Rule 2.2 – 2.3.
- (D) The application form for Supervising Attorneys will establish the Supervising Attorney's identity (including their OSB Member Number) and seek evidence establishing that the Supervising Attorney meets the qualifications listed in Rules 2.4 – 2.6.

**3.2 Filing Application, Timing.** All relevant forms must be filed with the Admissions Department, following instructions and timelines on the Department's website. The applicant is responsible for assuring that all forms (including those from the Employer and Supervising Attorney) are complete and have been properly filed.

**3.3 Processing by Admissions Department.** The Admissions Department will verify that the applicant has submitted all required forms under Rule 3.1, and that they were submitted in compliance with Rule 3.2. Program Administrators will notify applicants if any information is missing or if the applicant, proposed Employer, or proposed Supervising Attorney do not meet the Program requirements. If an application is deficient, Regulatory Counsel will give the applicant a reasonable time in which to cure the deficiency. If an applicant does not cure the deficiency by the deadline, then the application will be rejected, and the applicant may not reapply unless the applicant pays a resubmission fee, demonstrates that the deficiency has been cured, and demonstrates that all other Program requirements are met. When Regulatory Counsel is satisfied that the applicant has met the requirements of Rules 3.1 and 3.2, Regulatory Counsel will present applicant to the Board to consider whether applicant has the good moral character and fitness to practice law.

**3.4 Certificate of Eligibility.** The Admissions Department will use the information submitted with the applicant's SPPE application to initiate the character and fitness process described in RFA 6.05 and 6.15.

- (A) If the Board determines that the applicant has the good moral character and fitness to practice law prescribed by ORS 9.220(2), the Board will issue the applicant a Certificate of Eligibility. That certificate will allow the applicant to obtain a Provisional License and participate fully in the Supervised Practice Portfolio Examination Program.

- (B) Alternatively, the Board may choose to issue a Certificate of Eligibility conditioned on specific probationary terms.
- (C) If the Board denies the applicant a Certificate of Eligibility, it will provide the written notice specified by RFA 6.05(5). The applicant may contest the Board's denial by requesting an evidentiary hearing pursuant to RFA 9.01. Any evidentiary hearing shall be conducted pursuant to the process identified in RFA 9.05 – 9.60.
- (D) While awaiting the Board's decision on whether to issue a Certificate of Eligibility, an otherwise qualified applicant may begin working and accumulating hours within the Supervised Practice Portfolio Examination Program. Until Regulatory Counsel issues a Provisional License to the Applicant under Rule 3.6, the applicant may not undertake any activities that require a license to practice law, unless currently licensed under a Student Practice License (RFA 13.05 – 13.30). Hours worked during this period that meet the requirements of Rule 6.12, however, count towards the hours requirement in that rule.

**3.5 Admission to Program.** When an applicant has established that the requirements of Rules 2.1 – 2.6 have been met, Regulatory Counsel will notify the applicant, Employer, and Supervising Attorney that the applicant has been accepted into the Supervised Practice Portfolio Examination Program and may begin working and accumulating hours under the Program.

**3.6 Issuance of Provisional License.** When the Board issues a Certificate of Eligibility for an applicant, Regulatory Counsel will:

- (A) Issue the applicant a document evidencing their Provisional License; and
- (B) Notify the Employer and Supervising Attorney that the applicant has received a Provisional License and may undertake activities permitted by that license.

## **Section 4**

### **Professional Liability Coverage**

**4.1 Mandatory Coverage.** Employers must arrange professional liability coverage for Provisional Licensees through the Oregon State Bar Professional Liability Fund (PLF), arrange that coverage through an alternative carrier approved by the PLF, or obtain an exemption pursuant to Rule 4.2. Employers must pay premiums and other expenses for this coverage to the same extent that they pay those expenses for any other new lawyer they employ.

**4.2 Exemptions from Coverage Requirement.** An Employer need not obtain professional liability coverage for a Provisional Licensee if:

- (A) The Provisional Licensee practices law exclusively as in-house counsel for one Oregon client;

- (B) The Provisional Licensee only practices law in Oregon through their employment by a government agency, an instrumentality of a government agency, or a public defense agency;
- (C) The Provisional Licensee only practices law in Oregon through their employment with a legal aid service serving Oregon residents, or a law firm that provides public defense services to Oregon residents through a consortium under an OPDS or other government contract; or
- (D) The Employer obtains a waiver/exemption on any basis approved by the PLF.

**4.3 Proof of Compliance.** The Provisional Licensee must file with the PLF proof of compliance with Rule 4.1 or 4.2.

**4.4 Maintenance of Coverage.** Unless exempt under Rule 4.2, an Employer must maintain coverage for any Provisional Licensee while the Provisional Licensee is employed by that Employer.

**4.5 Temporary Suspension for Lack of Coverage.** If a Provisional Licensee loses coverage, that Provisional Licensee's license will be immediately and automatically suspended under Section 16. The Employer and Provisional Licensee may reinstate the license as provided in that Section.

## **Section 5**

### **Roles and Duties of Program Participants**

**5.1 Role and Duties of Provisional Licensees.** Provisional Licensees will work diligently and ethically to serve clients and complete any assignments made by their Supervising Attorney(s). At the same time, they will work diligently and ethically towards completing all required components of the Program. In carrying out these dual roles, all of the following apply:

- (A) The needs of clients must take precedence over completing the requirements of the Program.
- (B) Work assigned by the Supervising Attorney should also take precedence over completing the requirements of the Program, although Supervising Attorneys and Employers will make every effort to accommodate completion of Program requirements (see Rules 5.2 and 5.3 below).
- (C) Provisional Licensees must adhere to the constraints specified in the Temporary Supervised Practice Rules, RFA 13.10 to 13.20, as they apply to law students qualified under RFA 13.20(1).
  - (1) Provisional Licensees do not have to satisfy the qualifications for eligibility in RFA 13.20, nor need they follow the certification procedure outlined in RFA 13.25. The qualifications and application procedures specified in these rules govern the Supervised Practice Portfolio Examination Program.

(2) A Provisional Licensee who has never taken a course in evidence, however, must follow the limits of RFA 13.20(2)(d) unless the Supervising Attorney represents to the court under RFA 13.10(6) that the Provisional Licensee has obtained similar knowledge of evidence through MCLE programs or other means.

(D) To be eligible for admission to the Oregon State Bar through this Program, Provisional Licensees must complete all of the Program components specified in Rules 6.1 – 6.14; submit at least one Interim Portfolio as specified in Rule 7.1; and submit their Final Portfolio as specified by Rules 8.1 – 8.2.

**5.2 Role and Duties of Employers.** Employers participating in the Program must:

- (A) Maintain any professional liability coverage required by Section 4 of these rules;
- (B) Unless subject to Rule 2.3, provide Provisional Licensees at least the minimum salary and benefits specified by Rule 2.2(D);
- (C) Provide Provisional Licensees appropriate work space, tools, and technology to accomplish the tasks assigned by the Supervising Attorney;
- (D) Include Provisional Licensees in any training programs or other educational activities provided to other new lawyers working for the Employer;
- (E) Unless subject to Rule 2.3, compensate the Provisional Licensee for time spent in training programs or other educational activities to the same extent that other new lawyers are compensated for that time; and
- (F) Arrange the Provisional Licensee's schedule and workload to give the Provisional Licensee sufficient time to complete portions of the Program that do not benefit the Employer directly. The Employer need not compensate the Provisional Licensee for that time, except as provided in subsection (D) above.

**5.3 Role and Duties of Supervising Attorneys.** Supervising Attorneys participating in the Program must:

- (A) Watch or attend the training sessions described in Section 14 of these rules;
- (B) Supervise the Provisional Licensee's schedule and workload to give the Provisional Licensee sufficient time to complete all Program components;
- (C) Accommodate the Provisional Licensee's reasonable requests for work that will help them complete the Program or otherwise develop their professional skills;
- (D) Supervise the work of the Provisional Licensee, and assume personal professional responsibility for that supervision, in the manner required by RFA 13.30;
- (E) Complete the statements, rubrics, and other approvals required under Section 6;
- (F) Discuss completed rubrics with the Provisional Licensee; and
- (G) Provide other regular feedback that will help the Provisional Licensee develop their skills and better serve Employer clients.

**5.4 Delegation of Supervising Attorney's Duties.** Supervising Attorneys may delegate the duties outlined in Rule 5.3(D) – (G), as well as the responsibility specified in RFA 13.30, to another Employee working for the Employer if that Employee:

- (A) Is an active member of the Oregon State Bar; and
- (B) Has the knowledge and skills to supervise the Provisional Licensee effectively.

The Supervising Attorney, however, retains professional responsibility for the work of the Provisional Licensee and the supervisory competence of the lawyer to whom they delegate any supervisory duties.

**5.5 Dual Supervising Attorneys.**

- (A) A Provisional Licensee may work for two Supervising Attorneys concurrently if each Supervising Attorney meets the qualifications specified in Rules 2.4-2.6 and the following conditions are satisfied:
  - (1) The Supervising Attorneys must coordinate their supervision to ensure that the Provisional Licensee is able to meet Program requirements; and
  - (2) If the Supervising Attorneys work for different Employers, each Employer must meet the qualifications specified in Rules 2.2 – 2.3, and those Employers must follow the conflict of interest and screening requirements that apply when one lawyer (the Provisional Licensee) works for two different organizations. RPC 1.7-1.13, 1.18.
- (B) If a Provisional Licensee works for two Supervising Attorneys concurrently, the Provisional Licensee may include in their Portfolio work product and rubrics from either or both Supervising Attorneys.
- (C) A Provisional Licensee may not work for more than two Supervising Attorneys concurrently although, as provided in Section 15, a Provisional Licensee may have multiple Supervising Attorneys over time.

**Section 6**  
**Program Requirements**

**6.1 Overview of Program Requirements.** The Program has ten substantive requirements and an hours requirement, each described in more detail in the rules below. Provisional Licensees must also comply with the timing requirement of Rule 6.14. In brief, the program requirements are:

- (A) Completion of a Learning Plan for accomplishing the below activities;
- (B) Diligent, competent, and professional work on all Legal Work assigned to the Provisional Licensee by their Supervising Attorney;
- (C) Production of at least 8 pieces of written work product;
- (D) Leadership of at least 2 initial client interviews or client counseling sessions;

- (E) Leadership of at least 2 negotiations;
- (F) Completion of 15 hours of Practice Overview MCLE programs designated by the Board;
- (G) Evidence of competence in professional responsibility as described in Rule 6.7;
- (H) Completion of at least 10 hours of activities exploring diversity, equity, inclusion, or access to justice issues;
- (I) Completion of regular timesheets recording all time devoted to the Program;
- (J) A Portfolio organizing the above Program components;
- (K) Completion of 675 hours of work as defined by Rule 6.12; and
- (L) Compliance with the timing requirement of Rule 6.14.

In addition to these required components, Provisional Licensees may choose to participate in the New Lawyer Mentoring Program as described in Rule 6.15.

**6.2 Learning Plan.** The Learning Plan will help Provisional Licensees track their Program progress and plan to complete each Program component. The Board will provide a template for this Learning Plan. Provisional Licensees must submit an up-to-date Learning Plan with the Halfway Portfolio described in Rule 7.1 below. Additional use of the Learning Plan is optional.

**6.3 Legal Work.** Provisional Licensees will perform Legal Work assigned to them or approved by their Supervising Attorney.

- (A) Rule 1.2(J) defines “Legal Work” for the purpose of this Program.
- (B) Provisional Licensees must perform this work diligently, competently, and professionally.
- (C) A Provisional Licensee should not attempt work for which they feel unprepared or incompetent to perform. Instead, the Provisional Licensee should discuss their reservations with the Supervising Attorney and seek appropriate assistance.

**6.4 Written Work Product.**

- (A) Each Provisional Licensee must prepare and submit at least 8 pieces of written work product. Written work product may take any form that lawyers use in their practices including, but not limited to, memos, letters, emails, white papers, complaints, motions, briefs, contracts, legal or statutory analysis blog entries, issues briefs, and wills. All submitted work product, however, must comply with the following requirements:
  - (1) The work product must address some substantive aspect of a legal matter, as well as a prediction, conclusion, or recommendation related to that issue.
  - (2) At least 2 of the pieces of work product must be at least 1500 words long, and each of the other pieces must be at least 300 words long, not including headers or signature blocks. Footnotes do count towards the word totals.

- (3) Each piece of work product must constitute a separate piece of work. Provisional Licensees may not divide a memorandum, brief, or other piece of work into components that they submit separately.
- (4) Each piece of work product must address at least one legal issue that differs from the legal issues addressed in other pieces of work product.
- (B) Each piece of work product must be accompanied by a cover sheet completed by the Provisional Licensee. The Board will provide a standardized template for the cover sheet, seeking information about the context for the work product; the strategy used for any necessary research; whether a template or form provided a foundation for the work product; the extent to which the Licensee received input from other lawyers; the extent to which the Licensee relied upon artificial intelligence programs; and the document's word count (as defined by subsections (A)(2) and (D)(4)). The Licensee must attest that the information provided on the cover sheet is correct.
- (C) Each piece of work product must also be accompanied by a statement from the Supervising Attorney. The Board will provide a template for this statement, which will require the Supervising Attorney to:
  - (1) Attest that, after reviewing the assistance noted by the Provisional Licensee on their cover sheet, the work product sufficiently reflects the knowledge/research, analysis, and writing of the Provisional Licensee that BBX can meaningfully assess the Provisional Licensee's competence from the work product;
  - (2) Attest that the legal analysis is accurate; and
  - (3) Indicate if and how the Employer used the work product.
- (D) If the Provisional Licensee used a template, form, or artificial intelligence composition as the foundation for the work product, these provisions apply:
  - (1) The Provisional Licensee must submit a copy of the original template, form, or artificial intelligence text used as a foundation;
  - (2) The Provisional Licensee must highlight the portions of the work product that represent the Provisional Licensee's additions, edits, or other customization;
  - (3) The Provisional Licensee may not rely upon the same template, form, or artificial intelligence text for more than one work product submitted to the Examiners; and
  - (4) Only the additions, edits, or other customization will count towards the word-count requirements in subsection (A)(2).
- (E) Provisional Licensees must redact the work product to remove information that would identify them, their Supervising Attorney, their Employer, and the names and affiliations of any other counsel associated with the matter.
- (F) If the work product relates to a client matter:
  - (1) The work product must be redacted to protect the client's interests; and



- (2) Before the Portfolio is submitted, the client must consent to inclusion of the work product in the Portfolio.
- (G) If the Provisional Licensee is unable to gather sufficient work product from client-related work, the Supervising Attorney may assign a mock exercise or exercises to the Provisional Licensee, which can be submitted to fulfill this requirement. The Board will also maintain an “issue bank” of materials that can be used by Provisional Licensees to fulfill the writing requirements of the program. All mock work product must comply with subsections (A) through (E) above.

**6.5 Client Interviews or Counseling Sessions.** Each Provisional Licensee must lead two client interviews or counseling sessions that are assessed by their Supervising Attorney. Client interviews and counseling sessions may be conducted orally (in person, by phone, or by video) or in writing (by exchange of letters, emails, or other electronic messages).

- (A) If an interview or counseling session is conducted orally, the Supervising Attorney will observe the interaction. Before beginning the interview or counseling session, the Provisional Licensee and Supervising Attorney will explain their roles and obtain the client’s oral consent.
- (B) If an interview or counseling session is conducted in writing, the Supervising Attorney may assess the interaction as it unfolds or after it has been completed. Client consent is not required for this type of assessment. Interviewing or counseling performed in writing must include sufficient exchange between the client and Provisional Licensee, so that the Supervising Attorney can assess the Provisional Licensee’s ability to identify legal issues, convey information, and respond to client questions and specific needs.
- (C) For each of the two interviews or counseling sessions, the Supervising Attorney will complete a rubric provided by the Board, share the completed rubric with the Provisional Licensee, and offer any additional feedback that would assist the Provisional Licensee’s development. The rubric will include an attestation that the Provisional Licensee led the interview or counseling session, with little or no assistance from the Supervising Attorney.
- (D) After completing the interview or counseling session and receiving feedback from the Supervising Attorney, the Provisional Licensee will complete a cover sheet about the interview or counseling session using a template provided by the Board.
- (E) “Client” should be interpreted in the context of the Provisional Licensee’s practice position. A Provisional Licensee working in a government agency, for example, may have other government employees as clients; a Provisional Licensee working inhouse at a business or other organization, may have other members of that organization as clients. A Provisional Licensee working as a prosecutor may use interviews or discussions with complainants to satisfy this component of the Program.
- (F) Provisional Licensees must ensure that neither their cover sheet nor the Supervising Attorney’s completed rubric identifies the Provisional Licensee, the Supervising

Attorney, their Employer, the parties involved in the matter, or any counsel to those parties.

- (G) For Provisional Licensees who cannot satisfy this Program component as part of their supervised practice, the Admissions Department will maintain a list of approved opportunities (including simulations) for meeting this component. Subsections (A) – (F) will apply to those opportunities, except that client consent is not necessary for simulations.

**6.6 Negotiations.** Each Provisional Licensee must conduct two negotiations that are assessed by the Supervising Attorney. A negotiation includes any discussion aimed at reaching an agreement. It may occur in the context of litigation, transactional, regulatory, or other matters. The negotiation does not have to focus on final resolution of the matter; it may focus on preliminary or interim matters. Negotiations may be conducted orally (in person, by phone, or by video) or in writing (by exchange of letters, emails, or other electronic messages).

- (A) If a negotiation is conducted orally, the Supervising Attorney will observe the negotiation. Before beginning the negotiation, the Provisional Licensee and Supervising Attorney will explain their roles and obtain oral consent from other attorneys participating in the negotiation. If the Provisional Licensee/Supervising Attorney's client is present, the client must also provide oral consent.
- (B) If a negotiation is conducted in writing, the Supervising Attorney may assess the negotiation as it unfolds or after it has been completed. Consent from opposing counsel or clients is not required for this type of assessment.
- (C) Negotiations need not be complex or lengthy, but they must offer an opportunity for the Supervising Attorney to assess both the Provisional Licensee's ability to express their position and their responsiveness to opposing counsel.
- (D) For each of the negotiations, the Supervising Attorney will complete a rubric provided by the Board, share the completed rubric with the Provisional Licensee, and offer any additional feedback that would assist the Provisional Licensee's development. The rubric will include an attestation that the Provisional Licensee led the negotiation, with little or no assistance from the Supervising Attorney.
- (E) After completing the negotiation and receiving feedback from the Supervising Attorney, the Provisional Licensee will complete a cover sheet about the negotiation using a template provided by the Board.
- (F) Provisional Licensees must ensure that neither their cover sheet nor the Supervising Attorney's completed rubric identifies the Provisional Licensee, the Supervising Attorney, their Employer, the parties involved in the matter, or any counsel to those parties.
- (G) For Provisional Licensees who cannot satisfy this Program component as part of their supervised practice, the Board will maintain a list of approved opportunities (including simulations) for meeting this component. Subsections (A) – (F) will apply to those

opportunities, except that consent from other counsel or clients is not necessary for simulations.

### **6.7 Evidence of Competence in Professional Responsibility.**

- (A) Provisional Licensees may demonstrate their competence in issues of professional responsibility in one of two ways:
  - (1) Achieving a score of at least 85 on the Multistate Professional Responsibility Exam (MPRE); or
  - (2) For Provisional Licensees who have passed a law school course on Professional Responsibility, completing a set of 10 journal entries devoted to issues of professional responsibility or professionalism. The Board will develop rules governing the format and content of these entries, following these principles:
    - (a) Each entry should describe a lawyering situation that raises an issue of professional responsibility, identify relevant Oregon Rules of Professional Conduct and other sources, analyze the issue, and offer a conclusion. Conclusions may, if appropriate, note that resolution of the issue is unclear or disputed.
    - (b) The journal entries should discuss rules drawn from at least 5 of the 8 chapters of the Oregon Rules of Professional Conduct.
    - (c) Provisional Licensees may discuss the issues they write about with colleagues, the State Bar's Legal Ethics Hotline, and other sources. The State Bar encourages this type of discussion and consultation for all lawyers.
- (B) An Examiner will independently assess the content of the journal entries submitted under option (2).

**6.8 Activities Related to Diversity, Equity, Inclusion, or Access to Justice.** Provisional Licensees must devote at least 10 hours to activities related to diversity, equity, inclusion, or access to justice. These activities may include pro bono work, MCLE programs, volunteer work with an Oregon State Bar sponsored affinity bar association or affinity section, and self-study. The Admissions Department will maintain a list of approved self-study activities, and Provisional Licensees may propose additions to that list to be approved by the Program Manager. Provisional Licensees will log these activities on a template provided by the Admissions Department.

**6.9 Practice Overview.** The Board will designate 15 hours of MCLE programs that, taken together, provide an overview of doctrinal principles commonly encountered in entry-level law practice. The Provisional Licensee must attend or watch all 15 hours of these designated programs. As the Provisional Licensee attends or watches these programs, they must include their certificates of completion in their Portfolio.

**6.10 Timesheet.** Provisional Licensees must record their Program hours, and the Supervising Attorney must approve that record of hours with their signature at the end of each week. The Board will provide a template for recording these hours. Provisional Licensees should record all time devoted to the activities listed in Rule 6.12, even if that time is not billable to a client.

**6.11 Portfolio.** The Provisional Licensee must create and maintain a Portfolio collecting all of the above materials. The Board will provide a template for organizing the Portfolio. As explained in Section 7 below, Provisional Licensees must submit at least one Interim Portfolio (the “Halfway Portfolio”) to the Board for review and feedback. Submission of additional Interim Portfolios is optional. When the Provisional Licensee has completed the Program requirements, they will prepare and submit a Final Portfolio to the Board as provided in Rules 8.1 – 8.2.

**6.12 Hours.** To demonstrate their minimum competence and qualify for admission to the Oregon State Bar, Provisional Licensees must document at least 675 hours spent working within the Supervised Practice Program. Those hours may include:

- (A) Up to 40 hours per week of Legal Work assigned by the Supervising Attorney, even if the time is not billed to a client;
- (B) All time devoted to working on the Program components outlined in Rules 6.2 – 6.11; and
- (C) All time spent in any training or educational activities required by their Employer that are not included in the Program components.

**6.13 Credit for Legal Work Performed While Enrolled in a JD Program.** A Provisional Licensee who has earned a JD from an ABA-accredited law school may count up to 100 hours of Legal Work performed while enrolled as a JD student if:

- (A) The work was assigned and supervised by an attorney who met the requirements of Rules 2.4 through 2.6;
- (B) That attorney signed the Declaration of a Supervising Attorney (Rule 2.4(G)) before the work was performed;
- (C) The Provisional Licensee was certified under Oregon’s Law Student Appearance Program (RFA 13.05 through 13.30) when the work was performed;
- (D) The work satisfies the definition of Legal Work in Rule 1.2(J); and
- (E) The Provisional Licensee maintained contemporary timesheets documenting that work, and those timesheets were signed by the Supervising Attorney.

**6.14 Timing.** At least three quarters of the work product described in Rules 6.4, 6.5, and 6.6 must have been scored as “qualified” within 3 calendar years of the date on which an Examiner transmits a Final Portfolio to the Admissions Department under Rule 8.3(A).

**6.15 New Lawyer Mentoring Program (NLMP).** Participation in the NLMP is waived for Provisional Licensees, although Provisional Licensees who work for solo practitioners, small law firms, or other small organizations are encouraged to consider participation in the NLMP.

## **Section 7**

### **Interim Portfolios**

**7.1 Required Interim Portfolio.** Provisional Licensees must submit an Interim Portfolio to the Board after completing 350 hours of Program work. This “Halfway Portfolio” must contain:

- (A) An up-to-date Learning Plan (as described in Rule 6.2);
- (B) Any Timesheets (as described in Rule 6.10) not yet submitted to the Board;
- (C) Any completed Evidence of Competence in Professional Responsibility (as described in Rule 6.7);
- (D) Any completed log of Activities Related to Diversity, Equity, Inclusion, or Access to Justice (as described in Rule 6.8);
- (E) At least three pieces of Written Work Product (Rule 6.4), documentation of Client Interviews or Counseling Sessions (Rule 6.5), and/or documentation of Negotiations (Rule 6.6) that have not yet been reviewed by the Board.

If a Provisional Licensee has completed other Program components, they may also include those components in the Halfway Portfolio.

**7.2 Optional Interim Portfolios.** Provisional Licensees may submit additional Interim Portfolios before or after submission of the Halfway Portfolio if the Interim Portfolio contains at least three pieces of written work product, client interviews or counseling sessions, and/or negotiations that have not been previously submitted to the Board. Provisional Licensees should submit any unsubmitted Timesheets with each Interim Portfolio submission.

**7.3 Timing of Submission and Review.** The Board will create and publish rules for submission and review of Portfolios that ensure frequent and regular opportunities for Provisional Licensees to submit interim Portfolios and receive timely results and feedback.

**7.4 Review and Scoring of Interim Portfolios.** The contents of each Interim Portfolio will be scored using the standards outlined in Rule 9.3.

- (A) Portfolio components that receive a “qualified” score will count towards the Final Portfolio score. Provisional Licensees need not resubmit those components; nor will any additional Examiners review them. The Board will maintain a record of all components that achieve a qualified score during Interim Portfolio reviews.
- (B) If a Portfolio component receives a score of “not qualified,” the Provisional Licensee may submit a replacement component with a subsequent Interim or Final Portfolio. The replacement component must be a new piece of work, not a revised version of the original submission. If a Licensee submits a replacement component, the original

component and its score will be removed from the Provisional Licensee's record. The Admissions Department, however, will maintain anonymized records of replaced documents (as provided in Rule 20.1) to inform its Program Review.

**7.5 Feedback on Interim Portfolios.** After components of an Interim Portfolio have been scored, the Provisional Licensee will receive a copy of the Examiner's completed rubric for each component, as well as a summary of the Program components that have been scored "qualified" through that date.

## **Section 8**

### **Final Portfolios**

**8.1 Submission of Final Portfolio.** When the Provisional Licensee has completed all Program requirements, they will submit a Final Portfolio to the Board. Provisional Licensees must mark their submission as a Final Portfolio. The Final Portfolio will contain:

- (A) Any Timesheets (as described in Rule 6.10) not yet submitted to the Board; and
- (B) All remaining Portfolio components that have not already been marked "qualified."

**8.2 Timing of Submission and Review.** The Board will create and publish rules for submission and review of Final Portfolios that ensure frequent and regular opportunities for Provisional Licensees to submit Portfolios and receive timely results and feedback.

**8.3 Final Portfolio Review.** The contents of each Final Portfolio will be reviewed and scored as provided in Section 9.

- (A) If the Examiner(s) mark each component of the Final Portfolio as "qualified," an Examiner will transmit the Portfolio and completed rubrics to the Admissions Department, noting that the Provisional Licensee appears to have demonstrated their minimum competence to practice law by passing all Program requirements. The Examiner will forward copies of this notice and the completed rubrics to the Provisional Licensee for their information.
- (B) If a Final Portfolio fails to earn a "qualified" score on each component, the Provisional Licensee may submit another Final Portfolio as provided in Rules 8.1 and 8.2. There is no limit on the number of Final Portfolios that a Provisional Licensee may submit.

## **Section 9**

### **Portfolio Review, Scoring, and Challenges**

**9.1 Examiner Review.** The Board will create and publish rules for review and grading of Portfolios that follow best practices, account for bias, and address conflicts (Section 13). Those rules will ensure that multiple Examiners participate over time in grading components of each Provisional Licensee's Portfolio. If practicable, at least two Examiners will grade each piece of written work product (Rule 6.4) included in a Portfolio.

**9.2 Anonymous Grading.** All Portfolios will be graded anonymously.

**9.3 Scoring Rules.** Each Portfolio component will be scored as follows:

- (A) The Learning Plan submitted with the Halfway Portfolio will be scored “qualified” if it documents how the Provisional Licensee plans to fulfill all Program requirements.
- (B) The Practice Overview MCLE requirement will be scored “qualified” when the Provisional Licensee has submitted certificates of completion for all 15 hours.
- (C) The Professional Responsibility requirement will be scored “qualified” when the Provisional Licensee (a) submits evidence of achieving a score of at least 85 on the MPRE; or (b) receives a “qualified” score on the 10 professional responsibility journal entries. The Board will develop and publish rubrics for scoring those journal entries.
- (D) Activities related to diversity, equity, inclusion, or access to justice will be scored “qualified” when the Provisional Licensee submits the required template documenting 10 hours of those activities.
- (E) Written work product will be scored “qualified” or “not qualified” using rubrics published by the Board. The Examiners will score these documents based on independent review of the document, the Supervising Attorney’s attestation, and the Provisional Licensee’s cover sheet.
- (F) Client interviews, client counseling sessions, and negotiations will be scored “qualified” or “not qualified” using rubrics published by the Board. The Examiners will score these components based on the Supervising Attorney’s completed rubric and the Provisional Licensee’s reflection.
- (G) The Timesheet will be scored “qualified” when it documents completion of 675 hours of Program work (including any credit towards that total from work completed as a JD student).

## **Section 10**

### **Admission Decision**

**10.1 Admission of Provisional Licensees.** When an Examiner notifies the Admissions Department that a Provisional Licensee appears to have successfully completed all Program requirements, the Admissions Department will check the Final Portfolio, together with records from Interim Portfolios, to confirm that that the Provisional Licensee has received a “qualified” score on all Program requirements. This is a clerical check rather than a second review.

- (A) If the Admissions Department agrees that the Provisional Licensee has successfully completed all Program requirements, Regulatory Counsel will inform the Provisional Licensee of that fact.
- (B) The Admissions Department will review the Licensee’s updated application (Rule 3.1) to determine if any updates raise new questions about the Licensee’s good moral character and fitness to practice law. If the Department identifies any new questions,

Regulatory Counsel will refer the Licensee's application to the Board for consideration. The Board will consider whether, considering this new information, the Licensee still possesses the good moral character and fitness to practice law. In making that determination, the Board will follow all applicable rules in the RFA.

- (C) The Admissions Department will conduct any necessary further review to confirm that the Provisional Licensee has satisfied other requirements of admission under the RFA, and will process the Provisional Licensee's application for admission as if the Provisional Licensee had passed the Uniform Bar Exam and Multistate Professional Responsibility Exam.
- (D) The Provisional Licensee's Provisional License will remain in effect until they are sworn into the Bar or, after considering any updates to the Licensee's application, the Board enters a final determination that the Licensee lacks the good moral character and fitness to practice law.

## **Section 11 Accommodations**

**11.1 Accommodations for Workplace Conditions.** If a Provisional Licensee seeks accommodations for any workplace conditions or assignments, they must address that request to their Supervising Attorney or another appropriate person in the Employer's organization.

**11.2 Accommodations for Program Requirements.** If a Provisional Licensee believes that a disability, health condition, caretaking responsibility, or other condition will impair their ability to complete any Program requirements, they may request reasonable accommodations from the Board. These requests may be filed at any time. The Board will list examples of accommodations on the SPPE website and will make available a form for requesting those or other accommodations. Provisional Licensees can also reach out to the Ombudsperson for assistance with accessing accommodations.

## **Section 12 Transparency**

**12.1 Transparency Required.** The Board will maintain an SPPE website that will include:

- (A) All Program rubrics, templates, and other forms needed by Provisional Licensees, Supervising Attorneys, and Employers;
- (B) Any scoring rubrics used by Examiners;
- (C) Examples of accommodations that may be provided under Rule 11.2;
- (D) A handbook offering explanations and examples related to these rules;
- (E) Links to training materials related to this Program;
- (F) Information about the Ombudspersons described in Section 17;



- (G) Proposed amendments to these rules; and
- (H) A current version of these rules with any amendments highlighted.

### **Section 13 Conflicts**

**13.1 Examiner/Provisional Licensee Conflicts.** Examiners will review Provisional Licensees' Portfolios anonymously, but the Program seeks to avoid even the appearance of favoritism or bias by an Examiner. The Board, therefore, will develop guidelines and processes for identifying relationships between Examinees and Provisional Licensees that might suggest bias or an appearance of favoritism. Examiners will not review Portfolios submitted by Provisional Licensees with whom they have that type of relationship.

**13.2 Client Conflicts.** Portfolios elements described in Rules 6.4 – 6.6 will be redacted to remove information that would identify the client or matter. To prevent Examiners from inadvertently reviewing work product on a matter where they have a conflict of interest, or for which their review would create an appearance of impropriety, the Board will develop guidelines and processes for identifying and precluding those possibilities.

### **Section 14 Training of Program Participants and Examiners**

**14.1 Training on Diversity, Equity, and Inclusion.** Each Supervising Attorney and Examiner must complete at least 2 hours of training related to issues of diversity, equity, and inclusion that may arise in the SPPE Program. The Admissions Department will develop that training, and participants may claim MCLE credit for attending or viewing these sessions.

**14.2 Other Training for Supervising Attorneys.** In addition to completing the training specified in Rule 14.1, Supervising Attorneys must complete training related to Program requirements, successful supervision, and constructive feedback. The Admissions Department will arrange for creation of these training programs, which will require no more than 4 hours total.

- (A) These training sessions will be videotaped so that Supervising Attorneys can watch them at their convenience. Supervising Attorneys, however, must complete these training sessions or videos within one month of beginning supervision of a Provisional Licensee.
- (B) Supervising Attorneys may claim MCLE credit for attending or viewing these sessions.

**14.3 Other Training for Examiners.** The Board will arrange training sessions to familiarize Examiners with the Program requirements and scoring rubrics. Examiners may claim MCLE credit for attending these sessions.

**14.4 Training of Provisional Licensees.** The Board will create up to 4 hours of introductory training to orient Provisional Licensees to the Program. Among other elements, this training will introduce the Provisional Licensees to the Ombudspersons described in Section 17. Provisional

Licensees must attend this training in person or view it online. They will be able to claim MCLE credit for these training hours.

## **Section 15**

### **Changes in Status**

**15.1 Change in Supervising Attorney.** If the Supervising Attorney will no longer be able or willing to supervise the Provisional Licensee, the Provisional Licensee must immediately notify Regulatory Counsel of that fact.

- (A) If another attorney working for the Employer is able and willing to serve as a Supervising Attorney, that individual should complete the “Declaration of Supervising Attorney” described in Rule 2.4(G) and file it with the Admissions Department.
- (B) If the Admissions Department agrees that the individual described in subsection (A) is qualified to serve as a Supervising Attorney, the Admissions Department will notify the Provisional Licensee, Supervising Attorney, and Employer of that fact.
- (C) If no other attorney working for the Employer is willing to serve as the Provisional Licensee’s Supervising Attorney, the Provisional Licensee may seek a new Supervising Attorney and Employer as provided in Rules 2.2 – 2.6.

**15.2 Change in Employer.** If the Employer is no longer willing or able to employ the Provisional Licensee, the Provisional Licensee must immediately notify Regulatory Counsel of that fact.

**15.3 Temporary Suspension of License.** During any period for which the Provisional Licensee lacks a Supervising Attorney approved by Regulatory Counsel, the Provisional Licensee’s license shall be immediately and automatically suspended under Section 16.

## **Section 16**

### **Temporary Suspension of License**

**16.1 Effect of Suspension.** If a Provisional License is suspended under any provision of these rules, the Provisional Licensee must:

- (A) Immediately notify their Supervising Attorney and Employer;
- (B) Decline any new work or representation that would require a law license;
- (C) Within 10 business days, notify all clients represented in pending matters, as well as any opposing counsel or co-counsel, that the Provisional Licensee’s authority to practice has been suspended; and
- (D) Take all other necessary steps to protect the interests of clients served by the Provisional Licensee.

**16.2 Reinstatement of License.** A Provisional Licensee whose license has been suspended may reinstate that license by:

- (A) Filing new applications from a Supervising Attorney and Employer under Rule 3.1; and
- (B) Filing new proof of compliance under Rule 4.3 if the suspension resulted from lack of professional liability coverage.

The Provisional Licensee may not perform any work that requires a law license until the Provisional Licensee has been notified that their Provisional License has been reinstated.

**16.3 Continuation of Program Participation.** Once a Provisional License has been reinstated, they may continue pursuing the Program where they left off. The suspension does not increase the number of required hours or any other requirement of the Program. The time limit applied to Portfolio elements described in Rule 6.14, however, remains in effect.

## **Section 17**

### **Ombudspersons**

**17.1 Appointment of Ombudspersons.** The Board shall appoint at least 2 Ombudspersons for this Program. The Ombudspersons may have any qualifications that the Board deems appropriate.

**17.2 Duties of Ombudspersons.** Any Program participant may contact an Ombudsperson to express concerns related in any way to the Program.

- (A) The Ombudsperson(s) must keep discussions with each Program participant confidential, unless (1) authorized by a participant to share information or (2) required by law to disclose information.
- (B) The Ombudsperson(s) will attempt to help Program participants resolve individual or systemic difficulties related to the Program.

**17.3 Conflicts of Interest.** An Ombudsperson may not assist a Program participant if the Ombudsperson has a conflict of interest with that participant or any other person related to the participant's concern.

- (A) For the purpose of this rule, a conflict of interest means a family relationship, a current or former employment relationship, or any other relationship that would bias the Ombudsperson's handling of the concern.
- (B) If a conflict emerges while addressing a participant's concern, the Ombudsperson must immediately refer the concern to another Ombudsperson.

**17.4 Restrictions on Ombudspersons.** The Ombudspersons may not:

- (A) Assist Program participants with legal issues related to client matters;
- (B) Offer advice on whether the Examiners will find Portfolio components qualified; or
- (C) Offer evidence or otherwise participate in license termination proceedings under Rule 19.2.

## **Section 18**

### **Client Assistance Office Complaints**

**18.1 Notification of Complaint.** If a complaint is filed against the Provisional Licensee with the Client Assistance Office of the Oregon State Bar, the Provisional Licensee must immediately notify Regulatory Counsel, the Provisional Licensee's Employer, and the Provisional Licensee's Supervising Attorney.

- (A) The Provisional Licensee must include with those notices the actual complaint materials filed by the complaining party.
- (B) Regulatory Counsel shall forward the complaint to the Client Assistance Office and name the Supervising Attorney as an additional attorney against whom the complaint is filed.
- (C) The Provisional Licensee's license will remain in effect pending investigation by the Client Assistance Office, but the Supervising Attorney and/or Employer may restrict the Provisional Licensee's work if they believe that is necessary to protect clients.

**18.2 Dismissal of Complaint.** If the Client Assistance Office dismisses the complaint, the Provisional Licensee's license shall remain in effect.

**18.3 Referral to Disciplinary Counsel's Office.** If the Client Assistance Office refers the complaint to Disciplinary Counsel's Office, that referral will immediately suspend the Provisional Licensee's license and the Provisional Licensee must take the steps outlined in Rule 16.1.

- (A) If Disciplinary Counsel's Office dismisses the grievance, the Provisional Licensee may reinstate their Provisional License as provided by Rule 16.2. The provision of Rule 16.3 (Continuation of Program Participation) shall apply to this reinstatement.
- (B) If Disciplinary Counsel files a formal complaint, the Provisional Licensee's license shall immediately terminate under Rule 19.1(E).

## **Section 19**

### **Termination of Provisional License**

**19.1 Automatic Termination.** A Provisional Licensee's Provisional License shall immediately and automatically terminate if:

- (A) The Provisional Licensee is admitted to the practice of law in Oregon;
- (B) The Provisional Licensee receives notice under RFA 6.05(5) that the Board is not satisfied that the Provisional Licensee has demonstrated that they have the good moral character and fitness to practice law;
- (C) The Provisional Licensee is disbarred or suspended due to discipline from the practice of law in any other jurisdiction;

- (D) The Provisional Licensee resigns from the practice of law in another jurisdiction while a disciplinary action is pending in that jurisdiction;
- (E) A formal complaint is filed against the Provisional Licensee by the Disciplinary Counsel's Office of the Oregon State Bar;
- (F) An indictment is filed against the Provisional Licensee; or
- (G) The Provisional Licensee receives a Notice of Termination of Provisional License, to which the Provisional Licensee does not offer an objection as described in Rule 19.2(C) below.

**19.2 Termination for Cause.** If Regulatory Counsel receives evidence that continued practice by the Provisional Licensee poses a significant threat to clients or the public, then Regulatory Counsel may provide a Notice of Termination of Provisional License to the Provisional Licensee by email marked "high priority," stating the grounds for concern and copying the Provisional Licensee's Supervising Attorney and Employer, as well as the Board Chair. The Notice shall state that pursuant to Rules 19.1(G) and 19.2(C), the Provisional Licensee must file an objection within 10 business days, or the Provisional Licensee's license shall automatically terminate.

- (A) A rebuttable presumption that the Provisional Licensee is a significant threat to clients or the public is created by the following:
  - (1) The filing of 3 or more complaints with the Client Assistance Office;
  - (2) The filing of 2 or more PLF claims against the Provisional Licensee; or
  - (3) Evidence gathered by, or presented to, Regulatory Counsel demonstrating that the Provisional Licensee:
    - (a) Regularly violates Oregon's Rules of Professional Conduct;
    - (b) Has engaged in the practice of law for a client, or through a process, that is not permitted under this Program;
    - (c) Has intentionally evaded the supervision of the Provisional Licensee's Supervising Attorney on any Legal Work performed; or
    - (d) Has knowingly submitted a false or misleading statement in an Interim or Final Portfolio, or has knowingly submitted work product in a Portfolio that unreasonably takes credit for work product that was completed by others.
- (B) Any presumption created by this rule may be overcome only through clear and convincing evidence that:
  - (1) The facts underlying the presumption are not true, or
  - (2) Despite the truth of the facts underlying a presumption, the Provisional Licensee is not a significant threat to clients or the public.
- (C) The Provisional Licensee will have 10 business days after the email is sent to file an objection by reply email to Regulatory Counsel, copied to the Board Chair, the Supervising Attorney, and the Employer. An objection shall include any evidence

supporting the Provisional Licensee's position. If the Provisional Licensee does not submit an objection within 10 business days, the Provisional Licensee's Provisional License will automatically terminate pursuant to Rule 19.1(G).

- (D) The Provisional Licensee's Supervising Attorney and/or Employer may also respond to the Notice of Termination, but they are not required to do so.
- (E) After considering the objection and supporting evidence, Regulatory Counsel may choose to withdraw the Notice of Termination and notify the Board Chair, the Provisional Licensee, Supervising Attorney, and Employer that the Notice has been withdrawn.
- (F) If Regulatory Counsel chooses to pursue termination of the Provisional Licensee's license, Regulatory Counsel must submit a new Show Cause Hearing notice to the Provisional Licensee, Supervising Attorney, Employer, and Board Chair. The notice shall be sent via email, marked "high priority," and shall identify the basis for the Show Cause Hearing, which must be one of the following:
  - (1) That Regulatory Counsel reasonably believes that the evidence attached to the Provisional Licensee's objection does not overcome the rebuttable presumptions created by Rule 19.2(A)(1) – (3), because it does not meet the standard set forth in Rule 19.2(B);
  - (2) That Regulatory Counsel reasonably believes that evidence in its possession contradicts or calls into question the evidence included in the Provisional Licensee's objection; or
  - (3) That Regulatory Counsel reasonably believes the totality of evidence against the Provisional Licensee establishes that the Provisional Licensee is a significant threat to clients or the public.
- (G) If the basis of the Show Cause Hearing is Rule 19.2(F)(2) or (3), then Regulatory Counsel must include all evidence it considered in reaching the reasonable beliefs identified in those subsections about the Provisional Licensee's evidence or threat level.
- (H) The Board must hold a Show Cause Hearing on the Notice of Termination, set at least 15 business days after issuance of the Show Cause Hearing notice in subsection (F) but not more than 45 business days after issuance of that Show Cause Hearing notice. When scheduling the Show Cause Hearing, all reasonable efforts will be made to schedule the hearing on a date that will permit all witnesses to be present.
- (I) The Board shall have a Show Cause Hearing before a panel of 3 members. Within 5 business days following the Show Cause Hearing notice from Regulatory Counsel, the Board Chair shall issue a Show Cause Order identifying the date of the Show Cause Hearing and outlining the procedural rules by which the hearing will be conducted. The Show Cause Order shall allow at least 10 business days for discovery and the issuing of subpoenas before the Show Cause Hearing is held.
- (J) At the hearing, the panel will receive documentary and oral evidence from Regulatory Counsel, the Provisional Licensee, and any other interested parties who choose to

participate in the hearing. Once all evidence is received, panelists may ask questions of any party who presented evidence during the Hearing. Once Members have had their questions answered, Regulatory Counsel shall provide a closing statement, followed by the closing statement of the Provisional Licensee, and the hearing shall be closed.

- (K) The Board must render a decision on whether the Provisional Licensee's Provisional License should be terminated for cause within 14 business days of the Show Cause Hearing. The decision shall state whether the Regulatory Counsel established a rebuttable presumption that the Provisional Licensee is a significant threat to clients or the public; whether the Provisional Licensee overcame that rebuttable presumption through clear and convincing evidence to the contrary; and whether, in looking at the totality of the evidence, the Board believes that the Provisional Licensee presents a significant threat to clients or the public. The Board's decision on that matter is final.
- (L) Any error in procedure, in admitting or excluding evidence, or in ruling on evidentiary or discovery questions shall not invalidate a finding or conclusion, or require that a new or supplemental Show Cause Hearing be conducted, unless the error resulted in the denial of a fair hearing.
- (M) A finding that the Provisional Licensee presents a significant threat to clients or the public shall terminate the Provisional Licensee's Provisional license. The former Licensee may reapply to the SPPE Program or pursue other pathways for admission to the Bar, but the Board will consider the facts underlying termination of the Provisional License when assessing the former Licensee's good moral character and fitness to practice law.

**19.3 Mandatory Steps Upon Termination.** Upon termination of the Provisional License, the Provisional Licensee may not undertake any new representation that would require a law license and must, within 10 business days:

- (A) Notify all clients represented in pending matters, as well as any opposing counsel or co-counsel, that the Provisional Licensee's authority to practice has been terminated; and
- (B) Take all other necessary steps to protect the interests of clients served by the Provisional Licensee.

## **Section 20**

### **Program Review**

**20.1 Audits of Component Scoring.** The Admissions Department will maintain a file of anonymous work product that was scored "not qualified." At least once a year, the Board will review samples randomly selected from this file, comparing the samples to work product scored as "qualified," to check for consistency among Examiners. If significant discrepancies are identified, the Board will discuss those discrepancies and consider revisions to its rubrics, changes in Examiner training, or other steps to reduce future discrepancies.

**20.2 Review of Minimum Competence Standard.** At least once a year, the Board will randomly select several completed Portfolios to assess whether those Portfolios—taken as a whole—

demonstrate minimum competence to practice law. If the Board finds that the Portfolios do not meet that standard, it will consider revisions to its rubrics or these rules.

**20.3 Review of Other Program Elements.** At least once a year, the Board will gather input from Employers, Supervising Attorneys, and Provisional Licensees about their experience in the Program. The Board may use any suitable means (including surveys and focus groups) to gather this information. The Board may also consider gathering input from other individuals, including judges and clients. Information from these inquiries will inform further Program development.

**20.4 Annual Report.** The Board will submit an annual report to the Oregon Supreme Court, noting the number of applicants to the Program, the number of Provisional Licenses granted, and the number of Provisional Licensees admitted to the Bar. The report will also note any insights gathered from the reviews described in Rules 20.1 – 20.3; and any proposals for improving the Program.

## **Section 21**

### **Amendments to These Rules**

**21.1 Amendments.** The SPPE is a new initiative, and the Board may amend these rules as it gains experience with different aspects of the Program.

- (A) Amendments may be initiated by the Board, one of its Members, Regulatory Counsel, or an Ombudsperson.
- (B) The Board will notify Provisional Licensees, Supervising Attorneys, and Employers by email if it is considering an amendment and will give those Program participants an opportunity to comment on the proposed amendment.
- (C) Any amendment adopted by the Board must be approved by the Oregon Supreme Court.
- (D) The Board must publish any approved amendment on its website, and notify Program participants by email of the amendment, at least 14 calendar days before that amendment goes into effect.
- (E) If an amendment adds to the duties of Provisional Licensees, Supervising Attorneys, or Employers, the amendment will not affect existing Program participants until 6 months after it is approved by the Oregon Supreme Court. Similarly, an amendment that increases Program requirements or makes it more difficult for Provisional Licensees to qualify for Bar admission will not affect Provisional Licensees who are already enrolled in the Program until 6 months after it is approved by the Oregon Supreme Court. Other amendments will take effect as provided in subsection (D).
- (F) The Board may alter scoring rubrics, templates, and other forms used in the Program without amending these rules. The Board, however, will publish altered rubrics, templates, and other forms on its website at least 30 days before those changes go into effect. Similarly, it will notify Program participants by email of these changes at least 30 days before they go into effect.



# **Exhibit C**

Notes and Explanations on Proposed Rules for the  
Supervised Practice Portfolio Examination (SPPE) Licensing Pathway  
Revised 08/02/2023

This document summarizes key points that the Licensing Pathways Development Committee (LPDC) discussed when drafting rules for the Supervised Practice Portfolio Examination (SPPE) licensing pathway. These notes include explanations of why the Committee chose to deviate in some places from the general recommendations contained in the Task Force’s original and supplemental reports.

A working group created an initial draft of these rules, using the rules adopted for the Provisional License Program (PLP) as a framework for its discussion.<sup>1</sup> The proposed SPPE rules maintain some of the language from the PLP rules, but vary in other respects. The current version of the rules reflects changes made after consideration of substantive public comments and deliberation by the Committee.

**Program Title**

The Task Force proposed a “Supervised Practice Pathway” as a way to assess a candidate’s minimum competence to practice law. As the Committee developed that concept further, it recognized that the portfolio of work product assessed by the Board of Bar Examiners (BBX) was as important as—if not more important than—the supervised practice hours themselves. For that reason, the Committee voted to rename this pathway the “Supervised Practice Portfolio Examination” or “SPPE.”

**Section 1: Background, Definitions, and Authorities**

This section identifies the purpose of the SPPE, the regulatory authority for the program, and the meaning of key words used in the rules. The Committee discussed at length the meaning of “Legal Work” given in Rule 1.2(J). The definition adopted by the Committee is broad enough to encompass all types of work performed by newly licensed lawyers, including “activities that are also performed by unlicensed individuals, as long as newly licensed attorneys working for the Employer regularly incorporate those activities in their work.” That provision recognizes that attorneys in some workplaces, especially those who work for government and nonprofits, perform some incidental clerical work that lawyers in better funded organizations delegate to nonlawyers.

The definition of “Legal Work” is important because that work comprises most of the hours that candidates must log under Rule 6.12 before qualifying for admission to the bar. The latter rule makes clear that only Legal Work assigned by a Supervising Attorney counts towards those

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<sup>1</sup> The Oregon Supreme Court approved the PLP as a remedial measure for candidates who failed the February 2022 Oregon Bar Exam. That program allows candidates to demonstrate their competence through means similar to the ones proposed for the SPPE.

required hours. Candidates, therefore, may not assign tasks to themselves that they consider “Legal Work.”

## **Section 2: Qualifications of Program Participants**

### **2.2: Qualifications of Employers.**

This rule provides detail on the obligations of employers, including:

- committing to hiring Provisional Licensees for at least 20 hours of paid Legal Work per week;
- paying Provisional Licensees a salary and benefits equivalent to those provided other recent law school graduates; and
- paying professional liability premiums for Provisional Licensees as they would for other first-year lawyers when coverage is required.

These requirements implement the preferences expressed by the Task Force and are somewhat stronger than the requirements imposed for the PLP.

### **2.3 Exceptions to Hours and Pay Requirements for Employers.**

Although the Committee prefers for Provisional Licensees to be paid for their work, it recognized that some Licensees may be willing (and eager) to provide pro bono services to clients. This rule gives Licensees that opportunity.

The Committee also discovered that some organizations (particularly law schools) provide grants to graduates to support them while they work for employers. This rule allows Provisional Licensees to rely upon those grants rather than direct pay from employers while participating in the SPPE program.

### **2.4: Qualifications of Supervising Attorneys.**

Experience Level: The Task Force recommended that Supervising Attorneys have 5-7 years’ experience, although it noted that a later committee should decide whether that requirement was appropriate. The Committee concluded that attorneys gain expertise quickly in today’s workplace, and that some organizations (especially government agencies and nonprofits) experience high levels of turnover that push attorneys quickly into supervisory roles. Attorneys with 3-5 years of experience, moreover, may be especially capable of supervising Provisional Licensees because they are close to their own learning years. The Committee, therefore, chose to require that a Supervising Attorney have “been an active member of the bar in at least one jurisdiction for at least three of the five years preceding the application.” The Committee retained the Task Force’s recommendations that the Supervising Attorney have an active Oregon license and have had such a license for at least 2 years.

Family Members: The PLP rules provide that no immediate family member may work for the Provisional Licensee’s employer. The Committee agreed that the rules should prevent the possibility of family bias in supervision but thought the PLP prohibition was too broad. In

particular, the Committee was concerned that an employer-wide ban could prevent candidates from finding employment in rural parts of the state. The Committee, therefore, adopted a rule prohibiting an immediate family member from serving as a Provisional Licensee's Supervising Attorney. The Committee also adopted a definition of "immediate family member."

Federal Judges: The Task Force suggested that a future committee consider whether it would be appropriate to allow federal judges located in Oregon to serve as Supervising Attorneys even if they are not active members of the Oregon bar. The Committee concluded that federal judges would provide excellent lawyering experiences for Provisional Licensees. Rule 2.5, therefore, provides that a "federal judge, magistrate, or bankruptcy judge whose primary chambers are in Oregon may serve as a Supervising Attorney" without being either a member of the Oregon State Bar or an active member of any other bar. The Committee decided to limit this exception geographically, at least during the initial years of the SPPE, to assure that Provisional Licensees have an opportunity to participate in the Oregon legal community. After experience with the program, BBX and the Supreme Court might extend this exception to federal judges outside of Oregon.

The Committee discussed the fact that federal judges who are not members of the Oregon State Bar would not be subject to that Bar's discipline if they neglected their duties as Supervising Attorneys. The Committee, however, concluded that other ethical constraints would ensure excellent supervision by federal judges.

## **2.5 Rehabilitation from Public Discipline.**

Although Supervising Attorneys should model high ethical standards, the Committee recognized that attorneys who have been disciplined are capable of rehabilitation. This rule confirms that "[t]he general rule is that an individual who has a record of public discipline in any jurisdiction may not serve as a Supervising Attorney." The rule then allows an exception if the public discipline was imposed more than 5 years previously, the attorney has incurred no other discipline (public or private) since that time, and the attorney submits a petition to the Board explaining their rehabilitation and fitness. The Board will then at its discretion decide whether the attorney has demonstrated sufficient rehabilitation and fitness to serve as a Supervising Attorney.

## **Section 3: Application and Admission to the Program**

### **3.4: Certificate of Eligibility.**

The Task Force report did not consider the intersection of the SPPE with Character and Fitness review. The PLP rules require Provisional Licensees to pass Character and Fitness review (and obtain a "Certificate of Eligibility") before starting the program. The Committee agreed with this approach but recognized that Character and Fitness review sometimes takes several months. For that reason, the proposed SPPE rules allow applicants to begin accumulating hours that count towards completion of the SPPE while they are undergoing Character and Fitness review.

Applicants may not perform any work that would require a law license during this time, unless they retain a valid student license, but they may complete other work for the SPPE.

#### **Section 4: Professional Liability Coverage**

The Task Force did not address the issue of professional liability coverage. The PLP rules require that coverage and provide that “Following common practice, the Employer will pay the cost of the Applicant or Provisional Licensee’s insurance coverage, whether through the PLF or an approved alternative carrier.” The Committee clarified this requirement in the SPPE rules, providing in Rule 4.1 that “Employers must pay premiums and other expenses for this coverage to the same extent that they pay those expenses for any other new lawyer they employ.”

#### **Section 5: Roles and Duties of Program Participants**

##### **5.1 Role and Duties of Provisional Licensees.**

Law Student Appearance Program: The Task Force noted that a future committee should consider the intersection of the SPPE with the Law Student Appearance Program described in the Rules for Admission (RFA). The PLP rules incorporate the law student appearance rules by reference, giving Provisional Licensees the same practice scope as law students. The Committee maintained that approach for the SPPE, finding that the law student rules provide the appropriate balance of practice autonomy and supervision for candidates completing the SPPE.

##### **5.4 Delegation of Supervising Attorney’s Duties.**

This rule follows the Task Force’s recommendation that a Supervising Attorney should be able to delegate some responsibilities to other licensed attorneys in the organization. Under the proposed rule, the Supervising Attorney will retain exclusive authority to supervise the Provisional Licensee’s overall schedule and workload. Other active members of the Oregon Bar could supervise the Provisional Licensee on specific tasks, complete rubrics for the Provisional Licensee’s Portfolio, and provide feedback to the Provisional Licensee. The Supervising Attorney would have responsibility for identifying lawyers with the knowledge and skills to supervise the Provisional Licensee effectively. The Supervising Attorney would also “retain[] professional responsibility for the work of the Provisional Licensee and the supervisory competence of the lawyer to whom they delegate any supervisory duties.”

This decision was made as it better reflects active practice by a new attorney. Other programs that provide supervised paths to licensure provide similar models of formal supervision and task supervision.<sup>2</sup>

##### **5.5 Dual Supervising Attorneys**

The Task Force Report stressed the importance of allowing Provisional Licensees to have more than one Supervising Attorney. This rule explicitly authorizes Licensees to have two concurrent

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<sup>2</sup> The original PLP Rules did not explicitly allow delegation, but the Board approved an amendment, approved by the Supreme Court, which allows delegation with wording similar to that used in the proposed SPPE Rules.

Supervising Attorneys, while the rules in Section 15 provide for multiple Supervising Attorneys over time.

The proposed rule includes important safeguards for Provisional Licensees and the public. To protect Licensees, the rule requires concurrent Supervising Attorneys to “coordinate their supervision to ensure that the Provisional Licensee is able to meet Program requirements.” To protect the public, the rule notes that Supervising Attorneys who work for different Employers must follow the conflict-of-interest and screening requirements that apply when a lawyer works for two different organizations. Provisional Licensees should have the same status as fully licensed lawyers for conflict-of-interest purposes, so it is important for Employers to be aware of those constraints.

The Committee limited Provisional Licensees to two concurrent Supervising Attorneys because it believed that supervision and conflict checking would become unwieldy with more than one concurrent supervisor. The rules do allow for delegation of task supervision within the same organization (Rule 5.4) and for multiple Supervising Attorneys over time (Section 15).

## **Section 6: Program Requirements**

This section of the rules outlines the components of the Exam Alternative Portfolio (EAP) envisioned by the Task Force. The SPPE rules refer to the EAP simply as a Portfolio. Brief comments on each component of the Portfolio appear below.

**6.2 Learning Plan.** The Learning Plan will help Provisional Licensees plan and track completion of the program components. It will also serve as a model for project management and self-directed learning later in their careers. Licensees need to submit the Plan only once (with a Portfolio submitted halfway through the program), but they are encouraged to use it throughout the duration of the program. The Committee discussed whether a Learning Plan was necessary but concluded that the requirement was not burdensome and would assist some Provisional Licensees.

**6.3 Legal Work.** Legal Work assigned by a Supervising Attorney will form the bulk of the Provisional Licensee’s work. The Task Force recommended that the SPPE rules should exclude “administrative, ministerial and purely paralegal activities” from work hours that count toward the “legal work” hours of the program—or that a cap should be placed on the number of hours earned in those activities. The Committee agreed with that general principle but recognized the difficulty of separating these activities from “Legal Work.” The Committee also noted that lawyers in some nonprofits and government agencies have limited administrative support, requiring them to perform tasks that lawyers in large firms might delegate to others. Integrating these tasks into a busy practice is part of a professional’s role in an organization with limited means. As explained above (Section 1), the Committee concluded that the best approach was to define Legal Work with respect to the context in which the Provisional Licensee practices.

The Task Force directed a future committee to consider whether two common types of work (document review and assistance to judges) should qualify as “Legal Work” within the SPPE.

The Committee concluded that these activities should qualify for the program. Although both activities can be performed without a license, and neither involves a client, employers and judges often hire licensed lawyers for this work. More important, these activities expose new lawyers to a wide range of practical, doctrinal, and ethical issues. The breadth of exposure in these activities, in fact, may be larger than in some practice areas. Provisional Licensees working in one of these areas will still have to demonstrate their competence at client encounters and negotiations, but the Committee concluded that these competencies could be assessed through simulations for any Licensee who lacks those opportunities in the workplace.

**6.4 Written Work Product.** The Task Force envisioned that candidates in the SPPE would gather examples of written work product in their EAP. The PLP rules fleshed out this requirement by requiring 8 pieces of written work product, with 2 of those pieces exceeding 1500 words. Those numbers parallel the writing required for the Uniform Bar Exam: 6 essays plus two longer writings created for the Performance Test. The Committee adopted the same requirements for the SPPE. The SPPE need not parallel the bar exam, but the number of writings on that exam suggests that 8 writings (including 2 longer pieces) are sufficient to assess minimum competence.

Length of Documents: The Committee retained the PLP requirement that candidates submit 2 documents that exceed 1500 words, and it added a requirement that each of the other 6 documents exceed 300 words. The Committee recognized that the average length of a passing essay on the MEE is 500 words, while the average length of a passing submission on the MPT is 1725 words. The Committee, however, did not feel that those word lengths translated to competent practice documents. BBX members on the Committee spoke strongly about the disorganization and unnecessary length of bar exam essays. The time constraints of the exam, they suggested, cause examinees to type as quickly as they can without thoughtful composition.

Minimally competent documents composed in practice can be—and often should be—concise. The Committee also reviewed several sample emails analyzing legal issues and found that, although the text of each email included just 300-350 words, the emails were the type of documents that would demonstrate minimum competence in the SPPE. Many documents submitted with SPPE portfolios will exceed 500 words, but the Committee concluded that documents with 300-500 words could also demonstrate minimum competence. Similarly, the Committee found that documents with 1500-1725 words could demonstrate minimum competence in more complex contexts.

The Committee also included a provision (Rule 6.4(A)(3)) to prevent Provisional Licensees from dividing a long document into several shorter Portfolio pieces.

To assist Provisional Licensees in choosing documents to include in their Portfolios, the Committee agreed that a program handbook should advise Licensees that submitted works must include a complete legal analysis matching the criteria on the Board's scoring rubrics (which will be published). The handbook will also note that, although it is possible to meet that standard with works of 300-500 words, many works will require more than 500 words.

Types of Written Work Product: The PLP rules allow candidates to include a wide range of writings in their portfolios, including “memos, letters, emails, complaints, motions, briefs, contracts, . . . wills” and “any [other] form that lawyers use in their practices.” The Committee maintained this approach and added additional examples to the list, reasoning that it was necessary to accommodate the many practice areas that candidates may enter, and that document production varies widely among practice areas and office types.

The Committee, however, provided that submitted writings must “address some substantive aspect of a legal matter, as well as a prediction, conclusion, or recommendation related to that issue.” This will avoid submission of scheduling letters and other types of non-substantive writing. As noted at the end of this document, the Committee also suggested that the Board create a handbook or website with examples of documents that would and would not meet these basic requirements.

Breadth of Issues: The Committee discussed the possibility of requiring Provisional Licensees to submit documents addressing issues drawn from multiple areas tested on the bar exam. The Committee, however, concluded that this was unnecessary. Every practice area draws upon the threshold concepts and skills learned in law school and tested on the bar exam. The real test of competence in law is whether a new lawyer can apply those concepts and skills to learn the doctrine in their practice areas, and the SPPE assesses just that competence.

The Committee, however, did not want Provisional Licensees to include in their Portfolios multiple documents analyzing the same legal issue. Instead, Licensees should demonstrate some breadth within their practice area. To achieve that goal, Rule 6.4(A)(4) provides: “Each piece of work product must address at least one legal issue that differs from the legal issues addressed in other pieces of work product.”

The Committee anticipates that BBX will develop and publish guidelines explaining when legal issues differ sufficiently. BBX, for example, might require that each written work rely upon at least 3 legal authorities that have not been relied upon in previously submitted work product. For contracts and other documents with the force of law, BBX might require at least 3 provisions that have not appeared in previous submissions.

Authorship: The Committee discussed at length the independence of written work product submitted by Provisional Licensees. In the workplace, new lawyers may discuss their work with other lawyers, and they may receive editorial suggestions or other feedback from those lawyers. They may also use artificial intelligence (AI) programs for a wide variety of purposes, including research, composition, and editing.

The PLP rules focus on “first drafts” as a way of limiting the input that Provisional Licensees might receive from other sources. The Committee found this approach problematic for several reasons: (a) Employers might not want to share first drafts outside their workplace; (b) the requirement might negatively impact attorneys with disabilities who work with copy editors and other assistants; (c) even a first draft might reflect significant input from another attorney who



discussed the writing with the candidate; and (d) a focus on first drafts does not address the use of AI programs.

After gathering input from legal writing professors, judges, practitioners, and other experts, the Committee adopted a two-part approach. First, Provisional Licensees must disclose the assistance they received in creating the submitted work product. BBX will develop a checklist for this purpose that will become part of the cover sheet submitted by Provisional Licensees with each piece of written work product. Licensees will attest that all information included on the cover sheet is correct.

Second, the Supervising Attorney will attest that “after reviewing the assistance noted by the Provisional Licensee on their cover sheet, the work product sufficiently reflects the knowledge/research, analysis, and writing of the Provisional Licensee that BBX can meaningfully assess the Provisional Licensee’s competence from the work product.”

BBX will discuss these requirements in a handbook and provide examples for Supervising Attorneys and Provisional Licensees to follow.

Accuracy of Legal Principles: Bar Examiners may not know the substantive law informing writings that each candidate submits, although they will be responsible for assessing minimum competence in other ways. To address this challenge, the proposed SPPE rules require the Supervising Attorney to attest that “the legal analysis [in a submitted writing] is accurate.” That statement will also indicate if and how the writing was used, giving additional assurances of its accuracy.

Feedback from Supervising Attorneys: The Task Force hoped that Supervising Attorneys would provide frequent feedback to SPPE candidates, helping them develop their knowledge and skills. The Committee shares that hope but decided against requiring Supervising Attorneys to provide particular types of feedback or use specific rubrics for written work. That type of requirement might prove too burdensome or restrictive for Supervising Attorneys. Instead, the SPPE’s required training sessions (Section 14) will include information about best practices for giving feedback and sample rubrics for Supervising Attorneys to use if they choose to do so.

Cover Sheet: The rule requires Provisional Licensees to prepare a brief cover sheet noting the context for the work, the strategy used for any research, whether a template supplied the foundation for the work, the extent to which the Licensee received assistance from humans or AI programs, and the document’s word count.

Templates: The rule recognizes that lawyers base some of their work on templates. If a template forms the foundation of a written work, the Provisional Licensee must provide a copy of the original template and highlight the portions representing the Provisional Licensee’s edits, additions, or other customization. Training materials will make clear that this requirement applies only when the Provisional Licensee worked closely with a single template. Provisional Licensees who review multiple samples to guide their work need not submit those samples. To assure that Licensees make more than minor modifications to a template, Rule 6.4(D)(4) provides that “Only the additions, edits, or other customization will count towards the word-count requirements”

described above. In addition, Rule 6(D)(3) bars the Provisional Licensee from relying upon the same template for more than one writing accepted by the Examiners as qualified.

The Committee decided that drafts generated by AI should be treated like templates. A Provisional Licensee who relies upon an AI draft, therefore, must submit the original AI draft, show their modifications, meet the word-count requirement through their modifications, and abstain from submitting more than one writing based on that AI draft.

Client Consent: When reviewing the draft PLP rules, the Supreme Court concluded that clients should consent to the inclusion of any written work in a Provisional Licensee's portfolio. The SPPE rules take the same approach, which also accords with *In re Conry*, 368 Or. 349 (2021). Clients must provide their consent *before* the Provisional Licensee submits any written work related to the client.

Redaction: The PLP rules require Provisional Licensees to redact written work product "to protect the client's interest." The Committee retained that provision and, based on experience with the PLP, added a provision requiring redaction of information that would identify the Provisional Licensee, "their Supervising Attorney, their Employer, and the names and affiliations of any other counsel associated with the matter." That provision will prevent any appearance of impropriety that might result from Examiners recognizing lawyers associated with work product.

Mock Exercises: Although the definition of required writings is broad, the Committee recognized that some Provisional Licensees might have difficulty producing 8 writings from their practices. The rule thus allows Supervising Attorneys to assign mock writings and also provides that the Board will maintain an "issue bank" that Provisional Licensees can draw upon for this purpose.

**6.5 Client Interviews or Counseling Sessions.** This Portfolio component assesses a key lawyering competence, as recognized by both Oregon's Essential Eligibility Requirements (Rules for Admission 1.25) and the *Building a Better Bar* report cited by the Task Force. The rule defines "client" broadly to encompass diverse practice areas. It also directs the Admissions Department to maintain a list of assessment opportunities (including simulations) for Provisional Licensees who do not encounter clients in their supervised practice.

The rule provides that a "client" must be interpreted in the context of a Provisional Licensee's practice and gives several examples. A specific provision allows prosecutors to use discussions with complainants to satisfy this Portfolio element, reasoning that discussions with complainants are most analogous to client encounters.

After some discussion, the Committee concluded that client interviews and counseling sessions may occur either orally or through written exchanges (including emails). The rule allows either type of encounter to qualify.

The proposed rule requires client consent when a Supervising Attorney observes an oral session, but not when the Supervising Attorney reviews written exchanges. The Committee did not think consent was necessary in the latter context because the Supervising Attorney's presence would

not disrupt the session and only reviews of the session (not the written exchanges themselves) would be included in the Portfolio.

To assure both client confidentiality and the anonymity of Portfolio review, the rule directs Provisional Licensees to ensure that the Portfolio materials related to this component do not reveal the identity of “the Provisional Licensee, the Supervising Attorney, their Employer, the parties involved in the matter, or any counsel to those parties.”

**6.6 Negotiations.** This Portfolio component assesses a common type of lawyering communication that bridges diverse practice areas. The rule provides that a qualifying negotiation need not “focus on final resolution of the matter; it may focus on preliminary or interim matters.” The rule also recognizes that negotiations may occur orally or through an exchange of writings. The rule, finally, provides: “Negotiations need not be complex or lengthy, but they must offer an opportunity for the Supervising Attorney to assess both the Provisional Licensee’s ability to express their position and their responsiveness to opposing counsel.” The Committee decided this approach was preferable to specifying a particular length or number of exchanges for a qualifying negotiation.

For negotiations conducted orally, the rule requires consent from other counsel and the Provisional Licensee’s client (if the client attends the negotiation). For negotiations conducted in writing, the Committee does not believe that any consent is necessary.

For Provisional Licensees who do not engage in any negotiations as part of their supervised practice, the rule requires the Admissions Department to maintain a list of appropriate assessment opportunities (including simulations).

This rule, like the one governing client encounters, requires Provisional Licensees to ensure that materials included in the Portfolio do not reveal the identity of the “Provisional Licensee, the Supervising Attorney, their Employer, the parties involved in the matter, or any counsel to those parties.”

**6.7 Evidence of Competence in Professional Responsibility.** The Task Force envisioned that Provisional Licensees would take the MPRE to establish a competent understanding of the Rules of Professional Conduct. The Committee agreed that the MPRE offers one avenue for measuring this competence, but it found that the SPPE offers more authentic ways to assess that competence. The MPRE tests model rules, rather than Oregon’s rules, and it consists solely of closed-book multiple-choice questions. Committee members expressed frustration that the MPRE cultivates a sense that lawyers can answer ethical questions without consulting the text of Oregon’s rules. They also noted that the ethical dilemmas that arise in practice are often more nuanced than the situations tested through the MPRE’s multiple-choice questions. The Committee, finally, noted that the purpose of the SPPE was to avoid assessing competence through high-stakes, closed-book exams.

The Committee thus decided to offer Provisional Licensees two options for demonstrating their understanding of the rules of professional conduct:

- (A) Achieving a score of at least 85 on the Multistate Professional Responsibility Exam (MPRE); or
- (B) Completing a set of at least 10 journal entries devoted to issues of professional responsibility or professionalism.

The second option is available only to Provisional Licensees who have passed a law school course on professional responsibility, which provides additional evidence of their competence.

The rule allows the Board to develop rules governing the format and content of the journal entries, but it establishes three guiding principles. First, each entry must describe a lawyering situation that raises an issue of professional responsibility, identify Oregon Rules of Professional Conduct and other sources related to that issue, analyze the issue, and offer a conclusion. The conclusion need not be definite; instead, the guideline acknowledges that “resolution of the issue [may be] unclear or disputed.” The Provisional Licensee, however, must identify the nature of the unclarity or dispute.

Second, to ensure that the Provisional Licensee demonstrates competence with respect to a range of professional responsibility issues, the journal entries must discuss rules drawn from at least 5 of the 8 chapters of the Oregon Rules.

Finally, the guidelines provide that “Provisional Licensees may discuss the issues they write about with colleagues, the State Bar’s Legal Ethics Hotline, and other sources.” The Committee views that process of consultation as essential to competence in professional responsibility. It also parallels required elements of the New Lawyer Mentoring Program.

The content of journal entries submitted under this option will be independently assessed by an Examiner.

**6.8 Activities Related to Diversity, Equity, Inclusion, or Access to Justice.** The Committee believed that Provisional Licensees should devote some of their attention to issues related to diversity, equity, inclusion, or access to justice. These issues are critical for all practicing lawyers. The rule requires 10 hours of this work and offers Licensees a menu of options for satisfying the requirement.

**6.9 Practice Overview MCLEs.** The Committee concluded that Provisional Licensees would benefit from MCLE programs providing “an overview of doctrinal principles commonly encountered in entry-level law practice.” The *Learning the Ropes* program offered by the Oregon State Bar Professional Liability Fund often provides that content to new lawyers. Recognizing that the content of the PLF’s program might change over time, however, the Committee did not specify the *Learning the Ropes* program (as the PLP rules do). Instead, the Committee drafted a rule that requires the Board to designate 15 hours of MCLE programming that offer the type of overview contemplated by the rule. All Provisional Licensees must attend or watch that programming and document their compliance with certificates of completion.

**6.10 Timesheet.** The Task Force recommended that time devoted to the SPPE should be documented “employing six-minute increments and contemporaneously kept time records that

are approved/certified by the supervising attorney.” The PLP rules softened this requirement slightly by allowing Provisional Licensees to document their time in 6- or 15-minute intervals. The Committee concluded that this type of timekeeping (whether in 6- or 15-minute intervals) was unnecessarily burdensome and would not provide useful information for the Board to review. Many lawyers do not record or bill their time; for Provisional Licensees working in those organizations, this requirement would introduce a new burden on both Supervising Attorneys and Provisional Licensees—and would detract from their client service. Even Provisional Licensees working for organizations that regularly record time would have to redact those records to protect client confidentiality and would encounter other tracking difficulties as program hours are not limited to billable hours.

The Committee concluded that Provisional Licensees should record their program time on a weekly basis, with their Supervising Attorney approving the number of recorded hours. The rule provides that the Board will create a template for this purpose. That provision will allow the Board to determine how much detail is desirable on these weekly records, although the Committee believes that a simple summary of weekly hours should be sufficient. The Committee also contemplates that the template will include the definition of “Legal Work” specified in Rule 1.2(J) as a reminder to Supervising Attorneys about the type of work that should count towards program hours.

**6.12 Hours.** The Task Force recommended that Provisional Licensees document 1000 – 1500 hours of program work to complete the SPPE. The SPPE working group and Committee devoted considerable research and discussion to this recommendation. We considered it essential to identify sufficient hours to establish a Provisional Licensee’s minimum competence, but to avoid additional hours that might become a barrier to entry.

In the end, we based our decision in part on the experiential hours that will be required for the Oregon Experiential Portfolio Examination. Although that pathway is still under construction, we anticipate that it will require candidates to complete 15 academic credits of experiential work.

Under ABA Standard 310, each academic credit requires 45 hours of work.<sup>3</sup> The OEPE, therefore, will require candidates to complete 675 hours of experiential work as part of their demonstration of minimum competence.

The Committee concluded that the same hours requirement should apply to the SPPE. Provisional Licensees will have already completed 3 years of law school, so their workplace hours build on an already extensive foundation. The primary measure of a Provisional Licensee’s competence, moreover, will come from assessment of the work submitted to the Board in their Portfolios. The Task Force did not have time to outline those submissions in detail, so may have

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<sup>3</sup> For courses that include classroom instruction, the requirement is just 42.5 hours because 50 minutes of classroom instruction count for a full hour under the ABA rules. To simplify its calculation, however, the Committee assumed 45 hours of work for each experiential credit required by the OEPE.

relied more heavily on hours to signal minimum competence. The lesser hours proposed by the Committee complement the detailed work product now required from Provisional Licensees.

Although the Committee agreed with the Task Force that practice should be measured in hours rather than months, it was concerned that Provisional Licensees might log 70 or more hours per week in some workplaces. Completing the SPPE in less than 10 weeks might not give Provisional Licensees sufficient time to absorb workplace lessons and reflect on their practice. Rule 6.12, therefore, bars Licensees from counting more than 40 hours of legal work per week towards the 675 total. The rule also limits other activities that may count towards the hours requirement.<sup>4</sup>

With these provisions, Provisional Licensees will spend at least 17 weeks fulfilling SPPE requirements. Indeed, most Licensees may need longer to accumulate the required hours and fulfill all Portfolio requirements. Even the minimum 17 weeks, however, is considerably longer than the 8-10 weeks that graduates typically devote to bar study. It also requires a heavier investment of time than the OEPE, which can be completed during law school.

In addition to finding 675 hours (when combined with the extensive Portfolio requirements) sufficient to establish a Licensee's minimum competence, the Committee noted that a heavier hours requirement would deter employers from participating in the SPPE. Candidates who successfully complete the OEPE will be licensed shortly after graduation, while those who pass the July bar exam are typically licensed in October. A requirement of 1000 hours would require about 29 weeks to complete, making SPPE candidates ineligible for full licenses until late November—even if they began work immediately after law school graduation in May.<sup>5</sup> The SPPE supervision requirements impose burdens that employers are unlikely to tolerate for that long, especially if lawyers who have taken the bar exam are available for unsupervised work on an earlier schedule. The requirement of 675 hours, when combined with the Portfolio requirements, provides sufficient time to establish a candidate's minimum competence while maintaining parity among the three licensing paths.

**6.13 Credit for Work in JD Program.** The Task Force suggested that Provisional Licensees might be able to use some of their JD work to satisfy program requirements. The Committee agreed with this suggestion but decided that, with a lower number of required program hours, only limited credit should be available for work performed as a JD student. The proposed rule allows JD graduates of an ABA-accredited law school to count up to 100 hours of Legal Work performed as a student toward the hours required by Rule 6.12, but only if (a) the Licensee did the work while certified under Oregon's Law Student Appearance Program, and (b) the work otherwise met SPPE requirements. The latter requirement incorporates the Task Force's

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<sup>4</sup> Although the rule allows Provisional Licensees to count up to 40 hours of legal work each week, the Committee believes that most Licensees will average just 35 hours of work a week. That average accounts for vacation days, lighter workdays, illness, and caretaking responsibilities. A Licensee who averages 35 program hours per week would complete the hours requirement in 19.3 weeks.

<sup>5</sup> For this calculation, we assumed 35 hours of work per week, for the reasons given in footnote 4.

suggestion that JD work might count towards the SPPE only if the supervisor of that work qualified as an SPPE Supervising Attorney.

Given the limited nature of credit allowed for work done as a JD student, the Committee saw no need to incorporate the Task Force's suggestion that there should be a time limit on how far back a candidate could reach to count JD hours and experiences. The general time limit imposed by Rule 6.14, combined with the stringent limits in this rule, will ensure that the Board has timely evidence of a Provisional Licensee's competence.

The Committee acknowledged that its proposed Rule 6.13 permits very limited credit for work performed as a JD student. In addition to the limits described above, the rule allows only credit for hours; Provisional Licensees may not include any JD work in their Portfolios. At least to start, however, the Committee believes these limits are appropriate. As the Board and Supreme Court develop more experience with the SPPE and OEPE, it may be appropriate to expand this credit.

**Rule 6.14 Timing.** The PLP rules require provisional licensees to complete their work within 18 months, although tolling is allowed under specified circumstances. The Task Force, similarly, suggested that supervised practice hours "must be completed within a set window of time" and that "consumer protection dictates that the supervised practice hours occur within a reasonably condensed period of time to ensure that the lessons that are learned through repetition and consistent exposure to concepts are not lost to time." The Committee agreed with the Task Force's overall concern but did not think that the time limit needed to be as rigid as the one set for the PLP. A strict time limit, the Committee found, was unnecessary, contrary to principles of universal design, and potentially burdensome for the Admissions Department.

The Committee noted that Provisional Licensees have a strong incentive to complete the SPPE and be fully admitted to the bar as quickly as possible. Employers share that incentive because fully licensed lawyers are more valuable than provisionally licensed ones. Under the SPPE, moreover, Employers have no obligation to maintain the employment of Provisional Licensees. In that respect, the SPPE differs from the PLP. If a candidate pursuing the SPPE is not progressing quickly enough, or is unable to perform competently, the Employer likely will discharge the Licensee.

When delays occur, those are likely to stem from illness, disability, or family caretaking. Principles of universal design caution against requirements that would penalize Provisional Licensees who encounter those conditions or require them to seek special accommodations. The Committee also concluded that petitions for tolling or waivers of a time limit would burden the Admissions Department. Indeed, simply tracking time spent by SPPE candidates would impose some burdens on that Department.

The Committee concluded that it was most important for the Board to obtain relatively recent evidence of a Provisional Licensee's competence at the time of licensing. The hours devoted to the program provide an opportunity to gain competence, and those hours may be spread over

time. The artifacts in the Portfolio demonstrate competence so time limits should be tethered to those artifacts, rather than to program hours.

Rule 6.14 thus provides that, no matter how long a Provisional Licensee remains in the SPPE, “[a]t least three quarters of the work product described in Rules 6.4, 6.5, and 6.6 must have been scored as ‘qualified’ within 3 calendar years of the date on which an Examiner transmits a Final Portfolio to the Admissions Department under Rule 8.3(A).” This requirement ensures that the Provisional Licensee’s demonstration of competence is sufficiently recent to provide public protection.

**6.14 New Lawyer Mentoring Program (NLMP).** The Committee drew some of its ideas for the SPPE’s structure and components from the NLMP, which Oregon requires for all newly licensed lawyers. After designing the SPPE structure and components, the Committee concluded that the NLMP would be redundant for Provisional Licensees. The SPPE itself provides the type of mentoring that new lawyers need. This rule thus waives the NLMP requirement for Provisional Licensees, although it encourages Licensees working for solo practitioners, small firms, and other small organizations to broaden their mentoring opportunities by participating in the NLMP.

## **Section 7: Interim Portfolios**

**7.1 Required Interim Portfolio.** Building on New Hampshire’s Daniel Webster Scholars Program, the Task Force suggested that Provisional Licensees should submit work product to the Board “at regular intervals.” The Committee agreed with this suggestion: Licensees should receive feedback from the Board as they progress, rather than solely at the end of the program. The Committee decided to require only one Interim Portfolio, submitted to the Board after completing 350 program hours (i.e., about halfway through the hours requirement). This requirement will allow the Admissions Department to monitor Licensee progress while providing feedback to Licensees. Licensees must include evidence of at least 3 lawyering tasks (written work product, client encounters, and/or negotiations) in this Interim Portfolio.

**7.2 Optional Interim Portfolios.** Licensees who desire more feedback on their progress may submit additional Interim Portfolios, either before or after submitting their Halfway Portfolio. The only limit on these submissions is that Interim Portfolios must contain at least 3 new pieces of work. This will protect the Board from examining work product in very small batches.

**7.3 Timing of Submission and Review.** Rather than establishing elaborate deadlines (and processes for requesting extensions) for submission of the Interim Portfolios, the rules provide that “The Board will create and publish rules for submission and review of portfolios that ensure frequent and regular opportunities for Provisional Licensees to submit interim portfolios and receive timely results and feedback.” This sets policy parameters while recognizing that administration of this program will be a big logistical shift for the Admissions Department.

**7.4 Review and Scoring of Interim Portfolios.** An important element of the SPPE is that Portfolio components are scored as they are submitted, receiving a score of either “qualified” or “not qualified.” As explained further below, Licensees establish their minimum competence by obtaining a “qualified” score on every component of the Portfolio. This avoids the problems



inherent in a more holistic scoring of Portfolios (see below), lessens the Board’s workload, and provides assurance to Licensees as they progress through the program. Once a component has been scored “qualified,” it will not be reexamined by the Board.

The PLP rules adopted this approach and, after considering other approaches in detail, the Committee thought this approach provided the best basis for reliable and fair assessments of Licensees.

If a component receives a “not qualified” score, the Provisional Licensee may replace that component in a future Portfolio. Replacement pieces must constitute a new piece of work; the Licensee cannot submit a revised version of the original submission.

Under the proposed rules, Licensees may replace “not qualified” components as often as necessary to meet the program requirements. This allows Licensees to learn from their mistakes and progress towards minimum competence over time. Replacement opportunities also reduce the pressure on Examiners to pass Licensees. If an Examiner has any doubt about the competence of a component, they can score the component as “not qualified,” knowing that the Licensee will have another chance to demonstrate their competence.

The rules do not allow Licensees to challenge “not qualified” scores. As explained in Section 9 below, the Committee anticipates that two Examiners will review each component of the Portfolio. That level of review, combined with the unlimited ability to submit replacement components, offers Licensees a fair avenue for demonstrating their competence.

The PLP rules take a somewhat different approach. Provisional Licensees in that program may resubmit components scored “not qualified” with clarifying information about why the component should receive a qualifying score. That program, however, also strictly limits the number of replacement components submitted by Licensees. The Committee concluded that the approach outlined above would be more workable for BBX and helpful to Provisional Licensees. Licensees should learn from their mistakes and create new work, rather than dwelling on past work product.

## **Section 8: Final Portfolio Review**

This Section describes the process of Final Portfolio review, incorporating rules from Sections 7 and 9. Review of the Final Portfolio does not differ substantively from that of Interim Portfolios. If any component of the Final Portfolio receives a “not qualified” score, the Provisional Licensee has unlimited opportunities to replace that component and submit a new Final Portfolio.

## **Section 9: Portfolio Review, Scoring, and Challenges**

The rules in this Section provide more detail on the process of scoring Interim and Final Portfolios. The rules for review and scoring differ somewhat from the PLP provisions, which permit a single Examiner to grade each Portfolio component. The proposed SPPE rules allow a single Examiner to grade some Portfolio components but specify in Rule 9.1: “If practicable, at least two Examiners will grade each piece of written work product (Rule 6.4) included in a

Portfolio.” Rule 9.1 also provides that “multiple Examiners [should] participate over time in grading components of each Provisional Licensee’s Portfolio.”

The use of multiple Examiners will increase the reliability and fairness of Portfolio grading. The Committee recognized, however, that using multiple Examiners to grade each Portfolio component might not always be feasible; Rule 9.1 gives BBX some leeway to decide what is “practicable.” That rule also contemplates that BBX will “create and publish [more detailed] rules for review and grading of portfolios that follow best practices, account for bias, and address conflicts.”

Rule 9.2 provides that all Portfolio components must be graded anonymously.

Rule 9.3 outlines the scoring rules for each Portfolio component. Some components (e.g., completion of the “Practice Overview” MCLE hours) will be marked “qualified” when the Provisional Licensee submits evidence of completion. Written work, client encounters, negotiations, and professional responsibility journal entries will be scored using rubrics developed and published by the Board.

The PLP rules establish complex rules for BBX to review Final Portfolios that are marked deficient, as well as for Provisional Licensees to remediate deficiencies and appeal BBX decisions. Those processes are necessary given the time limits on participation in the PLP and the restrictions on replacement of Portfolio components. The proposed SPPE rules impose no strict time limits and allow unlimited replacement of deficient Portfolio components (although Rule 6.14 imposes a “freshness” requirement on some Portfolio components). In that context, the Committee concluded that procedures for challenging BBX decisions were not necessary.

### **Section 10: Admission Decision**

This section confirms that completion of the SPPE takes the place of a passing score on the UBE. It also describes a process for administratively confirming that Provisional Licensees have satisfied all the SPPE requirements. Finally, the Section lays out a process for reviewing any updates to the Licensee’s application for admission that might raise character and fitness issues.

Provisional Licensees need not undergo a full character and fitness review after completing the SPPE because that review is done before starting the program. The rules, however, require Licensees to update their applications and direct the Admissions Department to refer applications to the Board if any of those updates raise character and fitness issues. The Board will create a form and process for this update.

### **Section 11: Accommodations**

This Section first notes that Provisional Licensees must seek any accommodations for workplace conditions or assignments from their Employer, not from the Board. Relatively few accommodations should be needed for the SPPE itself because the Committee designed the program requirements using principles of universal design. E.g., the program does not include any tight deadlines or timelines, Licensees may choose to complete some requirements either

orally or in writing, and Licensees may use proofreaders, software programs, and other assistance when creating written work product.

When accommodations for SPPE requirements are needed, the Committee concluded that they should be available not just for documented disabilities, but for any “disability, health condition, caretaking responsibility, or other condition [that] will impair [the Provisional Licensee’s] ability to complete any Program requirements.” The Board will decide what reasonable accommodation is appropriate for these requests. The rule requires the Board to list examples of accommodations on its website so that Licensees will know that they are available and feel comfortable seeking needed accommodations. Finally, the rule refers Provisional Licensees to the Ombudspersons for questions about accessing accommodations.

In crafting this rule, the Committee received helpful suggestions from the Oregon Attorneys with Disabilities Association; the provisions of the proposed rule incorporate all those suggestions.

## **Section 12: Transparency**

The Oregon courts and State Bar value transparency, so the Board will publish all forms and documents related to the SPPE on its website. This will include the rubrics that Examiners use to score Portfolio components. Publication of these rubrics will help Provisional Licensees and Supervising Attorneys understand the Board’s definition of minimum competence. The rubrics themselves will be developed with input from practicing attorneys, just as the Board seeks input when setting the state’s cut score for the UBE.

The website will also include other essential information, such as examples of program accommodations, links to the handbook and training materials, and introductions to the Ombudspersons. The website developed for the PLP demonstrates some of the materials that can be made available to SPPE participants.

## **Section 13: Conflicts**

Although Portfolios will be scored anonymously, the Committee wants to avoid any appearance of favoritism or conflicts of interest. Rule 13.1, therefore, directs the Board to “develop guidelines and processes for identifying relationships between Examinees and Provisional Licensees that might suggest bias or an appearance of favoritism.” Examiners who have that type of relationship with a Provisional Licensee will not review Portfolios submitted by that Licensee.

Rule 13.2 addresses the possibility that an Examiner might review a Portfolio containing work product related to a matter on which the Examiner has a conflict of interest. Even though all work product will be redacted to protect client interests, the Board would not want an Examiner to inadvertently review work product on a matter for which they have a conflict of interest—or for which their review would create an appearance of impropriety. To guard against those possibilities, the rule directs the Board to “develop guidelines and processes for identifying and precluding those possibilities.”

The PLP rules included more detailed provisions for avoiding these potential conflicts or appearances of impropriety, but the Board found some of those mechanisms unwieldy in practice. Proposed rules 13.1 and 13.2, therefore, give the Board considerable discretion to develop its own processes for this purpose. Processes adopted for the PLP now appear to be working well.

#### **Section 14: Training**

This Section requires training on diversity, equity, and inclusion issues for all Examiners and Supervising Attorneys. That training will focus specifically on their work in the SPPE, seeking to avoid implicit bias and other attitudes that might undermine the fairness of the program. Supervising Attorneys and Provisional Licensees are also required to take training focused on the program requirements. The Board, finally, will arrange training for its Examiners to familiarize them with program requirements and scoring rubrics. All training will be eligible for MCLE credit.

The Task Force suggested that Supervising Attorneys should complete all training before supervising any hours that would count towards Program requirements. The Committee did not think this was necessary because the Program rules, handbook, and website will offer a sufficient introduction to the Program. Training may also be more effective once participants have started to work with the Program. Rule 14.2(A), however, requires Supervising Attorneys to complete training about program requirements “within one month of beginning supervision of a Provisional Licensee.”

#### **Section 15: Changes in Status**

The rules in this Section allow Provisional Licensees to change both Supervising Attorneys and Employers during the program. To protect the public, Rule 15.3 temporarily suspends the Provisional Licensee’s license during any period for which they lack a Supervising Attorney.

#### **Section 16: Temporary Suspension of License**

This Section complements Section 15 by identifying the steps a Provisional Licensee must take if their license is temporarily suspended, explaining how a license may be reinstated, and providing that a Licensee may pick up the program where they left off after reinstating a license. The time limit imposed by Rule 6.14 (on the submission of Portfolio components), however, would remain in effect.

#### **Section 17: Ombudspersons**

This Section provides for the appointment of two Ombudspersons to assist Provisional Licensees, Supervising Attorneys, and Employers with both individual and systemic problems in the program. Two Ombudspersons are required in case one has a conflict of interest with respect to a particular issue.

### **Section 18: Client Assistance Office Complaints**

This Section lays out rules for handling a Provisional License if a complaint against a Provisional Licensee is filed with the Client Assistance Office. If the Office dismisses the complaint, then the Provisional License remains in effect. If the Office forwards the complaint to Disciplinary Counsel's Office, the Provisional License will be suspended. If Disciplinary Counsel dismisses the grievance, the Provisional Licensee may reinstate their License. If Disciplinary Counsel files a formal complaint, then the Provisional License terminates immediately. These provisions are the same as those developed in the PLP rules.

### **Section 19: Termination of Provisional License**

This Section lays out rules for when and how a Provisional License may terminate. The rules are similar to those developed for the PLP, protecting the public while providing appropriate due process to the Provisional Licensee. The Committee made slight modifications to the process to better reflect the Board's current practice for handling other terminations. In particular, Rule 19.2(I) provides that any show cause hearing will be held before a panel of 3 Board members, rather than before the full Board.

Under Rule 19.2(M), a Provisional Licensee may reapply to the SPPE or pursue other pathways to bar admission once a license has been terminated, but the Board will consider the facts underlying the termination in considering the former Licensee's character and fitness. The Committee considered whether to impose a waiting period but concluded that existing processes already create a de facto waiting period. The Board would not issue a new Certificate of Eligibility to a candidate shortly after terminating that candidate's Provisional License. And, although a candidate might sit for the bar exam after termination of a Provisional License, the Board would determine whether the candidate was ready for admission through its ordinary Character and Fitness review.

### **Section 20: Program Review**

This Section requires several types of annual review of the SPPE, as well as an annual report to the Supreme Court about the program. The Committee recognizes that annual reviews and reports may not be necessary indefinitely but decided to allow future Boards and the Court to determine when to reduce the frequency of those assessments.

Additionally, the Committee plans to consider a requirement that the Board issue a different annual report that discusses the impact on attorney diversity (as defined by the OBA), access to justice, success in securing employment, and description of job types obtained across participants in all three of Oregon's proposed licensing paths. That recommendation will be discussed after the Committee completes the design of the OEPE.

## **Section 21: Amendments to These Rules**

This Section specifies the process for amending the SPPE rules and offers protections for Provisional Licensees in the program at the time amendments are adopted. Rule 21.1(F) clarifies that the Board may alter scoring rubrics, templates, and other forms used in the Program without amending the rules. The Board, however, must publish any altered rubrics, templates, and other forms on its website and notify Program participants of those changes.

If an amendment adds to the duties of Provisional Licensees, Supervising Attorneys, or Employers; increases Program requirements; or makes it more difficult for Provisional Licensees to qualify for Bar admission, the amendment will not affect existing Program Participants until 6 months after it is approved by the Oregon Supreme Court. The Committee considered freezing Program requirements for participants based on the time they entered the Program, but decided this was too unwieldy given variation in Program entry. Most participants should finish the Program within 6 months, so the 6-month delay should have an effect similar to freezing Program requirements by time of entry.

## **Other Notes**

Incentives for Supervising Attorneys. The Committee discussed various ways to incentivize lawyers to serve as Supervising Attorneys. Preliminary conversations with Regulatory Counsel suggest that some MCLE credit might be available for supervising a Provisional Licensee (in addition to the credit for participating in SPPE training programs). The Committee suggests that Supervising Attorneys should be able to claim 3 hours of MCLE credit for each 337 hours of supervision (approximately half the required number of program hours for participants). We decided, however, not to include this in the rules. Instead, the Admissions Department should decide on the appropriate amount of MCLE credit—and should resolve issues such as whether to divide credits between dual Supervising Attorneys.

Public recognition can also provide an incentive for attorney participation. Committee members suggested that the State Bar could maintain a website recognizing attorneys for serving as Supervising Attorneys, could give those attorneys a certificate for framing, or could adopt other ways of recognizing these attorneys via newsletters, MCLE discounts, etc.

Additional Assistance for Program Participants. The Committee suggested ways to provide additional information or assistance to program participants, such as by creating a handbook or website. In addition to the information mentioned in the rules, that resource could include examples of writings that do and do not meet basic program requirements; other samples of Portfolio components; and samples of completed rubrics and Program templates. The PLP website has already started to include materials like these.

Access to the SPPE. The Task Force emphasized that candidates should have broad access to the SPPE. In particular, the report recommended that candidates should not have to seek admission to the SPPE immediately after qualifying; that candidates should be able to pursue multiple

pathways (such as starting the SPPE while also studying for the bar exam); that candidates should be able to pursue the SPPE after failing a bar exam; and that there should be no cap on the number of candidates pursuing the SPPE. The Committee agreed with all of these points but did not state them explicitly in the rules. Instead, the rules provide that anyone who meets the qualifications of Rule 2.1 may participate in the pathway.

Breadth of Experience. The Task Force’s Supplemental Report noted that some concerns had been raised about SPPE work lacking the breadth of subject matter tested on the bar exam. The Task Force noted, however, that the “depth of meaningful experience offered by the SPPE more than makes up for this lack of breadth.” The Committee agreed with the latter conclusion. Based on the *Building a Better Bar* study and other sources, moreover, it noted that competent practice in *any* area draws upon knowledge and skills that transcend practice areas. Successful practice in any area, therefore, demonstrates the existence of that necessary foundation.

In addition, new attorneys must learn new doctrinal rules in any practice area they choose; the law is too vast, too variable over state lines, and too changeable for either law school or bar study to teach attorneys more than a fraction of the rules they will apply in any practice area. The SPPE assesses the most essential element of a general license to practice law: the ability to draw upon the foundational knowledge and skills learned in law school to develop competence in a specific practice area.

For those reasons, the Committee did not pursue any of the options identified in the Supplemental Report for increasing breadth. Those options, the Committee concluded, would detract from the program’s focus on assessing the essential knowledge and skills needed for competent law practice.