

OREGON STATE BOARD OF BAR EXAMINERS

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October 25, 2023

Sent via electronic mail to:

Linda.L.Kinney@ojd.state.or.us

Hon. Meagan A. Flynn
Chief Justice
Oregon Supreme Court
1163 State St NE
Salem, OR 97301

Re: Proffered Alternative Language to SPPE Regulations per Court's Request

Dear Chief Justice Flynn:

At the Oregon Supreme Court's October 10, 2023, Public Meeting, the Court indicated that for the Supervised Practice Portfolio Examination (SPPE) Pathway to secure unanimous approval from the Court, there were five areas in which the Court wanted to revise the rules.

The LPDC—through its co-chairs—offered to draft proposed language to address the Court's specifically expressed concerns. The Committee's effort to do so is below. We hope you find them responsive. LPDC representatives at the November meeting will be prepared to actively revise the proposals as directed by the Court with the hope that the SPPE—as revised by the Court—can be approved at that meeting.

I. Curriculum Requirements

Discussion

The Court expressed the belief that curricular requirements needed to be added to the program to ensure all applicants licensed through this pathway have demonstrated knowledge in certain foundational areas of law. The Court indicated it would like the SPPE to require applicants to have completed and passed courses addressing the subjects that will be tested on the NextGen Bar Exam. While course names, coverage of topics, and assessments may differ among law schools, six of the eight subjects to be tested on that exam roughly map onto the 1L curriculum for most law schools. The two additional subjects that will be tested on that exam—evidence and business associations—are common upper-level courses. The Court also noted that to qualify for Oregon's Certified Law Student program, the student must have taken a course on evidence. *See* Rule for Admission 13.20(1)(e).

Rule Change Language

If the Court chooses to add this curricular requirement, it could do so with the following proposed amendments:

- Amendment A: Add to Rule 1.2 Definitions (renumbering as necessary):

(W) Satisfactorily Completes means the applicant earned a passing grade in a law school course, whether that course was taken during law school or after graduation.

- Amendment B: Renumber Rule 2.1(A) – (D) as subsections of Rule 2.1(A). Add as subsection 2.1(A)(2) (renumbering the other sections as necessary), the additional qualification: “Satisfies the curriculum requirements described in subsection (B).”

- Amendment C: Add to Rule 2.1, a subsection (B) that states:

- (1) To participate in the SPPE an individual must have satisfactorily completed courses in the subject matter areas generally known as:

Business Associations
Civil Procedure
Constitutional Law
Contract Law
Criminal Law or Investigatory Criminal Procedure
Evidence
Torts
Real Property

- (2) If an individual has not satisfactorily completed a course covering one of these areas of law during law school, the individual must complete a post-law school course that has been approved by the Board and addresses that area of law. The uncompleted course(s) may be completed during an applicant’s participation in the SPPE, but an applicant may not be admitted until the course(s) have been completed.”

The proposed language ensures that applicants to the SPPE successfully complete courses addressing the areas of law identified by the Court without limiting the qualifying courses to

particular course titles or syllabi. This has been done to balance the need to ensure that SPPE participants have been exposed to and successfully educated on these areas of law while not stifling innovation in how law schools present these subjects to students or unnecessarily restricting access to the SPPE because of difference in pedagogy across schools and professors.

II. Portfolio Work-Product

Discussion

The Court indicated that it may want to make changes to the make-up of the portfolio work product. The contemplated changes include: (1) requiring three (rather than two) pieces of written work be 1500 words or longer, (2) removing the word limit for the other submissions but providing a clear list of permitted document types, and (3) either removing emails as permitted portfolio submissions or limiting the number of emails submitted to one.

Rule Change Language

To change the number of portfolio submission that that must be at least 1500 word, it could do so with the following amendment:

- Amendment D: Subsection 6.4(A)(2) - delete “2 of the” and replace with it with “3 of the 8”.

If the Court elects to eliminate the word limit for the balance of the submissions, it could best accomplish that by the following amendment:

- Amendment E: Subsection 6.4(2) – delete “and each of the other pieces must be at least 300 words long.”. Then move the contents of subsection 6.4(2) to be the second sentence of subsection 6.4(A). This would necessitate renumbering the balance of the subsections in Section 6.4(A).

To clarify the types of documents that can be submitted as part of a written portfolio, the Court could make the following amendment:

- Amendment F: Section 6.4(A) – delete the current second sentence (“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.”).

- Amendment G: Add to Section 6.4, a subsection that states:

Written work product must take the form of work product generally used in the practice of law including, but not limited to, memoranda, correspondence, pleadings, motions, briefs, contracts, wills, legal or statutory analysis articles, white papers, or mediation statements.

If the Court intended to adopt all of these amendments, it could adopt the following amendment instead, which incorporates Amendments D through G:

- Amendment H: Replace Section 6.4(A) with the following:

6.4 Written Work Product.

(A) Each Provisional Licensee must prepare and submit at least 8 pieces of written work product. At least 3 of the 8 pieces of work product must be at least 1500 words long, not including headers or signature blocks. Footnotes do count towards the word totals. All submitted work product 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) 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.
- (3) 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.
- (4) Written work product must take the form of work product generally used in the practice of law including, but not limited to, memoranda, correspondence, pleadings, motions, briefs, contracts, wills, legal or statutory analysis articles, white papers, or mediation statements.

III. Credit for Law School Clinic or Externship Hours

Discussion

The Court discussed whether any hours in a law school clinic or externship should count towards an applicant's 675 required hours of supervised practice. There was also discussion about whether, if earning hours was permitted, the procedures for permitting it were adequate.

Currently the rules contemplate up to 100 hours of legal work performed while enrolled as a JD student counting if the supervising attorney meets all requirements of Sections 2.4-2.6 of the Rules to be a supervising attorney, the supervising attorney has signed the Declaration of a Supervising Attorney *before* the work was performed, the provisional licensee was a certified law student at the time the work was performed, the work satisfies the definition of Legal Work in Rule 1.2(J), and contemporaneous timesheets are maintained. Rule 6.13. These requirements ensure that the qualifying hours are done under the same circumstances that exist once a person has graduated from law school and applied for admission via the SPPE. While the rules require contemporaneous commitment and record keeping by both the student and their supervising attorney, these rules do not require the Provisional Licensee to turn in these records to the Bar *prior* to the applicant being fully admitted to the SPPE.

Rule Change Language

If the Court chooses to pass the rules without permitting any practice hours completed prior to graduation to be included, the Court could accomplish this by adopting the following amendment:

- Amendment I: Section 6.13 – Delete.

If the Court chooses to lower the number of permitted hours completed prior to graduation, the Court could accomplish this by adopting the following amendment:

- Amendment J: Section 6.13 – delete “100,” and replace it with _____ (number of hours the Court elects to authorize).

If the Court concludes that it is appropriate for students to be able to earn hours while in law school but wants a more formalized procedure for the hours to be counted, we propose that the Court delete Rule 6.13 *for now*, to give Bar staff an opportunity to determine the best way to accomplish that task and the Board can present a proposal to the Court as soon as it is prepared.

IV. Time for Completion

Discussion

The rules as drafted currently have a requirement of recency—as it relates to admission date—for portfolio submissions, meaning an applicant must fulfill three fourths of the portfolio projects within three years of admittance. Rule 6.14. While the rule makes no specific reference to SPPE hours, as an applicant can only make portfolio submissions while actively working for a supervising attorney, this rule necessitates an applicant actively accumulate hours during this time, even if the applicant had already completed 645 hours in supervised practice. The LPDC crafted this approach after conversations with the Oregon Attorneys with Disability Association who suggested developing the SPPE with universal design in mind. The LPDC concluded this approach followed that suggestion while still maintaining consumer protection as its top priority.

However, this approach does create the possibility that an applicant could remain an “applicant” indefinitely and the Court expressed an interest in being presented with an option that put a time limit on how quickly an applicant had to complete the program.

Rule Change Language

Within the current structures of the rule, it could do so with the following amendment:

- Amendment K: Rule 6.14 – delete “At least three quarters” and add replace it with “All,” so that the rule reads:

All 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).

V. Data Collection and Program Reauthorization

Discussion

The Court emphasized the need for the program to collect data and regularly report it to the Court so it can be reviewed to determine: (1) who is using the program to achieve licensure; (2) who are the types of clients working with Provisional Licensees and where do Provisional Licensees go on to practice once licensed; (3) whether there are any meaningful differences in malpractice claims or bar complaints (or other indicia of negative performance that can reasonably be tracked) between individuals who achieve licensure through the Uniform Bar

Exam versus the SPPE; and (4) what salary these individuals are being paid while participating in the program (and any other indicator of whether participants are being taken advantage of by the market place). The Court also indicated that it wanted to ensure that it had an opportunity to formally re-evaluate the program via re-authorization.

Rule Change Language

If the Court chooses to make these changes, it could do so with the following amendments:

- Amendment L: Add the following Rule as Rule 20.4 (renumbering the current 20.4 Annual Report as Rule 20.5):

At least once every other year, the Board will gather data about the work the applicants pursuing the SPPE are doing, including but not limited to: area of law of practice; nature of employer (public, private, nonprofit, etc); nature of clients; and salary. The Board will also gather data on bar complaints against individuals licensed through the program.

- Amendment M: Replace Rule 20.5 Annual Report, with the following:

Annual Report and Periodic Re-Authorization. The Board will submit an annual report to the Oregon Supreme Court, noting the number of applicants in the Program, the number of Provisional Licenses granted, and the number of Provisional Licensees admitted to the Bar. The annual report will also note any insights gathered from the reviews described in Rules 20.1-20.3 (and will provide the underlying data at the Court's request); and any proposal for improving the Program. Every other year, the report to the Court will include data gathered pursuant to Section 20.4. Every fourth year, the Court will vote whether to re-authorize the Program. If the Program is not reauthorized, any currently enrolled Provisional Licensee will be permitted to remain in the Program but no new applicants can begin the Program.

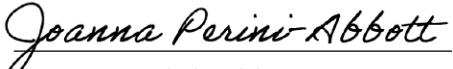
VI. Conclusion

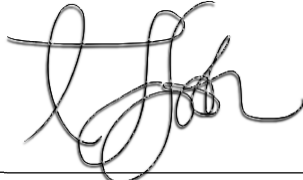
We truly believe that the SPPE will provide a thoughtful and rigorous opportunity for individuals to prove their competence to practice law through actual supervised practice and an examination portfolio that reflects the realities of lawyering in Oregon. In doing so, the SPPE will put Oregon at the forefront of attorney licensure nationwide. For this, the LPDC wants to express a sincere thank you to the Oregon Supreme Court for inviting and guiding this process.

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The LPDC appreciates the care and thoughtfulness with which the Court has reviewed the proposed rules. We are happy to provide the proposed amendments requested by the Court to facilitate the program being adopted by the Court as soon as possible and we will be prepared at the Court's November public meeting to further revise sections as directed by the Court to—hopefully—accomplish that goal.

Thank you for your consideration and we look forward to discussing the matter with you on November 7, 2023.


Joanna Perini-Abbott
Co-chair LPDC


Adrian Tobin Smith
Co-chair LPDC