

Meeting of the Alternatives to the Exam Development Committee
Oregon State Board of Bar Examiners
Wednesday, July 13, 2022
Zoom Meeting – Invites are sent via Outlook Calendar
Open Session Agenda
(Items may not be discussed in the order listed)

Wednesday, July 13, 2022, 12:00 p.m. – 1:00 p.m.

1. Call to Order/Finalization of Agenda

- A. Roll of Attendees
- B. Finalize Agenda

2. Old Business/Updates on Events/News/Developments of Interest

- A. Report from Breakout Groups
 - i. Outreach Group
 - a. What was discussed
 - b. What were goals/assignments were set
 - c. What will be discussed in the next breakout session
 - ii. SPP
 - a. What was discussed
 - b. What were goals/assignments were set
 - c. What will be discussed in the next breakout session
 - iii. OEP
 - a. What was discussed
 - b. What were goals/assignments were set
 - c. What will be discussed in the next breakout session

B. Update on status of Provisional Licensing Update

- i. Update from Professor Merritt and Troy Wood

Exhibit 1

3. New Business

- A. Breakout into Groups for 20-minutes
- B. Return to Committee for Breakout Group Reports

4. Adjourn

OREGON STATE BOARD OF BAR EXAMINERS

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Via Email Only

June 30, 2022

Linda Kinney
State Court Administrator's Office
Oregon Supreme Court
Salem, OR 97301
linda.l.kinney@ojd.state.or.us

RE: SCO No. 22-019
Proposed Rules for Provisional Licensing Program (February 2022 Cohort)

Dear Ms. Kinney:

In Supreme Court Order 22-019, the Court authorized the creation of a Provisional License Program (PLP) for those individuals who took the February 2022 Uniform Bar Exam in Oregon and received a score of 264 or lower. Enclosed for the Court's consideration are the rules the Board of Bar Examiners propose the Court adopt to administer that program. For ease of reference, this document is "bookmarked." We have also enclosed an Executive Summary of the Program, which provides an overview of the program.

The Board believes these proposed rules create a program that will maintain consumer protections while also providing program participants an opportunity to demonstrate their competence to practice law without passing a bar exam. Representatives of the Board will plan on attending the Court's July 2022 public meeting to answer any questions the Court may have about this program. It is our hope that the Court will adopt these rules (or a version of these rules as amended by the Court) at the July meeting so that the Board and Oregon State Bar staff can move forward with the PLP.

Please let us know if you, or anyone with the Court, has any questions that you would like to have addressed before the meeting.

Sincerely,



Kendra M. Matthews
Chair, Oregon Board of Bar Examiners

Enclosures

cc: Jason Specht, w/enclosures, via jason.d.specht@ojd.state.or.us
Tina N. Brown, w/enclosures, via tina.brown@ojd.state.or.us
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The Oregon Provisional License Program

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Section 1 Background, Definitions, and Authorities

1.1 Origin and Purpose. The Oregon Provisional License Program offers a pathway to licensure for individuals who took the February 2022 Uniform Bar Exam in Oregon (February 2022 Exam) and obtained a UBE score of 264 or lower. The facility hosting that exam suffered a failure of its heating system, which produced extremely cold temperatures in the rooms where the exam was administered. As one of the remedial measures adopted to compensate for those unfortunate exam conditions, the Oregon Supreme Court on May 12, 2022, ordered creation of this Provisional Licensing Program (SCO No. 22-019). Individuals who successfully complete the Program will be eligible for admission to the Oregon State Bar without achieving a passing score on the UBE. Those individuals, however, must satisfy all other requirements specified in the Rules for Admission.

1.2 Definitions. In these Rules:

- (A) **Admissions Department** means the Admissions Department of the Oregon State Bar.
- (B) **Applicant** means an individual applying to participate in the Provisional License Program.
- (C) **Board** means the Oregon State Board of Bar Examiners.
- (D) **Certificate of Eligibility** means a certificate issued by the Board under Rule 3.5.
- (E) **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.
- (F) **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.
- (G) **Examiner** means a member of the Oregon State Board of Bar Examiners.
- (H) **Final Portfolio** means a final compilation of the Provisional Licensee's work, as described in Rules 6.11 and 9.2.
- (I) **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 regularly incorporate those activities in their work.
- (J) **Mentor** means a lawyer assigned to serve in that capacity under the New Lawyer Mentoring Program.
- (K) **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.
- (L) **New Lawyer Mentoring Program** or **NLMP** means the program of that name established by the Oregon Supreme Court.
- (M) **Ombudsperson** means an ombudsperson for this program appointed by the Board under Section 15.
- (N) **PLF** means the Oregon State Bar Professional Liability Fund.
- (O) **Portfolio** means either a Final Portfolio or Quarterly Portfolio.

- (P) **Program Managers** means the individuals appointed by the Board to supervise the program established by these Rules. If the Board does not appoint a Program Manager over the program or aspects of the program, then the default Program Manager shall be Regulatory Counsel.
- (Q) **Provisional License** means the temporary, conditional, and limited license to practice law conferred under the program established by these Rules.
- (R) **Provisional License Program, Program, or PLP** means the licensing program established by these Rules.
- (S) **Provisional Licensee** means an individual provisionally practicing law within the program established by these Rules.
- (T) **Quarterly Portfolio** means a compilation of the Provisional Licensee's work submitted to the Board on a quarterly basis, as provided in Section 7.
- (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 Supreme Court of the State of Oregon on January 1, 2022, with any subsequent amendments adopted while the PLP remains active.
- (W) **Supervising Attorney** means an active member of the Oregon State Bar who has committed to supervising a Provisional Licensee working within the program established by these Rules.
- (X) **Supreme Court** means the Oregon Supreme Court.

1.3 Regulatory Authority. The Supreme Court delegates to the Oregon State Bar the administrative authority to oversee this Program and all Program-related activities, so long as the Program and related activities are in accordance with SCO No. 22-019, SCO No. 22-___, and these Rules.

Section 2

Qualifications of Program Participants

2.1 Qualifications of Provisional Licensees. Pursuant to Supreme Court Order SCO 22-019, an individual may participate in the Program as a Provisional Licensee if that individual:

- (A) Occupied their assigned exam seat before or during session one on day one of the February 2022 Exam;
- (B) Received a UBE score of 264 or lower on the February 2022 Exam;
- (C) Satisfies the criteria in RFA 3.05(1), (2) or (3) (Qualifications of Applicants). Applicants who took the exam prior to graduation must qualify under RFA 3.05(1);
- (D) Satisfies the requirements of RFA 7.05 (Professional Responsibility Examination);
- (E) Possesses the Certificate of Eligibility described in Rule 3.5;
- (F) Has secured a commitment of employment with a qualified Employer;
- (G) Has secured a commitment from a qualified Supervising Attorney to serve in that role;

- (H) Has obtained professional liability insurance or a waiver of that requirement, as provided in Section 4 of these Rules; and
- (I) 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) Employs (or has agreed to employ) a Provisional Licensee for at least 20 hours of paid work a week;
- (D) Commits to paying the Provisional Licensee at least \$20 per hour for that work, plus any benefits required by local, state, or federal law;
- (E) Makes a good faith commitment to maintain that employment, pay, and benefits until:
 - (1) The Provisional Licensee is admitted to the Oregon State Bar;
 - (2) The Provisional Licensee’s license is suspended or terminated under Sections 14 or 17 of these Rules; or
 - (3) 18 months have expired from the date on which the Provisional Licensee began the Program;
- (F) Employs an attorney who is qualified to serve as a Supervising Attorney and who has agreed to assume that role;
- (G) Employs no family member of the Provisional Licensee; and
- (H) 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 Qualifications of Supervising Attorneys. An individual may participate in the Program as a Supervising Attorney if that individual:

- (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 five of the seven years preceding the application;
- (D) Has no record of public discipline in any jurisdiction to which they are or have been members;
- (E) Is employed by the same organization as the Provisional Licensee; and

- (F) Signs the “Declaration of Supervising Attorney” and files that document with the Admissions Department.

2.4 Qualifications of Mentors. An individual is qualified to participate in the Program as a Mentor if the Supreme Court has appointed that individual as a Mentor under the New Lawyer Mentoring Program Rule.

Section 3 Application and Admission to Program

3.1 Application Forms/Publication. The Board will develop forms governing admission to the Program. Those forms will be published on the “Admissions Forms Library” website by August 31, 2022.

3.2 Filing Application, Timing. All relevant forms must be filed with the Admissions Department after the publication date in Rule 3.1, but before the application deadline of December 31, 2023. 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 Burden of Establishing Qualifications. At a minimum, the Provisional License application form(s) shall request from Applicant, Employer, and Supervising Attorney clear and convincing evidence establishing the following:

- (A) The identity of the Applicant, using the same name and personal identifiers (including the NCBE number) used to register for the February 2022 Exam;
- (B) That Applicant meets all of the qualifications listed in Rule 2.1;
- (C) The identity of the Applicant’s Employer and that the Employer meets all of the qualifications listed in Rule 2.2;
- (D) The identity of the Applicant’s Supervising Attorney, using their OSB Member Number, and that the Supervising Attorney meets all of the qualifications listed in Rule 2.3;
- (E) That if Applicant were to complete the same application they submitted for the February 2022 Exam, that Applicant’s answers would remain the same in sections 21 and 22 of that Application or, if the answers would be different, provide a complete and accurate amended answer, together with documentation that supports or corroborates the need for the amended answer(s); and
- (F) Applicant’s acknowledgement that they remain bound by RFA 4.25, which creates an ongoing duty to cooperate with the Board in providing updates to questions answered in the February 2022 Exam Application, and an ongoing duty to update Applicant’s answers in the Application for this Program, including the need to disclose relevant facts related to the qualifications of any party to Applicant’s application for this Program.

3.4 Processing by Admissions Department. The Admissions Department will review, organize, and verify that Applicant has submitted all required application forms under Rule 3.1, and that they were submitted in compliance with Rules 3.2 and 3.3. Regulatory Counsel will notify Applicants if any information is missing or if Applicant, Applicant's Employer, or Applicant's Supervising Attorney do not meet the requirements for the Program. If an application is deficient, Regulatory Counsel will provide 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 Applicant may not resubmit the same application unless and until the Applicant pays a resubmission fee of \$100, demonstrates that the deficiency is cured, and demonstrates that all other Program requirements are met. When Regulatory Counsel is satisfied that the Applicant has met their Burden under Rule 3.3, Regulatory Counsel shall present Applicant to the Board to consider whether Applicant has the requisite character and fitness to participate in the program.

3.5 Certificate of Eligibility. To obtain the Certificate of Eligibility required by Rule 2.1(E), Applicants must establish that they have the good moral character and fitness to practice law prescribed by ORS 9.220(2). The Board will use the Applicant's February 2022 Bar Application, together with any updates provided under Rule 3.3(E), to initiate the character and fitness process described in RFA 6.05 and 6.15.

(A) Following the process outlined in RFA 6.05 and 6.15, the Board will:

- (1) Issue a Certificate of Eligibility;
- (2) Issue a Certificate of Eligibility conditioned on specific probationary terms as specified by the Board; or
- (3) Deny the Applicant a Certificate of Eligibility.

(B) 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.

(C) Any evidentiary hearing shall be conducted, to the extent practicable, pursuant to the process identified in RFA 9.05 to 9.60.

3.6 Admission to Program. When an Applicant has established that all requirements of the Program are satisfied, including the Proof of Compliance required by Rule 4.4, Regulatory Counsel will admit Applicant into the Program through the following:

- (A) Issuing the Provisional Licensee a document evidencing their Provisional License;
- (B) Notifying the Employer and Supervising Attorney that the Applicant has been accepted into the Program; and
- (C) Directing the Provisional Licensee to enroll in the New Lawyer Mentoring Program.

3.7 Absolute Deadline for Applications. The Board will not accept applications to the Program after December 31, 2023.

Section 4 Professional Liability Insurance

4.1 Mandatory Insurance. All Program Applicants must obtain Professional Liability Insurance through the Oregon State Bar Professional Liability Fund (PLF) or obtain an exemption pursuant to Rule 4.3. Unless exempt, Applicants must obtain the PLF's Primary Coverage Plan consisting of a no-deductible policy with limits of \$300,000 aggregate of all claims, with an additional \$75,000 claims expense allowance.

4.2 Process for Obtaining Insurance. When the Board issues a Certificate of Eligibility pursuant to Rule 3.5, Regulatory Counsel shall notify the PLF that the Applicant is eligible to participate in the Program. The PLF will issue an invoice or statement identifying the pro-rata cost of professional liability insurance through the end of the coverage year. Upon receipt of the invoice or statement, Applicant's Employer may pay the balance in full or through an installment plan approved by the PLF. Alternatively, the Applicant may provide proof of an exemption from this requirement under Rule 4.3.

4.3 Exemptions from Insurance Requirement. An Applicant need not obtain insurance from the PLF if:

- (A) Applicant practices law exclusively as in-house counsel for one Oregon client;
- (B) Applicant only practices law in Oregon through their employment by a government agency, an instrumentality of a government agency, or public defense agency;
- (C) Applicant 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;
- (D) Applicant only practices law in Oregon through an Oregon Employer that maintains professional liability insurance through an alternative carrier approved by the PLF; or
- (E) Applicant obtains a waiver/exemption on any basis approved by the PLF.

To benefit from any of these exemptions, the Applicant must submit proof that the PLF has accepted their exemption assessment and agrees that they are exempt from the requirement to obtain the Primary Coverage Plan.

4.4 Proof of Compliance. When the Applicant's employer has paid an amount sufficient to obtain the PLF's Primary Coverage Plan, the PLF will notify Regulatory Counsel that Applicant meets Oregon's minimum insurance requirement. If Applicant obtains an exemption from the requirement to purchase the Primary Coverage Plan, then Applicant must submit proof of submission to the PLF, and the PLF's acceptance of that exemption.

4.5 Payment of Premiums. 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

4.6 Maintenance of Insurance. Unless exempt under Rule 4.3, the Provisional Licensee must maintain insurance for the duration of the Provisional License. If an Employer provides coverage under Rule 4.5, the Employer must maintain that coverage while the Provisional Licensee is employed in that status.

4.7 Temporary Suspension for Lack of Insurance. If a Provisional Licensee loses insurance coverage, whether provided by the PLF or an Employer's alternative carrier, that Provisional Licensee's license will be immediately and automatically suspended under Section 14. The 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. At the same time, they will work diligently and ethically towards completing all required components of this 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 this Program.
- (B) Work assigned by the Supervising Attorney should also take precedence over completing the requirements of this 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 Provisional License 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) Provisional Licensees must maintain any Professional Liability Insurance required by Section 4 of these Rules.
- (E) To be eligible for admission to the Oregon State Bar under this Program, Provisional Licensees must complete all of the Program components specified in Section 6 of these Rules; submit Quarterly Portfolios as specified in Section 7 of the Rules; and submit their Final Portfolio as specified by Section 9 of the Rules.

- (F) The work specified in subsection (E) above must be completed within 18 months of the day on which Regulatory Counsel notifies the Provisional Licensee that they have been accepted to the Program. If a Provisional Licensee's license is temporarily suspended under Section 14, running of the 18-month clock will be tolled under Rule 14.4.

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

- (A) Maintain any Professional Liability Insurance required by Section 4 of these Rules;
- (B) Provide Provisional Licensees at least the minimum salary and benefits specified by Rule 2.3(D) above;
- (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) 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 need 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 12 of these Rules;
- (B) Supervise the work of the Provisional Licensee, and assume personal professional responsibility for that supervision, in the manner required by RFA 13.30;
- (C) Supervise the Provisional Licensee's schedule and workload to give the Provisional Licensee sufficient time to complete all Program components;
- (D) Accommodate the Provisional Licensee's reasonable requests for work that will help them complete the Program or otherwise develop their professional skills;
- (E) Complete the Program rubrics for documents, client interviews or counseling sessions, and negotiations used to satisfy the Program requirements;
- (F) Discuss those 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 Assignment of Non Legal Work. Supervising Attorneys may assign Provisional Licensees tasks that do not constitute Legal Work if:

- (A) Other new lawyers working for the Employer commonly perform those tasks;
- (B) The Provisional Licensee is compensated at their regular wage for time spent on those tasks; and
- (C) Time spent on these tasks constitutes no more than 10 percent of time spent on all tasks assigned to the Provisional Licensee.

5.5 Roles and Duties of Mentors. Mentors participating in the Program have the same role and duties as other Mentors appointed under the New Lawyer Mentoring Program.

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. The substantive requirements are:

- (A) Diligent, competent, and professional work on all Legal Work assigned to the Provisional Licensee by their Supervising Attorney;
- (B) Completion of the Professional Liability Fund’s “Learning the Ropes” CLE program;
- (C) Completion of the New Lawyer Mentoring Program in the manner described in Rule 6.4;
- (D) Production of at least 8 independently authored pieces of written work product;
- (E) Leadership of at least 2 initial client interviews or client counseling sessions;
- (F) Leadership of at least 2 negotiations;
- (G) Reflections on each of the 8 pieces of written work product, 2 client interviews or counseling sessions, and 2 negotiations;
- (H) Development and maintenance of a learning plan for accomplishing the above activities;
- (I) Completion of regular timesheets recording all time devoted to the Program; and
- (J) A Portfolio organizing the above Program components.

6.2 Legal Work. Provisional Licensees will perform Legal Work assigned to them by their Supervising Attorney.

- (A) Legal Work, as defined by Rule 1.2(I), includes any 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 regularly incorporate those activities in their work.
- (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.

- (D) Provisional Licensees may request particular types of Legal Work that would benefit their professional development or completion of this Program. Provisional Licensees may also request permission to work on pro bono matters. If a Supervising Attorney agrees to any of these requests, that agreement constitutes “assignment” of Legal Work.

6.3 Learning the Ropes. The Provisional Licensee must attend or watch all sessions of the 2021 or 2022 “Learning the Ropes” program offered by the Oregon State Bar Professional Liability Fund. When the Provisional Licensee has satisfied this requirement, they must include their certificate of completion in their Portfolio.

6.4 New Lawyer Mentoring Program (NLMP). The NLMP Manual explains all required and optional elements of the NLMP.

- (A) Provisional Licensees must follow the directions in the Manual for completing the required activities in Parts 1 to 5; at least one optional activity in each of those Parts; and at least 10 practice activities.
- (B) Provisional Licensees must use the Manual worksheets to document their completion of required activities, optional activities, and practice activities. Those worksheets must be included in each Quarterly Portfolio, updated to reflect all activities completed to date.
- (C) Provisional Licensees may not use any of the required activities specified in Rules 6.5 to 6.11 to satisfy the required activities, optional activities, or practice activities required by the NLMP. All NLMP activities are in addition to the other requirements of this Program.
- (D) Lawyers who obtain their permanent licenses through the Provisional Licensing Program will not have to repeat the NLMP during their first year of practice. That requirement will be waived for lawyers completing the NLMP as part of the Provisional Licensing Program.

6.5 Independently Authored Written Work Product.

- (A) Each Provisional Licensee must prepare and submit at least 8 pieces of independently authored work product. Written work product may take any form that lawyers use in their practices: memos, letters, emails, complaints, motions, briefs, contracts, wills, etc. All submitted work product, however, must comply with the following requirements:
- (1) The work product must address some *substantive* aspect of a legal matter. Provisional Licensees may not submit routine scheduling notes or engagement letters for this component of the Portfolio.
 - (2) At least 2 of the pieces of work product must exceed 1500 words, not including headers or signature blocks. Footnotes do count towards the word total.
 - (3) All submitted work product must be *independently* authored by the Provisional Licensee. If another individual edits the Provisional Licensee’s work, the Provisional Licensee must submit the original draft without those edits.

If Provisional Licensees are unsure whether a particular piece of work product qualifies for submission, they may ask one or both Program Managers. The Program Managers will not judge the quality of the work product, but can advise the Provisional Licensee whether the work product meets these minimum requirements.

- (B) Each piece of work product must be accompanied by a brief assessment completed by the Supervising Attorney. The Board will provide standardized rubrics to use for these assessments.
- (C) Each piece of work product must also be accompanied by the Provisional Licensee's structured reflection. The Board will provide a standardized template for that reflection.
- (D) If the Provisional Licensee used a sample, template, or other work as foundation for the work product, the Provisional Licensee must also:
 - (1) Submit a copy of the original sample, template, or other work used as a foundation; and
 - (2) Highlight the portions of the work product that represent the Provisional Licensee's additions, edits, or other customization.
- (E) If the work product relates to a client matter, and the work product has not been publicly filed in substantially the same form:
 - (1) The work product must be redacted to protect the client's interests; and
 - (2) The client must consent to inclusion of the work product in the Portfolio.
- (F) 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. All mock work product must comply with subsections (A) through (D) above.

6.6 Client Interviews or Counseling Sessions. Each Provisional Licensee must lead two client interviews or counseling sessions that are observed and assessed by their Supervising Attorney.

- (A) Requirements for the Provisional Licensee:
 - (1) Before beginning each interview or counseling session, the Provisional Licensee must explain the Supervising Attorney's role, assure the client that the Supervising Attorney (a member of the Provisional Licensee's organization) is encompassed by the attorney-client privilege, and obtain the client's consent to the Supervising Attorney's presence.
 - (2) If the client objects to the Supervising Attorney's presence, the Supervising Attorney will depart, and the Provisional Licensee will conduct the session without assessment. The Provisional Licensee must find another interview or counseling session to satisfy this component of the Program.
 - (3) After completing the interview or counseling session and receiving feedback from the Supervising Attorney, the Provisional Licensee must complete a structured reflection about the interview or counseling session. The Board will provide a template for that structured reflection.

(B) Role of the Supervising Attorney:

- (1) The Supervising Attorney should not speak during the interviews or counseling sessions other than to greet the client at the beginning of each session, provide input specifically requested by the Provisional Licensee, or intervene if necessary to protect the interests of the client.
- (2) If the client addresses a question to the Supervising Attorney, the Supervising Attorney should politely redirect the question to the Provisional Attorney.
- (3) For each of the two interviews or counseling sessions, the Supervising Attorney will complete the client interview/counseling session 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.
- (4) The Supervising Attorney's completed rubric will become part of the Provisional Licensee's Portfolio.

(C) Exceptions:

- (1) Provisional Licensees working in a prosecutor's office may use interviews or other sessions with a complainant to satisfy this component of the Program. The provisions in subsections (A) and (B) will govern those sessions except that the attorney-client privilege will not apply.
- (2) If a Provisional Licensee does not conduct client (or complainant) interviews or counseling sessions in their workplace, the Program Managers will help the Provisional Licensee find other ways to satisfy this component of the Program. It may be possible, for example, for the Provisional Licensee to interview simulated clients as part of a law school competition or CLE exercise. Any substitutes will be structured to follow the other portions of this Rule as closely as possible.

6.7 Negotiations. Each Provisional Licensee must conduct two negotiations that are observed and 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.

(A) Requirements for the Provisional Licensee:

- (1) Before beginning each negotiation, the Provisional Licensee must explain the Supervising Attorney's role to other attorneys participating in the negotiation. If the client is present, the Provisional Licensee must also explain the Supervising Attorney's role to the client and obtain the client's consent to the Supervising Attorney's presence.
- (2) If the client objects to the Supervising Attorney's presence, the Supervising Attorney will depart, and the Provisional Licensee will conduct the negotiation without that assessment. The Provisional Licensee must find another negotiation to satisfy this component of the Program.

- (3) After completing the negotiation and receiving feedback from the Supervising Attorney, the Provisional Licensee will complete a structured reflection about the negotiation. The Board will provide a template for that structured reflection.

(B) Role of the Supervising Attorney:

- (1) The Supervising Attorney should not speak during the negotiations other than to greet other attorneys and the client at the beginning of each session, provide input specifically requested by the Provisional Licensee, or intervene if necessary to protect the interests of the client.
- (2) If another attorney or the client addresses a question to the Supervising Attorney, the Supervising Attorney should politely redirect the question to the Provisional Attorney.
- (3) For each of the two negotiations, the Supervising Attorney will complete the negotiation 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 completed rubric will become part of the Provisional Licensee's Portfolio.

- (C) Exceptions: If a Provisional Licensee does not conduct negotiations in their workplace, the Program Managers will help the Provisional Licensee find other ways to satisfy this component of the Program. It may be possible, for example, for the Provisional Licensee to conduct negotiations as part of a law school competition or CLE exercise. Any substitutes will be structured to follow the other portions of this Rule as closely as possible.

6.8 Reflections. The Provisional Licensee must complete reflections, using templates provided by the Board, for (a) each of the 8 independently authored written work products submitted under Rule 6.5; (b) each of the 2 client interviews or counseling sessions conducted under Rule 6.6; and (c) each of the 2 negotiations conducted under Rule 6.7. The Provisional Licensee must include all of these reflections in their Portfolio.

6.9 Learning Plan. The Learning Plan has two purposes: (a) It tracks what the Provisional Licensee has accomplished to date, and (b) it sets goals for the coming quarter.

- (A) The Board will provide a Learning Plan template to help Provisional Licensees create and update their Learning Plans.
- (B) Provisional Licensees must update the Learning Plan regularly and include the current Plan in each Quarterly Portfolio.
- (C) The final Learning Plan, submitted as part of the Final Portfolio, will demonstrate how the Provisional Licensee has accomplished all requirements of the Program. It will also require the Provisional Licensee to reflect on how they will continue to improve their skills and knowledge as a practicing lawyer.

6.10 Timesheets. Provisional Licensees must complete timesheets for every day spent working in the Program. These timesheets are separate from any timekeeping required by the

Supervising Attorney or Employer. The Program timesheets are used to document achievement of the 1500 hours required by the Program and to demonstrate the Provisional Licensee's competence in timekeeping.

- (A) The Board will provide timesheet blanks for Provisional Licensees to use for these purposes.
- (B) Provisional Licensees may use those timesheets to record their time in either 6- or 15-minute increments, whichever is most convenient for them.
- (C) Decimals must be used to record all time. E.g., 30 minutes is .5 hours.
- (D) Provisional Licensees should record all time devoted to the Program, even if that time is not billable to a client.
- (E) Timesheets must be submitted as part of both Quarterly Portfolios and the Final Portfolio.

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 their Portfolio for review at the end of every quarter they participate in the Program. When the Provisional Licensee is ready to seek admission to the Oregon State Bar, the Provisional Licensee must prepare and submit a Final Portfolio as provided in Rule 9.2.

6.12 Hours. To qualify for admission to the Oregon State Bar, Provisional Licensees must document at least 1500 hours spent working within the Provisional Licensing Program. Those hours may include:

- (A) All time spent devoted to 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 6.3 to 6.11.
- (C) All time spent discussing or learning about Program components with their Supervising Attorney, other Employees of the Employer, their Mentor, the Program Managers, or an Ombudsperson;
- (D) All time spent reviewing or reflecting on feedback from the Board on Quarterly Portfolios;
- (E) All time spent in any training or educational activities required by their Employer that are not included in the Program components; and
- (F) Up to 30 additional hours of MCLE activities.

Section 7 Quarterly Portfolios and Review

7.1 Requirement of Quarterly Portfolios. Provisional Licensees must submit their Portfolios to the Board each quarter that they participate in the Program. These Quarterly Portfolios must contain all Program work described by Rules 6.3 to 6.10 that has been completed to date.

7.2 Notification of Quarterly Due Dates. Regulatory Counsel will notify Provisional Licensees of the time and date when each Quarterly Portfolio is due, as well as the process for submitting the Quarterly Portfolio. That notice will be provided at least 30 calendar days before the due date.

7.3 Timeliness of Quarterly Portfolios. Lawyers frequently must comply with deadlines, and missing a deadline can have serious consequences for a client. Provisional Licensees, therefore, must submit at least 2 Quarterly Portfolios in a timely manner before requesting an Admission Decision under Section 9.

- (A) Examiners will review components of a Quarterly Portfolio that is submitted late, and will score components of the Portfolio, but they will score the Quarterly Portfolio itself “unqualified” due to lateness. Provisional Licensees who submit a late Quarterly Portfolio, therefore, may need to devote additional time to the Program.
- (B) A Provisional Licensee may request an extension of time for filing a Quarterly Portfolio by completing the “Extension of Time” form and emailing it to admissions@osbar.org at least 24 hours before the Quarterly Portfolio is due. Regulatory Counsel will grant requests for an extension only if unforeseen circumstances prevent the Provisional Licensee’s timely submission. If an emergency occurs during the final 24 hours before a Quarterly Portfolio is due, the Provisional Licensee should submit the “Extension of Time” form and explain the sudden nature of the unforeseen circumstances.

7.4 Review and Grading of Portfolios. Each Quarterly Portfolio will be reviewed and graded by an Examiner. Components of the Portfolio will be scored in the following manner:

- (A) The “Learning the Ropes” CLE program will be scored “in progress” until the Provisional Licensee has finished the program. When the Provisional Licensee has completed the program, this component will be scored “qualified.” I.e., the Examiner does not make any independent assessment of the Provisional Licensee’s work in this program.
- (B) The New Lawyer Mentoring Program will be scored “in progress” until the Provisional Licensee has finished the activities required by Rule 6.4. When the Provisional Licensee has completed those activities, this component will be scored “qualified.” I.e., the Examiner does not make any independent assessment of the Provisional Licensee’s work in this program.
- (C) Written work product will be scored “qualified” or “not qualified” using Program rubrics. The Examiner will score these documents based on independent review of the

document, review of the Supervising Attorney's completed rubric, and review of the Provisional Licensee's accompanying reflection.

- (D) Client interviews or client counseling sessions will be scored "qualified" or "not qualified" using Program rubrics. The Examiner will score this work based on the Supervising Attorney's completed rubric and review of the Provisional Licensee's reflection.
- (E) Negotiations will be scored "qualified" or "not qualified." The Examiner will score this work based on the Supervising Attorney's completed rubric and review of the Provisional Licensee's reflection.
- (F) Reflections will be scored "qualified" as long as they are submitted and complete. The reflections are required but their primary purpose is to help the Examiner assess the above items. The Examiner does not need to score the contents of the reflections.
- (G) The learning plan will be scored "qualified" or "not qualified" using Program rubrics.
- (H) Timesheets will be scored "qualified" as long as they appear reasonably complete.
- (I) The Quarterly Portfolio itself will be scored "qualified" or "not qualified" according to Program rubrics.

7.5 Anonymous Grading. All Portfolios will be graded anonymously. Provisional Licensees will identify their Portfolios with numbers assigned by the Admissions Department.

7.6 Feedback. Provisional Licensees will receive the Examiner's completed rubrics, as well as a Quarterly Summary Sheet, after each Quarterly Review. The Board will make every effort to provide this feedback within 3 calendar weeks of the Quarterly Portfolio submission.

7.7 Challenges to Quarterly Assessments. Provisional Licensees may not challenge or appeal any assessments made during the Quarterly Reviews. These assessments will contribute to the final Licensing Score, but they are revealed primarily to help Provisional Licensees improve their performance.

- (A) If a Provisional Licensee disagrees with an assessment, they should discuss the disagreement with their Supervising Attorney, another attorney working for the Employer, their Mentor, or an Ombudsperson. Those individuals may be able to help the Provisional Licensee understand the assessment and work to improve their performance.
- (B) If a Provisional Licensee continues to disagree with an assessment, they may include a note explaining their disagreement in the Portfolio. Examiners will read that note during subsequent reviews and may choose to amend an assessment.
- (C) Similarly, a Supervising Attorney who disagrees with an assessment may add a note to the Provisional Licensee's Portfolio explaining that disagreement. These notes are particularly helpful if the Supervising Attorney clarifies an aspect of the underlying matter that may not have been apparent to the Examiner reviewing the Quarterly Portfolio.

7.8 Replacement of Portfolio Components. Provisional Licensees may replace some components of the Portfolio if that component has been marked “not qualified.” These provisions govern those replacements:

- (A) Provisional Licensees may replace up to 4 pieces of the independently authored written work product described in Rule 6.5. In other words, Provisional Licensees may submit up to 12 pieces of written work product to satisfy the requirement of 8 documents marked “qualified.”
- (B) Provisional Licensees may replace the materials relating to one or both client interviews or counseling sessions described in Rule 6.6. In other words, Provisional Licensees may submit materials relating to up to 4 client interviews or counseling sessions to satisfy the requirement of 2 sets of materials marked “qualified.”
- (C) Provisional Licensees may replace the materials relating to one or both negotiations described in Rule 6.7. In other words, Provisional Licensees may submit materials relating to up to 4 negotiations to satisfy the requirement of 2 sets of materials marked “qualified.”
- (D) If a Provisional Licensee replaces any of the materials discussed in subsections (A) through (C) above, they should also replace the reflections related to those materials.
- (E) The replacements described in subsections (A) through (D) above may be included in any Quarterly or Final Portfolio submitted after the original component was marked “not qualified.”
- (F) When the Provisional Licensee adds the replacement component to the Portfolio, they may remove the original component marked “not qualified.” The Final Admission Decision described in Section 9 below will not include the removed component.
- (G) Learning plans, timesheets, and Quarterly Portfolios may not be replaced. Instead, as provided in Rule 9.4, Provisional Licensees must receive a “qualified” mark on just 3 learning plans, 3 timesheets, and 3 Portfolios (including the Final Portfolio and its materials) to qualify for admission to the Oregon State Bar. This allows Provisional Licensees to replace deficient learning plans, timesheets, and Quarterly Portfolios by remaining in the Program for an additional quarter.

Section 8 Accommodations

8.1 Accommodations. This Program has been designed using the principles of universal design, so it should be accessible to all individuals who qualify as Provisional Licensees. If, however, a Provisional Licensee has a disability as defined under the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.), and the Provisional Licensee believes that the disability will impair their ability to complete any Program requirements, the Licensee may request reasonable accommodations. The Provisional Licensee should use the process outlined in RFA 5.10 to seek those accommodations. The filing deadline for any request filed under this provision is the date upon which the Provisional Licensee files their application to participate in

the Program, although Provisional Licensees may file later requests if the disability occurs or the need for accommodation becomes apparent after the filing deadline.

Section 9 Admission Decision

9.1 Character and Fitness Process. Although the Certificate of Eligibility described in Rule 3.5 allows Provisional Licensees to participate in the PLP, the Board will conduct a final character and fitness review before admitting Provisional Licensees to the Oregon Bar. Provisional Licensees are responsible for initiating that process by submitting an application to the Board under RFA 8.10(A)(4).

- (A) Regulatory Counsel will publish the 8.10(A)(4) application on the Admissions homepage.
- (B) Given the time it may take to complete the character and fitness review, including any investigation, Provisional Licensees need not wait until they have completed the PLP before submitting their RFA 8.10(A)(4) application. Instead, a Provisional Licensee may submit that application any time after completing 1250 hours of PLP work.
- (C) Once an 8.10(A)(4) application has been submitted, the Admissions Department and Board will follow the character and fitness processes outlined in the RFA Sections 6 and 9, including (if necessary) any proceedings described in Section 9 of those rules. This review, however, shall focus primarily on the Provisional Licensee's conduct since filing their February 2022 Bar Application.

9.2 Initiation of Admission Decision. When a Provisional Licensee has completed all components of the Program, they may submit their Final Portfolio to the Board for review. Final Portfolios may be submitted at any time; they are not subject to the deadlines imposed for Quarterly Portfolios.

9.3 Final Portfolio Review. The Board will assign an Examiner to review each Final Portfolio. The Examiner will follow this process:

- (A) The Examiner will review each previously marked component of the Final Portfolio to determine whether each of those components was marked as "qualified."
- (B) If a component was marked "not qualified," and has not been replaced, the Examiner will review any notes from the Provisional Licensee or Supervising Attorney explaining why the component should be considered qualified. If the Examiner agrees, the Examiner will adjust the score on that component to reflect "qualified" performance. Although the Examiner may adjust scores upward in this manner, the Examiner may not lower any scores on previously scored components.
- (C) The Examiner will then review all newly submitted components of the Final Portfolio, scoring them as outlined in Rule 7.4.
- (D) Once all Portfolio components have been scored, the Examiner will determine whether the Provisional Licensee has met the requirements for admission listed in Rule 9.4.

9.4 Qualification for Admission. To qualify for admission to the Oregon State Bar under this Program, a Provisional Licensee must:

- (A) Complete at least 1500 hours of work within the Program, and
- (B) Achieve a score of “qualified” on:
 - (1) The “Learning the Ropes” CLE program;
 - (2) The New Lawyer Mentoring Program activities required by Rule 6.4;
 - (3) At least 8 independently authored pieces of written work product (including at least 2 that exceed 1500 words);
 - (4) At least 2 initial client interviews or counseling sessions;
 - (5) At least 2 negotiations;
 - (6) Reflections for at least 8 pieces of written work product, 2 client interviews or counseling sessions, and 2 interviews;
 - (7) At least 3 learning plans;
 - (8) At least 3 timesheets;
 - (9) At least 3 Portfolios, including the Final Portfolio

9.5 Action Upon Examiner’s Decision.

- (A) If the Examiner who reviews the Final Portfolio determines that the Provisional Licensee has satisfied the criteria listed in Rule 9.4, the Examiner will complete the “Qualified for Admission” form and transmit both that form and Final Portfolio to the Board. The Board will proceed as outlined in Rule 9.6 below.
- (B) If the Examiner finds that the Provisional Licensee has not satisfied the criteria listed in Rule 9.4, the Examiner will note the deficiencies on the “Final Portfolio Deficiency” form and transmit the form and Final Portfolio to the Board. The Board will proceed as outlined in Rule 9.7 below.

9.6 Admission of Provisional Licensees. When an Examiner transmits a “Qualified for Admission” form and Final Portfolio to the Board, the Board will follow these steps:

- (A) The Admissions Department will check the Final Portfolio to confirm that the requirements of Rule 9.4 have been met. This is a clerical check rather than a second review.
- (B) If the Admissions Department agrees that the Final Portfolio meets the requirements of Rule 9.4, Regulatory Counsel will inform the Provisional Licensee that they have successfully completed the Program.
- (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.

- (D) If it has not already done so, the Board will process the Provisional Licensee's RFA 8.10(A)(4) application, as provided in Rule 9.1.
- (E) The Provisional Licensee's Provisional License will remain in effect while the Admissions Department and Board complete the steps outlined in this Rule and Rule 9.1, unless the Board issues a notice under RFA 6.05(5) that it is not satisfied that the Provisional Licensee has demonstrated that they have the good moral character and fitness to practice law. Once the Provisional Licensee receives that notice, their Provisional License will terminate immediately under Rule 17.1.

9.7 Review of Deficient Portfolios. If an Examiner marks a Final Portfolio as deficient and transmits that Portfolio to the Board, the Board will follow these steps:

- (A) The Board will assign another Examiner to review the Final Portfolio marked as deficient.
- (B) That Examiner will review the Final Portfolio, paying particular attention to the portions identified by the first Examiner as deficient.
- (C) If the second Examiner agrees that the Final Portfolio is deficient, the Board will notify the Provisional Licensee that the Portfolio has been judged deficient and will initiate the Remediation and Appeal Process described in Rule 9.8.
- (D) If the second Examiner disagrees with some of the first Examiner's scoring and believes that the Final Portfolio meets the requirements of Rule 9.4, the two examiners will meet to discuss the Portfolio. If they agree on a disposition after that discussion, they will proceed with the processes for Admission (Rule 9.6) or Remediation and Appeal (Rule 9.8).
- (E) If the two examiners do not agree, the Board will appoint a third Examiner to review the Final Portfolio. All three Examiners will discuss the Final Portfolio and then vote on whether the Final Portfolio satisfies the requirements of Rule 9.4. The majority vote on this issue will govern disposition of the Final Portfolio.
- (F) The Provisional Licensee's Provisional License will remain in effect throughout the review process specified in this Rule.

9.8 Remediation and Appeal. If a Final Portfolio is deemed deficient under Rule 9.7, the Board will notify the Provisional Licensee of the negative decision, share the assessments completed by the Examiners (including their designation of which portions of the Final Portfolio are deficient) and offer the Provisional Licensee an opportunity to remediate the Final Portfolio.

- (A) To remediate the Final Portfolio, the Provisional Licensee may update or replace the components that have been marked deficient.
- (B) The Provisional Licensee may also add additional materials to the Final Portfolio, clarifying or expanding upon materials that have already been submitted.

- (C) The revised Final Portfolio must be submitted to the Board within 30 calendar days of when the Provisional Licensee received the deficiency notice.
- (D) The Examiners who determined the original Final Portfolio deficient under Rule 9.7 will review the revised Final Portfolio, discuss the Provisional Licensee's remediation, and decide whether the revised Final Portfolio meets the requirements of Rule 9.4. If only two Examiners rendered the original deficiency decision, and those Examiners disagree in their assessment of the revised Final Portfolio, the Board will appoint a third Examiner to review the revised Final Portfolio and discuss its contents with the other two Examiners. Those three Examiners will decide by majority vote whether the revised Final Portfolio meets the requirements of Rule 9.4.
- (E) If the Examiners decide that the revised Final Portfolio meets the requirements of Rule 9.4, they will complete the "Qualified for Admission" form and transmit the form and revised Final Portfolio to the Board. The Board will proceed as outlined in Rule 9.6 above.
- (F) If the Examiners decide that the revised Final Portfolio is still deficient, they will note the deficiencies on the "Final Portfolio Deficiency" form and transmit the form and revised Final Portfolio to the Board. The Board will notify the Provisional Licensee of that decision and share the "Final Portfolio Deficiency" form with the Provisional Licensee. This decision will be final with no opportunity for further remediation or appeal.
- (G) The Provisional Licensee's Provisional License will remain in effect throughout the remediation and appeal process specified in this Rule. If the Board notifies the Provisional Licensee under subsection (F) that the Final Portfolio is still deficient, however, the Provisional License will terminate immediately under Rule 17.1(D).

Section 10 Transparency

10.1 Transparency Required. The Board will publish all reflection templates, rubrics, the first Quarterly Summary form, and any other grading materials by September 30, 2022. These materials will be available on the Admissions Department's webpage.

Section 11 Conflicts

11.1 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 Admissions Department, therefore, will circulate the names of Provisional Licensees to all Examiners as Provisional Licensees are admitted to the Program. Similarly, the Admissions Department will provide the names of all Examiners to all Provisional Licensees.

- (A) Examiners must identify any Provisional Licensees who are family members, former students, current or former Employees of their organization, or who are known to the

Examiner in some other way that might bias the Examiner's assessment of the Provisional Licensee's work.

- (B) Provisional Licensees, similarly, must identify any Examiners who are family members, former instructors, current or former supervisors, or who know the Provisional Licensee in some other way that might bias the Examiner's assessment of the Provisional Licensee's work.
- (C) A conflict of interest between an Examiner and Provisional Licensee exists if either one appears on the other's list. The Admissions Department will develop a list of these conflicts of interest and assure that no Examiner assesses a Portfolio (at any stage in the process) submitted by a Provisional Licensee for whom a conflict exists.
- (D) Examiners who are conflicted out of assessing one or more Provisional Licensees' Portfolios may still assess the Portfolios of other Provisional Licensees. A firm, entity, government agency, or organization, therefore, may serve as an Employer in this Program even if one of its Employees serves as an Examiner. Under those circumstances, the Examiner working for the Employer will not participate in any decisions regarding Provisional Licensees also working for the Employer.

11.2 Client Conflicts in Criminal Matters. No Examiner who works as a prosecutor or in any other law enforcement position may review a Portfolio that includes work product related to a criminal defense matter. Nor may any Examiner who represents criminal defendants review a Portfolio that includes work product related to a criminal prosecution.

11.3 Other Client Conflicts. Work product in Portfolios will be redacted under Rule 6.5(E) to remove client identifying information. To prevent Examiners from inadvertently reviewing work product on a matter where they have a conflict of interest, the Provisional Licensee must provide the Admissions Department a confidential list of the clients represented in that work product, as well as a general description of the type of representation (e.g., "criminal defense," "real estate transaction") and the court and docket number if the matter is being litigated.

- (A) The Admissions Department will provide a form for reporting this information.
- (B) Provisional Licensees must submit that completed form at the same time they submit each Quarterly or Final Portfolio.
- (C) Before assigning the Quarterly or Final Portfolio to an Examiner, Regulatory Counsel will share the confidential list with the conflict manager at that Examiner's workplace. If the conflict manager identifies a potential conflict, Regulatory Counsel will assign the Portfolio to an Examiner without any conflicts.

11.4 Ongoing Conflict. Once an Examiner has been conflicted out of reviewing a Portfolio, the Examiner may not review any subsequent versions of that Portfolio.

11.5 Conflicts of Consultants. Should an Examiner consult with an expert in the type of law practiced by the Provisional Licensee, then the consultant shall be reviewed in the same manner as the Examiner to determine if any conflicts exist.

Section 12

Training of Supervising Attorneys, Mentors, Examiners, and Provisional Licensees

12.1 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. The Program Managers will identify programs that meet this requirement.

- (A) If an Examiner has already completed qualifying training within 18 months of the Program start, that training will count towards this requirement.
- (B) Examiners may claim MCLE credit for attending these sessions.

12.2 Additional Training for Supervising Attorneys. In addition to completing the training specified in Rule 12.1, Supervising Attorneys must complete up to 4 hours of training related to Program requirements, successful supervision, and constructive feedback. The Program Managers will create this programming.

- (A) These training sessions will be videotaped so that Supervising Attorneys can watch them at their convenience.
- (B) Supervising Attorneys may claim MCLE credit for attending these sessions.

12.3 Additional Training for Examiners. The Program Managers will arrange training sessions to familiarize the Examiners with the requirements of the Program, the rubrics used to score Portfolios, and general approaches to Portfolio assessment.

- (A) Examiners must attend all sessions to participate in the Program.
- (B) These sessions will total no more than 6 hours in length.
- (C) To the extent possible, sessions will be videotaped so Examiners can watch them at their convenience.
- (D) Some sessions, however, will include exercises in which the Examiners will score sample components of a Portfolio and discuss their scoring. Examiners must participate in these sessions in person or virtually.
- (E) Examiners may claim MCLE credit for attending these sessions.

12.4 Training of Mentors. Mentors participating in this Program need to complete only the training requirements imposed by the New Lawyer Mentoring Program; they need not complete any other requirements to mentor Provisional Licensees. Mentors participating in this Program, however, may participate in any of the training offered Supervising Attorneys under Rule 12.1 or 12.2 (and receive MCLE credit for that participation) if they are interested in doing so.

12.5 Training of Provisional Licensees. The Program Managers will create training programs to explain Program components to Provisional Licensees. Provisional Licensees will be invited to attend these programs in person, so that they can meet the Program Managers and ask

questions, but the sessions will also be recorded for Provisional Licensees who cannot attend in person. The recorded sessions will remain available as resources for all Provisional Licensees.

Section 13

Changes in Status

13.1 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 2.3(F) 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 and 2.3.

13.2 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.

13.3 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 14.

Section 14

Temporary Suspension of License

14.1 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 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.

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

- (A) Filing new declarations from a Supervising Attorney and Employer under Rule 3.2; and

- (B) Filing new proof of compliance under Rule 4.4 if the suspension resulted from lack of insurance.

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.

14.3 Continuation of Program Participation. Once a Provisional License has been reinstated, Provisional Licensees 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.

14.4 Tolling of Program Time. The 18-month limit on Program enrollment (Rule 5.1(F)) shall be tolled during any period for which the Provisional Licensee's license is temporarily suspended. Provisional Licensees shall have a full 18 months of provisionally licensed time to complete the Program requirements.

Section 15 Ombudspersons

15.1 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.

15.2 Duties of Ombudsperson(s). 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.

15.3 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.

15.4 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 Portfolios or Portfolio components qualified; or

- (C) Offer evidence or otherwise participate in license termination proceedings under Rule 17.2.

Section 16

Client Assistance Office Complaints

16.1 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.

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

16.3 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 14.1.

- (A) If Disciplinary Counsel's Office dismisses the grievance, the Provisional Licensee may reinstate their Provisional License as provided by Rule 14.2. The provisions of Rules 14.3 (Continuation of Program Participation) and 14.4 (Tolling) shall apply to this reinstatement.
- (B) If Disciplinary Counsel files a formal complaint, the Provisional Licensee's license shall immediately terminate under Rule 17.1(G).

Section 17

Termination of Provisional License

17.1 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 applies for admission to the practice of law in Oregon and then withdraws that application;

- (C) The Provisional Licensee receives notice under RFA 6.05(5) that the Board is not satisfied that Provisional Licensee has demonstrated that they have the good moral character and fitness to practice law;
- (D) The Board deems the Provisional Licensee's Final Portfolio deficient and the Provisional Licensee has exhausted the remediation and appeal measures specified by Rule 9.8;
- (E) The Provisional Licensee is disbarred or suspended from the practice of law in any other jurisdiction;
- (F) The Provisional Licensee resigns from the practice of law in another jurisdiction while a disciplinary action is pending in that jurisdiction;
- (G) A formal complaint is filed against the Provisional Licensee by the Disciplinary Counsel's Office of the Oregon State Bar;
- (H) An indictment is filed against the Provisional Licensee; or
- (I) 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 17.2(C) below.

17.2 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, and the Board Chair. The Notice shall state that pursuant to Rules 17.1(I) and 17.2(C), that 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 License 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;
 - (3) The Provisional Licensee's failure to submit qualified work product in 2 or more Quarterly Portfolios; or
 - (4) 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 a Quarterly Portfolio, or has knowingly submitted work product in a Quarterly 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 17.1(l).
- (D) The Provisional Licensee's Supervising Attorney and/or Employer may also respond to the Notice of Termination, but 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 17.2(A)(1) through (4), because it does not meet the standard set forth in Rule 17.2(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 17.2(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 for which a quorum of non-recused members of the Board shall be present, and all witnesses may be present.
- (I) The Board Chair shall preside over the Show Cause Hearing. 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 Board Chair 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, the Board Chair may allow individual Board Members to 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 10 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, and shall prohibit the Provisional Licensee from applying for a new Provisional License in Oregon, but shall not preclude the Provisional Licensee from applying for, or gaining, a license to practice law in Oregon through the bar exam, or any other alternative to the bar exam, unless that alternative includes a temporary or provisional license involving supervised practice.

17.3 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 ten 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 18 Amendments to These Rules

18.1 Amendments. This Provisional License Program is a pilot 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 if it is considering an amendment and will give the Provisional Licensees an opportunity to comment on the proposed amendment.
- (C) Any amendment adopted by the Board must be approved by the Supreme Court.
- (D) The Board must notify Provisional Licensees of any approved amendment at least 14 calendar days before that amendment goes into effect.
- (E) No amendment may add to the duties of Provisional Licensees, Supervising Attorneys, Employers, or Mentors. Nor may any amendment increase Program requirements or change scoring in a way that would make it more difficult for Provisional Licensees to qualify for admission to the Oregon State Bar.

Executive Summary of Draft Provisional License Program

This document provides an overview of the draft Rules for the Oregon Provisional License Program (PLP).

Introduction

The Program offers a pathway to licensure for individuals who took the February 2022 Uniform Bar Exam (UBE) in Oregon and obtained a UBE score of 264 or lower. If otherwise qualified, those individuals may obtain a Provisional License to work for an Employer under the direct supervision of a Supervising Attorney.

Qualifications of Program Participants

1. *Provisional Licensees.* To become a Provisional Licensee, an applicant must show that they:

- Obtained a score of 264 or lower on the Oregon February bar exam;
- Meet the age and educational requirements of RFA 3.05;¹
- Meet the MPRE requirements of RFA 7.05;
- Have secured commitments from a qualifying Employer and Supervising Attorney;
- Have obtained professional liability insurance or a waiver of that requirement; and
- Have obtained a Certificate of Eligibility from the Board.

To obtain a Certificate of Eligibility, applicants must show that they have the good moral character and fitness to practice law prescribed by ORS 9.220(2). The Board will make that determination following the procedures outlined in RFA 6.05 and 6.15. As a basis for its determination, the Board will use the applicant's February 2022 bar application supplemented with any updates to sections 21 and 22 of that application.

After reviewing that information and conducting any further investigation, the Board may (1) issue a Certificate of Eligibility; (2) Issue a Certificate of Eligibility conditioned on specific probationary terms as specified by the Board; or (3) deny the applicant a Certificate of Eligibility. If the Board denies a Certificate of Eligibility, the applicant may request an evidentiary hearing under RFA 9.01. That hearing will be conducted, to the extent practicable, pursuant to the process identified in RFA 9.05 to 9.60.

2. *Employers.* Provisional Licensees may work for any law firm, solo practitioner, business entity, non-profit organization, or government agency that operates in Oregon if the organization meets these requirements:

- It agrees to employ the Provisional Licensee for at least 20 hours per week;
- It agrees to pay the Provisional Licensee at least \$20 per hour for that work, plus any benefits required by law;
- It makes a good faith commitment to continue that employment while the Provisional Licensee is in the Program;

¹ RFA refers to the Rules for Admission of Attorneys published by the Supreme Court of the State of Oregon.

- It employs an attorney who has agreed to serve as a Supervising Attorney and who qualifies to assume that role; and
- It employs no family member of the Provisional Licensee.

3. *Supervising Attorneys.* Supervising attorneys must:

- Have been an active member of the Oregon State Bar for the preceding two or more years;
- Have been an active member of the bar in at least one jurisdiction for at least five of the last seven years;
- Have no record of public discipline in any jurisdiction to which they are or have been members; and
- Be employed by the same organization as the Provisional Licensee.

Practice Limits

Provisional Licensees will practice under the same limits that govern law students admitted to temporary supervised practice under RFA 13.20(1). Those constraints are spelled out in RFA 13.05-13.20.

Program Requirements

To complete the Program and establish their eligibility for admission to the Oregon State Bar, Provisional Licensees must complete 1500 hours of Program work within 18 months of beginning the Program. As part of that work, Provisional Licensees must complete each of these components:

1. Legal Work assigned to them by their Supervising Attorney
2. The “Learning the Ropes” CLE program
3. The New Lawyer Mentoring Program²
4. At least 8 independently authored pieces of written work product, with at least 2 of those documents exceeding 1500 words
5. Leadership of at least 2 initial client interviews or client counseling sessions
6. Leadership of at least 2 negotiations
7. Reflections on each of the above written documents, client interviews or counseling sessions, and negotiations
8. A learning plan
9. Regular timesheets
10. A Portfolio organizing materials related to items 2-9 above

Definition of Legal Work

As defined for this Program, Legal Work includes any work that is commonly performed by licensed attorneys in Oregon. Legal work may include activities that are performed by

² If a Provisional Licensee is admitted to the Oregon State Bar, they will not have to repeat this program.

unlicensed individuals, as long as newly licensed attorneys regularly incorporate those activities in their work.

Calculation of Hours

All time devoted to fulfilling Program requirements counts towards the required 1500 hours in the Program. The Draft Rules also allow Provisional Licensees to count (1) additional training or educational activities required by their Employer, and (2) up to 30 additional hours of MCLE programming.

Quarterly Review by the Board

Provisional Licensees will submit their Portfolios (including all Program requirements completed to date) to the Board at the end of each quarter in the Program. Each Quarterly Portfolio will be reviewed and scored by an Examiner using rubrics developed for the Program. Here is how the Examiners will score the different items:

- The “Learning the Ropes” CLE program: Scored “in progress” until the Provisional Licensee has finished the program; then “qualified.” I.e., the Examiner does not have to make any independent assessment of the Provisional Licensee’s work in this program.
- The New Lawyer Mentoring Program: Scored like the previous item. I.e., the Examiner does not have to make any independent assessment of the Provisional Licensee’s work.
- Written work product: Scored “qualified” or “not qualified” using Program rubrics. The Examiner will score these documents based on independent review of the document, review of the Supervising Attorney’s completed rubric, and review of the Provisional Licensee’s accompanying reflection.
- Client interviews or client counseling sessions: Scored “qualified” or “not qualified” using Program rubrics. The Examiner will score this work based on the Supervising Attorney’s completed rubric and review of the Provisional Licensee’s reflection.
- Negotiations: Scored “qualified” or “not qualified.” The Examiner will score this work based on the Supervising Attorney’s completed rubric and review of the Provisional Licensee’s reflection.
- Reflections: Scored “qualified” as long as they are submitted and complete. The reflections are required but their primary purpose is to help the Examiner assess the above items. The Examiner does not need to score the contents of the reflections.
- Learning Plan: Scored “qualified” or “not qualified” using Program rubrics.
- Timesheets: Scored “qualified” as long as they appear reasonably complete.
- Portfolio: Scored “qualified” or “not qualified” according to Program rubrics.

After the Quarterly Portfolio has been scored, the Board will return the Portfolio and completed rubrics to the Provisional Licensee. The Provisional Licensee will also receive a Quarterly

Summary sheet summarizing their status on each Program requirement and total hours completed by the end of that quarter.

As explained further below, the Provisional Licensee must obtain sufficient “qualified” scores to qualify for admission to the Oregon State Bar. The quarterly reviews give the Provisional Licensee opportunities (within specified limits) to remediate or replace items that have been marked “unqualified.” Provisional Licensees may not appeal scores given during quarterly reviews. Instead, the Rules explain how they may supplement, remediate, or replace items marked “unqualified.”

Final Admission Decision

The Provisional Licensee will submit their Final Portfolio when they have completed all components of the Program. This submission may occur at any time; the Provisional Licensee does not have to wait until the next quarterly submission date.

The Provisional Licensee will qualify for admission if they have completed at least 1500 hours of work within the Program and obtained a “qualified” score on:

- The “Learning the Ropes” CLE program
- The New Lawyer Mentoring Program activities required by the Draft Rules
- At least 8 independently authored pieces of written work product (including at least 2 that exceed 1500 words)
- At least 2 initial client interviews or client counseling sessions
- At least 2 negotiations
- Reflections for at least 8 pieces of written work product, 2 client interviews or counseling sessions, and 2 negotiations
- At least 3 learning plans
- At least 3 timesheets
- At least 3 Portfolios, including the Final Portfolio

Satisfying these requirements takes the place of passing the UBE. Provisional Licensees must meet any other qualifications for admission. In particular, the Board will conduct a final character and fitness review before admitting Provisional Licensees to the Oregon Bar.

Training and Other Assistance

The rules require training for Supervising Attorneys, Examiners, and Provisional Licensees. Training will be as concise as possible, focused on helping Program participants navigate the Program fairly and efficiently. For Supervising Attorneys and Examiners, training will include attention to diversity, equity, and inclusion issues.

A Program Manager will be available to answer questions about Program requirements, rubrics, and other elements of the Program. In addition, the rules require appointment of 2 ombudspersons who can help Provisional Licensees and other Program participants resolve individual or systemic difficulties related to the Program.

Protections for Clients and the Public

The Board will review the character and fitness of all Program applicants, admitting only those who establish that they have the good moral character and fitness to practice law prescribed by ORS 9.220(2). Once admitted to the Program, Provisional Licensees will practice under the constraints specified in the Temporary Supervised Practice Rules, RFA 13.10-13.20, as they apply to law students qualified under RFA 13.20(1). Those constraints will assure adequate supervision of the Provisional Licensee's work. In addition to those protections, the rules stress that client needs take precedence over any Program requirements; Provisional Licensees must prioritize their clients over other Program work.

Any work product included in Portfolios will be redacted to protect client interests. In addition, a conflict-checking system will assure that Examiners do not inadvertently review work product on a matter for which they have a conflict of interest.

The rules provide for temporary suspension of a Provisional License if the Provisional Licensee loses their Supervising Attorney; loses required insurance coverage; or is subject to a Client Assistance Office complaint that is referred to Disciplinary Counsel.

The Provisional License terminates automatically if the Provisional Licensee is disbarred or suspended from the practice of law in any other jurisdiction; the Provisional Licensee resigns from the practice of law in another jurisdiction while a disciplinary action is pending in that jurisdiction; a formal complaint is filed against the Provisional Licensee by the Disciplinary Counsel's Office of the Oregon State Bar; or an indictment is filed against the Provisional Licensee.

In addition to these provisions, Regulatory Counsel has authority to initiate a proceeding to terminate a Provisional License whenever Regulatory Counsel develops or receives evidence that continued practice by the Provisional Licensee poses a significant threat to clients or the public. The rules outline evidence that will create a rebuttable presumption of this significant threat (including the filing of 2 or more PLF claims against the Provisional Licensee), as well as the procedures for terminating a Provisional License with appropriate notice and process for the Provisional Licensee.

Protections for Provisional Licensees

The rules discussed above require compensation for the work performed by Provisional Licensees; they also require training for Supervising Attorneys and Examiners. In addition to these protections, the rules create a process for Provisional Licensees to seek accommodations for any disabilities. They also require transparency with respect to all rubrics and other materials used to assess Provisional Licensees.

Supervising Attorneys may assign non-legal work to Provisional Licensees, but that work must be compensated and can constitute no more than 10% of the time spent on all tasks assigned to the Provisional Licensee.

Examiners will review Portfolios anonymously. In addition, a conflict-checking system will assure that Examiners do not review Portfolios submitted by Provisional Licensees with whom they have a conflict of interest.

Provisional Licensees will receive feedback through the quarterly review of their Portfolios. They will have the opportunity (within specified limits) to supplement or replace materials that are marked “not qualified.” Processes are also specified for contesting a proposed termination of their Provisional License; for appealing a finding that their Final Portfolio is deficient; and for reinstating a license that has been temporarily suspended.

Provisional Licensees, finally, have the opportunity to switch Supervising Attorneys and/or Employers during the Program without losing credit for the hours or work they have already accumulated.

Amendments

The Provisional License Program is a new initiative, and the Board may find that amendments are necessary. A rule allows for those amendments while providing protections to Provisional Licensees. I.e., the Provisional Licensees will have an opportunity to comment on any proposed amendments, and no amendment may increase Program requirements.

Alignment with Minimum Competence

The tables on the following pages show how the components of the Program provide evidence of each of the competencies specified by (a) Oregon’s essential eligibility requirements (RFA 1.25) and (b) the *Building a Better Bar* report.

Alignment of PLP Components with Oregon's Essential Eligibility Requirements

Essential Eligibility Requirement	Program Component(s) Providing Evidence of that Requirement
Knowledge of the fundamental principles of law and application	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney's supervision³
Legal reasoning and analysis	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney's supervision
Recollection of complex factual information	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Legal Work completed under the Supervising Attorney's supervision
Integration of complex factual information with complex legal theories	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Legal Work completed under the Supervising Attorney's supervision
Problem solving	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney's supervision
Recognition and resolution of ethical dilemmas	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney's supervision

³ Although Examiners will not review this work (unless it is submitted to satisfy one of the other Program components), the Supervising Attorney's acceptance of that work provides evidence of this and other competencies.

Essential Eligibility Requirement	Program Component(s) Providing Evidence of that Requirement
Other fundamental skills commensurate with being a lawyer	<ul style="list-style-type: none"> • Completion of regular timesheets • Completion and maintenance of a Learning Plan • Creation, organization, and maintenance of the Portfolio • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision
Ability to communicate honestly, candidly, and civilly with clients, attorneys, courts, and others	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision
Ability to conduct financial dealings in a responsible, honest, and trustworthy manner	<ul style="list-style-type: none"> • Completion of regular timesheets • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision
Ability to conduct oneself with respect for and in accordance with the law	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision
Ability to demonstrate regard for the rights, safety, and welfare of others	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision
Ability to demonstrate good judgment on behalf of clients and in conducting one’s professional business	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision
Ability to act diligently, reliably, and punctually in fulfilling obligations to clients, lawyers, courts, and others	<ul style="list-style-type: none"> • Completion of regular timesheets • Compliance with deadlines for submission of Quarterly Portfolios • Elements of the New Lawyer Mentoring Program • Learning the Ropes Program • Legal Work completed under the Supervising Attorney’s supervision

Essential Eligibility Requirement	Program Component(s) Providing Evidence of that Requirement
Ability to comply with deadlines and time constraints	<ul style="list-style-type: none"> • Compliance with deadlines for submission of Quarterly Portfolios • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision
Ability to comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision

**Alignment of PLP Components with
Building a Better Bar Definition of Minimum Competence**

Building a Better Bar Element	Program Component(s) Providing Evidence of that Requirement
The ability to act professionally and in accordance with the Rules of Professional Conduct	<ul style="list-style-type: none"> • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Legal Work completed under the Supervising Attorney’s supervision⁴
An Understanding of legal processes and sources of law	<ul style="list-style-type: none"> • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Legal Work completed under the Supervising Attorney’s supervision • Other training provided by the Employer • Other MCLE activities pursued by the Provisional Licensee
An understanding of threshold concepts in many subjects	<ul style="list-style-type: none"> • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Legal Work completed under the Supervising Attorney’s supervision • Other training provided by the Employer • Other MCLE activities pursued by the Provisional Licensee
The ability to interpret legal materials	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision
The ability to interact effectively with clients	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Elements of the New Lawyer Mentoring Program • Legal Work completed under the Supervising Attorney’s supervision

⁴ Although Examiners will not review this work (unless it is submitted to satisfy one of the other Program components), the Supervising Attorney’s acceptance of that work provides evidence of this and other competencies.

Building a Better Bar Element	Program Component(s) Providing Evidence of that Requirement
The ability to identify legal issues	<ul style="list-style-type: none"> • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Legal Work completed under the Supervising Attorney’s supervision • Other training provided by the Employer • Other MCLE activities pursued by the Provisional Licensee
The ability to conduct research	<ul style="list-style-type: none"> • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Legal Work completed under the Supervising Attorney’s supervision
The ability to communicate as a lawyer	<ul style="list-style-type: none"> • Elements of the New Lawyer Mentoring Program • Eight independently authored documents • Two client interviews or counseling sessions • Two negotiations • Reflections on documents, client interactions, and negotiations • Legal Work completed under the Supervising Attorney’s supervision
The ability to understand the “big picture” of client matters	<ul style="list-style-type: none"> • Elements of the New Lawyer Mentoring Program • Reflections on documents, client interactions, and negotiations • Legal Work completed under the Supervising Attorney’s supervision
The ability to manage a law-related workload responsibly	<ul style="list-style-type: none"> • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Completion of Learning Plans • Completion of regular Timesheets • Compliance with deadlines for submission of Quarterly Portfolios • Legal Work completed under the Supervising Attorney’s supervision
The ability to cope with the stresses of legal practice	<ul style="list-style-type: none"> • Learning the Ropes Program • Elements of the New Lawyer Mentoring Program • Reflections on documents, client interactions, and negotiations • Legal work completed under the Supervising Attorney’s supervision
The ability to pursue self-directed learning	<ul style="list-style-type: none"> • Development of Learning Plans • Elements of the New Lawyer Mentoring Program • Reflections on documents, client interactions, and negotiations • Legal work completed under the Supervising Attorney’s supervision