

**Meeting of the Alternatives to the Exam Development Committee**  
**Oregon State Board of Bar Examiners**  
**Wednesday, August 10, 2022**  
**Zoom Meeting – Invites are sent via Outlook Calendar**  
**Open Session Agenda**  
*(Items may not be discussed in the order listed)*

**Wednesday, August 10, 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. Remind participants of the Schedule
- B. 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
      - I. Chair Perini-Abbott to give presentation
  - 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

**3. New Business**

- A. Rubrics Developed by Professor Merritt needs Committee and Advisory Group Feedback and Support
- B. Breakout into Groups for 30-minutes

**4. Adjourn**

## Outreach Plan

Presentations: (see chart below for outreach and scheduling)

- Outreach to:
  - Affinity Bars
  - Specialty Bars
  - County Bars
  - Specialty Bar listserv outreach (Kristen Sterling)
  - Other interested groups?
- Two options:
  - 15 minute presentation (PPT to be approved by full group by end of August; PPT to be adjusted in November once first draft is done)
  - Hour-long CLE (PPT to be approved by full group by end of August; PPT to be adjusted in November once first draft is done)
- Survey questions - on bar website through QR code?

Publications - need to draft an article that can be widely shared; who will lead outreach?

- OSB Bulletin (December/Jan/Feb)
  - Cover - dedicated cover versus listed article
  - Advertising next to the movers and shakers
- Presidents Message
- MBA magazine
- OWLS e-news letter; quarterly advanced sheet
- Highlight on bar website
- County Bar electronic newsletters
- OTLA (The Trial Lawyer)/OADC (the Verdict) - publications 10-months of the year
- Non-lawyer publications/
  - Portland Business Journal
  - Daily Journal of Commerce
  - Association for Corporate Counsel (General Counsel)
  - DRO reaching out to broader disability community?

- DCBS – Department of Consumer Business Services
- Legislature/Gov't – Bar does an update for judiciary committee (Feb)
  - Bar email to the legislature; Capitol Insider

Presentations - outreach/scheduling

<b>Group</b>	<b>LPDC outreach person</b>	<b>Group Contact Person</b>	<b>Schedule/Next Steps</b>	<b>Notes</b>
Oregon Judicial Conference	Judge Ortega	Judge Ortega		
CIDC (Clackamas Indigent Defense Corporation)		Shannon Kmetic	September 22	Shannon reached out following OCLDA task force presentation
Clatsop County Bar Association	Sunil Raju			
Crooks/Jefferson Counties Bar Association	Phil Duong			
Douglas County Bar Association	Danny Lang			
Lincoln County Bar Association	Brian Gardner			
MBA	Shalini Vivek			Shalini to make intro to programming chairs
OADA	Barbara Diamond			
OADC	Katie Smith			
ODAA	Kelsie McDaniel			
OGALLA	Megan Hinzdel			
Oregon Attorneys with Disabilities	Barbara Diamond			
Oregon Filipino American Lawyers Association	Peter Sabido			
Oregon New Lawyers Division	Yvana Mols		Presenting at executive committee 9/24; follow up on larger CLE	
OSB Advisory Committee on D&L	Yazmin Wadia			

<b>Group</b>	<b>LPDC outreach person</b>	<b>Group Contact Person</b>	<b>Schedule/Next Steps</b>	<b>Notes</b>
OSB Consumer Law Section	Emily Rena-Dozier			
OWLS	Kristen Sterling			Need to work with Kristen on a date
SABA Oregon	Aruna Masih			
Sixth Judicial Bar Association	Justin Morton			
OCDLA	Brook Reinhard	Mae Lee Browning		JPA/KM spoke at public defense task force meeting on 8/2
Oregon Law Center	Monica Goracke			
OMLA	Jennifer Reger			
FBA	Jeremy Carp			
Clackamas County Bar Association				
Coos County Bar Association				
Deschutes County Bar Association				
Jackson County Bar Association				
Josephine County Bar Association				
Lane County Bar Association				
Linn-Benton County Bar Association				
Malheur County Bar Association				
Marion County Bar Association				

<b>Group</b>	<b>LPDC outreach person</b>	<b>Group Contact Person</b>	<b>Schedule/Next Steps</b>	<b>Notes</b>
Northwest Indian Bar Association				
OAPABA				
Oregon Chapter - National Bar Association				
Oregon Chinese Lawyers Association				
Oregon Crime Victims Law Center				
OSB - diversity section				
OSB- nonprofit orgs				
OSB - small and solo				
Oregon South Asian Bar Association				
OTLA				
Polk County Bar Association				
Tillamook County Bar Association				
Twenty-Fourth Judicial District Bar Association				
Union County Bar Association				
Wallowa County Bar Association				
Washington County Bar Association				

## Design Questions for PLP and SPP

TFR = Task Force Recommendations (including Supplemental Report)

PLP = Rules for Provisional License Program

RFA = Oregon’s Rules for Admission

<b>Candidates</b>	
Who is eligible to pursue this path?	<ul style="list-style-type: none"> <li>• Both TFR &amp; PLP say anyone who is eligible to take the Oregon bar exam (RFA 3.05)</li> <li>• TFR also says:               <ul style="list-style-type: none"> <li>○ Should not have to use SPP immediately after graduation</li> <li>○ May pursue SPP and other paths (e.g., bar exam)</li> <li>○ Development Committee should consider how to structure fees if a candidate pursues multiple paths</li> <li>○ May pursue SPP after failing bar exam</li> <li>○ No cap on number of people who may pursue this path</li> </ul> </li> </ul>
Do candidates have to fulfill any prerequisites?	<ul style="list-style-type: none"> <li>• PLP: Must pass MPRE before starting pathway. (TFR requires passage of MPRE, but not clear if that must occur first)</li> <li>• PLP also requires insurance and certificate of eligibility (see section on “other provisions” about both of these)</li> <li>• TFR: Development Committee should consider whether certain law school courses (e.g., Civil Procedure and Evidence) are required, but should minimize prerequisites to keep pathway accessible. If any prerequisites are instituted, there should be post-grad opportunities to fulfill</li> </ul>
<b>Employers and Supervisors</b>	
What organizations qualify as employers?	<ul style="list-style-type: none"> <li>• TFR refers generally to need for infrastructure supporting training and supervision</li> <li>• PLP: “Any law firm, solo practitioner, business entity, non-profit organization, or government agency” that:               <ul style="list-style-type: none"> <li>○ Operates in Oregon</li> <li>○ Commits to employing the candidate for at least 20 hours a week</li> <li>○ Commits to paying the candidate at least \$20 per hour plus any benefits required by law</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Makes a good faith commitment to employ candidate until candidate is admitted to bar, terminated from program, or 18 months have passed</li> <li>○ Has an attorney who qualifies as a supervisor</li> <li>○ Does not employ any family member of the candidate</li> <li>● PLP: Employer must provide work space, tools, and technology</li> <li>● PLP: Employer must include candidate in training and other programs provided new lawyers</li> <li>● PLP: Employer must give candidate time to complete program requirements that don't benefit employer directly, but need not compensate for those hours</li> </ul>
Who qualifies as a supervisor?	<ul style="list-style-type: none"> <li>● TFR &amp; PLP: active Oregon license</li> <li>● TFR &amp; PLP: 2 years' experience practicing in Oregon (immediately before application to supervise?)</li> <li>● Total years practice experience? <ul style="list-style-type: none"> <li>○ TFR: 5-7 years, but Development Committee should decide</li> <li>○ PLP: 5 of the last 7 yrs</li> <li>○ TFR suggested possibility of different experience requirements by field</li> <li>○ TFR also suggested possible delegation of day-to-day supervision to more junior attorneys (e.g. 3 years' experience)</li> </ul> </li> <li>● TFR &amp; PLP: No record of public discipline</li> <li>● TFR: Development Committee should decide whether clerkships for federal judges qualify for pathway. If so, may need to waive Oregon license and practice requirements</li> <li>● TFR: Development Committee should develop process for certifying supervisors</li> </ul>
Can supervisors delegate day-to-day supervision to attorneys who aren't themselves qualified as supervisors?	<ul style="list-style-type: none"> <li>● TFR: Yes</li> <li>● PLP: Doesn't address</li> </ul>
How will candidates find positions?	<ul style="list-style-type: none"> <li>● TFR: At least to start, candidates will have to find their own positions. As the program becomes established, BBX or OSB might be able to assist</li> <li>● PLP: Candidates must find their own positions</li> </ul>
Will candidates be paid?	<ul style="list-style-type: none"> <li>● TFR: Applicants "can and should be paid a reasonable wage for their work"</li> <li>● PLP: Requires candidates to be paid at least \$20 per hour plus any benefits required by law</li> </ul>



<p>May candidates have more than one supervisor?</p>	<ul style="list-style-type: none"> <li>• TFR: Yes, this is very important. Should be explicitly authorized. Not clear if TFR meant more than one supervisor at the same time or over time.</li> <li>• PLP: Doesn't contemplate more than one supervisor at a time, but allows changes of supervisors and employers. See section 13 of the rules.</li> </ul>
<p><b>Hours Requirement</b></p>	
<p>How many hours must candidates complete?</p>	<ul style="list-style-type: none"> <li>• TFR: 1000-1500 hours, but Development Committee should decide specific number</li> <li>• PLP: 1500 hours (set by Court in its initial order)</li> </ul>
<p>How are hours recorded?</p>	<ul style="list-style-type: none"> <li>• TFR: 6-minute increments</li> <li>• PLP: 6- or 15-minute increments, as candidate prefers</li> </ul>
<p>What kinds of work count towards the hours requirement?</p>	<ul style="list-style-type: none"> <li>• TFR: should be "tangibly related to developing the applicant's legal competence"</li> <li>• TFR: Qualified activities likely would include, but not be limited to: <ul style="list-style-type: none"> <li>○ All activities related to direct representation of clients</li> <li>○ Advising businesses and their employees</li> <li>○ Developing or implementing policies or practices for nonprofits or government agencies</li> <li>○ Meeting with a supervising attorney on case matters, professional development, or ethics</li> <li>○ CLE courses and other training that are typical of an attorney in that practice area (but with a cap)</li> </ul> </li> <li>• TFR: Administrative, ministerial, or purely paralegal activities should not qualify or there should be a cap</li> <li>• TFR: Development Committee should consider whether to include document review or other activities that are important to the client but have limited potential for professional growth</li> <li>• TFR: Development Committee should consider whether to include "assistance and counsel to judges"</li> <li>• TFR Supplemental Report: Development Committee will specify but expect that hours will be devoted to "engaging with clients, appearing in court, drafting and editing legal documents, investigating and analyzing facts, and conducting legal research."</li> <li>• PLP: Hours include: <ul style="list-style-type: none"> <li>○ All time on legal work, which is "work that is commonly performed by licensed attorneys in Oregon. Legal work may include activities that are also performed by unlicensed</li> </ul> </li> </ul>

	<p>individuals, as long as newly licensed attorneys regularly incorporate those activities in their work.”</p> <ul style="list-style-type: none"> <li>○ Time devoted to working on other program components (including Learning the Ropes, NLMP, reflections, learning plan, etc.)</li> <li>○ Time spent discussing program with supervisor and others</li> <li>○ Time spent on training or educational activities required by supervisor</li> <li>○ Up to 30 hours of additional MCLE</li> </ul>
Does pro bono work count towards hours?	<ul style="list-style-type: none"> <li>● TFR: Yes, if properly supervised. But there should not be unreasonable expectations of a lot of pro bono work.</li> <li>● PLP: Yes, and candidate may request that work</li> </ul>
May employers assign non-legal work to candidates?	<ul style="list-style-type: none"> <li>● PLP: Yes, as long as other new lawyers working for the employer commonly perform those tasks; the candidate is compensated at their regular wage; and this work does not constitute more than 10% of time spent on all work for employer. Note, though, that this work does not count towards program hours unless “newly licensed attorneys regularly incorporate those activities in their work”</li> </ul>
Does the program have to be completed within a set time?	<ul style="list-style-type: none"> <li>● TFR: Yes, but didn’t specify period</li> <li>● PLP: Yes, 18 months (but there is provision for tolling)</li> </ul>
Is it possible to earn some of the hours while in law school?	<ul style="list-style-type: none"> <li>● TFR: Majority thought yes, but with these caveats: <ul style="list-style-type: none"> <li>○ There should be a cap (e.g., 200 hours out of 1000)</li> <li>○ Hours must qualify in all other respects. E.g., must be supervised by attorney qualifying as SPP supervisor, work must meet SPP definition</li> <li>○ These law school hours might expire if not used within specified time</li> </ul> </li> </ul>
<b>Other Program Requirements</b>	
Do candidates complete the “Learning the Ropes” program?	<ul style="list-style-type: none"> <li>● TFR didn’t mention</li> <li>● PLP: Yes, and these hours count towards hours requirement</li> </ul>
Do candidates participate in the New Lawyer Mentoring Program?	<ul style="list-style-type: none"> <li>● TFR: Development Committee should consider</li> </ul>

	<ul style="list-style-type: none"> <li>• PLP: Yes, and these hours count towards hours requirement. Rule 6.4 gives more specifics about components of NLMP that must be completed.</li> </ul>
<p>What other requirements must candidates fulfill?</p>	<ul style="list-style-type: none"> <li>• TFR: Candidates must submit portfolio (discussed further below) and timesheets. No other specifics given, but pathway will show that candidate has all of the Essential Eligibility Requirements specified in Oregon’s RFA, as well as the 12 building blocks in the IAALS report.</li> <li>• PLP: In addition to “Learning the Ropes,” NLMP, and assigned work, portfolio must include evidence of: <ul style="list-style-type: none"> <li>○ 8 pieces of independently authored work product. These may be in any form (e.g., email, motion, contract, letter, memo, brief) but must address some substantive aspect of a legal matter. At least 2 pieces must exceed 1500 words.</li> <li>○ Leadership of at least 2 client interviews or counseling sessions (prosecutors substitute complainants for clients)</li> <li>○ Leadership of at least 2 negotiations</li> <li>○ Reflections on the above</li> <li>○ A learning plan</li> <li>○ Timesheets</li> </ul> </li> <li>• PLP: Provisions made if practice doesn’t support independently authored work product, client interviews, or negotiations.</li> </ul>
<p><b>Practice Limits on Candidates</b></p>	
<p>What lawyering activities may candidates perform (and under what type of supervision)?</p>	<ul style="list-style-type: none"> <li>• TFR: Refers to Utah’s rules as appropriate. Also directs Development Committee to consider interaction with Law Student Appearance Program</li> <li>• PLP: Uses rules from Law Student Appearance Program, RFA 13.20(1) <ul style="list-style-type: none"> <li>○ May appear before any court or administrative tribunal with supervisor present</li> <li>○ May appear <u>without</u> supervisor’s presence if <ul style="list-style-type: none"> <li>▪ Client consents in writing (if governmental body is the client, supervising attorney of that body gives consent); and</li> <li>▪ Court or presiding officer consents</li> </ul> </li> <li>○ BUT supervisor’s <u>presence is required</u> if student appears for a defendant facing possible conviction for a felony; a juvenile defendant where the charge would constitute a felony if lodged against an adult; a defendant in any commitment proceeding; or a defendant</li> </ul> </li> </ul>

	<p>making an oral argument on appeal. (Note that students may make these appearances without a supervisor if made on behalf of the state or a governmental agency)</p> <ul style="list-style-type: none"> <li>○ May engage in other activities outside supervisor’s presence (but under general supervision) such as preparing pleadings, briefs, and other documents; assisting inmates with habeas petitions; taking depositions; preparing affidavits; negotiating and investigating related to litigation; and various non-litigation matters</li> <li>○ Pleadings and other formal documents must be signed by supervisor. They must also contain the name of the student who drafted the document.</li> <li>○ Other documents must be signed or approved by supervisor before they are executed. The document must state the extent to which the student was involved in drafting.</li> <li>○ If an activity does not result in a legal document to be reviewed, a memo recording the student’s activities must be kept in the file for the matter.</li> </ul> <ul style="list-style-type: none"> <li>● PLP: Candidate must put clients’ interests ahead of completing program requirements</li> <li>● PLP: Candidate must also put work for supervisor ahead of completing program requirements—although employers have an obligation to accommodate program requirements</li> <li>● PLP: Candidate “should not attempt work for which they feel unprepared or incompetent to perform. Instead, they should discuss their reservations with the Supervising Attorney and seek appropriate assistance”</li> <li>● PLP: Candidate “may request particular types of Legal Work that would benefit their professional development or completion of this Program.”</li> </ul>
<b>Role of BBX</b>	
Who makes the final decision on minimum competence?	<ul style="list-style-type: none"> <li>● TFR: BBX (as required by statute)</li> <li>● PLP: BBX</li> </ul>
What do candidates submit to the BBX?	<ul style="list-style-type: none"> <li>● TFR: an “exam alternative portfolio” (EAP) containing non-privileged work product</li> <li>● TFR: the materials should demonstrate the candidate’s “knowledge of general principles of law, legal analysis and reasoning, factual analysis, and communication skills.” Also, their “writing skills, ability to identify legal issues raised by factual situations, separate material which is relevant that which is not, and present a reasoned analysis of the relevant issue in a clear, concise, and well organized composition” and their ability “to apply legal principles and legal reasoning to various fact patterns.” All of these are skills tested on UBE</li> <li>● TFR: Materials will also demonstrate skills and knowledge not included on UBE</li> </ul>

	<ul style="list-style-type: none"> <li>• PLP: Portfolio including components that track program requirements</li> </ul>
When do candidates submit materials to the BBX?	<ul style="list-style-type: none"> <li>• TFR: At “regular intervals” (similar to Daniel Webster Program)</li> <li>• PLP: Quarterly, although final portfolio can be submitted whenever it is ready</li> </ul>
How will BBX assess portfolios?	<ul style="list-style-type: none"> <li>• TFR: Tools should be developed that will assure assessment is “standardized and repeatable,” that assessment aligns with competencies BBX wants to assess, and that results are reliable.</li> <li>• PLP: BBX will provide rubrics for supervisors to use, as well as reflection templates for candidates. Bar examiners themselves will use rubrics.</li> <li>• PLP: Portfolios are graded anonymously</li> <li>• PLP: Single examiner assesses portfolio and components. Once a component is marked “qualified” it will not be revisited.</li> <li>• PLP: Candidates must satisfy all requirements of program. There is no compensatory grading.</li> </ul>
What procedures should BBX follow if work is not minimally competent?	<ul style="list-style-type: none"> <li>• TFR: Regulations will have to lay this out</li> <li>• PLP: Candidates may not challenge quarterly assessments, but may provide clarifying information or (with limits) replace items that are graded “not qualified.” See rules 7.7 and 7.8.</li> <li>• PLP: Creates processes for review. See section 9 of the rules.</li> </ul>
<b>Contents of Portfolios</b>	
Should candidates show competence in a range of subject areas (as on the UBE)	<ul style="list-style-type: none"> <li>• TFR: “the depth of meaningful experience offered by the SPP more than makes up for this lack of breadth”</li> <li>• TFR: UBE doesn’t test Oregon law anyway</li> <li>• TFR: But Development Committee could consider mitigating in these ways: <ul style="list-style-type: none"> <li>○ Require candidate to complete a variety of tasks across practice areas</li> <li>○ Require a breadth of CLE’s</li> <li>○ Require portfolio to include work product across several substantive topics</li> </ul> </li> <li>• PLP: Doesn’t address this issue; assumes that breadth of tasks (i.e., writing, client counseling, and negotiation) combined with depth in one area is more relevant to minimum competence.</li> </ul>
How do we protect client confidentiality in portfolios?	<ul style="list-style-type: none"> <li>• TFR: There should be clear guidelines</li> <li>• PLP: Work must be redacted and client must consent to inclusion in portfolio</li> </ul>

<b>Training</b>	
Is there training for supervisors?	<ul style="list-style-type: none"> <li>• TFR: Yes, and training must be completed before candidate receives credit for any work</li> <li>• PLP: Yes, although some training can occur after candidate begins work</li> <li>• PLP: Training must include 2 hours of DEI and up to 4 additional hours related to the program requirements</li> </ul>
Is there training for examiners?	<ul style="list-style-type: none"> <li>• PLP: Yes. Must include 2 hours of DEI training and up to 6 additional hours related to grading portfolios</li> </ul>
Is there training for candidates?	<ul style="list-style-type: none"> <li>• PLP: Yes, to explain components of program.</li> </ul>
<b>Other Provisions</b>	
Will the candidates have professional liability insurance?	<ul style="list-style-type: none"> <li>• TFR doesn't mention but PLP has provisions for this in Section 4 of the rules</li> </ul>
What are the processes for joining the pathway?	<ul style="list-style-type: none"> <li>• PLP: BBX will develop forms for candidate, supervisor, and employer. These will include oaths that are signed by each when entering program.</li> </ul>
When do candidates complete their character and fitness review?	<ul style="list-style-type: none"> <li>• TFR doesn't address this</li> <li>• PLP: A full review is conducted before beginning pathway. If the candidate passes, then BBX issues a "certificate of eligibility." After the candidate has completed the pathway, BBX conducts a second C&amp;F review focused primarily on conduct since original application was filed. [Note that BBX felt strongly about this.]</li> </ul>
How are disabilities accommodated	<ul style="list-style-type: none"> <li>• PLP: Rule 8.1 provides for accommodations</li> </ul>
Will candidates have access to BBX rubrics and other decisional rules?	<ul style="list-style-type: none"> <li>• PLP: Yes, rule 10.1 requires full transparency.</li> </ul>
How do we protect against conflicts of interest?	<ul style="list-style-type: none"> <li>• PLP: Section 11 of the rules establishes a process to avoid examiner/candidate conflicts, as well as one to avoid conflicts of interest that might arise when an examiner reviews work product.</li> </ul>

<p>Can the candidate's temporary license be suspended or terminated?</p>	<ul style="list-style-type: none"> <li>• PLP: Yes. Temporary suspension if: <ul style="list-style-type: none"> <li>○ Candidate loses supervising attorney (rule 13.4)</li> <li>○ Candidate loses insurance coverage (rule 4.7)</li> <li>○ Client Assistance Office refers a complaint to Disciplinary Counsel's Office (rule 16.3)</li> </ul> </li> <li>• PLP: Termination of license if: <ul style="list-style-type: none"> <li>○ Disciplinary Counsel files a formal complaint (rule 16.3(B))</li> <li>○ Conditions specified by rule 17.1 arise</li> <li>○ Finding of significant threat to clients or public (process and standards outlined in rule 17.2)</li> </ul> </li> </ul>
<p>Is assistance available to candidates, supervisors, or others if problems arise?</p>	<ul style="list-style-type: none"> <li>• PLP: Yes, there are two ombudspersons (section 15 of rules)</li> <li>• PLP: Program managers can also offer some types of assistance</li> </ul>
<p>Will pathway be evaluated after implementation?</p>	<p>TFR: This would be appropriate and IAALS might assist</p>