

**Meeting of the Alternatives to the Exam Development Committee**  
**Oregon State Board of Bar Examiners**  
**Wednesday, December 14, 2022**  
**Zoom Meeting – Invites are sent via Outlook Calendar**  
**Open Session Agenda**

*(Items may not be discussed in the order listed or may be discussed in a workgroup session during the meeting)*

**Wednesday, December 14, 2022, 12:00 p.m. – 1:45 p.m.**

**1. Call to Order/Finalization of Agenda**

- A. Roll of Attendees
- B. Finalize Agenda

**2. Consent Agenda**

- A. Approval of prior meeting minutes

- i. October 19, 2022
- ii. November 2, 2022
- iii. November 16, 2022

**Exhibit 1**

**Exhibit 2**

**Exhibit 3**

**3. Old Business/Updates on Events/News/Developments of Interest**

- A. Each Lead BBX Member will report to group. There will be no breakout sessions today.

- i. Outreach Group
- ii. OEP Group
- iii. SPP Group

**4. New Business**

- A. Review and discuss SPP draft of proposed rules

- i. SPP Draft Rules
- ii. Notes on SPP Draft Rules

**Exhibit 4**

**Exhibit 5**

**5. Adjourn**

# **EXHIBIT 1**

**Meeting of the Licensure Pathways Development Committee (LPDC)  
Oregon State Board of Bar Examiners  
October 19, 2022 - Open Session Meeting Minutes**

**Wednesday, October 19, 2022, 12:00p.m. -1:00 p.m.**

**1. Call to Order/Finalization of Agenda - 12:05AM**

**A. Roll or Attendees:**

Committee Members Attending: Joanna Perini-Abbott; Dr. Anthony Rosilez; Addie Tobin Smith; Dean Brian Gallini; Professor Deborah Merritt; Erin Biencourt; Helen Hirschbiel; J.B. Kim; Joanne Kane; Dean John Perry; Kateri Walsh; Matt Shields; Mohamad J. Shaer; Phylis C. Myles; Rebecca Ivanoff; Dean Stuart Chinn; Susan Grabe; Lee Ann Donaldson

Court Liaison Attending: Jason Specht

OSB Staff Attending: Troy Wood, Sarah Haugstad, Vickie Hansen

**B. Finalize Agenda:** Chair Joanna Perini-Abbot called the meeting to order at 12:05pm. There were no additions to the agenda. Each group provided an update and then each group went into the break out groups. Ten minutes will be scheduled at the beginning of the meeting with the full Committee, followed by work sessions with two of the three subgroups today; OEP and SPP. Members can switch from group to group at their discretion.

**2. Consent Agenda**

A. Approval of prior meeting minutes

**See Exhibit 1**

The minutes were approved with no corrections.

**3. Old Business/Updates on Events/News/Developments of Interest**

A. Each Lead BBX Member will report to group. After all reports, workgroups will report to their assigned Zoom.

**i. Outreach Group**

Update provided by Joanna Perini-Abbott: The Outreach group is up and running. They have been presenting and are working to push the LPDC website forward so those interested can find out more. Chair Perini-Abbott states she is completing one presentation a week. An article will be published in the December Bar Bulletin. The Outreach group has a plan that is being worked, so they will not be meeting today.

No Breakout meeting or Assigned Room for the Outreach group.

**ii. SPP**

Update provided by Addie Smith: The group is having interesting conversations regarding how does this alternative to the exam need to reflect the exam and how should it be very separate from the exam. They are having conversations around equity and access. Conversations surrounding how do we trust the professionalism of our supervising attorneys and new graduates while

providing enough guidance of minimum competency being displayed. Deborah Merritt has been taking all of the groups notes and feedback and integrating them into a new document. Deborah is making note of what they want to take from the February cohort program and how this program will differ.

### **iii. OEP**

Update provided by Dr. Anthony Rosilez: Dean Galini facilitated the last discussion while Dr. Rosilez was out of the office. The entry aspects have been discussed and noted in detail. The discussion ended with the fact that it is now time to begin reviewing the parallel rules. The group now needs to add thought questions at the OEP level. Curriculum pieces will need more detailed discussions with the law schools.

### **4. New Business**

None discussed.

### **5. Adjourn, 1:00PM**

# **EXHIBIT 2**

**Meeting of the Licensure Pathways Development Committee (LPDC)  
Oregon State Board of Bar Examiners  
November 2, 2022 - Open Session Meeting Minutes**

**Wednesday, November 2, 2022, 12:00p.m. -1:00 p.m.**

**1. Call to Order/Finalization of Agenda - 12:01 PM**

**A. Roll or Attendees:**

Committee Members Attending: Joanna Perini-Abbott; Dr. Anthony Rosilez; Addie Tobin Smith; Dean Brian Gallini; Hon. Darleen Ortega; Professor Deborah Merritt; Erin Biencourt; Helen Hirschbiel; Joanne Kane; Dean John Perry; Kelsie McDaniel; Lee Ann Donaldson; Logan Cornett; Megan Hinzdel; Rebecca Hanley; Dean Stuart Chinn; Sandy Patrick; Yvana Mols

Court Liaison Attending: Jason Specht

OSB Staff Attending: Troy Wood, Kellie Baumann

**B. Finalize Agenda:** Chair Joanna Perini-Abbot called the meeting to order at 12:01pm. There were no additions to the agenda. Each group provided an update and then each group went into the break out groups. Ten minutes will be scheduled at the beginning of the meeting with the full Committee, followed by work sessions with two of the three subgroups today; OEP and SPP. Members can switch from group to group at their discretion.

**3. Old Business/Updates on Events/News/Developments of Interest**

A. Each Lead BBX Member reported to group. After all reports, workgroups reported to their assigned Zoom.

**i. Outreach Group**

Update provided by Joanna Perini-Abbott: The Outreach group is up and running. Recently, Chair Perini-Abbot met with OCDLA. The OEP received good feedback and will receive more feedback from attendees from this meeting through a survey. The Outreach group has a plan that is being worked, so they will not be meeting today.

No Breakout meeting or Assigned Room for the Outreach group.

**ii. OEP**

Update provided by Dr. Anthony Rosilez: Last meeting was really productive because we were able to work through a lot of items. We've worked through the Admissions piece and we are really close on the curricular elements. Our next big task is to dig into the Capstone work. We are moving right along.

**iii. SPP**

Update provided by Addie Smith: The group is working right through things. Our next big meeting is this Friday. We are working through Section 8 today and we will do Sections 8 – 18 on Friday. We're extending the deadline for comments on 8-18 to noon on Thursday. Even if you can only

flag things for discussion or list concerns that would be very helpful. Warm welcome to anyone who hasn't joined us before, you're welcome to come join the SPP on Friday.

#### **4. New Business**

Chair Perini-Abbot mentioned that a big discussion point for the last OEP meeting was the definition of "independent work product." Since the definition will likely span both groups, we may want it to be consistent. She recommended everyone that can attend on Friday, do so. Also maybe a small group of both sides should get together to see if it is possible to make the definition consistent. Addie said that the SPP has tackled that question and their strong preference is that the supervisors send on their cover sheet validation that it is primarily the work of the Provisional Licensee, but that it is unrealistic in the real world to expect that people will have completely independent work that they are able to submit. Part of the process of being a lawyer is receiving feedback and making edits. Happy to meet with Tony or get a small group together to discuss.

#### **5. Adjourn, 12:10PM**

# **EXHIBIT 3**



**Meeting of the Licensure Pathways Development Committee (LPDC)  
Oregon State Board of Bar Examiners  
November 16, 2022 - Open Session Meeting Minutes**

**Wednesday, November 16, 2022, 12:00p.m. -1:00 p.m.**

**1. Call to Order/Finalization of Agenda - 12:03 PM**

**A. Roll or Attendees:**

Committee Members Attending: Joanna Perini-Abbott; Dr. Anthony Rosilez; Addie Tobin Smith; Akriti Bhargava; Dean Brian Gallini; Professor Deborah Merritt; Erin Biencourt; JB Kim; Dean John Perry; Justice Meagan Flynn; Kateri Wash; Kendra Matthews; Matthew Shields; Phylis C. Myles; Rebecca Ivanoff; Rebekah Hanley; Sandy Patrick; Dean Stuart Chinn; Susan Grabe; Tung Yin

OSB Staff Attending: Kellie Baumann, Vickie Hansen

**B. Finalize Agenda:** Chair Joanna Perini-Abbot called the meeting to order at 12:03pm. There were no additions to the agenda. Approval of meeting minutes was pushed to the next meeting due to lack of quorum. Each group provided an update and then each group went into the break out groups. Ten minutes will be scheduled at the beginning of the meeting with the full Committee, followed by work sessions with two of the three subgroups today; OEP and SPP. Members can switch from group to group at their discretion.

**3. Old Business/Updates on Events/News/Developments of Interest**

A. Each Lead BBX Member reported to group. After all reports, workgroups reported to their assigned Zoom.

**i. Outreach Group**

Update provided by Joanna Perini-Abbott: The Outreach group is working on more outreach before the holidays. They are trying to get in the eyeballs and ears of any lawyer in Oregon that will listen to us. She also said SPP is very close to draft to share with whole group. Would like to use next meeting to have the SPP present to the group. The OEP will be able to take a lot of their work. Kendra Matthews said we may need two meetings – one to take in what they are doing and the second to be able to fully discuss it.

No Breakout meeting or Assigned Room for the Outreach group.

**ii. SPP**

Update provided by Addie Smith: The group is really close. Our document has, for the most part, incorporated all of the conversations that we've had. There is a lot of technical things we are trying to tackle today. I've flagged where there is anticipated pushback. Addie had a question about the public records law and how it applies to emails. Kendra Matthews confirmed that Addie can email a draft to members, but they cannot email to collaborate without running afoul of the public meeting requirements.

### **iii. OEP**

Update provided by Dr. Anthony Rosilez: The OEP has been very productive in our last few meetings. At this point, we are going to bifurcate our process. Troy and Tony are going to work on taking what the SPP has done and how we can use it on the OEP side. Dean Gallini will be able to work with the law school people to shore up the remaining pieces of that, including the Capstone and portfolio. Then we can come together more quickly. Today's meeting will be run by Dean Gallini.

### **4. New Business**

None.

### **5. Adjourn, 12:14PM**

# **EXHIBIT 4**

**The Oregon Supervised Practice Pathway  
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**Section 1**  
**Background, Definitions, and Authorities**

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

**1.2 Definitions.**

- (A) **Admissions Department** means the Admissions Department of the Oregon State Bar.
- (B) **Board** means the Oregon State Board of Bar Examiners.
- (C) **Certificate of Eligibility** means a certificate issued by the Board under Rule 3.4.
- (D) **Employee** means any individual regularly providing work to an Employer and receiving compensation for that work, whether the individual is formally designated a partner, member, employee, of counsel, consultant, independent contractor, or other similar term.
- (E) **Employer** is a business entity, non-profit organization, or government agency (including instrumentalities thereof) that employs the Supervising Attorney, and employs or has agreed to employ a Provisional Licensee.
- (F) **Examiner** means a member of the Oregon State Board of Bar Examiners or a grader appointed by the Board to review and score portfolios.
- (G) **Final Portfolio** means a final compilation of the Provisional Licensee's work, as described in Rule 9.1.
- (H) **Halfway Portfolio** is a Portfolio submitted to the Board after a Provisional Licensee has completed at least 350 hours of Program work, as further described in Rule 7.1.
- (I) **Interim Portfolio** is a compilation of the Provisional Licensee's work, submitted while still pursuing the Pathway, as further described in Rules 7.1 – 7.2.
- (J) **Legal Work** means work that is commonly performed by licensed attorneys in Oregon. Legal work may include activities that are also performed by unlicensed individuals, as long as newly licensed attorneys working for the Employer or similar organizations regularly incorporate those activities in their work.
- (K) **Minimum Competence to Practice Law** as defined by the essential eligibility requirements of RFA 1.25.
- (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) **Ombudsperson** means an ombudsperson for this program appointed by the Board under Section 17.
- (M) **Pathway** means the Supervised Practice Pathway established by these rules.
- (N) **Provisional License** means the limited license to practice law conferred under the Supervised Practice Pathway.

- (O) **Provisional Licensee** means an individual practicing law within the Supervised Practice Pathway.
- (P) **PLF** means the Oregon State Bar Professional Liability Fund.
- (Q) **Portfolio** means either a Halfway Portfolio, Interim Portfolio, or Final Portfolio, as described in Rules 7.1 – 7.2 and 9.1.
- (R) **Program** means the Supervised Practice Pathway established by these rules.
- (S) **Program Manager** means the individual appointed by the Board to supervise the Supervised Practice Pathway. If the Board does not appoint a Program Manager, then the default Program Manager shall be Regulatory Counsel.
- (T) **Regulatory Counsel** means Regulatory Counsel to the Oregon State Bar.
- (U) **Rules for Admission** or **RFA** means the Rules for Admission of Attorneys published by the Oregon Supreme Court [CITE] with any subsequent amendments.
- (V) **Supervising Attorney** means (1) an individual who has committed to supervising a Provisional Licensee under Rules 2.4 – 2.5; or (2) an active member of the Oregon State Bar to whom the Supervising Attorney has delegated responsibility under Rule 5.4.
- (W) **SPP** means the Supervised Practice Pathway established by these rules.

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

**Section 2**  
**Qualifications of Pathway Participants**

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

- (A) Satisfies the criteria in RFA 3.05(1), (2) or (3) (Qualifications of Applicants);
- (B) Has applied for the Certificate of Eligibility described in Rule 3.4;
- (C) Has secured a commitment of employment with a qualified Employer;
- (D) Has secured a commitment from a qualified Supervising Attorney to serve in that role; and
- (E) Signs the “Oath for a Provisional Licensee” and files that document with Regulatory Counsel.

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

- (A) Is authorized to practice law, do business, regulate, or otherwise operate within Oregon;
- (B) Regularly practices law, does business, regulates, or otherwise operates within Oregon;

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

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

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

**2.4 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 three of the five years preceding the application;
- (D) Has no record of public discipline in any jurisdiction to which they are or have been members or satisfies the requirements of Rule 2.5;
- (E) Is employed by the same organization as the Provisional Licensee;
- (F) Is not an immediate family member of the Provisional Licensee they will supervise; and
- (G) Signs the “Declaration of Supervising Attorney” and files that document with the Admissions Department.

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

- (A) The latest disciplinary decision was entered more than 5 years before the individual’s application to serve as a Supervising Attorney;
- (B) No other disciplinary proceedings or investigations have been instituted against the individual since that time;
- (C) The individual submits a petition to the Board seeking waiver from the general rule stated in 2.5;
- (D) The petition explains their rehabilitation and fitness to serve as a Supervising Attorney; and
- (E) Following review of the petition, the Board waives the general rule.
  - (1) The Board or a subset thereof, may, but need not, interview the individual to determine their fitness to serve as a Supervising Attorney.
  - (2) The Board’s decision on the individual’s fitness will be final, without any right of appeal.

**Section 3**  
**Application and Admission to Program**

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

- (A) The application form for applicants will parallel the Board’s Bar Exam Application. In addition to seeking information about the applicant’s identity and eligibility for the SPP, the form will request information needed to determine whether the applicant has the good moral character and fitness to practice law prescribed by ORS 9.220(2). That information will be used to determine whether the applicant qualifies for the Certificate of Eligibility described in Rule 3.4.
- (B) Applicants and Provisional Licensees have a duty to update this application promptly and continuously under RFA 4.25(2). That duty lasts until the applicant is admitted to the Oregon State Bar, is denied admission to the State Bar, or withdraws their application for admission.
- (C) The application form for Employers will establish the Employer’s identity and seek evidence establishing that the Employer meets the qualifications listed in Rule 2.2 – 2.3.
- (C) The application form for Supervising Attorneys will establish the Supervising Attorney’s identity (including their OSB Member Number) and seek evidence establishing that the Supervising Attorney meets the qualifications listed in Rules 2.4 – 2.5.

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



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

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

- (A) If the Board determines that the applicant has the good moral character and fitness to practice law prescribed by ORS 9.220(2), the Board will issue the applicant a Certificate of Eligibility. That certificate will allow the applicant to obtain a Provisional License and participate fully in the Supervised Practice Pathway.
- (B) Alternatively, the Board may choose to issue a Certificate of Eligibility conditioned on specific probationary terms.
- (C) If the Board denies the applicant a Certificate of Eligibility, it will provide the written notice specified by RFA 6.05(5). The applicant may contest the Board's denial by requesting an evidentiary hearing pursuant to RFA 9.01. Any evidentiary hearing shall be conducted pursuant to the process identified in RFA 9.05 to 9.60.
- (D) While awaiting the Board's decision on whether to issue a Certificate of Eligibility, an otherwise qualified applicant may begin working and accumulating hours within the Supervised Practice Pathway. Until Regulatory Counsel issues a Provisional License to the Applicant under Rule 3.6, the applicant may not undertake any activities that require a license to practice law, unless currently licensed under a Student Practice License (RFA . Hours worked during this period that meet the requirements of Rule 6.12, however, count towards the hours requirement in that rule.

**3.5 Admission to Pathway.** When an applicant has established that the requirements of Rules 2.1 – 2.5 have been met, Regulatory Counsel will notify the applicant, Employer, and Supervising Attorney that the applicant has been accepted into the Supervised Practice Pathway and may undertake activities permitted by the Provisional License.

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

- (A) Issue the applicant a document evidencing their Provisional License; and

- (B) Notify the Employer and Supervising Attorney that the applicant has received a Provisional License.

**Section 4**  
**Professional Liability Insurance**

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

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

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

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

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

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

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

**5.1 Role and Duties of Provisional Licensees.** Provisional Licensees will work diligently and ethically to serve clients and complete any assignments made by their Supervising Attorney(s).

At the same time, they will work diligently and ethically towards completing all required components of the Pathway. In carrying out these dual roles, all of the following apply:

- (A) The needs of clients must take precedence over completing the requirements of the Pathway.
- (B) Work assigned by the Supervising Attorney should also take precedence over completing the requirements of the Pathway, although Supervising Attorneys and Employers will make every effort to accommodate completion of Pathway requirements (see Rules 5.2 and 5.3 below).
- (C) Provisional Licensees must adhere to the constraints specified in the Temporary Supervised Practice Rules, RFA 13.10 to 13.20, as they apply to law students qualified under RFA 13.20(1).
  - (1) Provisional Licensees do not have to satisfy the qualifications for eligibility in RFA 13.20, nor need they follow the certification procedure outlined in RFA 13.25. The qualifications and application procedures specified in these rules govern the Supervised Practice Pathway.
  - (2) A Provisional Licensee who has never taken a course in evidence, however, must follow the limits of RFA 13.20(2)(d) unless the Supervising Attorney represents to the court under RFA 13.10(6) that the Provisional Licensee has obtained similar knowledge of evidence through MCLE programs or other means.
- (D) To be eligible for admission to the Oregon State Bar through this Pathway, Provisional Licensees must complete all of the Pathway components specified in Section 6 of these rules; submit at least one Interim Portfolio as specified in Rule 7.1; and submit their Final Portfolio as specified by Rules 8.1 – 8.2.

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

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

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

- (A) Watch or attend the training sessions described in Section 14 of these rules;
- (B) Supervise the Provisional Licensee’s schedule and workload to give the Provisional Licensee sufficient time to complete all Pathway components;
- (C) Accommodate the Provisional Licensee’s reasonable requests for work that will help them complete the Pathway or otherwise develop their professional skills;
- (D) Supervise the work of the Provisional Licensee, and assume personal professional responsibility for that supervision, in the manner required by RFA 13.30;
- (E) Complete the Pathway rubrics for client interviews, counseling sessions, and/or negotiations to satisfy the Pathway 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 Delegation of Supervising Attorney’s Duties.** Supervising Attorneys may delegate the duties outlined in Rule 5.3(D) – (G), as well as the responsibility specified in RFA 13.30, to another Employee working for the Employer if that Employee:

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

**5.5 Dual Supervising Attorneys.**

- (A) A Provisional Licensee may work for two Supervising Attorneys concurrently if each Supervising Attorney meets the qualifications specified in Rules 2.4-2.5 and the following conditions are satisfied:
  - (1) The Supervising Attorneys must coordinate their supervision to assure that the Provisional Licensee is able to meet Program requirements; and
  - (2) If the Supervising Attorneys work for different Employers, each Employer must meet the qualifications specified in Rules 2.2 – 2.3, and those Employers must follow the conflict of interest and screening requirements that apply when one lawyer (the Provisional Licensee) works for two different organizations [CITE].
- (B) If a Provisional Licensee works for two Supervising Attorneys concurrently, the Provisional Licensee may include in their Portfolio work product and rubrics from either or both Supervising Attorneys.

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- (C) A Provisional Licensee may not work for more than two Supervising Attorneys concurrently although, as provided in Section 15, a Provisional Licensee may have multiple Supervising Attorneys over time.

## **Section 6 Program Requirements**

**6.1 Overview of Program Requirements.** The Program has ten substantive requirements and an hours requirement, each described in more detail in the rules below. The substantive requirements are:

- (A) Completion of a learning plan for accomplishing the below activities;
- (B) Diligent, competent, and professional work on all Legal Work assigned to the Provisional Licensee by their Supervising Attorney;
- (C) Production of at least 8 pieces of written work product;
- (D) Leadership of at least 2 initial client interviews or client counseling sessions;
- (E) Leadership of at least 2 negotiations;
- (F) Completion of the Professional Liability Fund’s “Learning the Ropes” CLE program;
- (G) Evidence of competence in professional responsibility as described in Rule 6.7;
- (H) Completion of at least 10 hours of activities exploring diversity, equity, inclusion, or access to justice issues;
- (I) Completion of regular timesheets recording all time devoted to the Pathway; and
- (J) A Portfolio organizing the above Pathway components.

In addition to these required components, Provisional Licensees may choose to participate in the New Lawyer Mentoring Program as described in Rule 6.14.

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

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

- (A) Rule 1.2(J) defines “Legal Work” for the purpose of this Program.
- (B) Provisional Licensees must perform this work diligently, competently, and professionally.

- (C) A Provisional Licensee should not attempt work for which they feel unprepared or incompetent to perform. Instead, the Provisional Licensee should discuss their reservations with the Supervising Attorney and seek appropriate assistance.

**6.4 Written Work Product.**

- (A) Each Provisional Licensee must prepare and submit at least 8 pieces of written work product. Written work product may take any form that lawyers use in their practices including, but not limited to, memos, letters, emails, white papers, complaints, motions, briefs, contracts, legal or statutory analysis blog entries, issues briefs, and wills. All submitted work product, however, must comply with the following requirements:
  - (1) The work product must address some substantive aspect of a legal matter, as well as a prediction, conclusion, or recommendation related to that issue.
  - (2) At least 2 of the pieces of work product must be at least 1500 words long, and each of the other pieces must be at least 300 words long, not including headers or signature blocks. Footnotes do count towards the word totals.
- (B) Each piece of work product must be accompanied by a statement from the Supervising Attorney. The Board will provide a template for this statement certifying that (1) the work product meaningfully reflects the written work of the Provisional Licensee, and (2) the legal analysis is accurate. The statement should also indicate if and how the Employer used the work product.
- (C) Each piece of work product must also be accompanied by a cover sheet completed by the Provisional Licensee. The Board will provide a standardized template for the cover sheet, seeking brief information about the context for the work product, the strategy used for any necessary research, and whether a template formed the foundation of the work product.
- (D) If the Provisional Licensee used a template or form as the foundation for the work product, the Provisional Licensee must also:
  - (1) Submit a copy of the original template or form 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:
  - (1) The work product must be redacted to protect the client’s interests; and
  - (2) If the work product was not filed publicly, the client must consent in writing to inclusion of the work product in the Portfolio. Once a document has been publicly filed, it is available to any person under Oregon law.
- (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. The Board will also maintain an “issue bank” of materials that can be used by Provisional Licensees to

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fulfil the writing requirements of the program. All mock work product must comply with subsections (A) through (D) above.

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

- (A) If an interview or counseling session is conducted orally, the Supervising Attorney will observe the interaction. Before beginning the interview or counseling session, the Provisional Licensee and Supervising Attorney will explain their roles and obtain the client's oral consent.
- (B) If an interview or counseling session is conducted in writing, the Supervising Attorney may assess the interaction as it unfolds or after it has been completed. Client consent is not required for this type of assessment. Interviewing or counseling performed in writing must include sufficient exchange between the client and Provisional Licensee, so that the Supervising Attorney can assess the Provisional Licensee's ability to identify legal issues and convey information and responsiveness to client questions and specific needs.
- (C) For each of the two interviews or counseling sessions, the Supervising Attorney will complete a rubric provided by the Board, share the completed rubric with the Provisional Licensee, and offer any additional feedback that would assist the Provisional Licensee's development. The rubric will include an attestation that the Provisional Licensee led the interview or counseling session, with little or no assistance from the Supervising Attorney.
- (D) After completing the interview or counseling session and receiving feedback from the Supervising Attorney, the Provisional Licensee will complete a cover sheet about the interview or counseling session using a template provided by the Board.
- (E) "Client" should be interpreted in the context of the Provisional Licensee's practice position. A Provisional Licensee working in a government agency, for example, may have other government employees as clients; a Provisional Licensee working inhouse at a business or other organization, may have other members of that organization as clients. A Provisional Licensee working as a prosecutor may use interviews or discussions with complainants to satisfy this component of the Program.
- (F) For Provisional Licensees who cannot satisfy this Program component as part of their supervised practice, the Admissions Department will maintain a list of approved opportunities (including simulations) for meeting this component. Subsections (A) – (E) will apply to those opportunities, except that client consent is not necessary for simulations.

**6.6 Negotiations.** Each Provisional Licensee must conduct two negotiations that are assessed by the Supervising Attorney. A negotiation includes any discussion aimed at reaching an

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agreement. It may occur in the context of litigation, transactional, regulatory, or other matters. The negotiation does not have to focus on final resolution of the matter; it may focus on preliminary or interim matters. Negotiations may be conducted orally (in person, by phone, or by video) or in writing (by exchange of letters, emails, or other electronic messages).

- (A) If a negotiation is conducted orally, the Supervising Attorney will observe the negotiation. Before beginning the negotiation, the Provisional Licensee and Supervising Attorney will explain their roles and obtain oral consent from other attorneys participating in the negotiation. If the Provisional Licensee/Supervising Attorney's client is present, the client must also provide oral consent.
- (B) If a negotiation is conducted in writing, the Supervising Attorney may assess the negotiation as it unfolds or after it has been completed. Consent from opposing counsel or clients is not required for this type of assessment. (C) Negotiations need not be complex or lengthy, but they must offer an opportunity for the Supervising Attorney to assess both the Provisional Licensee's ability to express their position and their responsiveness to opposing counsel.
- (C) For each of the negotiations, the Supervising Attorney will complete a rubric provided by the Board, share the completed rubric with the Provisional Licensee, and offer any additional feedback that would assist the Provisional Licensee's development. The rubric will include an attestation that the Provisional Licensee led the negotiation, with little or no assistance from the Supervising Attorney.
- (D) After completing the negotiation and receiving feedback from the Supervising Attorney, the Provisional Licensee will complete a cover sheet about the negotiation using a template provided by the Board.
- (E) For Provisional Licensees who cannot satisfy this Program component as part of their supervised practice, the Board will maintain a list of approved opportunities (including simulations) for meeting this component. Subsections (A) – (D) will apply to those opportunities, except that consent from other counsel or clients is not necessary for simulations.

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

- (A) Provisional Licensees may demonstrate their competence in issues of professional responsibility in one of three ways:
  - (1) Achieving a score of at least 85 on the Multistate Professional Responsibility Exam (MPRE); or
  - (2) Devoting at least one of the pieces of written work product required by Rule 6.4 to a professional responsibility issue; or
  - (3) Devoting at least 10 hours to discussing, researching, or writing about professional responsibility issues related to their practice or that of others. Provisional Licensees who choose this option must document their exploration of these issues in a log, briefly



noting topics explored, conclusions reached, and time devoted to each exploration. The Board will provide a template for this log.

(B) An Examiner will independently assess the content of work submitted under options (2) and (3).

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

**6.9 Learning the Roles.** The Provisional Licensee must attend or watch all 15 hours of the most recent “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.

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

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

**6.12 Hours.**

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

- (A) All time 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 6.2 – 6.11.
- (C) All time spent discussing or learning about Program components with a Supervising Attorney, other Employees of the Employer, the Program Manager, or an Ombudsperson;
- (D) All time spent reviewing or reflecting on feedback from the Board on Interim 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 20 additional hours of MCLE activities.

**6.13 Credit for Work in JD Program.** As provided in this rule, Provisional Licensees who have earned a JD from an ABA-accredited law school may apply some work completed during their JD enrollment to Pathway requirements.

- (A) Provisional Licensees may receive credit for any of the following work completed during their JD enrollment:
  - (1) Up to 5 academic credits earned in a clinic, externship, or simulation course, with each credit counting for 45 of the hours required by Rule 6.12;
  - (2) Up to 2 pieces of the written work required by Rule 6.4;
  - (3) One of the client interviews or counseling sessions required by Rule 6.5; and
  - (4) One of the negotiations required by Rule 6.6.

(B) To claim credit for the work listed in subsection (A), Provisional Licensees should include the following documentation in their Portfolios:

- (1) A law school transcript documenting academic credits claimed for work in clinics, externships, or simulations. For work done in simulations, Provisional Licensees should also provide a catalogue description or syllabus for the course.
- (2) For written work, client interviews or counseling sessions, and negotiations, the documents specified by Rules 6.4 – 6.6 for each of those components. The Supervising Attorney statements and rubrics required for those components may be provided by any graduate of an ABA-accredited law school who supervised the Provisional Licensee for that component, even if that graduate does not meet the qualifications of a Supervising Attorney under Rules 2.4 – 2.5. The documents submitted for these components need not have been completed contemporaneously with the component.

(C) Provisional Licensees may claim the credits specified in this rule at any time, but they are encouraged to submit documentation with the first Interim Portfolio they submit.

**6.14 New Lawyer Mentoring Program (NLMP).** Participation in the NLMP is waived for Provisional Licensees, although Provisional Licensees who work for solo practitioners, small law firms, or other small organizations are encouraged to consider participation in the NLMP. Provisional Licensees who do participate in the NLMP may count up to 20 hours of that participation as part of the hours counted under Rule 6.12(F), even if the NLMP hours do not carry MCLE credit. In no case, however, may the total hours counted for NLMP participation and additional MCLE activities exceed 20.

## **Section 7 Interim Portfolios**

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

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

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

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

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

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

- (A) Portfolio components that receive a “qualified” score will count towards the Final Portfolio score. Provisional Licensees need not resubmit those components; nor will any additional Examiners review them. The Board will maintain a record of all components that achieve a qualified score during Interim Portfolio reviews.
- (B) If a Portfolio component receives a score of “not qualified,” the Provisional Licensee may either:
  - (1) Challenge that score following the provisions of Rule 9.4; or
  - (2) Submit a replacement component with a subsequent Interim or Final Portfolio. The replacement component must be a new piece of work, not a revised version of the original submission. If a Licensee submits a replacement component, the original component and its score will be removed from the Provisional Licensee’s record. The

Admissions Department, however, will maintain anonymized records of replaced documents (as provided in Rule 20.1) to inform its Program Review.

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

## **Section 8 Final Portfolios**

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

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

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

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

- (A) If the Examiner marks each component of the Final Portfolio as “qualified,” the Examiner will transmit the Portfolio and completed rubrics to the Admissions Department, noting that the Provisional Licensee appears to have demonstrated their minimum competence to practice law by passing all Program requirements. The Examiner will forward copies of this notice and the completed rubrics to the Provisional Licensee for their information.
- (B) If the Examiner marks any component of the Final Portfolio as “not qualified,” the Provisional Licensee may challenge that score as provided in Rule 9.4.
  - (1) If any challenges result in a “qualified” score for all components, the Examiner will transmit the Portfolio and modified rubrics to the Admissions Department as provided in subsection (A).
  - (2) If any component of the Final Portfolio retains a score of “not qualified” after the challenge process has ended, the Admissions Department will notify the Provisional Licensee of that fact and provide copies of all rubrics and statements concerning the deficient components.
- (C) If a Final Portfolio fails to earn a “qualified” score on each component, the Provisional Licensee may submit another Final Portfolio as provided in Rules 8.1 and 8.2. There is no limit on the number of Final Portfolios that a Provisional Licensee may submit.

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

**9.1 Examiner Review.** The Board will create and publish rules for review and grading of portfolios that follow best practices, account for bias, and address conflicts (Section 13).

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

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

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

**9.4 Challenges to Component Scoring.** Provisional Licensees may challenge any “not qualified” score by filing a notice with the Admissions Department, using the form provided for that purpose.

- (A) The notice form will provide an opportunity for the Provisional Licensee to offer a brief statement of why they believe the component deserves a “qualified” score. The form

will also allow the Supervising Attorney to offer a brief statement if they choose to do so.

- (B) The Examiner who entered the challenged score will review the Provisional Licensee's notice and accompanying statement(s). If that information persuades the Examiner to change the score to "qualified," the Examiner will complete a second rubric noting that decision and marking the component "qualified." The challenge will then end.
- (C) If the Examiner adheres to the "not qualified" score after reading the Provisional Licensee's notice and accompanying statement(s), the Examiner will provide a brief statement explaining their decision to the Provisional Licensee.
- (D) If the Provisional Licensee chooses to continue the challenge after the Examiner's second review, the Board will appoint a second Examiner to review the challenged component. The second Examiner will review the original submission, the first Examiner's original scoring rubric, the Provisional Licensee's notice and accompanying statement(s), and the First Examiner's statement explaining their adherence to a "not qualified" score.
- (D) After reviewing the above materials, the second Examiner will determine whether the component is "qualified" or "not qualified." The second Examiner's decision will control and will conclude the challenge. If the second Examiner scores the component as "not qualified," the Provisional Licensee will retain the opportunity to replace that component in future portfolios.
- (E) For challenged components that are ultimately scored "qualified," the Admissions Department will remove the original rubric and all evidence related to the challenge from the Provisional Licensee's file. The Admissions Department, however, will maintain anonymized records of original rubrics and challenges (as provided in Rule 20.1) to inform the Board's Program Review.

## **Section 10**

### **Admission Decision**

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

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

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

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

## **Section 11 Accommodations**

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

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

## **Section 12 Transparency**

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

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

### Section 13 Conflicts

**13.1 Examiner/Provisional Licensee Conflicts.** Examiners will review Provisional Licensees' Portfolios anonymously, but the Program seeks to avoid even the appearance of favoritism or bias by an Examiner. The 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.

**13.2 Other Client Conflicts.** Work product in Portfolios will be redacted under Rule 6.4(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 Interim or Final Portfolio.
- (C) Before assigning the Interim 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.

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

#### **Section 14**

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

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

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

(A) These training sessions will be videotaped so that Supervising Attorneys can watch them at their convenience.

(B) Supervising Attorneys may claim MCLE credit for attending these sessions.

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

**14.4 Training of Provisional Licensees.** The Board will create up to 2 hours of introductory training to orient Provisional Licensees to the Program. Among other elements, this training will introduce the Provisional Licensees to the Ombudspersons described in Section 17. Provisional Licensees must attend this training in person or view it online. They will be able to claim MCLE credit for these training hours and also count the time towards their Program hours.

#### **Section 15**

##### **Changes in Status**

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

(A) If another attorney working for the Employer is able and willing to serve as a Supervising Attorney, that individual should complete the "Declaration of Supervising Attorney" described in Rule 2.4(G) and file it with the Admissions Department.

(B) If the Admissions Department agrees that the individual described in subsection (A) is qualified to serve as a Supervising Attorney, the Admissions Department will notify the Provisional Licensee, Supervising Attorney, and Employer of that fact.

(C) If no other attorney working for the Employer is willing to serve as the Provisional Licensee's Supervising Attorney, the Provisional Licensee may seek a new Supervising Attorney and Employer as provided in Rules 2.2 – 2.5.

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

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

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

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

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

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

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

**16.3 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.

### **Section 17 Ombudspersons**

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

**Commented [ats4]:** Additional changes may be necessary after meeting with Ombudsperson for input.

**17.2 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.

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

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

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

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

## **Section 18**

### **Client Assistance Office Complaints**

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

- (A) The Provisional Licensee must include with those notices the actual complaint materials filed by the complaining party.
- (B) Regulatory Counsel shall forward the complaint to the Client Assistance Office and name the Supervising Attorney as an additional attorney against whom the complaint is filed.

- (C) The Provisional Licensee’s license will remain in effect pending investigation by the Client Assistance Office, but the Supervising Attorney and/or Employer may restrict the Provisional Licensee’s work if they believe that is necessary to protect clients.

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

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

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

**Section 19**  
**Termination of Provisional License**

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

- (A) The Provisional Licensee is admitted to the practice of law in Oregon;
- (B) The Provisional Licensee receives notice under RFA 6.05(5) that the Board is not satisfied that Provisional Licensee has demonstrated that they have the good moral character and fitness to practice law;
- (C) The Provisional Licensee is disbarred or suspended from the practice of law in any other jurisdiction;
- (D) The Provisional Licensee resigns from the practice of law in another jurisdiction while a disciplinary action is pending in that jurisdiction;
- (E) A formal complaint is filed against the Provisional Licensee by the Disciplinary Counsel’s Office of the Oregon State Bar;
- (F) An indictment is filed against the Provisional Licensee; or
- (G) The Provisional Licensee receives a Notice of Termination of Provisional License, to which the Provisional Licensee does not offer an objection as described in Rule 19.2(C) below.

**19.2 Termination for Cause.** If Regulatory Counsel receives evidence that continued practice by the Provisional Licensee poses a significant threat to clients or the public, then Regulatory Counsel may provide a Notice of Termination of Provisional License to the Provisional Licensee

by email marked "high priority," stating the grounds for concern and copying the Provisional Licensee's Supervising Attorney and Employer, as well as the Board Chair. The Notice shall state that pursuant to Rules 19.1(G) and 19.2(C), the Provisional Licensee must file an objection within 10 business days, or the Provisional Licensee's license shall automatically terminate.

- (A) A rebuttable presumption that the Provisional Licensee is a significant threat to clients or the public is created by the following:
- (1) The filing of 3 or more complaints with the Client Assistance Office;
  - (2) The filing of 2 or more PLF claims against the Provisional Licensee; or
  - (3) Evidence gathered by, or presented to, Regulatory Counsel demonstrating that the Provisional Licensee:
    - (a) Regularly violates Oregon's Rules of Professional Conduct;
    - (b) Has engaged in the practice of law for a client, or through a process, that is not permitted under this Program;
    - (c) Has intentionally evaded the supervision of the Provisional Licensee's Supervising Attorney on any legal work performed; or
    - (d) Has knowingly submitted a false or misleading statement in an Interim or Final Portfolio, or has knowingly submitted work product in a Portfolio that unreasonably takes credit for work product that was completed by others.
- (B) Any presumption created by this rule may be overcome only through clear and convincing evidence that:
- (1) The facts underlying the presumption are not true, or
  - (2) Despite the truth of the facts underlying a presumption, the Provisional Licensee is not a significant threat to clients or the public.
- (C) The Provisional Licensee will have 10 business days after the email is sent to file an objection by reply email to Regulatory Counsel, copied to the Board Chair, the Supervising Attorney, and the Employer. An objection shall include any evidence supporting the Provisional Licensee's position. If the Provisional Licensee does not submit an objection within 10 business days, the Provisional Licensee's Provisional License will automatically terminate pursuant to Rule 19.1(G).
- (D) The Provisional Licensee's Supervising Attorney and/or Employer may also respond to the Notice of Termination, but they are not required to do so.
- (E) After considering the objection and supporting evidence, Regulatory Counsel may choose to withdraw the Notice of Termination and notify the Board Chair, the Provisional Licensee, Supervising Attorney, and Employer that the Notice has been withdrawn.
- (F) If Regulatory Counsel chooses to pursue termination of the Provisional Licensee's license, Regulatory Counsel must submit a new Show Cause Hearing notice to the Provisional Licensee, Supervising Attorney, Employer, and Board Chair. The notice shall

be sent via email, marked “high priority,” and shall identify the basis for the Show Cause Hearing, which must be one of the following:

- (1) That Regulatory Counsel reasonably believes that the evidence attached to the Provisional Licensee’s objection does not overcome the rebuttable presumptions created by Rule 19.2(A)(1) – (3), because it does not meet the standard set forth in Rule 19.2(B);
  - (2) That Regulatory Counsel reasonably believes that evidence in its possession contradicts or calls into question the evidence included in the Provisional Licensee’s objection; or
  - (3) That Regulatory Counsel reasonably believes the totality of evidence against the Provisional Licensee establishes that the Provisional Licensee is a significant threat to clients or the public.
- (G) If the basis of the Show Cause Hearing is Rule 19.2(F)(2) or (3), then Regulatory Counsel must include all evidence it considered in reaching the reasonable beliefs identified in those subsections about the Provisional Licensee’s evidence or threat level.
- (H) The Board must hold a Show Cause Hearing on the Notice of Termination, set at least 15 business days after issuance of the Show Cause Hearing notice in subsection (F) but not more than 45 business days after issuance of that Show Cause Hearing notice. When scheduling the Show Cause Hearing, all reasonable efforts will be made to schedule the hearing on a date for all witnesses may be present.
- (I) The Board shall have a Show Cause Hearing before a panel of 3 members. Within 5 business days following the Show Cause Hearing notice from Regulatory Counsel, the Board Chair shall issue a Show Cause Order identifying the date of the Show Cause Hearing and outlining the procedural rules by which the hearing will be conducted. The Show Cause Order shall allow at least 10 business days for discovery and the issuing of subpoenas before the Show Cause Hearing is held.
- (J) At the hearing, the panel will receive documentary and oral evidence from Regulatory Counsel, the Provisional Licensee, and any other interested parties who choose to participate in the hearing. Once all evidence is received, panelists may 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 14 business days of the Show Cause Hearing. The decision shall state whether the Regulatory Counsel established a rebuttable presumption that the Provisional Licensee is a significant threat to clients or the public; whether the Provisional Licensee overcame that Rebuttable Presumption through clear and convincing evidence to the contrary; and whether, in looking at the totality of the evidence, the Board believes that the Provisional Licensee presents a significant threat to clients or the public. The Board’s decision on that matter is final.

- (L) Any error in procedure, in admitting or excluding evidence, or in ruling on evidentiary or discovery questions shall not invalidate a finding or conclusion, or require that a new or supplemental Show Cause Hearing be conducted, unless the error resulted in the denial of a fair hearing.
- (M) A finding that the Provisional Licensee presents a significant threat to client's or the public shall terminate the Provisional Licensee's Provisional license. The former Licensee may reapply to the SPP or pursue other pathways for admission to the Bar, but the Board will consider the facts underlying termination of the Provisional License when assessing the former Licensee's good moral character and fitness to practice law.

**19.3 Mandatory Steps Upon Termination.** Upon termination of the Provisional License, the Provisional Licensee may not undertake any new representation that would require a law license and must, within 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 20 Program Review

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

**20.2 Review of Minimum Competence Standard.** At least once a year, the Board will randomly select several completed Portfolios to assess whether those Portfolios—taken as a whole—demonstrate minimum competence to practice law. If the Board finds that the Portfolios do not meet that standard, it will consider revisions to its rubrics or these rules.

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

**20.4 Annual Report.** The Board will submit an annual report to the Oregon Supreme Court, noting the number of applicants to the Program, the number of Provisional Licenses granted, and the number of Provisional Licensees admitted to the Bar. The report will also note any

insights gathered from the reviews described in Rules 20.1 – 20.3; and any proposals for improving the Program.

**Section 21**  
**Amendments to These Rules**

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

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



# **EXHIBIT 5**

## Notes on Draft SPP Rules

This document summarizes key discussion points of the SPP subcommittee, and includes explanations on where the subcommittee chose to deviate from general recommendations in the Task Force's original and supplemental reports.

The subcommittee used the PLP rules as a framework for its discussion, and the draft rules maintain some of the language from those rules. The subcommittee deleted PLP Rules that were not appropriate for a more permanent program. For this and other reasons, the numbering of the SPP rules differ from that of the PLP rules.

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

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

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

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

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

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

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

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

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

Experience Level: The Task Force recommended that Supervising Attorneys have 5-7 years' experience, although it noted that a later committee should decide whether that requirement was appropriate. The subcommittee concluded that attorneys gain expertise quickly in today's workplace, and that some organizations (especially government agencies and nonprofits) experience high levels of turnover that push attorneys quickly into supervisory roles. Attorneys with 3-5 years of experience, moreover, may be especially capable of supervising Provisional Licensees because they are close to their own learning years. The subcommittee, therefore, chose

to require that a Supervising Attorney have “been an active member of the bar in at least one jurisdiction for at least three of the five years preceding the application.” The subcommittee retained the Task Force’s recommendations that the supervising attorney have an active Oregon license and have had such a license for at least 2 years.

Family Members: The subcommittee added a requirement that the *Supervising Attorney* should not be an immediate family member of any Provisional Licensee they supervise, while the PLP rules provide that no immediate family member may work for the Provisional Licensee’s employer. The subcommittee thought that the PLP prohibition was too broad. The Task Force report did not address this issue. The subcommittee considered defining “immediate family member,” but decided to allow the Board to define that phrase through application.

Federal Judges: The Task Force suggested that a future committee consider whether it would be appropriate to allow federal judges located in Oregon to serve as Supervising Attorneys even if they are not active members of the Oregon bar. The subcommittee decided against including this exception. Although the subcommittee respects the competence and integrity of federal judges, membership in the state bar is necessary to enforce the professional responsibility obligations that attend supervision. Under the proposed rules, federal judges who are active members of the Oregon bar may serve as Supervising Attorneys, but judges without that status may not.

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

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

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

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

The Task Force report did not consider the intersection of the SPP with Character and Fitness review. The PLP rules require provisional licensees to pass character and fitness review (and obtain a “Certificate of Eligibility”) before starting the program. The subcommittee agreed with this approach but recognized that Character and Fitness review sometimes takes several months. For that reason, the draft SPP rules allow applicants to begin accumulating hours that count towards completion of the SPP while they are undergoing Character and Fitness review. Applicants may not perform any work that would require a law license during this time, unless they retain a valid student license, but they may complete other work for the SPP.

#### **Section 4: Professional Liability Insurance**

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

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

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

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

Time Limit on Pathway: The PLP rules require provisional licensees to complete their work within 18 months (although tolling of that time is allowed under specified circumstances). The Task Force, similarly, suggested that supervised practice hours “must be completed within a set window of time” and that “consumer protection dictates that the supervised practice hours occur within a reasonably condensed period of time to ensure that the lessons that are learned through repetition and consistent exposure to concepts are not lost to time.” The subcommittee, however, concluded that a time limit was unnecessary and would burden the Admissions Department with tracking and petitions for waiver. Provisional Licensees have a strong incentive to complete the SPP and be fully admitted to the bar as quickly as possible. When delays occur, those are likely to stem from illness, disability, or family caretaking. The subcommittee did not want to penalize Provisional Licensees who encounter those conditions—or subject the Admissions Department to petitions for tolling or waivers of a time limit.

The subcommittee also concluded that the interests of Employers will restrain the amount of time that Provisional Licensees spend in the program. Employers also have a strong incentive to have their Provisional Licensees fully admitted to the bar; they are likely to encourage Licensees to achieve that goal as quickly as possible. Conversely, SPP Employers have no obligation to maintain the employment of Provisional Licensees. If a Licensee is not progressing quickly enough, or is unable to perform competently, the Employer may and likely will discharge the Licensee.

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

This rule follows the Task Force’s recommendation that a Supervising Attorney should be able to delegate some responsibilities to other licensed attorneys in the organization. Under the proposed rule, the Supervising Attorney will retain exclusive authority to supervise the Provisional Licensee’s overall schedule and workload. Other active members of the Oregon Bar could supervise the Provisional Licensee on specific tasks, complete rubrics for the Provisional Licensee’s Portfolio, and provide feedback to the Provisional Licensee. The Supervising Attorney would have responsibility for identifying lawyers with the knowledge and skills to supervise the Provisional Licensee effectively. This decision was made as it better reflects active practice by a new attorney. Other programs that provide supervised paths to licensure provide similar models of formal supervision and task supervision.<sup>1</sup>

### **5.5 Dual Supervising Attorneys**

The Task Force Report stressed the importance of allowing Provisional Licensees to have more than one Supervising Attorney. This rule explicitly authorizes Licensees to have two concurrent Supervising Attorneys, while the rules in Section 15 provide for multiple Supervising Attorneys over time.

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

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

## **Section 6: Program Requirements**

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

**6.2 Learning Plan.** The Learning Plan will help Provisional Licensees plan and track completion of the program components. It will also serve as a model for project management and self-directed learning later in their careers. Licensees need to submit the Plan only once (with a

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<sup>1</sup> The PLP Rules do not explicitly allow delegation, but Regulatory Counsel has recently proposed that the Board and Supreme Court amend those rules to allow delegation as described in the draft SPP Rules.

Portfolio submitted halfway through the program), but they are encouraged to use it throughout the duration of the program.

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

The subcommittee concluded that the best approach was to define legal work with respect to the context in which the Provisional Licensee practices. The rule thus defines legal work as “work that is commonly performed by licensed attorneys in Oregon” and provides that this “work may include activities that are also performed by unlicensed individuals, as long as newly licensed attorneys working for the Employer or similar organizations regularly incorporate those activities in their work.”

The Task Force directed a future committee to consider whether two common types of work (document review and assistance to judges) should qualify as “legal work” within the SPP. The subcommittee concluded that these activities should qualify for the Pathway. Although both activities can be performed without a license, and neither involves a client, employers and judges often hire licensed lawyers for this work. More important, these activities expose new lawyers to a wide range of practical, doctrinal, and ethical issues. The breadth of exposure in these activities, in fact, may be larger than in some practice areas. Provisional Licensees working in one of these areas will still have to demonstrate their competence at client encounters and negotiations, but the subcommittee concluded that these competencies could be assessed through simulations for any Licensee who lacks those opportunities in the workplace.

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

Length of Documents: The subcommittee retained the PLP requirement that candidates submit two documents that exceed 1500 words, and it added a requirement that each of the other six

documents exceed 300 words. The subcommittee recognized that the average length of a passing essay on the MEE is 500 words, while the average length of a passing submission on the MPT is 1725 words. The subcommittee, however, did not feel that those word lengths translated to competent practice documents. BBX members on the subcommittee spoke strongly about the disorganization and unnecessary length of bar exam essays. The time constraints of the exam, they suggested, cause examinees to type as quickly as they can without thoughtful composition. Minimally competent documents composed in practice can be—and often should be—concise.

The subcommittee also reviewed two sample emails that analyzed evidentiary issues and found that, although the emails were just 322 and 341 words long, they were they type of documents that would demonstrate minimum competence in the SPP. Many documents submitted with SPP portfolios will exceed 500 words, but the subcommittee concluded that documents with 300-500 words could also demonstrate minimum competence. Similarly, the subcommittee found that documents with 1500-1725 words could demonstrate minimum competence in more complex contexts.

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

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

Authorship: The PLP rules require Provisional Licensees to submit independently authored writings, such as first drafts of writings that were revised by another attorney. The subcommittee found this approach problematic for several reasons: (a) Employers might not want to share first drafts outside their workplace; (b) the requirement might negatively impact attorneys with disabilities who work with copy editors and other assistants; and (c) even a first draft might reflect significant input from another attorney who discussed the writing with the candidate.

The subcommittee thus adopted an approach favored by judges and other employers who allow law students to use workplace products as writing samples. The draft SPP rules require the Provisional Licensee to submit a “statement from the Supervising Attorney certifying that the work product meaningfully reflects the written work of the Provisional Licensee.” The subcommittee believes that supervisors and clinical professors will understand this phrase.

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

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

Cover Sheet: The rule requires Provisional Licensees to prepare a brief cover sheet noting the context for the work, the strategy used for any research, and whether a template supplied the foundation for the work. This information will help the Board evaluate the work.

Templates: The rule recognizes that lawyers base some of their work on templates. If a template forms the foundation of a written work, the Provisional Licensee must provide a copy of the original template and highlight the portions representing the Provisional Licensee’s edits, additions, or other customization. Training materials will make clear that this requirement applies only when the Provisional Licensee worked closely with a single template. Provisional Licensees who review multiple samples to guide their work need not submit those samples. Training materials will also note that Provisional Licensees should not submit work that involves only minor modifications of a template; like other submissions, template-based writings should reflect legal analysis specific to the client’s matter.

Client Consent: When reviewing the draft PLP rules, the Supreme Court concluded that clients should consent to the inclusion of any written work in a Provisional Licensee’s portfolio. The subcommittee agrees that clients should consent in writing to submission of documents that have not been publicly filed, but believes that consent is unnecessary for publicly filed documents. The draft SPP rules differ from the PLP ones because they do not require filing of first drafts that might differ from the publicly filed version. If a writing included in a Provisional Licensee’s portfolio has been publicly filed, requiring client consent before sharing that document confidentially with the Board might raise confusion and concern for the client. The subcommittee, however, plans to ask bar counsel for input before finalizing its draft of this rule.

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



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

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

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

The draft rule requires client consent when a Supervising Attorney observes an oral session, but not when the Supervising Attorney reviews written exchanges. The subcommittee did not think consent was necessary in the latter context because the Supervising Attorney’s presence would not disrupt the session and only reviews of the session (not the written exchanges themselves) would be included in the portfolio. Bar counsel, however, has been asked to review this issue.

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

For negotiations conducted orally, the rule requires consent from other counsel and the Provisional Licensee’s client (if the client attends the negotiation). For negotiations conducted in writing, the subcommittee does not believe that any consent is necessary, but it will once again check this approach with bar counsel.

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

**6.7 Evidence of Competence in Professional Responsibility.** The Task Force envisioned that Provisional Licensees would take the MPRE to establish a competent understanding of the Rules of Professional Conduct. The subcommittee agreed that the MPRE offers one avenue for

measuring this competence. It found, however, that a Supervised Practice Pathway offers more authentic ways to assess that competence. The MPRE tests model rules, rather than Oregon's rules, and it consists solely of closed-book multiple-choice questions. Subcommittee members expressed frustration that the MPRE cultivated a sense that lawyers can answer ethical questions without consulting the text of Oregon's rules. They also noted that the ethical dilemmas that arise in practice are often more nuanced than the situations tested through the MPRE's multiple-choice questions.

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

- (A) Achieving a score of at least 85 on the Multistate Professional Responsibility Exam (MPRE); or
- (B) Devoting at least one of the pieces of written work product required by Rule 6.4 to a professional responsibility issue; or
- (C) Devoting at least 10 hours to discussing, researching, or writing about professional responsibility issues related to their practice or that of others. Provisional Licensees who choose this option must document their exploration of these issues in a log, briefly noting topics explored, conclusions reached, and time devoted to each exploration. The Board will provide a template for this log.

If Licensees choose either of the latter two options, an Examiner will independently assess the content of the work.

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

**6.9 Learning the Ropes.** The subcommittee concluded that this program, required of all newly licensed lawyers, would provide an essential foundation for Provisional Licensees.

**6.10 Timesheet.** The Task Force recommended that time devoted to the SPP should be documented "employing six-minute increments and contemporaneously kept time records that are approved/certified by the supervising attorney." The PLP rules softened this requirement slightly by allowing Provisional Licensees to document their time in 6- or 15-minute intervals. The subcommittee concluded that this type of timekeeping (whether in 6- or 15-minute intervals) was unnecessarily burdensome and would not provide useful information for the Board to review. Many lawyers do not record or bill their time; for Provisional Licensees working in those organizations, this requirement would introduce a new burden on both Supervising Attorneys and Provisional Licensees—and would detract from their client service. Even Provisional

Licenseses working for organizations that regularly record time would have to redact those records to protect client confidentiality, and would encounter other tracking difficulties as program hours are not limited to “billable” hours.

The subcommittee concluded that Provisional Licensees should record their program time on a weekly basis, with their Supervising Attorney approving the number of recorded hours. The rule provides that the Board will provide a template for this purpose. That provision will allow the Board to determine how much detail is desirable on these weekly records, although the subcommittee believes that a simple summary of weekly hours should be sufficient.

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

In the end, we based our decision in part on the experiential hours required by the Oregon Experiential Pathway rules. Those rules require candidates to complete 15 credits of experiential work. Under ABA Standard 310, each academic credit requires 45 hours of work.<sup>2</sup> The OEP, therefore, requires candidates to complete 675 hours of experiential work as part of their demonstration of minimum competence.

The subcommittee concluded that the same hours requirement should apply to the SPP.<sup>3</sup> Provisional Licensees will have already completed 3 years of law school, so their workplace hours build on an already extensive foundation. The primary measure of a Provisional Licensee’s competence, moreover, will come from assessment of the work submitted to the Board in their Portfolios. The Task Force did not have time to outline those submissions in detail, and may have relied more heavily on hours to signal minimum competence. The lesser hours proposed by the subcommittee complements the required work product by assuring that Provisional Licensees are exposed to about 20 weeks (5 months) of law practice.<sup>4</sup>

The subcommittee also noted that a heavier hours requirement would deter employers from participating in the SPP. Candidates who successfully complete the OEP will be licensed shortly

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<sup>2</sup> For courses that include classroom instruction, the requirement is just 42.5 hours because 50 minutes of classroom instruction count for a full hour under the ABA rules. To simplify its calculation, however, the subcommittee assumed 45 hours of work for each experiential credit required by the OEP.

<sup>3</sup> These hours exceed the average number of hours (400) spent by students preparing for and taking the bar examination, making this pathway more demanding than the exam pathway.

<sup>4</sup> If a Provisional Licensee logs 40 hours of program work each week, they would complete the hours requirement in about 17 weeks. The subcommittee, however, believes it is more realistic to assume that Provisional Licensees will average just 35 hours of program work a week. This allows for vacation days, lighter work days, sickness, and caretaking responsibilities. A Licensee who averages 35 program hours per week would complete the hours requirement in 19.3 weeks.

after graduation, while those who pass the bar exam are typically licensed in October. A requirement of 1000 hours would require about 29 weeks to complete, making SPP candidates ineligible for full licenses until late November—even if they began work immediately after law school graduation. The SPP supervision requirements impose burdens that employers are unlikely to tolerate for that long, especially if lawyers who have taken the bar exam are available for unsupervised work in October. If a Provisional Licensee begins shortly after graduation, they could complete their hours by mid-October—allowing them to obtain a full license on a schedule similar to that of graduates who take the UBE.

The subcommittee, finally, noted that some Provisional Licensees may need more than 675 hours to complete all of the work product and tasks required for their Portfolios. Those requirements buttress the hours requirement by assuring that a Provisional Licensee has engaged in a range of lawyering tasks to demonstrate their minimum competence. If a Provisional Licensee completes all of the Portfolio requirements within 675 hours, the subcommittee believes that the Licensee has offered ample demonstration of their competence to perform lawyering tasks.<sup>5</sup>

**6.13 Credit for Work in JD Program.** The Task Force suggested that Provisional Licensees might be able to use some of their JD work to satisfy program requirements. The subcommittee agreed with this suggestion and concluded that Licensees should be able to apply to Pathway requirements up to 5 academic credits (225 hours) from clinics, simulations, or externships; 2 pieces of written work; 1 client interview or counseling session; and 1 negotiation. These allowances assist Licensees without compromising the program’s validity or reliability. On the contrary, work done during law school may complement post-graduation work by demonstrating the Licensee’s competence in other doctrinal areas or by adding standardized exercises to the Portfolio. The subcommittee also noted that, even if a Provisional Licensee claimed credit for the full 225 hours of work done in law school, the Licensee would still devote at least 450 hours to the SPP—more than the average number of hours (400) that graduates devote to studying for the bar exam.

Portfolio components produced during a JD program must satisfy the rules governing those components. The Licensee’s professor or supervisor, in other words, must complete any required rubrics and statements. The Licensee, similarly, must complete the required cover sheets and reflections. These documents, however, may be created after the fact; they need not be

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<sup>5</sup> If the committee, BBX, or the Court disagrees with the subcommittee’s recommendation of 675 hours, the subcommittee would prefer to maintain that target number of hours but cut back on the activities that qualify for program credit. I.e., the subcommittee would drop some or all of subsections (B)—(F) in rule 6.12. Dropping those subsections, however, would create a different inconsistency with the OEP. Students enrolled in experiential education courses count hours devoted to classroom education, reviewing feedback, and the other types of work enumerated in those subsections. Requiring more than 675 hours to complete the SPP, when the OEP rests on that number of experiential hours, would be difficult to justify.

completed during the JD program. Requiring contemporaneous completion of these documents would disadvantage out-of-state candidates and others who did not plan to use the SPP while still in law school.

The Task Force suggested that JD activities might count towards the SPP only if the supervisors of those activities satisfied the SPP requirements for Supervising Attorneys, although the Task Force acknowledged that a subsequent committee might disagree after considering the issue more fully. The subcommittee did disagree with this suggestion. Although a focus on Oregon law is a strength of the SPP, Oregon lawyers frequently apply legal principles from other states when advising their clients. Work completed in an out-of-state clinic under the supervision of a lawyer licensed in that state can be as valuable in demonstrating minimum competence as work performed in Oregon. The subcommittee also noted that some law faculty members do not possess active law licenses, although they supervise excellent simulations for students. The subcommittee concluded that it could rely on the licensing systems of other states and the standards of ABA-accredited law schools to assure sufficient supervision of experiential work completed during law school. Any graduate of an ABA-accredited law school, therefore, may serve as the supervisor for experiential work completed during a JD program.

The subcommittee also disagreed with the Task Force's suggestion that there should be a time limit on how far back a candidate could reach to count JD hours and experiences. Lawyers rely upon foundational JD learning throughout their careers. If a candidate can demonstrate contemporary competence through other work, the committee did not see a reason to refuse credit for that foundational learning.

**6.14 New Lawyer Mentoring Program (NLMP).** The subcommittee drew some of its ideas for the Pathway structure and components from the NLMP, which Oregon requires for all newly licensed lawyers. After designing the SPP structure and components, the subcommittee concluded that the NLMP would be redundant for Provisional Licensees. The SPP itself provides the type of mentoring that new lawyers need. This rule thus waives the NLMP requirement for Provisional Licensees, although it encourages Licensees working for solo practitioners, small firms, and other small organizations to broaden their mentoring opportunities by participating in the NLMP. If a Licensee does participate in the NLMP, the Licensee may count up to 20 of those hours towards the SPP hours requirement. NLMP hours, however, count towards the cap on MCLE hours in Rule 6.12(F).

## **Section 7: Interim Portfolios**

**7.1 Required Interim Portfolio.** Building on New Hampshire's Daniel Webster Scholars Program, the Task Force suggested that Provisional Licensees should submit work product to the Board "at regular intervals." The subcommittee agreed with this suggestion: Licensees should receive feedback from the Board as they progress, rather than solely at the end of the program.

The subcommittee decided to require only one Interim Portfolio, submitted to the Board after completing 350 Pathway hours (i.e., about halfway through the hours requirement). This requirement will allow the Admissions Department to monitor Licensee progress while providing feedback to Licensees. Licensees must include evidence of at least three lawyering tasks (written work product, client encounters, and/or negotiations) in this Interim Portfolio.

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

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

**7.4 Review and Scoring of Interim Portfolios.** An important element of the SPP is that Portfolio components are scored as they are submitted, receiving a score of either “qualified” or “not qualified.” As explained further below, Licensees establish their minimum competence by obtaining a “qualified” score on every component of the Portfolio. This avoids the problems inherent in a more holistic scoring of Portfolios (see below), lessens the Board’s workload, and provides assurance to Licensees as they progress through the program. Once a component has been scored “qualified,” it will not be reexamined by the Board.

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

This rule also outlines the approach to components that receive a “not qualified” score. Following the PLP rules in part, Provisional Licensees may choose either to replace a deficient item in a future Portfolio or challenge the Examiner’s decision. Replacement pieces must constitute a new piece of work; the Licensee cannot submit a revised version of the original submission.

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

If a Licensee prefers to challenge a score of “not qualified,” the rules outline a procedure for those challenges (discussed in Section 9 below).

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

This Section describes the process of Final Portfolio review, incorporating rules from Sections 7 and 9. Review of the Final Portfolio does not differ substantively from that of Interim Portfolios. The process for challenging “not qualified” scores is identical to that for components of Interim Portfolios.

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

The rules in this Section provide more detail on the process of scoring Interim and Final Portfolios, as well as the process for challenging “not qualified” scores. The rules for review and scoring follow closely the PLP provisions. As Portfolios are submitted, a single Examiner scores the items in that Portfolio. All grading is done anonymously. Rubrics created by the Board to reflect minimum competence govern the scoring of written work product, client interviews or counseling sessions, negotiations, and when used, professional responsibility logs. Other components are scored “qualified” once they are complete.

The PLP rules reserve challenges to “not qualified” scores until after a Final Portfolio has been submitted. The subcommittee decided that it would be more efficient to allow challenges at any point in the process. Provisional Licensees are more likely to replace components than challenge their scores but, if a Licensee believes a score is unfair, it is better to resolve that dispute immediately. The rules governing challenges allow the Provisional Licensee to provide a brief explanation of why they believe the component deserves a “qualified” score. The Supervising Attorney may add to that explanation, but need not do so. The original Examiner will review the challenged component in light of this explanation. If they adhere to their “not qualified” score and the Provisional Licensee adheres to their challenge, the Board will appoint a second Examiner. That Examiner will make a final decision of “qualified” or “not qualified,” based on review of the original submission, the Licensee’s explanation, and any clarification offered by the original Examiner. This process should afford appropriate due process while respecting the Board’s time.

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

This section confirms that completion of the Pathway takes the place of a passing score on the UBE. It also describes a process for administratively confirming that Provisional Licensees have satisfied all of the Pathway requirements. Finally, the Section lays out a process for reviewing any updates to the Licensee’s application for admission that might raise character and fitness issues. Provisional Licensees need not undergo a full character and fitness review after completing the Pathway because that review is done before starting the program. The rules, however, require Licensees to update their applications and direct the Admissions Department to

refer applications to the Board if any of these updates raise character and fitness issues. The Board will create a form and process for this update.

### **Section 11: Accommodations**

This Section first notes that Provisional Licensees must seek any accommodations for workplace conditions or assignments from their Employer, not from the Board. Relatively few accommodations should be needed for the Pathway itself because the subcommittee designed the Pathway requirements using principles of universal design. E.g., the Pathway does not include any strict deadlines or timelines, Licensees may complete some requirements orally or in writing, and writings must “meaningfully reflect” the work of the author which allows for proof reading or typing by another.

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

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

### **Section 12: Transparency**

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

The website will also include other essential information, such as examples of program accommodations, links to the handbook and training materials, and introductions to the Ombudspersons.

### **Section 13: Conflicts**

Although Portfolios will be scored anonymously, the subcommittee wants to avoid any appearance of favoritism or conflicts of interest. This Section, therefore, establishes a process for



checking any conflicts of interest between Provisional Licensees and particular Examiners. The Section also creates a conflict-checking mechanism for work product submitted in Portfolios. Even though that work product will be redacted to protect client interests, the Board would not want an Examiner to inadvertently review work product on a matter for which they represent another party.

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

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

The Task Force suggested that Supervising Attorneys should complete all training before supervising any hours that would count towards Program requirements. The subcommittee did not think this was necessary because the Program rules, handbook, and website will offer a sufficient introduction to the Program. Training may also be more effective once participants have started to work with the Program.

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

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

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

This Section complements Section 15 by identifying the steps a Provisional Licensee must take if their license is temporarily suspended, explaining how a license may be reinstated, and providing that a Licensee may pick up the program where they left off after reinstating a license.

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

This Section provides for appointment of two Ombudspersons to assist Provisional Licensees, Supervising Attorneys, and Employers with both individual and systemic problems in the program. Two Ombudspersons are required in case one has a conflict of interest with respect on a particular issue. The subcommittee recommends that OEP and SPP meet together with an expert in the role of Ombudspersons and tailor a definition that can work across these two programs. The committee may want to modify the description after this meeting—or to correspond with any use of an Ombudsperson for the OEP.

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

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

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

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

Under Rule 18.2(M), a Provisional Licensee may reapply to the SPP or pursue other pathways to bar admission once a license has been terminated, but the Board will consider the facts underlying the termination in considering the former Licensee's character and fitness. The subcommittee considered whether to impose a waiting period, but concluded that existing processes already create a de facto waiting period. The Board would not issue a new Certificate of Eligibility to a candidate shortly after terminating that candidate's provisional license. And, although a candidate might sit for the bar exam after termination of a Provisional License, the Board would determine whether the candidate was ready for admission through its ordinary Character and Fitness review.

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

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

Additionally, the SPP subcommittee urges the full committee to require that the Board issue an different annual report that discusses the impact on attorney diversity (as defined by the OBA), access to justice, success in securing employment, and description of job types obtained across participants in all three of Oregon's licensing paths.

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

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

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

### **Other Notes**

Incentives for Supervising Attorneys. The subcommittee discussed various ways to incentivize lawyers to serve as Supervising Attorneys. Initial preliminary conversations suggested 3 credits of MCLE credit for every 6 months that they supervise a Provisional Licensee. The subcommittee liked this idea but thought that the credits should be tied to hours of supervision rather than months. The subcommittee suggested 3 hours of MCLE credit for 337 hours of supervision (approximately half the required number of program hours for participants). We decided, however, not to include this in the rules. Instead, the Admissions Department should decide on the appropriate amount of MCLE credit—and should resolve issues such as whether to divide credits between dual Supervising Attorneys.

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

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

Access to the SPP. The Task Force emphasized that candidates should have broad access to the SPP. In particular, the report recommended that candidates should not have to seek admission to the SPP immediately after qualifying; that candidates should be able to pursue multiple pathways (such as starting the SPP while also studying for the bar exam); that candidates should be able to pursue the SPP after failing a bar exam; and that there should be no cap on the number of

candidates pursuing the SPP. The subcommittee agreed with all of these points, but did not state them explicitly in the rules. Instead, the rules provide that anyone who meets the qualifications of Rule 2.1 may participate in the pathway. The above stipulations, however, could be added to the rules..

Breadth of Experience. The Task Force’s Supplemental Report noted that some concerns had been raised about SPP work lacking the breadth of subject matter tested on the bar exam. The Task Force noted, however, that the “depth of meaningful experience offered by the SPP more than makes up for this lack of breadth.” The subcommittee agreed with the latter conclusion. Based on the *Building a Better Bar* study and other sources, moreover, it noted that competent practice in *any* area draws upon knowledge and skills that transcend practice areas. Successful practice in any area, therefore, demonstrates the existence of that necessary foundation. For that reason, the subcommittee did not pursue any of the options identified in the Supplemental Report for increasing breadth. Those options, the subcommittee concluded, would detract from the Program’s focus on assessing the essential knowledge and skills needed for competent law practice.

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