

# OREGON STATE BOARD OF BAR EXAMINERS

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Dear Chief Justice,

On June 18, 2021, the Oregon State Board of Bar Examiners presented the Recommendations of the Alternatives to the Bar Exam Task Force to the Oregon Supreme Court. On January 12, 2022, the Court expressed “approval in concept” of the two principal pathways proposed by the Alternatives to the Bar Exam Task Force: the Supervised Practice Portfolio Examination (“SPPE”; then titled the Supervised Practice Pathway) and the Oregon Experiential Portfolio Examination (“OEPE”; then titled the Oregon Experiential Pathway).

Following your approval, the Oregon Board of Bar Examiners convened the Licensure Pathways Development Committee (“Committee”) comprised of a diverse array of attorneys and academics from across the state to draft proposed rules for these two pathways.<sup>1</sup> To support the work of the Committee, the Board also invited a wide range of local stakeholders and national licensing experts to participate in the Committee meetings and workgroups as an Advisory Group.<sup>2</sup> Participants in the Advisory Group include bar leaders from the county bar associations, affinity groups, and specialty areas; representatives from the National Conference of Bar Examiners and the Institute for the Advancement of the American Legal System; members of the judiciary; and other community members who expressed interest.

The Committee has met twice a month since April 2022. Shortly after convening the Committee created three workgroups: Outreach and Education; SPPE Development; and OEPE Development. Each workgroup met after organizational matters were discussed by the general Committee at the biweekly meetings.<sup>3</sup> The Outreach and Education Group designed a presentation which was reviewed by the Committee and has been presented to numerous membership organizations and bar associations across the state, including, for example, multiple county bars, OWLS, OCDLA, and OTLA. This presentation provided background on the recommendations of the Alternatives to the Bar Exam Task Force, introduced the SPPE and

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<sup>1</sup> For a complete list of Committee members see Appendix A.

<sup>2</sup> For a complete list of advisory members see Appendix B.

<sup>3</sup> Due to workload and timing some workgroups also hosted additional meetings at times that were convenient for the majority of participants, but all public meeting rules were followed, and all Committee and advisory members were invited to all meetings.

OEPE concepts, and solicited feedback on what the SPPE and OEPE programs should include. Notably, the Oregon State Bar Bulletin covered the work of the Committee as its cover story in its February/March Issue.<sup>4</sup>

While this outreach occurred, the SPPE and OEPE groups rolled up their sleeves and began the work of drafting program rules. Individuals self-selected into workgroups and, although Committee members were asked to remain faithful to one workgroup, advisory members were encouraged to float between workgroups as time and need permitted so as to share expertise across areas.

The SPPE workgroup had a strong drafting advantage because on July 26, 2022, this Court adopted rules for a Provisional Licensing Program (“PLP”)<sup>5</sup> for applicants who sat for the February 2022 bar examination but did not receive a passing score.<sup>6</sup> As the Court is well-aware, the PLP Rules were drafted very quickly by Oregon State Bar staff and a national expert to offer a timely solution to the applicants negatively impacted by the circumstances of the February 2022 bar exam. Because the PLP Rules were created so quickly, both the Board and the Court were aware that an opportunity for a deep analysis of the purpose and goal of each provision was not possible; nor was there an opportunity for significant public discourse. The PLP Rules were never intended to be the rules for the SPPE; still, the PLP Rules provided an excellent framework for the SPPE workgroup’s discussion.

The SPPE workgroup started with those rules and, section by section, participants were asked to identify areas that needed to be explored in further depth by the Committee. These notes were collected by the workgroup facilitator, organized by rule and topic, and then brought to the meetings for thorough discussion and decision-making. After several months’ work, the SPPE workgroup produced a draft of recommended SPPE program rules, along with a corresponding notes and explanation document that captured key discussions and the reasoning behind the most significant programmatic or rule decisions. These recommended SPPE Rules and corresponding notes and explanations were presented to the full Committee in the fall of 2022. The Committee then undertook a series of meetings to discuss the workgroup’s recommendations. Many of the rules and explanations were embraced by the Committee without a great deal of discussion; others led to extensive discussion and, often, revision of the proposed rules. Some of the topics that were robustly discussed at the Committee level included:

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<sup>4</sup>Shannon Gormley, *Expanding the Bar: OSB Applicants Soon May Choose From Bar Exam, Two Novel Examinations*, Oregon State Bar Bulletin (Feb/March 2023), <https://www.osbar.org/bulletin/issues/2023/2023FebruaryMarch/index.html>.

<sup>5</sup> *In re Approval of the Oregon Provisional License Program Rules*, SCO No. 22-031, (July 26, 2022), <https://www.osbar.org/docs/resources/SCO22-031ProvisionalLicensingProgram-Rules-Feb2022Cohort7-19-22.pdf>.

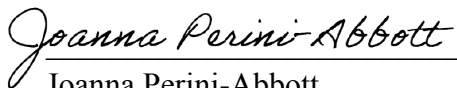
<sup>6</sup> During the administration of the February 2022 Oregon State Bar Examination, the HVAC system at the hosting venue malfunctioned, resulting in cold temperatures for most test takers. To address the likelihood that the testing environment affected the performance of test-takers, the Oregon Supreme Court in July approved a Provisional Licensing Program (PLP) to allow applicants from this cohort who did not achieve a passing score an alternative pathway to demonstrate minimum competency.

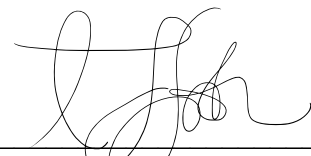
- definition of “legal work”;
- number of required supervised practice hours
- ability to count law school experiential learning as part of the required hours;
- length, authorship, type and breadth of written work submitted;
- timing/staleness of work product;
- ability to submit replacement work; and
- ethics requirements.

A detailed description of the Committee’s discussion and reasoning behind these issues is attached as Appendix C. With changes incorporated on these topics the Committee voted on March 8, 2023,<sup>7</sup> to post the revised Proposed SPPE Rules and corresponding notes and explanations for public comment.<sup>8</sup>

While the SPPE Rules await public comment, the OEPE workgroup plans to take the Proposed SPPE Rules and adapt them to meet unique requirements and philosophies of the law school environment based on previous OEPE workgroup conversations. Recommended OEPE Rules and a corresponding notes and explanations document will be presented to the larger Committee as soon as possible for consideration and further discussion.

The Committee and its co-chairs would like to thank the Oregon Supreme Court for its continued support and thoughtful engagement on these matters. We look forward to providing continued updates to the Court on our work and are excited that this report takes us one step closer to implementing these important assessment measures in Oregon.

  
 Joanna Perini-Abbott  
 Co-chair LPDC

  
 Adrian Tobin Smith  
 Co-chair LPDC

<sup>7</sup> The Committee voted to pass the rules to public comment without dissent., although two Law School representatives abstained on procedural grounds—they felt that they could not vote until after presenting the proposal to their faculty colleagues.

<sup>8</sup> For a complete copy of the SPPE Proposed Rules and Corresponding Notes and Explanations see Appendix D & E.

<b>LPDC Voting Member</b>	<b>Group Represented</b>
Akriti Bhargava	Recent law school graduate
Erin Biencourt	Practice outside of Willamette Valley
Stuart Chin	University of Oregon Law
Lee Ann Donaldson	President of OSB/BOG
Brian Gallini	Willamette Law
Helen Hierschbiel	OSB leadership
Kendra Matthews	BBX
John Parry	Lewis & Clark Law
Jo Perini-Abbott	BBX and large law firm experience
Tony Rosilez	BBX and D&I section of OSB
Hon. Thomas Ryan	State Court and Public Defense experience
Addie Smith	BBX

<b>Advisory Group Member</b>	<b>Group Representing</b>
Kurt Ruttum	Law firm/interested person
Maya Crawford Peacock	CEJ
Sunil Raju	Clatsop County Bar Association
Phil Duong	Crooks/Jefferson Counties Bar Association
Danny Lang	Douglas County Bar Association
Emily Cooper	DRO
Hon. Darlene Ortega	Oregon Court of Appeals
Sandy Patrick	Lewis & Clark
Tung Yin	Lewis & Clark
Devra Hermosilla	Lewis & Clark (career services)
Brian Gardner	Lincoln County Bar Association
Shalini Vivek	Multnomah County Bar Association
Barbara Diamond	OADA
Katie Smith	OADC
Kelsie McDaniel	ODAA
Megan Hinzdel	OGALLA
Barbara Diamond	Oregon Attorneys with Disabilities Association
Peter Sabido	Oregon Filipino American Lawyers Association
Yvana Mols	Oregon New Lawyers Division
Yazmin Wadia	OSB Advisory Committee on D&L
Emily Rena-Dozier	OSB Consumer Law Section
Kristin Sterling	OWLS
Aruna Masih	SABA Oregon
Justin Morton	Sixth Judicial Bar Association
Jen Reynolds	University of Oregon
Becky Ivanoff	University of Oregon (career services)
David Friedman	Willamette Law
Keith Cunningham-Parmeter	Willamette Law
Phylis Myles	Willamette Law (career services)
Mohamed Shaer	Willamette Law (student)
Brook Reinhard	OCDLA/public defense
Monica Goracke	Oregon Law Center
Quinn Kuranz	OTLA
Jennifer Reger	OMLA
Allie Sandhu	Lewis & Clark (student)
Logan Cornett	Institute for the Advancement of the American Legal System
Deborah Merritt	Institute for the Advancement of the American Legal System

Joanne Kane	National Conference of Bar Examiners
Danette McKinley	National Conference of Bar Examiners

### **Appendix C: Major Questions Discussed by the Licensing Pathways Development Committee**

The tables in this appendix summarize the Committee's discussion of major issues that arose when designing the Supervised Practice Portfolio Examination program. The tables summarize the Committee's proposed rule, the position (if any) taken by the original Task Force on the issue, and the Committee's rationale for its proposal. The tables also note the approach taken on each issue by the Provisional License Program (PLP) rules, although the Committee recognized that the PLP was designed for a specific remedial purpose and did not benefit from extended discussion.

The "Notes and Explanations" document attached in Appendix E offers more detail on the Committee's discussion of these and many other issues.

**Question One:** How many supervised practice hours should a Provisional Licensee complete before seeking admission to the Bar?

Committee's Proposed SPPE Rule	Task Force Position	Brief Explanation for Proposed SPPE Rule	PLP Rule
<p>675 hours, accumulated at the rate of no more than 40 hours per week. <b>Rule 6.12.</b></p>	<p>The Task force recommended 1000 – 1500 hours.</p>	<p>The Committee discussed this question at great length, considering both the Task Force recommendation and the PLP standard. On reflection, the Committee found 1000—1500 hours unnecessary to establish minimum competence. The primary measure of a Provisional Licensee’s competence will come from assessment of the work submitted to the Board in their Portfolios; the Task Force did not have an opportunity to fully consider the role of those assessments.</p> <p>675 hours parallels the number of hours of experiential work that the Committee anticipates requiring for the OEPE. Provisional Licensees have already completed 3 years of law school, so a higher number of hours seems unnecessary.</p> <p>The Committee limited the activities that count toward the 675 hours and capped the number of hours per week at 40. Provisional Licensees will spend at least 17 weeks meeting the SPPE hours requirement, which is considerably longer than the 8-10 weeks that graduates typically devote to bar study. The SPPE also requires a heavier investment of time than the OEPE, which can be completed during law school.</p> <p>The requirement of 675 hours, when combined with the Portfolio requirements, provides sufficient time to establish a candidate’s minimum competence while maintaining parity among the three licensing paths.</p>	<p>1500 hours. Rule 6.12.</p>



**Question Two:** Should experiential education or workplace hours completed while enrolled in a JD program count towards the required SPPE hours?

<b>Committee's Proposed SPPE Rule</b>	<b>Task Force Position</b>	<b>Brief Explanation for Proposed SPPE Rule</b>	<b>PLP Rule</b>
A Provisional Licensee who has earned a JD from an ABA-accredited law school may count up to 100 hours of Legal Work performed while enrolled in that JD program if the work satisfies other SPPE requirements. <b>Rule 6.13</b>	The Task Force recommended including some law school hours but capping them.	The Committee concluded that some hours completed during law school could count towards the SPPE requirements, but that the hours must comply with SPPE rules. Students, therefore, must perform that work while certified under Oregon's Law Student Appearance Program. Supervising Attorneys must also meet the SPPE qualifications and sign the SPPE declaration before the work is performed. Students, finally, must maintain contemporaneous timesheets of their work, and Supervising Attorneys must sign those timesheets. Given the lower number of supervised practice hours proposed by the Committee, the Committee also limited this credit to 100 hours.	No credit for hours completed during law school

**Question Three:** How should the rules define the “legal work” that counts towards program requirements?

<b>Committee’s Proposed SPPE Rule</b>	<b>Task Force Position</b>	<b>Brief Explanation for Proposed SPPE Rule</b>	<b>PLP Rule</b>
<p>Legal Work means "work that is commonly performed by licensed attorneys in Oregon. Legal work may include activities that are also performed by unlicensed individuals, as long as newly licensed attorneys working for the Employer regularly incorporate those activities in their work." <b>Rule 1.2(J)</b></p>	<p>The Task Force recommended that the SPPE rules should exclude “administrative, ministerial and purely paralegal activities” from work hours that count toward the “legal work” hours of the program—or that a cap should be placed on the number of hours earned in those activities. The Task Force directed a future committee to consider whether two common types of work (document review and assistance to judges) should qualify as “legal work” within the SPPE.</p>	<p>The Committee discussed the wide variety of work that new attorneys perform and the differences among practice areas and organizations. It also noted that new attorneys in some nonprofits and government agencies have limited administrative support, requiring them to perform tasks that attorneys in other organizations might delegate to others. Integrating these tasks into a busy practice is part of a professional’s role in an organization with limited means. Based on this discussion, the Committee concluded that the broad definition adopted by the PLP rules was appropriate. It amended the PLP definition, however, to include a reference to attorneys “working for the Employer.” This addition will prevent Employers from burdening Provisional Licensees with administrative work that other attorneys do not perform.</p> <p>The Committee concluded that document review and assistance to judges should qualify as “legal work.” Although both activities can be performed without a license, 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.</p> <p>The Committee noted that, regardless of the Provisional Licensee’s workplace, the Portfolio requirements will ensure that all Licensees engage in some legal research, writing, client counseling, and client negotiating. Simulation opportunities will be provided for Licensees who cannot obtain these experiences in their workplace.</p> <p>Rule 6.12, finally, allows Licensees to count “Legal Work” towards the program requirements only if that work is “assigned by the Supervising Attorney.” This will ensure that Licensees do not engage in administrative tasks or other work that is inappropriate for an employee paid the salary and benefits given to recent law school graduates. Rule 2.2(D).</p>	<p>The PLP definition is identical to the SPPE definition, except that the latter adds the words “working for the Employer.” Rule 1.2(I)</p>

**Issue Four:** What is the appropriate length for written work submitted as part of a Portfolio?

<b>Committee's Proposed SPPE Rule</b>	<b>Task Force Position</b>	<b>Brief Explanation for Proposed SPPE Rule</b>	<b>PLP Rule</b>
Each Provisional Licensee must submit 8 pieces of written work product that BBX finds minimally competent. At least 2 of those pieces must be 1500 words or longer, and each of the other pieces must be at least 300 words long. Word counts include footnotes, but not headers or signature blocks. <b>Rule 6.4(A)(2)</b>	None stated	<p>The Committee retained the PLP requirement that candidates submit 8 documents, with 2 of them exceeding 1500 words. It then added a requirement that each of the other 6 documents exceed 300 words.</p> <p>Some Committee members were concerned that documents with less than 500 words might not adequately demonstrate the Provisional Licensee's competence but, after reviewing several sample emails, the Committee concluded that some documents containing less than 500 words concisely and competently analyze legal issues.</p> <p>The Committee noted that many documents will be longer than 500 words because Provisional Licensees must meet the other requirements in Rule 6.4(A), such as the requirement that each writing "address some substantive aspect of a legal matter, as well as a prediction, conclusion, or recommendation related to that issue." The Committee, however, did not want to exclude documents that achieve those goals with fewer words.</p> <p>As part of its discussion on word counts, the Committee decided to bar Provisional Licensees from dividing a long document into several shorter pieces. Rule 6.4(A)(3).</p> <p>Finally, to assist Provisional Licensees in choosing documents to include in their Portfolios, the Committee agreed that a program handbook should advise Licensees that submitted works must include a complete legal analysis matching the criteria on the Board's scoring rubrics (which will be published). The handbook will also note that, although it is possible to meet that standard with works of 300-500 words, many works will require more than 500 words.</p>	Identical to the SPPE rule except that no minimum word count is stated for the 6 pieces that may be shorter than 1500 words.

**Issue Five:** What types of assistance, if any, may Provisional Licensees receive on written works included in their Portfolios?

Committee’s Proposed SPPE Rule	Task Force Position	Brief Explanation for Proposed SPPE Rule	PLP Rule
<p>Provisional Licensees may draw upon the same types of assistance that licensed lawyers use in the workplace, but they must complete a cover sheet noting that assistance, and they must submit any templates or AI compositions that formed the basis of their work. The Supervising Attorney must attest that “after reviewing the assistance noted by the Provisional Licensee on their cover sheet, the work product sufficiently reflects the knowledge/ research, analysis, and writing of the Provisional Licensee that BBX can meaningfully assess the Provisional Licensee’s competence from the work product.” The Supervising Attorney will also indicate if and how the work product was used.</p> <p><b>Rule 6.4(B)-(D)</b></p>	<p>None stated</p>	<p>The Committee concluded that the PLP’s focus on “independently authored” writings and “first drafts” was problematic for several reasons: (a) Employers might not want to share first drafts outside their workplace; (b) the requirement might negatively impact attorneys with disabilities who work with copy editors and other assistants; (c) even a first draft might reflect significant input from another attorney who discussed the writing with the candidate; and (d) a focus on first drafts does not address the use of AI programs.</p> <p>After gathering input from legal writing professors, judges, practitioners, and other experts, the Committee adopted a three-part approach. First, Provisional Licensees must disclose the assistance they received in creating the submitted work product. BBX will develop a checklist for this purpose that will become part of the cover sheet submitted by Provisional Licensees with each piece of written work product. Licensees will attest that all information included on the cover sheet is correct.</p> <p>Second, Provisional Licensees must submit any templates or AI compositions that formed the basis of a writing, and must highlight the portions of their writing that represent their additions, edits, or other customization.</p> <p>Finally, the Supervising Attorney must attest that “after reviewing the assistance noted by the Provisional Licensee on their cover sheet, the work product sufficiently reflects the knowledge/research, analysis, and writing of the Provisional Licensee that BBX can meaningfully assess the Provisional Licensee’s competence from the work product.”</p> <p>BBX will discuss these requirements in a handbook and provide examples for Supervising Attorneys and Provisional Licensees to follow.</p>	<p>Rule 6.5(A (3) requires that all submitted writings be “independently authored” by the Provisional Licensee. If another individual edits the Provisional Licensee’s work, the Provisional Licensee must submit the original draft without those edits.</p>

**Question Six:** What types of written work may Provisional Licensees submit and what type of breadth should those works demonstrate?

Committee’s Proposed SPPE Rule	Task Force Position	Brief Explanation for Proposed SPPE Rule	PLP Rule
<p>“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.” Each writing, however, “must address some substantive aspect of a legal matter, as well as a prediction, conclusion, or recommendation related to that issue.” Each piece of work product must also “address at least one legal issue that differs from the legal issues addressed in other pieces of work product.” Licensees, finally, “may not rely upon the same template, form, or artificial intelligence text for more than one work product submitted” <b>Rules 6.4(A) &amp; (D)</b></p>	<p>None stated</p>	<p>The rule recognizes the wide variety of written documents that lawyers prepare in different practice areas and attempts to accommodate those differences. The rule makes clear, however, that submitted documents must address some substantive aspect of a legal matter. Provisional Licensees cannot submit scheduling notices or other routine correspondence.</p> <p>The Committee discussed the possibility of requiring Provisional Licensees to submit documents addressing issues drawn from multiple areas tested on the bar exam, but concluded that this was unnecessary. Every practice area draws upon the threshold concepts and skills learned in law school and tested on the bar exam. Successful research, writing, and analysis in any practice area, therefore, demonstrates the minimum competence to learn and apply principles in other areas.</p> <p>The Committee did, however, require that each document address a unique legal issue so that Licensees cannot submit several writings that apply the same legal principle to different facts. Similarly, the rules prohibit Licensees from using the same template or AI text as the basis for more than one Portfolio item.</p>	<p>Rule 6.5(A), like the proposed SPPE rule, recognizes that lawyers prepare many types of written work product; it allows Provisional Licensees to submit any of those types of writings. Rule 6.5(A)(1), like the proposed SPPE rule, requires the work product to “address some substantive aspect of a legal matter.” The PLP rules do not impose any other restrictions on writings.</p>

**Question Seven:** Should Provisional Licensees be able to replace Portfolio components that BBX finds are “not qualified”?

Committee’s Proposed SPPE Rule	Task Force Position	Brief Explanation for Proposed SPPE Rule	PLP Rule
<p>“If a Portfolio component receives a score of ‘not qualified,’ the Provisional Licensee may submit a replacement component with a subsequent Interim or Final Portfolio. The replacement component must be a new piece of work, not a revised version of the original submission. If a Licensee submits a replacement component, the original component and its score will be removed from the Provisional Licensee’s record.”</p> <p><b>Rule 7.4(B)</b></p>	<p>None stated</p>	<p>The Committee agreed with the PLP approach of allowing Provisional Licensees to replace deficient Portfolio items. This allows Licensees to learn from their mistakes and reduces the pressure on Examiners to mark components as “qualified.” 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. Replacement also fits with the SPPE (and PPL) approach to grading. Licensees must demonstrate minimum competence on <u>every</u> Portfolio component; there is no compensatory grading as on the bar exam.</p> <p>The Committee, however, decided to lift the cap that the PLP rules impose on replacement items. Just as there is no limit to the number of times and individual can take the UBE to demonstrate competence, the Committee determined that there should be no limit on the number of times an applicant may replace a portfolio artifact if one is deemed not qualified. Replacement pieces, however, must constitute a new piece of work; the Licensee cannot submit a revised version of the original submission.</p> <p>Allowing Provisional Licensees to submit unlimited replacements will impose some burden on BBX but, to compensate for that burden, Licensees will not be able to challenge “not qualified” scores on Portfolio components. Each piece of work will be assessed by two BBX members or graders to ensure confidence in the assessment. If two graders agree that a component is not minimally qualified, it is more constructive for the Licensee to submit a replacement component than to argue about the graders’ assessment. Reviewing replacements will also burden BBX less than reviewing score challenges.</p>	<p>The PLP rules allow Provisional Licensees to replace Portfolio components but impose a cap on the number of replacements. Provisional Licensees may replace up to 4 pieces of written work product, as well as materials related to both client encounters and negotiations.</p>

**Question Eight:** Should Provisional Licensees complete their work within a specified time frame?

<b>Committee's Proposed SPPE Rule</b>	<b>Task Force Position</b>	<b>Brief Explanation for Proposed SPPE Rule</b>	<b>PLP Rule</b>
Provisional Licensees do not have to complete their hours within a specified time, but “At least three quarters of the work product described in Rules 6.4, 6.5, and 6.6 must have been scored as ‘qualified’ within 3 calendar years of the date on which an Examiner transmits a Final Portfolio to the Admissions Department under Rule 8.3(A). <b>Rule 6.14</b>	The Task Force suggested that supervised practice hours should be completed “within a reasonably condensed period of time.”	<p>In considering the Task Force’s recommendation for a “reasonably condensed period of time” the Committee noted the natural economic pressure on Provisional Licensees and Supervising Attorneys to conclude the licensing period as quickly as possible. The Committee also reviewed comments from the Oregon Attorneys with Disabilities Association, noting that strict timelines impose burdens on people with disabilities, illness, and family caretaking responsibilities to seek waivers. Responding to those requests also imposes burdens on BBX.</p> <p>The Committee concluded that principles of universal design (combined with the market pressures described above) favor a program without strict time limits. The Committee did, however, want to ensure that Portfolio components are relatively fresh when BBX approves them. Rule 6.14, therefore, requires that three-quarters of the primary Portfolio components be judged competent within three years of the submission of the final portfolio. This requirement ensures that the BBX’s assessment that an individual is qualified is based on recent, and not stale, work product.</p>	Rule 5.1(F) requires Provisional Licensees to complete the program within 18 months, although that clock is tolled under certain conditions.

**Question Nine:** How should Provisional Licensees demonstrate their minimum competence in professional responsibility and professionalism?

Committee's Proposed SPPE Rule	Task Force Position	Brief Explanation for Proposed SPPE Rule	PLP Rule
<p>Provisional Licensees may demonstrate their competence by either (1) achieving a passing score on the Multistate Professional Responsibility Exam (MPRE); or (2) completing a set of 10 journal entries devoted to questions of professional responsibility or professionalism. The second option is limited to Licensees who passed a law school course on professional responsibility. Licensees who choose that option must discuss rules drawn from at least 5 of the 8 chapters of the Oregon Rules of Professional Conduct in their journal entries. Examiners will independently assess the content of each journal entry. <b>Rule 6.7</b></p>	<p>The Task Force envisioned that Provisional Licensees would be required to achieve a passing score on the MPRE.</p>	<p>The Committee agreed that the MPRE offers one avenue for measuring ethical competence but determined that there are equally (or more) rigorous and more authentic means to assess that competence. The MPRE tests model rules, rather than Oregon's rules, and it consists solely of closed-book multiple-choice questions. Committee members also noted that the ethical dilemmas that arise in practice are often more nuanced than the situations tested through the MPRE's multiple-choice questions. The Committee, finally, noted that the purpose of the SPPE was to avoid assessing competence through high-stakes, closed-book exams.</p> <p>The Committee thus decided to offer Provisional Licensees two options for demonstrating their understanding of professionalism and the rules of professional conduct. Licensees may either achieve a passing score on the MPRE or they may create at least 10 journal entries discussing real ethical dilemmas encountered in practice.</p> <p>Rule 6.7 establishes three principles governing this second option. First, each journal entry must describe a lawyering situation that raises an issue of professional responsibility, identify Oregon Rules of Professional Conduct and other sources related to that issue, analyze the issue, and offer a conclusion. The conclusion need not be definite; instead, the guideline acknowledges that "resolution of the issue [may be] unclear or disputed." The Provisional Licensee, however, must identify the nature of the unclarity or dispute. Second, to ensure that the Provisional Licensee demonstrates competence with respect to a range of professional responsibility issues, the journal entries must discuss rules drawn from at least 5 of the 8 chapters of the Oregon Rules. Finally, the guidelines provide that "Provisional Licensees may discuss the issues they write about with colleagues, the State Bar's Legal Ethics Hotline, and other sources." The Committee views that process of consultation as essential to competence in professional responsibility. It also parallels required elements of the New Lawyer Mentoring Program.</p>	<p>Rule 2.1(d) Requires participants to pass the MPRE before receiving a provisional license.</p>



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

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

### **1.2 Definitions.**

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

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

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

## **Section 2**

### **Qualifications of Program Participants**

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

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

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

- (A) Is authorized to practice law, do business, regulate, or otherwise operate within Oregon;

- (B) Regularly practices law, does business, regulates, or otherwise operates within Oregon;
- (C) Except as provided in Rule 2.3, employs (or has agreed to employ) a Provisional Licensee for at least 20 hours of paid 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.

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

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

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

For the purposes of this rule, “immediate family member” means a parent, child, or sibling, whether biological, adopted, foster, or related by marriage.

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

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

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

### **Section 3**

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

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

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

- (D) The application form for Supervising Attorneys will establish the Supervising Attorney's identity (including their OSB Member Number) and seek evidence establishing that the Supervising Attorney meets the qualifications listed in Rules 2.4 – 2.6.

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

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

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

- (A) If the Board determines that the applicant has the good moral character and fitness to practice law prescribed by ORS 9.220(2), the Board will issue the applicant a Certificate of Eligibility. That certificate will allow the applicant to obtain a Provisional License and participate fully in the Supervised Practice Portfolio Examination Program.
- (B) Alternatively, the Board may choose to issue a Certificate of Eligibility conditioned on specific probationary terms.
- (C) If the Board denies the applicant a Certificate of Eligibility, it will provide the written notice specified by RFA 6.05(5). The applicant may contest the Board's denial by requesting an evidentiary hearing pursuant to RFA 9.01. Any evidentiary hearing shall be conducted pursuant to the process identified in RFA 9.05 – 9.60.
- (D) While awaiting the Board's decision on whether to issue a Certificate of Eligibility, an otherwise qualified applicant may begin working and accumulating hours within the Supervised Practice Portfolio Examination Program. Until Regulatory Counsel issues a Provisional License to the Applicant under Rule 3.6, the applicant may not undertake any activities that require a license to practice law, unless currently licensed under a Student Practice License (RFA 13.05 – 13.30). Hours worked during this period that meet

the requirements of Rule 6.12, however, count towards the hours requirement in that rule.

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

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

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

## **Section 4**

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

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

**4.4 Maintenance of 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 Program. In carrying out these dual roles, all of the following apply:

- (A) The needs of clients must take precedence over completing the requirements of the Program.
- (B) Work assigned by the Supervising Attorney should also take precedence over completing the requirements of the Program, although Supervising Attorneys and Employers will make every effort to accommodate completion of Program requirements (see Rules 5.2 and 5.3 below).
- (C) Provisional Licensees must adhere to the constraints specified in the Temporary Supervised Practice Rules, RFA 13.10 to 13.20, as they apply to law students qualified under RFA 13.20(1).
  - (1) Provisional Licensees do not have to satisfy the qualifications for eligibility in RFA 13.20, nor need they follow the certification procedure outlined in RFA 13.25. The qualifications and application procedures specified in these rules govern the Supervised Practice Portfolio Examination Program.
  - (2) A Provisional Licensee who has never taken a course in evidence, however, must follow the limits of RFA 13.20(2)(d) unless the Supervising Attorney represents to the court under RFA 13.10(6) that the Provisional Licensee has obtained similar knowledge of evidence through MCLE programs or other means.
- (D) To be eligible for admission to the Oregon State Bar through this Program, Provisional Licensees must complete all of the Program components specified in Rules 6.1 – 6.14; submit at least one Interim Portfolio as specified in Rule 7.1; and submit their Final Portfolio as specified by Rules 8.1 – 8.2.

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

- (A) Maintain any Professional Liability 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 Program that do not benefit the Employer directly. The Employer need not compensate the Provisional Licensee for that time, except as provided in subsection (D) above.

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

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

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

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

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

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

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

## **Section 6 Program Requirements**

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

- (A) Completion of a Learning Plan for accomplishing the below activities;
- (B) Diligent, competent, and professional work on all Legal Work assigned to the Provisional Licensee by their Supervising Attorney;
- (C) Production of at least 8 pieces of written work product;
- (D) Leadership of at least 2 initial client interviews or client counseling sessions;
- (E) Leadership of at least 2 negotiations;
- (F) Completion of the Professional Liability Fund’s “Learning the Ropes” MCLE 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 Program;
- (J) A Portfolio organizing the above Program components;

- (K) Completion of 675 hours of work as defined by Rule 6.12; and
- (L) Compliance with the timing requirement of Rule 6.14.

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

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

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

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

**6.4 Written Work Product.**

- (A) Each Provisional Licensee must prepare and submit at least 8 pieces of written work product. Written work product may take any form that lawyers use in their practices including, but not limited to, memos, letters, emails, white papers, complaints, motions, briefs, contracts, legal or statutory analysis blog entries, issues briefs, and wills. All submitted work product, however, must comply with the following requirements:
  - (1) The work product must address some substantive aspect of a legal matter, as well as a prediction, conclusion, or recommendation related to that issue.
  - (2) At least 2 of the pieces of work product must be at least 1500 words long, and each of the other pieces must be at least 300 words long, not including headers or signature blocks. Footnotes do count towards the word totals.
  - (3) Each piece of work product must constitute a separate piece of work. Provisional Licensees may not divide a memorandum, brief, or other piece of work into components that they submit separately.
  - (4) Each piece of work product must address at least one legal issue that differs from the legal issues addressed in other pieces of work product.
- (B) Each piece of work product must be accompanied by a cover sheet completed by the Provisional Licensee. The Board will provide a standardized template for the cover sheet, seeking information about the context for the work product; the strategy used for any necessary research; whether a template or form provided a foundation for the work product; the extent to which the Licensee received input from other lawyers; the extent to which the Licensee relied upon artificial intelligence programs; and the

document's word count (as defined by subsections (A)(2) and (D)(4). The Licensee must attest that the information provided on the cover sheet is correct.

- (C) Each piece of work product must also be accompanied by a statement from the Supervising Attorney. The Board will provide a template for this statement, which will require the Supervising Attorney to:
  - (1) Attest that, after reviewing the assistance noted by the Provisional Licensee on their cover sheet, the work product sufficiently reflects the knowledge/research, analysis, and writing of the Provisional Licensee that BBX can meaningfully assess the Provisional Licensee's competence from the work product;
  - (2) Attest that the legal analysis is accurate; and
  - (3) Indicate if and how the Employer used the work product.
- (D) If the Provisional Licensee used a template, form, or artificial intelligence composition as the foundation for the work product, these provisions apply:
  - (1) The Provisional Licensee must submit a copy of the original template, form, or artificial intelligence text used as a foundation;
  - (2) The Provisional Licensee must highlight the portions of the work product that represent the Provisional Licensee's additions, edits, or other customization;
  - (3) The Provisional Licensee may not rely upon the same template, form, or artificial intelligence text for more than one work product submitted to the Examiners; and
  - (4) Only the additions, edits, or other customization will count towards the word-count requirements in subsection (A)(2).
- (E) Provisional Licensees must redact the work product to remove information that would identify them, their Supervising Attorney, their Employer, and the names and affiliations of any other counsel associated with the matter.
- (F) If the work product relates to a client matter:
  - (1) The work product must be redacted to protect the client's interests; and
  - (2) The client must consent to inclusion of the work product in the Portfolio.
- (G) If the Provisional Licensee is unable to gather sufficient work product from client-related work, the Supervising Attorney may assign a mock exercise or exercises to the Provisional Licensee, which can be submitted to fulfill this requirement. The Board will also maintain an "issue bank" of materials that can be used by Provisional Licensees to fulfill the writing requirements of the program. All mock work product must comply with subsections (A) through (E) above.

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

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

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

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

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

- (A) Provisional Licensees may demonstrate their competence in issues of professional responsibility in one of two ways:
  - (1) Achieving a score of at least 85 on the Multistate Professional Responsibility Exam (MPRE); or
  - (2) For Provisional Licensees who have passed a law school course on Professional Responsibility, completing a set of 10 journal entries devoted to issues of professional responsibility or professionalism. The Board will develop rules governing the format and content of these entries, following these principles:
    - a) Each entry should describe a lawyering situation that raises an issue of professional responsibility, identify relevant Oregon Rules of Professional

Conduct and other sources, analyze the issue, and offer a conclusion. Conclusions may, if appropriate, note that resolution of the issue is unclear or disputed.

- b) The journal entries should discuss rules drawn from at least 5 of the 8 chapters of the Oregon Rules of Professional Conduct.
- c) Provisional Licensees may discuss the issues they write about with colleagues, the State Bar's Legal Ethics Hotline, and other sources. The State Bar encourages this type of discussion and consultation for all lawyers.

(B) An Examiner will independently assess the content of the journal entries submitted under option (2).

**6.8 Activities Related to Diversity, Equity, Inclusion, or Access to Justice.** Provisional Licensees must devote at least 10 hours to activities related to diversity, equity, inclusion, or access to justice. These activities may include pro bono work, MCLE programs, volunteer work with 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 Ropes.** 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 activities listed in Rule 6.12, even if that time is not billable to a client.

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

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

- (A) Up to 40 hours per week of Legal Work assigned by the Supervising Attorney, even if the time is not billed to a client;

- (B) All time devoted to working on the Program components outlined in Rules 6.2 – 6.11; and
- (C) All time spent in any training or educational activities required by their Employer that are not included in the Program components.

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

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

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

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

## **Section 7**

### **Interim Portfolios**

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

- (A) An up-to-date Learning Plan (as described in Rule 6.2);
- (B) Any Timesheets (as described in Rule 6.10) not yet submitted to the Board;
- (C) Any completed Evidence of Competence in Professional Responsibility (as described in Rule 6.7);
- (D) Any completed log of Activities Related to Diversity, Equity, Inclusion, or Access to Justice (as described in Rule 6.8);



- (E) At least three pieces of Written Work Product (Rule 6.4), documentation of Client Interviews or Counseling Sessions (Rule 6.5), and/or documentation of Negotiations (Rule 6.6) that have not yet been reviewed by the Board.

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

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

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

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

- (A) Portfolio components that receive a “qualified” score will count towards the Final Portfolio score. Provisional Licensees need not resubmit those components; nor will any additional Examiners review them. The Board will maintain a record of all components that achieve a qualified score during Interim Portfolio reviews.
- (B) If a Portfolio component receives a score of “not qualified,” the Provisional Licensee may submit a replacement component with a subsequent Interim or Final Portfolio. The replacement component must be a new piece of work, not a revised version of the original submission. If a Licensee submits a replacement component, the original component and its score will be removed from the Provisional Licensee’s record. The Admissions Department, however, will maintain anonymized records of replaced documents (as provided in Rule 20.1) to inform its Program Review.

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

## **Section 8**

### **Final Portfolios**

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

- (A) Any Timesheets (as described in Rule 6.10) not yet submitted to the Board; and

(B) All remaining Portfolio components that have not already been marked “qualified.”

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

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

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

## **Section 9**

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

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

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

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

- (A) The Learning Plan submitted with the Halfway Portfolio will be scored “qualified” if it documents how the Provisional Licensee plans to fulfill all Program requirements.
- (B) The “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; or (b) receives a “qualified” score on the 10 professional responsibility journal entries. The Board will develop and publish rubrics for scoring those journal entries.
- (D) Activities related to diversity, equity, inclusion, or access to justice will be scored “qualified” when the Provisional Licensee submits the required template documenting 10 hours of those activities.

- (E) Written work product will be scored “qualified” or “not qualified” using rubrics published by the Board. The Examiners will score these documents based on independent review of the document, the Supervising Attorney’s attestation, and the Provisional Licensee’s cover sheet.
- (F) Client interviews, client counseling sessions, and negotiations will be scored “qualified” or “not qualified” using rubrics published by the Board. The Examiners will score these components based on the Supervising Attorney’s completed rubric and the Provisional Licensee’s reflection.
- (G) The Timesheet will be scored “qualified” when it documents completion of 675 hours of Program work (including any credit towards that total from work completed as a JD student).

## **Section 10**

### **Admission Decision**

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

- (A) If the Admissions Department agrees that the Provisional Licensee has successfully completed all Program requirements, Regulatory Counsel will inform the Provisional Licensee of that fact.
- (B) The Admissions Department will review the Licensee’s updated application (Rule 3.1) to determine if any updates raise new questions about the Licensee’s good moral character and fitness to practice law. If the Department identifies any new questions, Regulatory Counsel will refer the Licensee’s application to the Board for consideration. The Board will consider whether, considering this new information, the Licensee still possesses the good moral character and fitness to practice law. In making that determination, the Board will follow all applicable rules in the RFA.
- (C) The Admissions Department will conduct any necessary further review to confirm that the Provisional Licensee has satisfied other requirements of admission under the RFA, and will process the Provisional Licensee’s application for admission as if the Provisional Licensee had passed the Uniform Bar Exam and Multistate Professional Responsibility Exam.
- (D) The Provisional Licensee’s Provisional License will remain in effect until they are sworn into the Bar or, after considering any updates to the Licensee’s application, the Board enters a final determination that the Licensee lacks the good moral character and fitness to practice law.

## **Section 11 Accommodations**

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

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

## **Section 12 Transparency**

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

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

## **Section 13 Conflicts**

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

**13.2 Client Conflicts.** Portfolios elements described in Rules 6.4 – 6.6 will be redacted to remove information that would identify the client or matter. To prevent Examiners from

inadvertently reviewing work product on a matter where they have a conflict of interest, or for which their review would create an appearance of impropriety, the Board will develop guidelines and processes for identifying and precluding those possibilities.

## **Section 14**

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

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

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

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

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

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

**14.4 Training of Provisional Licensees.** The Board will create up to 4 hours of introductory training to orient Provisional Licensees to the Program. Among other elements, this training will introduce the Provisional Licensees to the Ombudspersons described in Section 17. Provisional Licensees must attend this training in person or view it online. They will be able to claim MCLE credit for these training hours.

## **Section 15**

### **Changes in Status**

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

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

- (B) If the Admissions Department agrees that the individual described in subsection (A) is qualified to serve as a Supervising Attorney, the Admissions Department will notify the Provisional Licensee, Supervising Attorney, and Employer of that fact.
- (C) If no other attorney working for the Employer is willing to serve as the Provisional Licensee's Supervising Attorney, the Provisional Licensee may seek a new Supervising Attorney and Employer as provided in Rules 2.2 – 2.6.

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

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

## **Section 16**

### **Temporary Suspension of License**

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

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

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

- (A) Filing new applications from a Supervising Attorney and Employer under Rule 3.1; and
- (B) Filing new proof of compliance under Rule 4.3 if the suspension resulted from lack of 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, they may continue pursuing the Program where they left off. The suspension does not increase the number of required hours or any other requirement of the Program. The time limit applied to Portfolio elements described in Rule 6.14, however, remains in effect.

## **Section 17**

### **Ombudspersons**

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

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

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

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

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

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

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

## **Section 18**

### **Client Assistance Office Complaints**

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

- (A) The Provisional Licensee must include with those notices the actual complaint materials filed by the complaining party.

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

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

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

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

## **Section 19**

### **Termination of Provisional License**

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

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



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

(A) A rebuttable presumption that the Provisional Licensee is a significant threat to clients or the public is created by the following:

- (1) The filing of 3 or more complaints with the Client Assistance Office;
- (2) The filing of 2 or more PLF claims against the Provisional Licensee; or
- (3) Evidence gathered by, or presented to, Regulatory Counsel demonstrating that the Provisional Licensee:
  - (a) Regularly violates Oregon’s Rules of Professional Conduct;
  - (b) Has engaged in the practice of law for a client, or through a process, that is not permitted under this Program;
  - (c) Has intentionally evaded the supervision of the Provisional Licensee’s Supervising Attorney on any Legal Work performed; or
  - (d) Has knowingly submitted a false or misleading statement in an Interim or Final Portfolio, or has knowingly submitted work product in a Portfolio that unreasonably takes credit for work product that was completed by others.

(B) Any presumption created by this rule may be overcome only through clear and convincing evidence that:

- (1) The facts underlying the presumption are not true, or
- (2) Despite the truth of the facts underlying a presumption, the Provisional Licensee is not a significant threat to clients or the public.

(C) The Provisional Licensee will have 10 business days after the email is sent to file an objection by reply email to Regulatory Counsel, copied to the Board Chair, the Supervising Attorney, and the Employer. An objection shall include any evidence supporting the Provisional Licensee’s position. If the Provisional Licensee does not submit an objection within 10 business days, the Provisional Licensee’s Provisional License will automatically terminate pursuant to Rule 19.1(G).

(D) The Provisional Licensee’s Supervising Attorney and/or Employer may also respond to the Notice of Termination, but they are not required to do so.

(E) After considering the objection and supporting evidence, Regulatory Counsel may choose to withdraw the Notice of Termination and notify the Board Chair, the Provisional Licensee, Supervising Attorney, and Employer that the Notice has been withdrawn.

- (F) If Regulatory Counsel chooses to pursue termination of the Provisional Licensee's license, Regulatory Counsel must submit a new Show Cause Hearing notice to the Provisional Licensee, Supervising Attorney, Employer, and Board Chair. The notice shall be sent via email, marked "high priority," and shall identify the basis for the Show Cause Hearing, which must be one of the following:
- (1) That Regulatory Counsel reasonably believes that the evidence attached to the Provisional Licensee's objection does not overcome the rebuttable presumptions created by Rule 19.2(A)(1) – (3), because it does not meet the standard set forth in Rule 19.2(B);
  - (2) That Regulatory Counsel reasonably believes that evidence in its possession contradicts or calls into question the evidence included in the Provisional Licensee's objection; or
  - (3) That Regulatory Counsel reasonably believes the totality of evidence against the Provisional Licensee establishes that the Provisional Licensee is a significant threat to clients or the public.
- (G) If the basis of the Show Cause Hearing is Rule 19.2(F)(2) or (3), then Regulatory Counsel must include all evidence it considered in reaching the reasonable beliefs identified in those subsections about the Provisional Licensee's evidence or threat level.
- (H) The Board must hold a Show Cause Hearing on the Notice of Termination, set at least 15 business days after issuance of the Show Cause Hearing notice in subsection (F) but not more than 45 business days after issuance of that Show Cause Hearing notice. When scheduling the Show Cause Hearing, all reasonable efforts will be made to schedule the hearing on a date that will permit all witnesses to be present.
- (I) The Board shall have a Show Cause Hearing before a panel of 3 members. Within 5 business days following the Show Cause Hearing notice from Regulatory Counsel, the Board Chair shall issue a Show Cause Order identifying the date of the Show Cause Hearing and outlining the procedural rules by which the hearing will be conducted. The Show Cause Order shall allow at least 10 business days for discovery and the issuing of subpoenas before the Show Cause Hearing is held.
- (J) At the hearing, the panel will receive documentary and oral evidence from Regulatory Counsel, the Provisional Licensee, and any other interested parties who choose to participate in the hearing. Once all evidence is received, panelists may ask questions of any party who presented evidence during the Hearing. Once Members have had their questions answered, Regulatory Counsel shall provide a closing statement, followed by the closing statement of the Provisional Licensee, and the hearing shall be closed.
- (K) The Board must render a decision on whether the Provisional Licensee's Provisional License should be terminated for cause within 14 business days of the Show Cause Hearing. The decision shall state whether the Regulatory Counsel established a rebuttable presumption that the Provisional Licensee is a significant threat to clients or the public; whether the Provisional Licensee overcame that rebuttable presumption

through clear and convincing evidence to the contrary; and whether, in looking at the totality of the evidence, the Board believes that the Provisional Licensee presents a significant threat to clients or the public. The Board's decision on that matter is final.

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

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

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

## **Section 20**

### **Program Review**

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

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

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

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

## **Section 21**

### **Amendments to These Rules**

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

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

## Notes and Explanations on Proposed Rules for the Supervised Practice Portfolio Examination (SPPE) Licensing Pathway

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

A working group created an initial draft of these rules, using the rules adopted for the Provisional License Program (PLP) as a framework for its discussion.<sup>1</sup> The proposed SPPE rules maintain some of the language from the PLP rules, but vary in other respects.

### **Program Title**

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

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

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

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

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

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

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

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

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

- committing to hiring Provisional Licensees for at least 20 hours of paid 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 Committee prefers for Provisional Licensees to be paid for their work, it recognized that some Licensees may be willing (and eager) to provide pro bono services to clients. This rule gives Licensees that opportunity.

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

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

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

Family Members: The PLP rules provide that no immediate family member may work for the Provisional Licensee’s employer. The Committee agreed that the rules should prevent the

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

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

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

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

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

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

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

The Task Force report did not consider the intersection of the SPPE with Character and Fitness review. The PLP rules require Provisional Licensees to pass Character and Fitness review (and obtain a "Certificate of Eligibility") before starting the program. The Committee agreed with this approach but recognized that Character and Fitness review sometimes takes several months. For

that reason, the proposed SPPE rules allow applicants to begin accumulating hours that count towards completion of the SPPE while they are undergoing Character and Fitness review. Applicants may not perform any work that would require a law license during this time, unless they retain a valid student license, but they may complete other work for the SPPE.

#### **Section 4: Professional Liability 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 Committee clarified this requirement in the SPPE rules, providing in Rule 4.1 that “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.”

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

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

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

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

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



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

### **5.5 Dual Supervising Attorneys**

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

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

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

## **Section 6: Program Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Feedback from Supervising Attorneys: The Task Force hoped that Supervising Attorneys would provide frequent feedback to SPPE candidates, helping them develop their knowledge and skills. The Committee shares that hope but decided against requiring Supervising Attorneys to provide

particular types of feedback or use specific rubrics for written work. That type of requirement might prove too burdensome or restrictive for Supervising Attorneys. Instead, the SPPE's required training sessions (Section 14) will include information about best practices for giving feedback and sample rubrics for Supervising Attorneys to use if they choose to do so.

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

Templates: The rule recognizes that lawyers base some of their work on templates. If a template forms the foundation of a written work, the Provisional Licensee must provide a copy of the original template and highlight the portions representing the Provisional Licensee's edits, additions, or other customization. Training materials will make clear that this requirement applies only when the Provisional Licensee worked closely with a single template. Provisional Licensees who review multiple samples to guide their work need not submit those samples. To assure that Licensees make more than minor modifications to a template, Rule 6.4(D)(4) provides that "Only the additions, edits, or other customization will count towards the word-count requirements" described above. In addition, Rule 6(D)(3) bars the Provisional Licensee from relying upon the same template for more than one writing accepted by the Examiners as qualified.

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

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

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

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

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

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

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

The proposed rule requires client consent when a Supervising Attorney observes an oral session, but not when the Supervising Attorney reviews written exchanges. The Committee did not think consent was necessary in the latter context because the Supervising Attorney’s presence would not disrupt the session and only reviews of the session (not the written exchanges themselves) would be included in the Portfolio.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

The Committee concluded that the same hours requirement should apply to the SPPE. Provisional Licensees will have already completed 3 years of law school, so their workplace hours build on an already extensive foundation. The primary measure of a Provisional Licensee's competence, moreover, will come from assessment of the work submitted to the Board in their Portfolios. The Task Force did not have time to outline those submissions in detail, so may have relied more heavily on hours to signal minimum competence. The lesser hours proposed by the Committee complement the detailed work product now required from Provisional Licensees.

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

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

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

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

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

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

an earlier schedule. The requirement of 675 hours, when combined with the Portfolio requirements, provides sufficient time to establish a candidate's minimum competence while maintaining parity among the three licensing paths.

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

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

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

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

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

progressing quickly enough, or is unable to perform competently, the Employer likely will discharge the Licensee.

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

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

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

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

## **Section 7: Interim Portfolios**

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

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

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

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

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

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

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

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

The PLP rules take a somewhat different approach. Provisional Licensees in that program may resubmit components scored “not qualified” with clarifying information about why the component should receive a qualifying score. That program, however, also strictly limits the number of replacement components submitted by Licensees. The Committee concluded that the

approach outlined above would be more workable for BBX and helpful to Provisional Licensees. Licensees should learn from their mistakes and create new work, rather than dwelling on past work product.

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

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

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

The rules in this Section provide more detail on the process of scoring Interim and Final Portfolios. The rules for review and scoring differ somewhat from the PLP provisions, which permit a single Examiner to grade each Portfolio component. The proposed SPPE rules allow a single Examiner to grade some Portfolio components but specify in Rule 9.1: “If practicable, at least two Examiners will grade each piece of written work product (Rule 6.4) included in a Portfolio.” Rule 9.1 also provides that “multiple Examiners [should] participate over time in grading components of each Provisional Licensee’s Portfolio.”

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

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

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

The PLP rules establish complex rules for BBX to review Final Portfolios that are marked deficient, as well as for Provisional Licensees to remediate deficiencies and appeal BBX decisions. Those processes are necessary given the time limits on participation in the PLP and the restrictions on replacement of Portfolio components. The proposed SPPE rules impose no strict time limits and allow unlimited replacement of deficient Portfolio components (although

Rule 6.14 imposes a “freshness” requirement on some Portfolio components). In that context, the Committee concluded that procedures for challenging BBX decisions were not necessary.

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

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

### **Section 11: Accommodations**

This Section first notes that Provisional Licensees must seek any accommodations for workplace conditions or assignments from their Employer, not from the Board. Relatively few accommodations should be needed for the SPPE itself because the Committee designed the program requirements using principles of universal design. E.g., the program does not include any tight deadlines or timelines, Licensees may choose to complete some requirements either orally or in writing, and Licensees may use proofreaders, software programs, and other assistance when creating written work product.

When accommodations for Pathway requirements are needed, the Committee concluded that they should be available not just for documented disabilities, but for any “disability, health condition, caretaking responsibility, or other condition [that] will impair [the Provisional Licensee’s] ability to complete any Program requirements.” The Board will decide what reasonable 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 Committee received helpful suggestions from the Oregon Attorneys with Disabilities Association; the provisions of the proposed rule incorporate all those suggestions.

### **Section 12: Transparency**

The Oregon courts and State Bar value transparency, so the Board will publish all forms and documents related to the SPPE on its website. This will include the rubrics that Examiners use to score Portfolio components. Publication of these rubrics will help Provisional Licensees and

Supervising Attorneys understand the Board's definition of minimum competence. The rubrics themselves will be developed with input from practicing attorneys, just as the Board seeks input when setting the state's cut score for the UBE.

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

### **Section 13: Conflicts**

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

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

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

### **Section 14: Training**

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

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

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

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

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

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

### **Section 17: Ombudspersons**

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

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

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



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

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

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

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

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

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

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

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

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

### **Other Notes**

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

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

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

Access to the SPPE. The Task Force emphasized that candidates should have broad access to the SPPE. In particular, the report recommended that candidates should not have to seek admission to the SPPE immediately after qualifying; that candidates should be able to pursue multiple pathways (such as starting the SPPE while also studying for the bar exam); that candidates should be able to pursue the SPPE after failing a bar exam; and that there should be no cap on the number of candidates pursuing the SPPE. The Committee agreed with all of these points, but did not state them explicitly in the rules. Instead, the rules provide that anyone who meets the qualifications of Rule 2.1 may participate in the pathway. 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 SPPE work lacking the breadth of subject matter tested on the bar exam. The Task Force noted, however, that the “depth of meaningful experience offered by the SPPE more than makes up for this lack of breadth.” The Committee agreed with the latter conclusion. Based on the *Building a Better Bar* study and other sources, moreover, it noted that competent practice in *any* area draws upon knowledge and skills that transcend practice areas. Successful practice in any area, therefore, demonstrates the existence of that necessary foundation.

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

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