

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.¹ 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

¹ 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.²

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.

² 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.³ 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.⁴

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.⁵ 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

³ 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.

⁴ 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.

⁵ 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.