

Oregon State Bar

New Lawyer Mentoring Program Manual

Resources for New Lawyers and Mentors

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INTRODUCTION

The first years of a lawyer's practice are a critical time in the development of professional habits, practices and character. To facilitate this transition into the practice of law, the Oregon Supreme Court, in conjunction with the Bar, has created the New Lawyer Mentoring Program. The goal of the NLMP is to introduce new lawyers to the high standards of integrity, professional conduct, professional competence and service to the public that are an Oregon tradition.

Shortly after admission, each new lawyer (unless deferred or exempt), will be paired with an experienced lawyer who has practiced for at least seven years and who has been selected by the Court for his or her commitment to ethics, professionalism and professional skills. Together, the new lawyer and the mentor will develop a curriculum of activities to introduce the new lawyer to the legal community and to the practical application of ethics, civility and professionalism. The new lawyer will also receive practical guidance about client relations and law office management, as well as explore practical skills in a substantive area of the law. The mentor will be a coach and a guide as the new lawyer adjusts to the challenges of law practice. Finally, working with the new lawyer will allow the mentor to see the profession through new, enthusiastic eyes and help the mentor understand generational differences.

The NLMP is premised on one-to-one interaction as a supplement to traditional classroom-style continuing education programs that new lawyers attend. Although it consists of a series of mandatory activities and experiences, the NLMP is flexible enough to complement and coordinate with existing law firm training programs as well as the special training needs of government, corporate, and public interest practices.

The success of the NLMP depends on the commitment of both the mentors and the new lawyers, and the Court and the Bar appreciate the devotion of time, energy and skill that will be required on both sides. We are confident that mentors and new lawyers alike will benefit from the program.

This manual contains information about and forms for enrolling in the NLMP, developing the individual mentoring program, and certifying completion. It also has some tips for successful mentoring relationships, a copy of the Supreme Court's New Lawyer Mentoring Rule, and selected Oregon Rules of Professional Conduct. Questions not addressed in the manual can be directed to the NLMP Administrator, Kateri Walsh at 503-431-6406, or NLMP Coordinator, Karla Houtary at 503-431-6367 or by sending an email to mentoring@osbar.org.

OPERATING PROCEDURES AND POLICIES

1. Enrollment, Exemptions and Deferrals

- a. The New Lawyer Mentoring Program (NLMP) will operate in two sessions each year. The first begins in mid-May (Spring Session) and the second begins in mid-October (Fall Session). New lawyers who take the oath of office at times other than the scheduled swearing-in ceremonies will be assigned to a session by the NLMP administrator.
- b. Within 28 days of admission, new lawyers must either enroll in the NLMP, certify they are exempt, or request a deferment.
- c. New lawyers are exempt from the NLMP if they have engaged in the active, substantial and continuous practice of law in another jurisdiction for two or more years prior to admission in Oregon.
- d. New lawyers who are not practicing law, including judicial clerks, may request to defer participation in the NLMP until they begin practicing, at which time they must enroll in the next available NLMP session.
- e. New lawyers who practice outside the state of Oregon will be deferred from participation in the NLMP if the Bar determines that mentoring cannot be arranged conveniently. If a new lawyer deferred for this reason establishes a principal office in Oregon within the first two years of admission, the new lawyer must enroll in the next available NLMP session.

2. Mentor Match

- a. The Bar will match new lawyers with mentors based principally on geography and practice area. To the extent possible and practicable, consideration will be given to preferences for gender, age, ethnicity and other factors identified by a new lawyer or a mentor.
- b. New lawyers employed in law firms, government offices, corporate law departments, or other group practices may request either an “in-house” or an “outside” mentor. An “in-house” mentor is in the same firm or office as the new lawyer. An “outside” mentor is a lawyer not in the same firm or office as the new lawyer. New lawyers may request a specific mentor; if the mentor requested has not been appointed by the Supreme Court, a conditional match will be made pending the mentor’s appointment.
- c. The Bar will match new lawyers and mentors within 14 days of the Bar’s receipt of the new lawyer’s enrollment form in most cases, after which written notice of the match and respective contact information will be provided to the new lawyer and the mentor.
- d. The new lawyer is responsible for arranging the initial meeting with the mentor, and the meeting must take place within 28 days of the announcement of the match.

3. Designing the Mentoring Plan

- a. The Mentoring Plan includes core concepts and experiences that will introduce new lawyers to practical aspects of lawyering with which all lawyers need to be familiar for the successful and professional practice of law. The Mentoring Plan has six component parts:

- Introduction to the Legal Community;
- Rules of Professional Conduct, Professionalism, and Cultural Competence;
- Introduction to Law Office Management;
- Working With Clients;
- Career Development:
 - ✓ Public Service,
 - ✓ Bar Programs,
 - ✓ Work/Life Balance
- Practice Area Basic Skills.

Parts 1-5 are comprised of specific topics that the new lawyer must discuss with the mentor and specific activities that the new lawyer must complete and review with the mentor. In the Practice Area component, the new lawyer selects, completes, and then discusses with the mentor, a minimum of 10 basic skill activities in one or more substantive practice areas that best match the new lawyer's interests.

- b. During the initial meeting, the new lawyer and the mentor should review the required elements of the mentoring plan and identify the practice areas the new lawyer will focus on during the mentorship.
- c. The mentoring plan may include as many practice area activities as the new lawyer and mentor agree are practical, but must include at least 10 activities from one or more practice areas. The activities listed in the substantive areas are not exclusive; the new lawyer and mentor may supplement the listed activities or substitute others that they identify as basic competency skills. Similarly, if the new lawyer is interested in a substantive area for which no activities are suggested, the new lawyer and the mentor may develop a customized elective plan of activities designed to build basic skills in that area.
- d. If the mentor does not have experience in the practice area or areas the new lawyer wishes to focus on, the mentor should help the new lawyer find another experienced lawyer who practices in the subject area to assist in mentoring the new lawyer. In that situation, the mentors may split the allowed mentoring continuing education credits, although to get credits the consulted lawyer may need to apply to and be approved for the NLMP program.
- e. A new lawyer employed by a law firm, corporate legal department, or governmental unit may complete an alternate mentoring plan based on the employer's established training program, provided the program covers the areas required by the NLMP.

- f. A new lawyer who has completed some of the mentoring plan activities as a law clerk or otherwise prior to admission may also develop a customized plan with the mentor that will build on existing skills in the component areas.

4. Completing the Mentoring Plan

- a. The mentoring plan is designed to be completed in approximately one year. It is expected that new lawyers and their mentors will meet at least once each month for twelve months, and that each meeting will last approximately 90 minutes to allow sufficient time to review and discuss the various experiences and activities that make up the mentoring plan and to monitor the new lawyer's progress.
- b. New lawyers who are mentored within their law firm, corporate legal department, or governmental unit may complete some of their required activities in small group settings rather than by individual discussion with their in-house mentors.
- c. When all mentoring plan activities have been completed, the new lawyer and the mentor shall sign a Certificate of Completion. The new lawyer is responsible for filing the Certificate with the Bar, accompanied by a fee of \$100. When the Certificate has been filed, the new lawyer will be awarded six (6) hours of Minimum Continuing Legal Education credit that can be applied to the new lawyer's *next* reporting period (not the first reporting period on admission). See MCLE Regulation 6.100. The mentor will be awarded eight (8) MCLE credits.
- d. The Certificate of Completion must be filed with the Bar on or before December 31 of the new lawyer's first full year of admission. (For example, new lawyers admitted in 2011 will have until December 31, 2012 to complete their plans and file the Certificate of Completion.)
- e. A new lawyer who is unable to complete the plan within the allowed time may be granted additional time for good cause shown. Examples of good cause include health issues, a change in employment, or other circumstances that prevent the new lawyer from working on the mentoring plan. The new lawyer must submit a request for additional time in writing on or before the completion deadline.

5. Noncompliance, Suspension and Reinstatement

- a. A new lawyer who fails to complete the mentoring plan on time (and who has not been granted an extension) will be given written notice and shall have 60 days from the date of the notice to cure the noncompliance.
- b. If the noncompliance is not cured (by completing the mentoring plan) within the time allowed, the Executive Director shall recommend to the Supreme Court that the new lawyer be suspended from membership in the Bar.
- c. During a period of suspension, the new lawyer may not engage in the practice of law.

- d. A suspended new lawyer may apply for reinstatement as soon as the mentoring plan is completed. In addition to the reinstatement application, the new lawyer must submit the Certificate of Completion, the NLMP fee of \$100 and a reinstatement fee of \$100.
- e. Upon receipt of a satisfactory application for reinstatement, the Executive Director will forward a recommendation to the Supreme Court that the new lawyer be reinstated to active membership. Reinstatement is effective upon approval by the Supreme Court.
- f. A reinstatement after suspension for not completing the NLMP has no effect upon any other aspect of the new lawyer's status, including any suspension for nonpayment of membership fees, MCLE noncompliance or a disciplinary proceeding.

FREQUENTLY ASKED QUESTIONS

1. *Is the NLMP Mandatory?*

Yes. All newly admitted members of the Oregon State Bar must participate in the program unless they have already practiced in another jurisdiction for at least two years.

2. *What if I am unemployed or otherwise not practicing law after admission?*

New lawyers who do not have plans to begin practicing law immediately after admission, including new lawyers who are working as judicial clerks, may request a deferral until such time as they begin practicing law.

3. *When do I start the NLMP?*

Unless exempt or deferred, new lawyers must enroll in the NLMP by filing the enrollment form with the Bar within 28 days after admission to the bar. New lawyers who are granted a deferral must enroll in the next available NLMP session following their beginning to practice law.

4. *Who are the mentors?*

Mentors are Oregon bar members in good standing who have at least seven years of experience in the practice of law. They must have a reputation for competence and for conducting themselves ethically and professionally.

5. *How are mentors selected?*

Initially, bar leaders around the state were asked to nominate qualified lawyers in their communities. The nominees were reviewed by the NLMP Task Force recruitment committee, which recommended suitable candidates to the Board of Governors. The slate of mentors approved by the BOG was then sent to the Supreme Court for appointment. For subsequent sessions, bar members will be invited to nominate themselves. The BOG's standing Committee on the NLMP will review the candidates and make recommendations to the Supreme Court.

6. *Do mentors get any special training?*

Yes. All appointed mentors are required to screen a training video prepared by the Bar. In addition to familiarizing mentors with the creation and execution of the mentoring plan, the training video includes ideas and tips for establishing successful mentoring relationships. Mentors are also asked to review this manual in its entirety.

7. *How do I find a mentor?*

There are three ways that mentors will be identified for new lawyers. If a new admittee is hired by a firm or organization, their employer may assign a senior associate to serve as their NLMP mentor. The second option is for a new lawyer to seek out a respected

member of the bar him- or herself, and ask if they are willing to serve as a mentor. In these first two options, mentors will be appointed on a provisional basis pending Supreme Court approval. The third option is for the Bar to match new lawyers with mentors who have been appointed by the Supreme Court. The principal criteria for the match will be location and practice area interest, although other factors, such as a preference for gender, ethnicity, or age will be given consideration to the extent possible.

8. Does my mentor have to be a lawyer in my firm?

Generally, lawyers employed in law firms, corporate legal departments, and government offices will be matched with a mentor in the same firm or office. However, new lawyers may request and will then be matched with an “outside” mentor.

9. Can I choose my own mentor?

Yes. A new lawyer’s request for a specific mentor will be taken into consideration, provided the mentor is qualified and appointed by the court.

10. What is the Mentoring Plan?

The Mentoring Plan sets out the activities the new lawyer will work on with the mentor during the mentoring year. It is comprised of five areas of required activities and one practice area selected by the new lawyer. The elective activities may be in one or more substantive areas and must include at least 10 basic skills activities. Several practice area activities are contained in this manual. If a new lawyer wishes to focus on a substantive area not covered in the manual, the new lawyer and the mentor may identify basic skill activities related to that substantive area.

11. Can I get credit for Mentoring Plan activities that I have already completed prior to admission?

Experience as a law clerk or otherwise, prior to admission, will not exempt a new lawyer from the NLMP. However, the new lawyer and the mentor may design a customized mentoring plan that has the same focus but builds on existing knowledge and skills through more advanced activities.

12. How much time will the NLMP require?

The NLMP mentoring plan is designed to be completed in approximately twelve months if the new lawyer and mentor meet regularly. As a guide, the new lawyer and mentor should expect to meet monthly for approximately 90 minutes. Because the Certificate of Completion doesn’t have to be filed until December 31 of the first full year of admission, however, new lawyers will actually have 14 to 17 months to complete their plans.

13. Do I have to complete the new admittee MCLE requirements in addition to the Mentoring Plan?

Yes. The NLMP does not replace the Minimum Continuing Legal Education requirements for new admittees. (See MCLE Rule 3.3(b).) However, upon successful completion of the NLMP, new lawyers are awarded six MCLE credits that can be carried forward into their first three-year reporting period.

14. Do new lawyers receive MCLE credit for participating in the NLMP?

Yes, see question #13 above.

15. Do mentors receive MCLE credit?

Yes, the Board of Governors has determined that mentors may claim eight (8) general MCLE credits for mentoring a new lawyer. If another lawyer assists with the mentoring, the credits may be apportioned between them according to their respective responsibility for the mentoring.

16. What do I do if I have a problem with my mentor?

If a mentor is not making time for regular meetings or is not providing helpful guidance and coaching through the mentoring plan activities, a new mentor can be assigned. New lawyers are encouraged to give the relationship some time to develop and to remember that the NLMP mentor may not be able to satisfy all of the needs for support that the new lawyer may have. There are many voluntary mentoring programs available and new lawyers are encouraged to participate in as many as they feel is helpful or appropriate.

17. What if I can't complete my Mentoring Plan within the time allowed?

If a new lawyer does not believe that the December 31 deadline can be met due to health or personal issues, job changes or other circumstances beyond their control, an extension may be granted for good cause shown. A request for an extension must be submitted in writing to the Bar prior to the December 31 deadline. A new lawyer who does not qualify for an extension and who does not complete the plan in time will be given written notice and 60 days to cure the noncompliance (by completing the plan). Failure to complete the plan will result in the Executive Director recommending that the noncomplying new lawyer be suspended from membership in the Bar and, consequently, from the practice of law.

18. How do I establish completion of the Mentoring Plan?

When all of the activities of the Mentoring Plan have been completed, the new lawyer and the mentor sign the Certificate of Completion. The new lawyer is responsible for filing the Certificate and a copy of the completed Mentoring Plan with the Bar and paying the \$100 fee.

19. *What if I can't afford the fee?*

At the sole discretion of the Executive Director, the NLMP fee may be waived in cases of financial hardship or special circumstances. Requests for a fee waiver must be submitted in writing to the Executive Director and include the reason for the request accompanied by a summary of the applicant's income and expenses.

20. *How do I get reinstated from a suspension?*

A new lawyer suspended for failing to timely complete the mentoring plan can apply to the Executive Director for reinstatement by submitting the appropriate reinstatement form accompanied by the Certificate of Completion, paying the NLMP fee of \$100 and paying the reinstatement fee of \$100. If the submission is satisfactory to the Executive Director, a recommendation for the applicant's reinstatement will be sent to the Supreme Court.

TIPS FOR SUCCESS

If you are a mentor...

- Take the time to develop a meaningful mentoring relationship. At its best, this relationship is an opportunity for mutual learning and growth.
- Set both expectations and boundaries early on. At initial meeting, set a regular time on calendar for your monthly meetings. Inform your new lawyer about the best time to call with questions or issues, when they are more likely to get your undivided attention.
- Listen to your new lawyer's concerns and, especially in the beginning, draw out those concerns that the new lawyer may be reluctant to raise.
- Recognize that new lawyers may differ in what they hope and need to get out of a mentoring relationship. Adjust your own approach to assure you are providing your new lawyer with what he or she is seeking.
- Create a safe environment for the new lawyer's growth by being accessible and non-judgmental, keeping confidences, and inviting open and frank conversations.
- Acknowledge the issues facing new lawyers who are ethnic minorities, or who may face particular challenges because of their religion, sexual orientation, economic status, national origin or age.
- Remember that the only stupid question is the one that isn't asked. Encourage your new lawyer to ask, ask, ask. Be respectful and responsive with your answers.
- Your responsibility is not to direct or supervise your new lawyer's work, but to be a coach and guide for the development of professional values and skills.
- Share your experience and talent freely. Be the role model you would want.

If you are a new lawyer...

- Be respectful of your mentor's time. Be prompt and give plenty of notice if you need to reschedule a meeting. Make good use of your meeting time; come prepared with a list of things you want to discuss.
- Your mentor's "war stories" can be valuable learning tools, especially if you can relate them to a situation of your own.
- Ask questions! Don't let your ego get in the way of accepting feedback and constructive criticism from your mentor.
- Build multiple mentor relationships; your NLMP mentor will not be able to advise you in every aspect of your professional or personal life. Develop effective networks with peers, other lawyers in and outside your workplace, judges, family and friends.
- Your reputation in the community will be based on your interactions with your mentor, your clients, your work colleagues, opposing counsel, court staff and judges. Nurture it and guard it jealously.

NEW LAWYER MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENTS

In addition to the NLMP, new lawyers must meet the new admittee MCLE requirement of 15 hours of accredited CLE. The 15 hours consist of practical skill courses, ethics (including a child abuse reporting course) and an introductory course in access to justice:

3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.

* * *

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics (including one in child abuse reporting), and ten credit hours in practical skills.... New admittees admitted on or after January 1, 2009 must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Administrator may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee's first reporting period, the requirements in Rule 3.2(a) shall apply.

Unless a new lawyer's participation in the NLMP is deferred, the first MCLE reporting period runs concurrently with the NLMP and ends on December 31 of the first full calendar year of admission:

3.7 Reporting Period.

* * *

(b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

The practical skills requirement of the New Admittee MCLE rule will address many of the topics that the new lawyer will discuss with the mentor. Programs such as the OSB PLF *Learning the Ropes* and other shorter programs provide valuable course work for these credits, and will augment the practical skills work achieved in your mentoring plan:

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; the negative aspects of substance abuse to a law practice; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

The introductory Access to Justice course must be one that is specifically approved as such by the MCLE Administrator:

3.600 Introductory Course in Access to Justice. In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule 5.5(b) and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

Note that not all programs approved for Access to Justice credits meets the requirements for the introductory course.

If you have any questions about your MCLE requirements or whether any particular CLE program will fulfill the new admittee requirements, please call the OSB MCLE Department at (503) 620-0222 ext. 368 or toll free in Oregon 1-800-452-8260, ext. 368, or e-mail your questions to Denise Cline, MCLE Administrator, at dcline@osbar.or or Jenni Abalan at jabalan@osbar.org.

ETHICAL CONSIDERATIONS IN MENTORING

FORMAL ETHICS OPINION NO. 2011-184

Lawyer to Lawyer Consulting: Confidentiality, Conflicts of Interest

Facts:

Lawyer A participates in a mentoring program for new lawyers. Lawyer B is Lawyer A's mentor and is not in Lawyer A's law firm. Lawyer A wishes to discuss a matter concerning one of his clients with Lawyer B.

Lawyer C is a solo practitioner. She is a member of an email listserv maintained by a professional organization that provides members the opportunity to exchange ideas and respond to questions about problems and issues that arise in their practice. Lawyer C encounters an unusual situation in a case she is handling and wishes to receive advice on how to proceed from knowledgeable colleagues who participate in her listserv.

Questions:

1. May Lawyer A disclose information relating to the representation of his client with Lawyer B?
2. May Lawyer B consult regarding Lawyer A's client matter without first checking for conflicts of interest between Lawyer A's client and any client of Lawyer B's firm?
3. May Lawyer C relate the details of the unusual situation she has encountered to other lawyers who participate in her professional organization's listserv?

Conclusions:

1. Yes, qualified.
2. See discussion.
3. Yes, qualified.

Discussion:

Oregon RPC 1.6 provides, in pertinent part:

(1) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Oregon RPC 1.7 provides, in pertinent part:

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or.....

It is not uncommon for a lawyer working on a client matter to seek the guidance or assistance of a knowledgeable colleague. Except where the client has specifically instructed otherwise, lawyers may consult with colleagues within their own firms or who are formally associated on a client's matter violating the duties to safeguard confidential information and avoid conflicts of interest.

A lawyer may also on occasion seek the advice of colleagues who are not members of the lawyer's firm or associated on a client matter. Whether those discussions arise in the context of a formal mentoring relationship or through informal discussions, such as on a professional listserv or in casual conversation, both the lawyer seeking advice and the lawyer giving the advice must exercise care to avoid violating their duties to their respective clients.

The American Bar Association's Standing Committee on Ethics and Professional Responsibility Formal Opinion 98-411, "*Ethical Issues in Lawyer-to-Lawyer Consultation*," provides practical guidance on this subject.¹ Even though ABA opinion was adopted before listservs and other electronic discussion tools² were commonly used by lawyers and makes no reference to them or to lawyer mentoring programs, the principles it discusses and the guidance it provides are applicable in these contexts.³

I. Considerations for the Consulting Lawyer

Oregon RPC 1.6 safeguards "all information relating to the representation of a client," and prohibits disclosure of such information without the client's informed consent or as provided in one of the specific exceptions to the rule. There is no exemption for lawyers participating in mentorship programs or for other lawyers seeking assistance on behalf of clients. RPC 1.6(a) permits disclosure of confidential information, without the informed consent of a client, where the disclosure is "impliedly authorized to carry out the representation..." The rule does not suggest what kind of disclosures might be impliedly authorized, the ABA opinion interprets Rule 1.6 "to allow disclosures of client information to lawyers outside the firm when the consulting lawyer reasonably believes the disclosure will further the representation by

¹ Formal Opinion 98-411 (1998), available at: www.abanet.org/media/youraba/200911/98-411.pdf

² For purposes of this opinion, when reference is made to "listservs" the same considerations apply to discussions on blogs, online community "bulletin boards" or similar electronic discussion venues.

³ The ABA opinion purports to apply equally to consultations about the substance or procedure of a client's matter and to consultations about the consulting lawyer's own ethical responsibilities in the matter. However, since the ABA opinion was issued, both the ABA and Oregon have adopted rules that expressly permit disclosure of otherwise confidential information to the extent reasonably necessary "to secure legal advice about the lawyers compliance with these Rules." ABA Model Rule 1.6(b)(4) and Oregon RPC 1.6(b)(3). Comment [9] to the ABA Model Rule suggests that such disclosures may be impliedly authorized for the lawyer to carry out the representation but, even if not, are permitted "because of the importance of a lawyer's compliance with the Rules of Professional Conduct." This opinion is limited to consultations between lawyers unrelated to the lawyer's own professional conduct.

obtaining the consulted lawyer’s experience or expertise for the benefit of the consulting lawyer’s client.”

Consultations that are general in nature and that do not involve disclosure of information relating to the representation of a specific client do not implicate Rule 1.6. For instance, there would be no violation of the rule in a listserv inquiry seeking the name or citation for a recent case on a subject relevant to a client matter or to discussions about an issue of law or procedure that might be present in a client matter. Similarly, inquiries or discussions posed as hypotheticals generally do not implicate RPC 1.6. Accordingly, Lawyer A might safely pose a question to Lawyer B, or Lawyer C might post an inquiry on a listserv, as a hypothetical case.

Framing a question as a hypothetical is not a perfect solution, however. Lawyers faces a significant risk of violating Rule 1.6 when posing hypothetical questions if the facts provided permit persons outside the lawyer’s firm to determine the client’s identity. Where the facts are so unique or where other circumstances might reveal the identity of the consulting lawyer’s client even without the client being named, the lawyer must first obtain the client’s informed consent for the disclosures.

To obtain “informed consent,” a lawyer must provide a client with “adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”⁴ As noted in the ABA opinion, that may include an explanation that the disclosure may constitute a waiver of attorney-client privilege or might otherwise prejudice the client’s interests.

A lawyer should avoid consulting with another lawyer who is likely to be or to become counsel for an adverse party in the matter. In the absence of an agreement to the contrary, the consulted lawyer does not assume any obligation to the consulting lawyer’s client by simply participating in the consultation.⁵ The consulting lawyer thus risks divulging sensitive information to a client’s current or future adversary, who is not prohibited from subsequently using the information for the benefit of his or her own client. This should be a particular concern to Lawyer C if she posts her inquiry to listservs whose members may represent parties on all sides of legal issues. Moreover, no listserv, regardless the restrictions and limitations upon those who participate in it, can assure that messages will be read only by persons aligned with the interests of the lawyer posting an inquiry. Lawyer C, in seeking to consult about an unusual fact pattern, must be careful about using a listserv to obtain assistance from other attorneys, at least not without the informed consent of her client about the potential risks of the consultation.

⁴ Oregon RPC 1.0(g).

⁵ The ABA opinions suggests that an agreement to maintain confidentiality might be inferred in some situations, such as where the consulting lawyer puts conditions on the consultation or where the information discussed is of a nature that a reasonable lawyer would assume its confidentiality. In the absence of any authority, however, practitioners should not assume a confidentiality agreement will be inferred.

One way for a consulting lawyer to avoid some of the foregoing risks is to obtain an agreement that the consulted lawyer will both maintain the confidentiality of information disclosed and not engage in representation adverse to the consulting lawyer's client .

II. Considerations for the Consulted Lawyer

As discussed above, a consulted lawyer assumes no obligations to the consulting lawyer's client by the mere fact of the consultation. Lawyer B will not have violated any duty to Lawyer A's client under Rule 1.6 if Lawyer B later discloses or uses information received from Lawyer A, including in circumstances where Lawyer B undertakes representation adverse to Lawyer A's client.

Even a consultation premised on hypothetical facts can have practical implications for the consulted lawyer if the guidance provided to the consulting lawyer is used to harm a client of the consulted lawyer. The ABA opinion illustrates this point with the example of a lawyer skilled in real estate matters, like our Lawyer B, who is consulted by a less experienced lawyer, such as our Lawyer A, about how a tenant might void a lease. As a result of Lawyer B's guidance, Lawyer A's client repudiates a lease. Lawyer B subsequently learns that the landlord whose lease was repudiated is a client of Lawyer B's firm.

In that situation, if there was no confidentiality agreement between the lawyers, Lawyer B has a duty to inform the landlord client about the consultation and its possible consequences. While doing so does not breach any duties to Lawyer A's client or to Lawyer B's client, the practical result may be allegations of negligence or ethical misconduct by the landlord client and the destruction of the relationship. Had Lawyers A and B entered a confidentiality agreement regarding the consultation, then Lawyer B and his firm could be disqualified under Rule 1.10. if Lawyer B's obligations under that agreement would materially limit his ability to represent the landlord in the matter.⁶

Lawyer B can avoid the problems posed by the above example by insisting, prior to any consultation with Lawyer A about a client matter, that Lawyer A provide the identity of the client so that Lawyer B can check for possible conflicts with clients of Lawyer B's firm. In addition to checking for possible conflicts, Lawyer B might seek an agreement from Lawyer A, on behalf of Lawyer A's client, that the consultation will not create any obligations by Lawyer B to Lawyer A's client.

Consultations among lawyers, whether during the course of a mentorship program, on listservs and other "social media," during continuing education programs or in more informal settings, are an important part of a lawyer's professional development and a critical component in representing clients. Indeed, such consultations may be one way in which lawyers fulfill their ethical duty, under Oregon RPC 1.1, to provide competent representation. But lawyers who are not members of the same firm or affiliated on a particular case must be mindful of other ethical obligations to clients. For the consulting lawyer, like Lawyers A and C in this opinion, care

⁶ Oregon RPC 1.7(a)(2) prohibits a lawyer from representing a client if there is "a significant risk that the representation...will be materially limited by the lawyer's responsibilities to...a third person..." except where the affected client gives informed consent, confirmed in writing.

should be taken not to violate the duty to maintain the confidentiality of information relating to the representation of a client. For the consulted lawyer, like Lawyer B, the duty of loyalty to existing clients must be considered. Even though a consultation will not create an attorney-client relationship between the client of the consulting lawyer and the consulted lawyer, there may be circumstances, as illustrated above, where the consulted lawyer will need to check for possible conflicts of interest, or take other prophylactic measures, to ensure that an obligation to current clients is not impaired.

Approved by Board of Governors, March 2011.

OREGON STATE BAR

STATEMENT OF PROFESSIONALISM

(adopted by the Oregon Supreme Court December 1, 2006)

As lawyers, we belong to a profession that serves our clients and the public good. As officers of the court, we aspire to a professional standard of conduct that goes beyond merely complying with the ethical rules. Professionalism is the courage to care about and act for the benefit of our clients, our peers, our careers, and the public good. Because we are committed to professionalism, we will conduct ourselves in a way consistent with the following principles in dealing with our clients, opposing parties, opposing counsel, the courts, and the public.

- I will promote the integrity of the profession and the legal system.
- I will work to ensure access to justice for all segments of society.
- I will avoid all forms of illegal or unethical discrimination.
- I will protect and improve the image of the legal profession in the eyes of the public.
- I will promote respect for the courts.
- I will support the education of the public about the legal system.
- I will work to achieve my client's goals, while at the same time maintain my professional ability to give independent legal advice to my client.
- I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.
- I will communicate fully and openly with my client, and use written fee agreements with my clients.
- I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party.
- I will always be prepared for any proceeding in which I am representing my client.
- I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.
- I will only pursue positions and litigation that have merit.
- I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.
- I will support pro bono activities.

SELECTED

OREGON RULES OF PROFESSIONAL CONDUCT

Rule 1.0 Terminology

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (g) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(f) "Information relating to the representation of a client" denotes both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the

disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve information relating to the representation of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.

(7) to comply with the terms of a diversion agreement, probation,

conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

Rule 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will

be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

NEW LAWYER MENTORING PROGRAM RULE

(adopted by the Oregon Supreme Court December 6, 2010)

- 1. Applicability.** All lawyers admitted to practice in Oregon after January 1, 2011 must complete the requirements of the Oregon State Bar's New Lawyer Mentoring Program (NLMP) except as otherwise provided in this rule.
- 2. Administration of the NLMP; MCLE Credit.**
 - 2.1. The OSB Board of Governors shall develop the NLMP curriculum and requirements in consultation with the Supreme Court and shall be responsible for its administration. The OSB Board of Governors shall appoint a standing committee to advise the BOG regarding the curriculum and administration of the NLMP.
 - 2.2. The OSB Board of Governors may establish a fee to be paid by new lawyers participating in the NLMP.
 - 2.3. The OSB Board of Governors shall establish by regulation the number of Minimum Continuing Legal Education credits that may be earned by new lawyers and mentors for participation in the NLMP.
- 3. New Lawyer's Responsibilities.**
 - 3.1. The NLMP shall be operated in two sessions each year, one beginning on May 15 and the other on October 15. Unless deferred or exempt under this rule, new lawyers must enroll, in the manner prescribed by the OSB, in the first NLMP session after their admission to the bar.
 - 3.2. The new lawyer shall be responsible for ensuring that all requirements of the NLMP are completed within the requisite period including, without limitation, filing a Completion Certificate executed by the assigned mentor attesting to successful completion of the NLMP.
- 4. Appointment of Mentors.** The Supreme Court will appoint mentors recommended by the OSB Board of Governors. To qualify for appointment, the mentor must be a member of the OSB in good standing, with at least seven years of experience in the practice of law, and have a reputation for competence and ethical and professional conduct. All appointed mentors must complete the NLMP mentor training before participating in the program.
- 5. Deferrals.**
 - 5.1. The following new lawyers are eligible for a temporary deferral from the NLMP requirements:
 - 5.1.1. New lawyers on active membership status whose principal office is outside the State of Oregon and for whom the OSB determines that no mentorship can be arranged conveniently; and
 - 5.1.2. New lawyers serving as judicial clerks; and
 - 5.1.3. New lawyers who are not engaged in the practice of law.
 - 5.2. A new lawyer who is granted a deferral under section 5.1.1 of this Rule and who, within two years of beginning to practice law in any jurisdiction, establishes a principal office within the State of Oregon, must enroll in the next NLMP session. A new lawyer whose participation in the NLMP was deferred under sections 5.1.2 or 5.1.3 of this rule must

enroll in the next NLMP session following the conclusion of the judicial clerkship or the lawyer's entering into the practice of law.

- 6. Exemptions.** New lawyers who have practiced law in another jurisdiction for two years or more are exempt from the requirements of the NLMP.
- 7. Certificate of Completion; Noncompliance.**
 - 7.1. Each new lawyer is expected to complete the NLMP within 12 months of the date of enrollment, but in no event later than December 31 of the first full year of admission to the bar. The Certificate of Completion must be filed with the bar on or before that date.
 - 7.2. A new lawyer who fails to file a Certificate of Completion by December 31 of the first full year of admission shall be given written notice of noncompliance and shall have 60 days from the date of the notice to cure the noncompliance. Additional time for completion of the NLMP may be granted for good cause shown. If the noncompliance is not cured within the time granted, the OSB Executive Director shall recommend to the Supreme Court that the affected member be suspended from membership in the bar.
- 8. Reinstatement.** A new lawyer suspended for failing to timely complete the NLMP may seek reinstatement by filing with the OSB Executive Director a Certificate of Completion and a statement attesting that the applicant did not engage in the practice of law during the period of suspension except where authorized to do so, together with the required fee for the NLMP and a reinstatement fee of \$100. Upon receipt of the foregoing, the Executive Director shall recommend to the Supreme Court that the member be reinstated. The reinstatement is effective upon approval by the Court. Reinstatement under this rule shall have no effect upon the member's status under any proceeding under the Bar Rules of Procedure.

NLMP CALENDAR FOR 2011-SPRING SESSION*

May 6, 2011	Swearing-In Ceremony
June 3, 2011	Enrollment Forms Due
June 17, 2011	Mentor matches announced
July 15, 2011	Initial meeting between New Lawyer and Mentor
July 29, 2011	Alternate Plan proposals due
May 6, 2012	One year mentoring term ends, Certificates of Completion may be filed
December 31, 2012	Last day for Certificates of Completion
January 13, 2013	Notices of noncompliance sent
March 13, 2013	Noncompliance "cure" period expires
March 15, 2013	Suspension recommendations sent to Supreme Court

NLMP Calendar for 2011-Fall Session*

October 6, 2011	Swearing-In Ceremony
November 3, 2011	Enrollment Forms Due*
November 17, 2011	Mentor matches announced
December 15, 2011	Initial meeting between New Lawyer and Mentor
December 29, 2011	Alternate Plan proposals due
October 6, 2012	One year mentoring term ends, Certificates of Completion may be filed
December 31, 2012	Last day for Certificates of Completion
January 13, 2013	Notices of noncompliance sent
March 13, 2013	Noncompliance "cure" period expires
March 15, 2013	Suspension recommendations sent to Supreme Court

*New lawyers who are admitted other than at the scheduled swearing-in ceremonies will have adjusted deadlines for filing enrollment forms, mentor match, initial meetings, alternate proposals and end of one-year term, all of which will be based on actual admission date.

INITIAL MEETING GUIDE

What	Mentor	New Lawyer
Come prepared	Learn what you can about your new lawyer prior to the initial meeting.	Learn what you can about your mentor prior to the initial meeting.
Mentor's Career Story	Tell a brief story about your career, including a discussion about your mentors and their lessons. If you had no mentors, discuss how it affected your career.	Listen. Ask questions.
New Lawyer's Goals	Listen. Ask questions. Discuss.	Explain your career goals, including practice areas that interest you.
Compliance Deadline	Review the expected time for completion of the NLMP, including extensions if necessary, and the consequences of noncompliance.	Acknowledge your understanding of the deadlines and your responsibility for successful completion.
Prepare the Mentoring Plan ^{##}	Review the plan components. Discuss the new lawyer's practice area interest and any adjustments to meet the new lawyer's individual needs.	Review the plan in advance and be prepared to discuss your practice area choice and any other adjustments for your individual needs.
Establish a regular meeting schedule.	Inform the new lawyer of your time commitments and general schedule; agree on a method and frequency for communication between scheduled meetings.	Commit to organizing your time so as to make efficient use of mentoring meetings. Be considerate of the mentor's schedule.
Agree to be candid about any problems.	Explain that you will inform the new lawyer if a problem arises in the mentoring relationship, or if a desired result is not being achieved.	Explain that you will inform the mentor if a problem arises in the mentoring relationship, or if a desired result is not being achieved.

^{##} If your firm has an established plan, determine if it has been qualified under the NLMP; if not, you can seek approval by submitting a request explaining how the firm's plan is substantially similar to and will provide substantially equivalent experiences to the new lawyer as the standard plan.

APPENDIX OF FORMS

NLMP Enrollment Form (to be used by all new admittees to enroll in the NLMP, to certify their exemption, or request a deferment).

The Mentoring Plan (a worksheet on which the new lawyer and mentor develop the plan and track the completion of activities).

Elective Practice Area Activities (a list of suggested practice area activities from which the new lawyer and mentor select at least ten (10) to be completed during the mentoring year).

Certificate of Completion (to be filed with the NLMP Administrator when all mentoring plan activities have been completed).

NLMP Enrollment Form

Name _____ OSB # _____

Address _____ Phone _____

_____ E-mail _____

I am exempt from the NLMP because I have engaged in the active, substantial and continuous practice of law in _____ (jurisdiction) for two or more years prior to admission in Oregon.

I request a deferral from the NLMP because:

I am a judicial clerk for _____.

I am unemployed or employed in a non-law position.

I will be practicing in another state. *(If you check this box, attach a separate sheet explaining your situation and why you believe it will be difficult to participate in the NLMP.)*

Mentor Match Information

Employer Name & Address _____

I would prefer an inside outside mentor.

Name of proposed mentor, if applicable: _____

Practice Areas of Interest. Please select up to three (3):

- | | | |
|---|--|--|
| <input type="checkbox"/> Administrative Law | <input type="checkbox"/> Debtor/Creditor | <input type="checkbox"/> Labor & Employment—Employers' Counsel |
| <input type="checkbox"/> Bankruptcy | <input type="checkbox"/> Family Law | <input type="checkbox"/> Labor & Employment – Employee's Counsel |
| <input type="checkbox"/> Business & Corporate | <input type="checkbox"/> Real Property | <input type="checkbox"/> General Litigation-Plaintiff |
| <input type="checkbox"/> Consumer | <input type="checkbox"/> Taxation | <input type="checkbox"/> General Litigation-Defense |
| <input type="checkbox"/> Criminal-Prosecution | <input type="checkbox"/> Intellectual Property | <input type="checkbox"/> Wills & Taxes |
| <input type="checkbox"/> Criminal-Defense | <input type="checkbox"/> International Law | <input type="checkbox"/> Other (please indicate) _____ |

Please check any other special areas of interest:

- | | |
|---|---|
| <input type="checkbox"/> I am interested in ethnic diversity. | <input type="checkbox"/> I am interested in cultural and lifestyle diversity. |
| <input type="checkbox"/> I am interested in gender-related issues. | <input type="checkbox"/> I am interested in sexual orientation issues. |
| <input type="checkbox"/> I am interested in disability rights and issues. | |

If there are any other areas you would like us to consider, please indicate below:

I am a graduate of Willamette University School of Law.

I am a graduate of the University of Oregon School of Law.

I am a graduate of Northwestern School of Law at Lewis & Clark.

I speak a language other than English. Please indicate which language(s): _____

Mentoring Plan

(to be filed with the Oregon State Bar upon completion)

Please note: this section is in continuing development.

Please feel free to contact NLMP with recommendations for further activity content.

New Lawyer _____

Mentor _____

A. Required Activities & Experiences

<i>Activity</i>	<i>Date Completed</i>
1. Introduction to the Legal Community, Public Service and Bar Service	
a. As soon as practicable after receipt of the mentoring match, the new lawyer and mentor meet to get acquainted and design the mentoring plan. The new lawyer is responsible for arranging the initial meeting.	
b. Introduce the new lawyer to other lawyers and staff members at the mentor's office or workplace or ascertain that such introductions have already occurred.	
c. Introduce the new lawyer to other lawyers in the community through attendance at meetings of the local bar association or another law-related group. Discuss opportunities for participating in the work of local, state or national bar organizations and the value of professional networking and relationships gained thereby.	
d. Discuss a lawyer's professional obligations regarding and the personal rewards arising from community and public service, and supporting and providing legal service to low income clients.	
e. Acquaint the new lawyer with Campaign for Equal Justice, the Oregon Law Foundation and other law-related charitable organizations. Acquaint the new lawyer with programs in which lawyers in private practice can provide pro bono legal services. Alternatively, have the new lawyer report on a visit with someone closely connected to these services.	
f. Review and discuss the opportunities for volunteer participation in OSB and local bar programs (including the ONLD and local bar young lawyer groups) and how being involved in such activities promotes professional and personal development.	
g. Escort the new lawyer on a tour of the local courthouse(s) and, to the extent practicable, introduce the new lawyer to members of the judiciary, court personnel, and clerks of court. <i>(Required only for new lawyers whose practices will take them to the courthouse.)</i>	
h. Describe and explain the customs and expectations of etiquette and behavior in the legal community such as cooperating with reasonable requests of opposing counsel that do not prejudice the rights of the lawyer's client, punctuality in fulfilling all professional commitments, avoiding offensive tactics, treating opposing parties and counsel with courtesy, and discuss the value of adhering to those customs and practices.	

2. Rules of Professional Conduct / Standards of Professionalism

a. Discuss the lawyer's oath and the practical application of the obligation to protect the laws of the State of Oregon and the United States.	
b. Discuss the core lawyering values of confidentiality and loyalty with reference to the Oregon Rules of Professional Conduct. Review and discuss in depth at least two of the following Rules: <ul style="list-style-type: none">▪ 1.7 thru 1.11 Conflicts of Interest ;▪ 3.3. Candor Toward the Tribunal;▪ 4.2 Communication with Persons Represented by Counsel; or▪ 4.3 Dealing with Unrepresented Persons.	
c. Review and discuss ethical issues that arise with some regularity in the practice setting and best practices for resolving them, with reference to experience as well as the Rules of Professional Conduct. Review and discuss the importance of and methods used to screen for conflicts. Discuss available resources for resolving ethical issues, including consultation with the OSB ethics advice service, private ethics counsel, and in-house ethics counsel or committees.	
d. Discuss how a new lawyer should handle a situation in which it is believed that another lawyer has violated ethical duties, including the duty to report certain kinds of misconduct. Discuss what to do if the new lawyer believes he or she has been instructed to engage in prohibited conduct.	
e. Review and discuss the OSB Statement on Professionalism.	
f. Discuss and explain the Minimum Continuing Legal Education requirements and ways to fulfill such requirements, including OSB programs.	
g. Discuss the importance of cultural competence to effectively representing diverse clients and working in a diverse legal community.	
3. Introduction to Law Office Management	
a. Discuss good time keeping and time management techniques.	
b. If the new lawyer and the mentor are in the same firm, discuss the new lawyer's role in the billing system. If not in the same firm, review and discuss good billing practices.	
c. Review and discuss trust account rules and best practices for handling of client funds, including importance of clearing checks before funds are drawn and authority needed to pay lawyer fees from client funds in trust. Review and discuss OSB and PLF resources.	
d. Review and discuss malpractice insurance coverage including disclosure requirements.	
e. Introduce calendar and "tickler" or reminder systems.	
f. Introduce the use of information technology systems in law practice.	
g. Discuss resources (publications, seminars, equipment, etc.) that a new	

lawyer might find particularly helpful in his or her work.	
h. Discuss the roles and responsibilities of paralegals, secretaries, and other office personnel, and how to establish good working relationships with others in the office who are support staff, colleagues, or senior partners.	
i. Review and discuss a lawyer's responsibility as a subordinate under RPC 5.2, and as a supervisor of non-lawyers under RPC 5.3.	
4. Working with Clients	
a. Discuss the importance of knowing who you represent, particularly when representing corporations, government agencies or other organizations.	
b. Discuss client interaction, including tips for gathering information about a legal matter and appraising the credibility and trust of a potential client.	
c. Review how to screen for, recognize, and avoid conflicts of interest.	
d. Discuss issues that arise regarding the scope of representation.	
e. Discuss "DOs and DON'Ts" of maintaining good ongoing client relations, such as returning telephone calls and keeping clients informed about matters.	
f. Participate in or observe at least one client interview or client counseling session.	
g. Discuss how to decide whether to accept a proffered representation.	
h. Discuss how to talk about and set the fee for legal services. Review retainers and fee agreements and discuss the importance of written engagement agreements.	
i. Discuss how to deal with a difficult client and how to decline representation of the unrealistic or "impossible" client.	
j. Discuss terminating the lawyer-client relationship and necessary documentation.	
5. Career Satisfaction and Work/Life Balance	
a. Discuss how to handle challenging relationships in and outside the office, and how to develop a support system of colleagues and others with whom the new lawyer can discuss problems as they arise.	
b. Discuss the new lawyer's career objectives and how best to achieve them. If applicable, discuss the importance of having a business plan for developing a practice.	
c. Discuss the importance of making time for family, friends, and other personal interests, including how to manage billable hour or other performance requirements to enable an appropriate balance of professional obligations and personal life.	
d. Discuss the warning signs of substance abuse and depression and how to address those problems when they are manifested in the new lawyer or others. Review and discuss the support and counseling available to the new lawyer and the new lawyer's family through the Oregon Attorney's Assistance Program. Review OSB and PLF resources.	

B. Elective Practice Area Activities

Select and complete at least ten (10) Practice Area Activities in one or more substantive law Practice Areas shown on the following pages. At least one of the Activities must be a writing project that the mentor reviews with the new lawyer. If the new lawyer is interested in a practice area not included here, the new lawyer and mentor may identify basic skill activities in that practice area to include in the mentoring plan. The activities and experiences suggested on the following pages may be adjusted to the new lawyer's particular practice setting and individual needs.

<i>Activity</i>	<i>Date Completed</i>
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

Elective Practice Area Activities

Please note: this section is in continuing development.

Please feel free to contact NLMP with recommendations for further activity content.

1. Civil Litigation

a. Rules and Pleadings

- (1) Review and discuss the local rules of the Federal District Court of Oregon or the Oregon Uniform Trial Court Rules, as applicable, focusing on issues that frequently arise.
- (2) Review and discuss the Supplemental Local rules for your county's Circuit Court focusing on issues that frequently arise.
- (3) Review and discuss pleading standards.
- (4) Participate in preparing a complaint.
- (5) Review, discuss and prepare a summons and cause it to be served.
- (6) Participate in preparing an answer to complaint, counterclaim, cross-claim or third-party complaint.
- (7) Discuss and participate in a "conference" before filing a motion (include why is it required, what constitutes conferral, provision of authorities for one's position, necessity for dispositive motions.)
- (8) Discuss the pros and cons of a motion to dismiss in federal court or state court.
- (9) Prepare, file, and argue a motion. Review and discuss.

b. Discovery and Summary Judgment

- (1) Prepare for and observe or participate in a discovery planning conference with opposing counsel in a state or federal court case.
- (2) Participate in or observe a Rule 16 scheduling conference in the Federal District Court of Oregon.
- (3) Participate in or observe a scheduling conference in state court.
- (4) Participate in or observe an interview of a witness. Discuss how to take a proper statement from a witness for use at trial.
- (5) Discuss common issues of professionalism in a litigation practice including scheduling courtesies, who will produce documents or be deposed first, where will depositions occur, personal attacks in briefs or hearings, proper usage of email and fax communications, returning phone calls, appropriate courtroom conduct by counsel and client, preparation of a client for the courtroom, and others.
- (6) Prepare one of the following: a Request for Production of Documents, a Request for Admissions, or, if in Federal Court, a set of Interrogatories.
- (7) Prepare a Response to one of the following: a Request for Production of Documents, a Request for Admissions, or if in Federal Court, a Set of Interrogatories.
- (8) Discuss the proper preparation of a witness for a deposition and the proper conduct of an attorney taking and defending a deposition.
- (9) Participate in the preparation for and the taking of a deposition of a witness or adverse party in a civil.

- (10) Participate in the preparation for and defense of a deposition of a witness for your client or of your client in a civil action.
- (11) Participate in identifying expert witnesses and producing expert witness reports.
- (12) Discuss or participate in preparing motions and memoranda in support of summary judgment in state or federal court.

c. Trial preparation and trial

- (1) Discuss or participate in final trial preparations including preparing pretrial order and making pretrial disclosures of witnesses and exhibits.
- (2) Attend to observe or participate in a final pretrial conference in state or federal court.
- (3) Participate in an evidentiary hearing in a state or federal court.
- (4) Participate in or observe a trial (or significant parts of one) in a civil or criminal case in either a state or federal court.
- (5) Discuss the mechanics of trial, including where to be when questioning a witness or addressing the court, proper attire, when to stand, courtroom decorum, addressing opposing counsel, judge's bench books, etc.

2. Criminal Litigation

- a. Observe or participate in client interview or in a meeting with a key prosecution witness.
- b. Discuss factors considered by prosecutors in making charging decision.
- c. Participate in charge negotiations between defense counsel and the prosecutor's office.
- d. Participate in making a discovery request in a criminal case, including request for exculpatory materials.
- e. Discuss defense discovery obligations in state cases.
- f. Participate in engagement of private investigator for defense to interview witnesses and discuss the ethical issues involved in the use of state or federal investigators.
- g. Review information or indictment for constitutional and/or pleading defects.
- h. Research elements of crime charged or under investigation; discuss.
- i. Review and discuss pretrial diversion options.
- j. Review and discuss plea in abeyance statute in a particular case and study applicable statute.
- k. Discuss alternatives to prosecution in state cases such as specialty courts, diversion, and civil compromise.
- l. Review and discuss criteria in federal cases for a one- or two-level reduction of offense in a particular case and study applicable statute.
- m. Discuss elements of greater and lesser offenses and range of mandatory and discretionary sentences in a state case.
- n. Participate in discussions about and make or oppose a bail or pretrial release request .
- o. Observe and participate in trial.
- p. Observe and participate in entry of plea in state or federal court.
- q. Review and discuss Presentence Report; participate in filing objections.

- r. Research and participate in analysis of federal sentencing guidelines in particular federal case.
- s. Research and participate in analysis of sentencing guidelines in a particular state case.

3. Administrative Law

- a. Review and discuss the Oregon Administrative Procedures Act.
- b. Review and discuss the Attorney General's Model and Uniform Administrative Rules.
- c. Review and discuss the administrative rules promulgated by the Office of Administrative Hearings.
- d. Review and discuss the Oregon Public Records Law and the Oregon Open Meetings Law.
- e. Meet the Chief Administrative Law Judge and available administrative law judges from the Office of Administrative Hearings.
- f. Attend several types of administrative law contested case hearings which are open to the public.
- g. Participate in or observe an administrative law case from intake through hearing and final order.
- h. Review the OSB Oregon Administrative Law Handbook.
- i. Review the Attorney General's Administrative Law Manual and the Attorney General's Public Records and Meetings Manual.
- j. Review and discuss selected Oregon administrative law appellate case law.
- k. Review and discuss the OSB ethics opinions related to administrative law.

4. Alternative Dispute Resolution

- a. Review and discuss Oregon statutes on mediation including requirement to screen for potential conflict of interest of mediator.
- b. Discuss the differences between arbitration and mediation and the considerations for using each method of dispute resolution.
- c. Observe, participate in, or prepare for a mediation.
- d. Observe, participate in, or prepare for an arbitration.
- e. Discuss how to prepare a client for mediation or arbitration.

5. Appellate Practice

- a. Review and discuss the Oregon and Federal Rules of Appellate Procedure, as applicable.
- b. Attend and observe an appellate argument in the Oregon Supreme Court, the Oregon Court of Appeals, or the 9th Circuit Court of Appeals.
- c. Review and discuss ORS Ch. 138 through ORS 138.504 regarding appeals in criminal cases.
- d. Review and discuss ORS 183.400 and ORS 183.480 to 183.497 regarding judicial review of administrative agency actions.
- e. Review and discuss the Appellate Court Settlement Program.
- f. Review and discuss the Oregon Appellate Court Style Manual.
- g. Attend a CLE on a component of appellate practice (e.g., brief writing, oral argument).

- h. Review and discuss the OSB Appeal and Review CLE.
- i. Review discuss ORS ch. 19 Appeals and those portions of ORS ch. 21 Attorney Fees; Costs and Disbursements, ORS ch. 21 Fees Generally and ORS ch. 22 Bonds and Other Security Deposits related to appeals.
- j. Read and discuss an article or book on oral advocacy or brief writing.
- k. Participate in the drafting of a brief.
- l. Review and discuss the Appellate Practice Section Pro Bono.

6. Business Law

- a. Discuss the various forms of business entities (corporations, LLCs, partnerships, LLPs, etc.) and the considerations for choosing each one.
- b. Discuss key considerations in choosing Oregon, Delaware, or other jurisdiction for incorporation or organization of new entities.
- c. Draft or review basic documents involved in the formation of a business entity such as Articles of Incorporation, Articles of Organization, Bylaws, Operating Agreements, Partnership Agreements, corporate minutes and resolutions.
- d. Discuss basic blue sky and other securities issues associated with formation of entities.
- e. Conduct blue sky research for a proposed issuance by a private company.
- f. Draft or review Form D and related blue sky notices.
- g. Discuss or review one or more of the following documents commonly developed in a business practice:
 - (1) shareholders' agreement;
 - (2) buy-sell agreement;
 - (3) stock purchase agreement;
 - (4) asset purchase agreement;
 - (5) noncompetition agreement;
 - (6) security/collateral agreement; or
 - (7) promissory note.
- h. Participate in the due diligence process for mergers and acquisitions.
- i. Prepare UCC filings.

7. Constitutional Law

- a. Review and discuss the most common federal Constitutional claims used by attorneys in Oregon. This could include one or more of the following:
 - (1) Rights of communication and expression.
 - (2) Anti-establishment and religious freedom.
 - (3) Equal protection and due process.
 - (4) Privacy.
 - (5) Search and seizure.
 - (6) Habeas Corpus.
 - (7) Supremacy.
- b. Review and discuss how the Oregon Supreme Court interprets and applies the State Constitution and the claims that are used more frequently by practicing attorneys in Oregon. This could include one or more of the following:

- (1) First-things-first doctrine and primacy of state constitutional issues.
 - (2) Independent state constitutional rights.
 - (3) Interpreting state constitutional provisions.
 - (4) Expanded rights in criminal proceedings.
 - (5) Expanded rights of expression.
 - (6) Impairment of contract, open court and remedies, privileges and immunities, or the religion clauses.
- c. Review and discuss advantages and disadvantages of raising federal constitutional claims in state or federal court.
 - d. Review and discuss some of the common issues that arise in claims filed pursuant to Section 1983 of the Civil Rights Act Review and discuss some of the issues related how and where constitutional claims can be raised and what record will be necessary (challenging referendums or initiatives, administrative actions, state statutes, actions by judge during trial, constitutional claims in administrative proceedings, appeals, removal to federal court, referral from federal court to State Supreme Court).

8. Debtor-Creditor/Consumer Law

- a. Discuss and prepare or review a motion for provisional process.
- b. Discuss and prepare or review documents for the appointment of a receiver or an assignment for the benefit of creditors.
- c. Discuss and review statutory and possessory liens and their enforcement.
- d. Discuss and review how to file and enforce a foreign judgment.
- e. Discuss and prepare appropriate documents for garnishment or execution on a judgment.
- f. Discuss fraudulent conveyances and how to challenge or set aside a transfer.
- g. Discuss and review state and federal consumer protection laws including the UTPA, the Fair Debt Collection Act, the Fair Credit Act, TILA, and vehicle "lemon laws" and the claims and defenses they offer.
- h. Discuss and review a standard retail installment contract.
- i. Discuss and review the family expense doctrine.
- j. Observe or participate in a hearing on a consumer law issue.

9. Environmental Law

- a. Discuss or write a legal memorandum analyzing a significant question under one or more of the following statutory areas: RCRA Hazardous Waste (State and Federal), Solid Waste Management, Storage Tanks, Clean Air Act, Clean Water Act, NEPA/SEPA, Endangered Species Act, Asbestos Management.
- b. Discuss the obligations under applicable Right-to-Know statutes.
- c. Discuss obligations to report the discovery of preexisting contamination.
- d. Discuss or assist in preparing environmental permits needed for a project under both state and federal laws.
- e. Discuss or prepare a checklist for a multimedia compliance audit for an industrial facility.
- f. Discuss or observe a rulemaking process.

- g. Discuss or write a legal memorandum analyzing Superfund liability.
- h. Discuss or participate in preparation for and management of an agency inspection.
- i. Discuss or review agency penalty policy.

10. Estate Planning

- a. Participate in drafting and reviewing basic estate planning documents.
- b. Assist in gathering and organizing client information.
- c. Prepare diagrams of specific estate plans for clients.
- d. Prepare estate planning binders for clients.
- e. Participate in drafting and reviewing probate pleadings.
- f. Prepare notice to creditors and arrange for publication.
- g. Prepare the inventory of an estate.

11. Family Law

- a. Review and discuss the Rules of Civil Procedure, Uniform Trial Court Rules, and applicable Supplemental Local Rules specific to Family Law.
- b. Prepare a petition for dissolution.
- c. Prepare a Statement of Assets and Liabilities
- d. Create a child support worksheet.
- e. Observe or participate in a hearing on motion for temporary orders.
- f. Observe or participate in custody evaluation settlement conference Participate in a collaborative law meeting.
- g. Participate in a mediation.
- h. Observe or participate in a family law trial.
- i. Participate in preparing a premarital agreement or review and discuss statutory requirements, case law, and necessary terms of premarital agreements.

12. Immigration Law and the Representing of Foreign Nationals in Oregon

- a. Review and discuss the substantive law and procedures related to admission and exclusion.
- b. Review and discuss the substantive law and procedures related to removal, including relief from removal (voluntary departure, prosecutorial discretion, regularization of status, extreme hardship).
- c. Review and discuss the availability of judicial review and habeas corpus on matters related to admission, exclusion and removal.
- d. Review and discuss the most common grounds for seeking admission, delaying removal or changing immigration status to avoid removal. (Could include one or more of the following: creating a business, employment, family, victim of domestic violence or human trafficking, refugee, political asylum).
- e. Review and discuss common legal issues related to advising and representing foreign nationals in Oregon. This could include one or more of the following:
 - (1) Future impact of a guilty, no contest plea, or criminal conviction on admissibility and removal under immigration law.

- (2) Effect of immigration status on right to work, buy land, create a business, serve on a board of directors, and similar matters.
- (3) Requirements that employers check immigration status at time of hiring and in response to Social Security mismatch letter, I-9 audit, or other notice to employer from the federal government.
- (4) Effect of immigration status on rights of employees under labor protections statutes.
- (5) Effect of immigration status on eligibility for various government benefits and the potential impact of seeking benefits on immigration status.
- (6) Practical considerations in civil litigation related to discovery or retaliation.
- (7) Getting a drivers license and insurance under the REAL ID act.

13. Intellectual Property and Patent Law

- a. Discuss or participate in patent search/evaluation.
- b. Discuss or participate in drafting and filing a patent application.
- c. Discuss or participate in filing an Information Disclosure Statement (IDS).
- d. Discuss or participate in drafting an Office Action response.
- e. Discuss or participate in a telephone conversation with an Examiner.
- f. Discuss or participate in preparing and drafting an appeal brief.
- g. Discuss and review techniques for successful patent prosecution.
- h. Observe or participate in patent litigation.
- i. Observe or participate in a client interview.
- j. Discuss or participate in trademark search/evaluation.
- k. Discuss or participate in drafting and filing a trademark application.
- l. Discuss or participate in drafting an Office Action response.
- m. Discuss or participate in preparing and drafting an appeal brief.
- n. Discuss and review techniques for successful trademark prosecution.
- o. Discuss or participate in trademark litigation.
- p. Discuss or participate in drafting and filing a copyright application.

14. Juvenile Law

- a. Dependency cases
 - (1) Attend a shelter hearing.
 - (2) Discuss the standards used by DHS for removal in ICWA and non-ICWA cases and reasonable efforts to avoid removal, achieve permanency.
 - (3) Discuss placement options for children including involvement of relatives and visitation arrangements.
 - (4) Discuss the role of the court, DHS, the CASA, and the district attorney or department of justice lawyer (and the tribe in ICWA cases).
 - (5) Attend a jurisdictional hearing and discuss preparation of the parent to testify.
 - (6) Discuss the grounds for initial and continuing juvenile court jurisdiction and the relationship with “reasonable” or “active” efforts by the state to reunite the family.
 - (7) Attend a permanency hearing.
 - (8) Attend a termination of parental rights trial or review a transcript .

- (9) Discuss the role of counsel for a child who is capable of considered judgment; discuss best interests representation of a child not capable of considered judgment.
 - (10) Discuss Special Immigrant Juvenile Status for non-citizen child clients.
- b. Delinquency cases
- (1) Discuss formal and informal treatment of juvenile offenders and scope of court's discretion.
 - (2) Discuss capacity of juveniles to aid and assist and waive constitutional rights.
 - (3) Discuss the role of counsel in delinquency cases and the need to follow client directives as in criminal cases.
 - (4) Discuss pre-petition issues for juveniles, detention, and waiver to criminal court.
 - (5) Discuss direct and collateral consequences of juvenile adjudications.
 - (6) Attend a detention hearing.
 - (7) Attend a jurisdictional hearing.
 - (8) Attend a dispositional hearing.
 - (9) Discuss post-dispositional issues.

15. Labor and Employment

- a. Review and discuss the Oregon Bureau of Labor & Industries/EEOC administrative process. Review or participate in drafting a charge or the response to a charge.
- b. Participate in or observe the BOLI/EEOC administrative process, including a resolutions conference or an appeal to the Labor Commission.
- c. Participate in drafting or review and discuss a separation or settlement agreement.
- d. Participate in or discuss consultation with management on HR issues.
- e. Prepare for and observe or participate in an unemployment benefits appeal hearing.
- f. Review and discuss an employment law issue, such as a claim under Title VII, the Family Medical Leave Act, the Americans with Disabilities Act, or other substantive federal law or its state counterpart.
- g. Discuss or participate in drafting one or more of the following: basic defined contribution plans, including 401(k) plans; basic cafeteria plans; basic umbrella welfare plans; routine amendments to plans; determination letter requests; summary plan descriptions; summary of material modifications and summary annual report; distribution forms.

16. Legislative and Administrative Lobbying

- a. Discuss and review the roles that an attorney could play in advising or advocating in legislative or administrative lobbying for a client.
- b. Discuss the state and federal laws that require lobbyist to register, the definitions of lobbying, the restrictions on making gifts, and the requirements related to reporting time and certain expenditures.
- c. Discuss and review the characteristics of effective legislative lobbying, including how to make connections with legislators and legislative staff, build credibility and trust, testify, participate in work groups, join coalitions and similar matters.
- d. Attend and, if possible, participate in a legislative hearing.

- e. Discuss and review how to build relationships with agency representatives and the formal and informal ways to influence the agency in its decision-making.
- f. Become familiar with the OSB Public Affairs Program.

17. Natural Resources/Land Use

- a. Discuss or research a significant question under one or more of the following statutory areas: National Environmental Policy Act/SEPA/CEQA, Endangered Species Act/Marine Mammal Protection Act/Magnuson Stevens Fishery Conservation and Management Act, Clean Water Act/Rivers and Harbors Act, Coastal Zone Management Act, Federal Insecticide Fungicide, and Rodenticide Act, Federal Land Policy and Management Act/Multiple-Use Sustained-Yield Act/National Forest Management Act, reclamation Laws/Reclamation Reform Act, state and local land use laws, water rights laws, and wetlands laws, substantive mining and oil and gas laws.
- b. Discuss environmental, natural resources, and local land use permits needed for a project under federal, state, and local laws.
- c. Discuss or assist with the preparation of a permit application at the federal, state or local level.
- d. Discuss or review Phase I and Phase II environmental site assessments.
- e. Discuss or participate in due diligence investigations, such as compliance with applicable local land use requirements or existence of water rights.
- f. Discuss or review a property transfer assessment.
- g. Discuss or draft a site access agreement for survey work (legal survey, fish and wildlife survey, wetland delineations, remedial action).

18. Negotiation

- a. Discuss how to prepare for the negotiation of a legal matter (e.g., release of a personal injury claim, lease agreement, etc.).
- b. Discuss when and how negotiation should be initiated.
- c. Discuss when and how to involve the client in negotiation.
- d. Discuss ethical and professional obligations of negotiators.
- e. Discuss skills needed to be an effective negotiator and how to acquire them.
- f. Observe or participate in a negotiation.

19. Real Estate Law

- a. Discuss the steps involved in negotiating and completing a commercial real estate transaction.
- b. Draft or review one or more common real estate documents such as real estate purchase agreements, deeds of trust, mortgages, commercial leases, residential leases, Notice of Default.
- c. Discuss the basic provisions of state and federal law affecting real estate and the enforcement of legal rights associated with real estate.
- d. Discuss the taxation of real estate.

- e. Discuss title concepts and issues including marketability of title, priority of interests, forms of ownership, forms of conveyances, recording requirements, statutory and nonstatutory liens and other similar concepts.
- f. Discuss title insurance policy forms, available endorsements and customary insurance and endorsement practices in different transactions.
- g. Discuss distinctions between real and personal property and the methods of transfers of and creation of liens on different asset types.
- h. Discuss easements, reservations, covenants and the enforcement of such rights, common interest ownership options and the applicability of real estate doctrines such as partition.
- i. Discuss survey concepts and issues including metes and bounds legal descriptions, access and title issues presented by surveys.

20. Securities Regulations

Issuances:

- a. Understand basic premise of registration or qualifying for an exemption from registration (both at a federal and state level).
- b. Become generally familiar with definitions of “security,” “offers,” “sales”.
- c. Learn basics of common exemptions for securities issuances under the Securities Act of 1933
 - (1) Section 4(2), private placements.
 - (2) Regulation D, safe harbors.
 - (3) Section 3(a)(10), exchange transactions.
 - (4) Section 3(a)(11) and Rule 147, intrastate offerings.
 - (5) Rule 701, issuances under compensatory plans of non-reporting companies.
- d. Learn basics of common resale exemptions
 - (1) Section 4(1).
 - (2) Rule 144, safe harbor.
 - (3) “Section 4(1-1/2)”, exemption.
- e. Become generally familiar with process of registering securities transaction or company with the SEC.
- f. Become generally familiar with qualification and exemption under Blue Sky laws.

SEC:

- a. Understand general structure of Division of Corporation Finance and the basic SEC review process.
- b. Become generally familiar with SEC website and EDGAR filings, including access to forms, interpretations and company filings.
- c. Understand which forms are typically used for what purposes (S-1, S-3, S-4, S-8, 10-K, 10-Q, 8-K, proxy materials, Schedule 13D and 13G, Form 144)
 - (1) Review precedents of each.
- d. Review Regulation S-K (heart of SEC disclosure) and incorporation by reference into forms.
- e. Generally understand scope of coverage of Regulation S-X.

- f. Review Regulations FD and G.
- g. Become generally familiar with concept of “materiality”.

21. Tax Law

- a. Discuss the principal tax considerations associated with various forms of entities (corporations, LLCs, partnerships, limited partnerships, etc.).
- b. Discuss the general tax considerations associated with taxable and tax-free acquisitions and divestitures, equity compensation, like-kind exchanges and the procedures associated with federal and state tax controversies.
- c. Assist with the basic tax tasks associated with entity organizations, including federal EINs, S corporation and OSub elections.
- d. Discuss the tax forms and publications applicable to the basic types of entities.
- e. Analyze and discuss one or more complex tax matters.
- f. Prepare and analyze tax calculations.
- g. Participate in preparing IRS tax forms.

New Lawyer Mentoring Program
CERTIFICATE OF COMPLETION

By our signatures affixed below,

[New Lawyer's name, please print]

OSB # _____

and

[Mentor's name, please print]

OSB # _____

hereby certify that the New Lawyer named above has satisfactorily completed all the requirements of the New Lawyer Mentoring Program Mentoring Plan, a copy of which is submitted herewith.

Dated this _____ day of _____, 201__.

[New Lawyer's signature]

[Mentor's signature]

All new lawyers must comply with the requirements of MCLE Rule 3.3(b). This certification relates only to the NLMP.