

TO: Applicants and their Supervising Attorneys
FROM: Regulatory Counsel Troy Wood
RE: Amendments to Provisional License Program Rules

Experience with this Program has demonstrated a need for several amendments to the rules. Under PLP Rule 18.1, amendments must be adopted by the Board and approved by the Supreme Court. To begin that process, I am sharing the proposed amendments and their rationales in this memo.

Dual Supervising Attorneys

Some candidates have had trouble securing sufficient work from a single Supervising Attorney. After discussing the situation with candidates and potential supervisors, I believe that a Provisional Lawyer could demonstrate their competence by combining work for two different Supervising Attorneys. Rule 2.2(C) implicitly recognizes this possibility by requiring an employer to employ a Provisional Licensee for just 20 hours of paid work per week; this would free the Provisional Licensee to pursue other work in the remaining hours. Nor do any of the rules forbid a Provisional Licensee from working for more than one Supervising Attorney.

To clarify the option of working for more than one Supervising Attorney, while adopting appropriate protections for clients and the public, I propose the adoption of this proposed rule (which would appear in the section governing the roles and duties of Program participants):

5.6 Dual Supervising Attorneys.

- (A) A Provisional Licensee may work for two Supervising Attorneys concurrently if each Supervising Attorney meets the qualifications specified in Rule 2.3 and the following conditions are satisfied:
 - (1) The Supervising Attorneys must coordinate their supervision to assure that the Provisional Licensee is able to meet Program requirements; and
 - (2) If the Supervising Attorneys work for different Employers, each Employer must meet the qualifications specified in Rule 2.2, and those Employers must follow the conflict of interest and screening requirements that apply when one lawyer (the Provisional Licensee) works for two different organizations.
- (B) If a Provisional Licensee works for two Supervising Attorneys concurrently, the Provisional Licensee may include in their Portfolio work product and rubrics from either or both Supervising Attorneys.
- (C) A Provisional Licensee may not work for more than two Supervising Attorneys concurrently although, as provided in Section 13, a Provisional Licensee may have multiple Supervising Attorneys over time.

The proposed rule notes the conflict and screening requirements that apply to an attorney who works concurrently for more than one employer. The rule also limits Provisional Licensees to no more than two concurrent Supervising Attorneys. Permitting more than two concurrent supervisors would dilute the close relationship that the rules envision between the Provisional Licensee and their Supervising

Attorney. More than two Supervising Attorneys would also create risks for the Provisional Licensee of having to juggle conflicting workloads while also complying with Program requirements.

Delegation of Some Supervisory Duties

In some organizations, Supervising Attorneys will find it helpful to delegate some of their supervisory duties to other lawyers in the organization. The Supervising Attorney, for example, may not be available to accompany the Provisional Licensee to court for a particular matter. Similarly, a Provisional Licensee may interview a client in the presence of a lawyer other than the Supervising Attorney. The Law Student Appearance Program, on which part of the PLP is modeled, allows supervision by multiple attorneys and the flexibility is essential to that program's success.

I propose a new PLP Rule 5.4, which would complement the specification of the Supervising Attorney's duties in Rule 5.3. For convenience, I reproduce here existing Rule 5.3 together with the proposed Rule 5.4:

5.3 Role and Duties of Supervising Attorneys [Existing]. Supervising Attorneys participating in the Program must:

- (A) Watch or attend the training sessions described in Section 12 of these Rules;
- (B) Supervise the Provisional Licensee's schedule and workload to give the Provisional Licensee sufficient time to complete all Pathway components;
- (C) Accommodate the Provisional Licensee's reasonable requests for work that will help them complete the Pathway or otherwise develop their professional skills;
- (D) Supervise the work of the Provisional Licensee, and assume personal professional responsibility for that supervision, in the manner required by RFA 13.30;
- (E) Complete the Pathway rubrics for client interviews, counseling sessions, and/or negotiations to satisfy the Pathway requirements;
- (F) Discuss those completed rubrics with the Provisional Licensee; and
- (G) Provide other regular feedback that will help the Provisional Licensee develop their skills and better serve Employer clients.

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

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

Under proposed Rule 5.4, the Supervising Attorney would retain exclusive authority to supervise the Provisional Licensee's overall schedule and workload. This will maintain the bond between Supervising Attorney and Provisional Licensee, and will also protect the Provisional Licensee from conflicting supervisory demands. Other active members of the Oregon Bar, however, could supervise the Provisional Licensee on specific tasks, complete rubrics for the Provisional Licensee's Portfolio, and provide feedback to the Provisional Licensee. The Supervising Attorney would have responsibility for identifying lawyers with the knowledge and skills to supervise the Provisional Licensee effectively.

Training of Supervising Attorneys

PLP Rule 12.1 requires Supervising Attorneys and Examiners to complete at least 2 hours of training related to issues of diversity, equity, and inclusion. Subsection (A) of that rule then provides that Examiners need not repeat this training if they have already completed qualifying training within 18 months of starting the PLP. Subsection (B) further provides that Examiners may claim MCLE credit for attending these training sessions.

Subsections (A) and (B) should both apply to Supervising Attorneys as well as Examiners; omission of Supervising Attorneys from these subsections was an oversight. The amended rule would read as follows:

12.1 Training on Diversity, Equity, and Inclusion. Each Supervising Attorney and Examiner must complete at least 2 hours of training related to issues of diversity, equity, and inclusion. The Program Managers will identify programs that meet this requirement.

- (A) If an Examiner or Supervising Attorney has already completed qualifying training within 18 months of the Program start, that training will count towards this requirement.
- (B) Examiners and Supervising Attorneys may claim MCLE credit for attending these sessions.

Rehabilitated Lawyers as Supervising Attorneys

PLP Rule 2.3(D) provides that a Supervising Attorney must have “no record of public discipline in any jurisdiction to which they are or have been members.” Our legal system and profession, however, recognize the potential for rehabilitation. An attorney who has once been disciplined, but has worked many years without further discipline, may be an excellent role model and supervisor for a Provisional Licensee. For that reason, I recommend revising Rule 2.3(D) and adding a new Rule 2.5 as follows:

2.3 Qualifications of Supervising Attorneys. An individual may participate in the Program as a Supervising Attorney if that individual:

. . . .

- (D) Has no record of public discipline in any jurisdiction to which they are or have been members or satisfies the requirements of Rule 2.5;

2.5 Rehabilitation from Public Discipline. An individual who has a record of public discipline in any jurisdiction to which they are or have been members may serve as a Supervising Attorney if:

- (A) The final disciplinary decision was entered more than 10 years before the individual’s application to serve as a Supervising Attorney;
- (B) No other discipline, either public or private, has been imposed on the individual since that time; and
- (C) The individual submits a petition to the Board explaining their rehabilitation and fitness to serve as a Supervising Attorney.

The Board may, but need not, interview the individual to determine their fitness to serve as a Supervising Attorney. The Board's decision on the individual's fitness will be final, without any right of appeal.

Please send any recommended changes to these amendments to Regulatory Counsel of the Oregon State Bar via email before January 20, 2023.