

## Oregon's Provisional License Program Overview

### Introduction

The Provisional license Program (PLP) offers a pathway to licensure for individuals who took the February 2022 Uniform Bar Exam (UBE) in Oregon and obtained a UBE score of 264 or lower. If otherwise qualified, those individuals may obtain a provisional license to work for an employer under the direct supervision of a supervising attorney. Successful completion of the program will substitute for a passing score on the UBE, allowing those Provisional licensees to apply for admission to the Oregon State Bar.

This document provides an overview of the program. For more details, please consult the Rules for Oregon's Provisional License Program, approved by the Oregon Supreme Court on July 19, 2022.

### Qualifications of Program Participants

1. *Provisional Licensees.* To become a provisional licensee, an applicant must show that they:

- Obtained a score of 264 or lower on the Oregon February bar exam;
- Meet the age and educational requirements of Oregon's Rules for Admission (RFA) 3.05;
- Have taken the Multistate Professional Responsibility Exam (MPRE) and obtained a score of at least 85;
- Have secured commitments from a qualifying employer and supervising attorney;
- Have obtained professional liability insurance or a waiver of that requirement; and
- Have obtained a Certificate of Eligibility from the Board of Bar Examiners (BBX). That certificate is described further below.

2. *Employers.* Provisional licensees may work for any law firm, solo practitioner, business entity, non-profit organization, or government agency that operates in Oregon if the organization meets these requirements:

- It agrees to employ the provisional licensee for at least 20 hours per week;
- It agrees to pay the provisional licensee at least \$20 per hour for that work, plus any benefits required by law;
- It makes a good faith commitment to continue that employment while the provisional licensee is in the program;
- It employs an attorney who has agreed to serve as a supervising attorney and who qualifies to assume that role; and
- It employs no family member of the provisional licensee.

3. *Supervising Attorneys.* Supervising attorneys must:

- Have been an active member of the Oregon State Bar for the preceding two years;
- Have been an active member of the bar in at least one jurisdiction for at least five of the last seven years;

- Have no record of public discipline in any jurisdiction to which they are or have been admitted; and
- Be employed by the same organization as the provisional licensee.

### Application Process

Applicants that are interested in participating in the PLP should complete a full application. Applications will be available in the [Forms Library](#) on the Oregon State Bar's [Admissions page](#) by **August 31, 2022** and may be filed any time between that date and **December 31, 2023**. The PLP application authorizes the Admissions Department to conduct a background check and character and fitness screening review to determine whether the applicant possesses the good moral character and fitness to practice law.

If the applicant meets that standard, the Admissions Department will send the applicant a Qualification Letter, an application for their employer to fill out, and an application for their supervising attorney to fill out. These forms will also be available in the Admission Department's [Forms Library](#). When the Admissions Department receives the completed employer and supervising attorney forms, we will send the applicant a Certificate of Eligibility. The candidate must then submit a Certificate of Eligibility to the [Professional Liability Fund](#) to acquire the minimum insurance required for compliance with, or a narrative of their qualifications for an exemption from, the Oregon Insurance Requirement.

When all requirements have been met, the Oregon State Bar will notify the candidate of their enrollment in the Provisional Licensing Program.

### Provisional License

If an applicant is accepted into the PLP, Regulatory Counsel will issue a provisional license. That license will allow the provisional licensee to practice under the same constraints that govern law students admitted to temporary supervised practice under RFA 13.20(1). Those constraints are spelled out in RFA 13.05-13.20.

### Program Requirements for Provisional Licensees

To complete the program and establish their eligibility for admission to the Oregon State Bar, provisional licensees must complete 1500 hours of program work within 18 months of receiving their provisional license. As part of that work, provisional licensees must complete each of these components:

1. Legal work assigned to them by their supervising attorney<sup>1</sup>
2. The "Learning the Ropes" CLE program
3. The New Lawyer Mentoring Program
4. At least 8 independently authored pieces of written work product, with at least 2 of those documents exceeding 1500 words

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<sup>1</sup> As defined for this program, legal work includes any work that is commonly performed by licensed attorneys in Oregon. Legal work may also include activities that are performed by unlicensed individuals, as long as newly licensed attorneys regularly incorporate those activities in their work.

5. Leadership of at least 2 initial client interviews or client counseling sessions
6. Leadership of at least 2 negotiations
7. Reflections on each of the above written documents, client interviews or counseling sessions, and negotiations
8. A learning plan
9. Regular timesheets
10. A portfolio organizing materials related to items 2-9 above

As explained further below, BBX will score items 4-10 using program rubrics. Provisional licensees must receive a “qualified” score on each of those items to be eligible for admission to the Oregon State Bar. They must also provide evidence that they have completed 1500 hours of program work, including items 2 and 3.<sup>2</sup>

#### Quarterly Review by BBX

Provisional licensees will submit their portfolios (including all program requirements completed to date) to the BBX at the end of each quarter in the program. Each quarterly portfolio will be reviewed and scored by an examiner using rubrics developed for the program.

After the quarterly portfolio has been scored, BBX will return the portfolio and completed rubrics to the provisional licensee. The provisional licensee will also receive a quarterly summary sheet summarizing their status on each program requirement and total hours completed by the end of that quarter.

#### Program Requirements for Employers and Supervising Attorneys

Employers must agree to employ provisional licensees for at least 20 hours per week; pay those licensees at least \$20 per hour and any benefits required by law; include provisional licensees in any training offered their new lawyers; and provide work space, tools, and technology for the provisional licensee. Supervising attorneys will:

- Assign legal work to the provisional licensee, giving consideration to the provisional licensee’s professional development;
- Supervise the provisional licensees as required by RFA 13.05-13.20;
- Train the provisional licensee and offer feedback on their work; and
- Complete assessments (using program rubrics) of at least 8 pieces of written work, 2 client interviews or counseling sessions, and 2 negotiations completed by the provisional licensee.

Provisional licensees will include the supervising attorney’s assessments in their quarterly portfolios. If a provisional licensee’s work assignments do not include client sessions or negotiations, the PLP managers will arrange simulations for the provisional licensee. The

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<sup>2</sup> All time devoted to fulfilling program requirements counts towards the required 1500 hours in the program. Provisional licensees may also count (1) additional training or educational activities required by their employer, and (2) up to 30 additional hours of MCLE programming.

managers will also offer guidance on the types of written work product that provisional licensees should include in their portfolios.

### Final Admission Decision

The provisional licensee will submit their final portfolio when they have completed all components of the program, and BBX will review that portfolio. The provisional licensee will qualify for admission if they have completed at least 1500 hours of work within the program and obtained a “qualified” score on all program components.

Before approving a provisional licensee for admission to the Oregon State Bar, BBX will conduct a final character and fitness review focused primarily on the provisional licensee’s conduct since filing their February 2022 exam application.

### Training and Other Assistance

The PLP rules require training for supervising attorneys, examiners, and provisional licensees. Training will be as concise as possible, focused on helping program participants navigate the program fairly and efficiently. For supervising attorneys and examiners, training will include attention to diversity, equity, and inclusion issues.

A program manager will be available to answer questions about program requirements, rubrics, and other elements of the program. In addition, 2 ombudspersons will be available to help provisional licensees and other program participants resolve individual or systemic difficulties related to the program.

### Protections for Clients and the Public

The PLP rules stress that client needs take precedence over any program requirements; provisional licensees must prioritize those needs over other program work.

Any work product included in portfolios will be redacted to protect client interests. In addition, a conflict-checking system will assure that examiners do not inadvertently review work product on a matter for which they have a conflict of interest.

The rules provide for temporary suspension of a provisional license if the provisional licensee loses their supervising attorney; loses required insurance coverage; or is subject to a Client Assistance Office complaint that is referred to Disciplinary Counsel.

The provisional license terminates automatically if the provisional licensee is disbarred or suspended from the practice of law in any other jurisdiction; the provisional licensee resigns from the practice of law in another jurisdiction while a disciplinary action is pending in that jurisdiction; a formal complaint is filed against the provisional licensee by the Disciplinary Counsel’s Office of the Oregon State Bar; or an indictment is filed against the provisional licensee.

In addition to these provisions, Regulatory Counsel has authority to initiate a proceeding to terminate a provisional license whenever Regulatory Counsel develops or receives evidence that continued practice by the provisional licensee poses a significant threat to clients or the public. The rules outline evidence that will create a rebuttable presumption of this significant

threat, as well as the procedures for terminating a provisional license with appropriate notice and process for the provisional licensee.

### Protections for Provisional Licensees

The rules require compensation for the work performed by provisional licensees; they also require training for supervising attorneys and examiners. In addition to these protections, the rules create a process for provisional licensees to seek accommodations for any disabilities. They also require transparency with respect to all rubrics and other materials used to assess provisional licensees.

Supervising attorneys may assign non-legal work to provisional licensees, but that work must be compensated and can constitute no more than 10% of the time spent on all tasks assigned to the provisional licensee.

Examiners will review portfolios anonymously. In addition, a conflict-checking system will assure that examiners do not review portfolios submitted by provisional licensees with whom they have a conflict of interest.

In addition to receiving feedback from supervising attorneys, provisional licensees will receive feedback from the BBX through the quarterly review of their portfolios. If materials are marked “not qualified,” provisional licensees will have the opportunity to supplement or replace them. Processes are also specified for contesting the proposed termination of a provisional license; for appealing a finding that a final portfolio is deficient; and for reinstating a license that has been temporarily suspended.

Provisional licensees, finally, have the opportunity to switch supervising attorneys and/or employers during the program without losing credit for the hours or work they have already accumulated.

### Amendments

The Provisional License Program is a new initiative, and BBX may find that amendments to the rules are necessary. A rule allows for those amendments while providing protections to provisional licensees. I.e., the provisional licensees will have an opportunity to comment on any proposed amendments, and no amendment may increase program requirements.