



The State Bar of California

OPEN SESSION AGENDA ITEM 701 NOVEMBER 2023

DATE: November 16, 2023

TO: Members, Board of Trustees

FROM: Audrey Ching, Director, Office of Admissions
Donna Hershkowitz, Chief of Programs/Legislative Director

SUBJECT: Proposal for Portfolio Bar Exam: Return from Public Comment and Request for Transmission to the Supreme Court for Approval

EXECUTIVE SUMMARY

At the September 2023, Board of Trustees meeting, the Board approved circulating for public comment the proposal for a Portfolio Bar Examination submitted by the Alternative Pathway to Licensure Working Group. This action was preceded by the Board's May 2023 direction to staff to ask former Blue Ribbon Commission (BRC) members who indicated support for a bar exam alternative to develop a related proposal for the Board's consideration. This agenda item requests that the Board of Trustees: (1) recommend that the Supreme Court and State Bar pilot a Portfolio Bar Examination (PBE) as a method for assessing a candidate's minimum competence to practice law, along with a standardized assessment component of up to two performance tests with remaining licensees in the Provisional Licensure Program, to be implemented and concluded prior to the December 31, 2025, provisional licensure sunset date; and (2) recommend that the Board direct staff to work with representatives of the Committee of Bar Examiners and experts to finalize requirements for the pilot PBE, study outcomes of the pilot program, finalize program components that would be needed post-pilot (such as a matching program), and make recommendations regarding continuation, modification, or expansion of the PBE post-pilot.

BACKGROUND

In May 2023, the BRC submitted its final report to the Board of Trustees. The Board voted to transmit the report to the Supreme Court and also expressed a desire to review and discuss a specific proposal for an alternative pathway.

In response to the Board's request to staff, a group of former BRC members who supported an alternative pathway developed a draft proposal and submitted it to the full BRC and State Bar staff for feedback. The working group also presented the proposal to the Council on Access and Fairness and the Committee of Bar Examiners. The proposal was presented at the Board of Trustees September 2023 meeting and was approved for a 30-day public comment period. After conducting a comprehensive analysis of the public comments submitted, staff recommends the Board transmit the PBE to the Supreme Court for adoption. Staff has identified a few additional specifications that would need to be developed between the launch of the pilot and its conclusion, or before the launch of any post-pilot cohorts.

DISCUSSION

SUMMARY OF THE PORTFOLIO BAR EXAMINATION PROPOSED BY THE WORKING GROUP AND APPLICABILITY TO PILOT ROLLOUT

A Portfolio Bar Examination (PBE) is proposed as an alternative method to establish minimum competence to practice law in California and an alternative pathway to licensure. The PBE would allow law graduates to obtain provisional licenses and work under the supervision of licensed California lawyers for four to six months. During that time, candidates would assemble portfolios of work product that would be assessed by independent graders in a manner similar to grading bar exam essays and performance tests. Candidates who achieved passing scores on their portfolios would not need to take the two-day bar exam to be eligible for admission to the bar.

Key Components of the PBE:

- **Eligibility:** After the pilot, JD graduates of ABA-accredited and California-accredited law schools would be eligible to participate in the PBE. Graduates of unaccredited schools would not be eligible for this program.
- **Curriculum:** Candidates must have completed law school courses in the nine doctrinal subjects identified by the BRC as the subject matters necessary for establishing minimum competence.
- **Practice Scope During Supervised Practice Period:** Candidates with provisional licenses would have authority, responsibilities, and duties similar to provisional licensees in the Provisional Licensure Program.
- **Supervisor Qualifications:** Supervisors must hold active California licenses and not be immediate family members of candidates.
- **Required Supervised Practice Hours:** Candidates must complete 700–1000 hours of legal work over a period of 17.5–25 weeks, with the precise number of hours as yet to be determined.
- **Portfolio Contents:** Candidates must submit between eight to thirteen different work products meeting specific requirements to make up their portfolio—including two to three essays covering issues of professional responsibility, professionalism, or civility that arose during the practice period. Other pieces of written work product reflect analysis of a variety of substantive legal matters—including materials related to negotiations and client encounters. In addition, candidates must submit cover sheets

explaining the content and research that went into each piece of work and timesheets documenting hours spent on each portfolio component.

- **Grading:** Portfolios will be graded anonymously by independent examiners, based on grading rubrics established to ensure consistent grading across all examiners

Aspects of the PBE proposal applicable to the pilot program rollout period:

Not all aspects of the PBE would apply to the pilot as envisioned, namely Eligibility and Curriculum. Other aspects, such as Practice Scope and Supervisor Qualifications, apply but are elements that are likely largely in place for most pilot participants, given their status as provisional licensees.

- **Practice Scope During Supervised Practice Period:** Candidates with provisional licenses would have authority, responsibilities, and duties similar to provisional licensees in the Provisional Licensure Program.
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- **Grading:** Portfolios will be graded anonymously by independent examiners, based on grading rubrics established to ensure consistent grading across all examiners.

Benefits of the PBE identified in the proposal:

- The PBE would provide law school graduates with an alternative pathway to licensure that is more closely aligned with the practice of law and may be a better indicator of an individual's competence than a traditional bar exam.
- The PBE would assess candidates' skills and knowledge in a more holistic way than a two-day, all or nothing bar exam is capable of doing.
- The PBE would reduce the financial and emotional burden of the bar exam on law school graduates.

Specific benefits of pilot program rollout:

The pilot will serve as a small, monitored cohort providing empirical data and experience-based qualitative information, to inform subsequent decisions as to continuation or expansion of a PBE. The pilot period will also allow for all outstanding issues, as discussed in the State Bar Staff Views section below, to be fully vetted and addressed, providing a fully informed context for future Board and Supreme Court decision-making.

PUBLIC COMMENT

The PBE proposal was circulated for a 30-day public comment period subsequent to the September Board meeting. In addition to stakeholders who sign up on the State Bar website to receive notice of comment opportunities, the PBE proposal was sent to a broad distribution list of over 15,000 applicants in the Office of Admissions database. In addition, announcements about the public comment opportunity were made at the Committee of Bar Examiners October meeting, the Committee of State Bar Accredited and Registered Schools October meeting, and a meeting of ABA, Cal-Accredited and Registered law school registrars in October.

At the close of the public comment period, 2,814 public comments were received. One-quarter of the comments, 698, agree with the proposal, an additional 4 percent (102) agree if modified. Just over 70 percent (1,989) disagree with the proposal; under one percent (25) had no position. To assist in collating the public comments, the commenters were asked to select the reason(s) for their position from a dropdown menu. They were also given the opportunity to submit written comments.

Themes from Public Comment That Agree with the Proposal or Agree If Modified

Of the 698 who expressed agreement with the proposal, the top three reasons selected for their position were: (1) the Portfolio Bar Examination was a good way to assess minimum competence; (2) the PBE adequately protects the public; and (3) 700–1000 supervised practice hours required by the PBE were adequate.

Beyond the prepopulated choices, additional themes from submitted written comments emerged:

- **Inadequacy of the current two-day written bar exam:** Commenters expressed their concerns that the current bar exam is an inadequate measure of minimum competence and does not accurately assess one's ability to practice law. They believe that alternative assessments, such as a portfolio bar exam, should be explored to provide a more accurate evaluation.
- **Inclusivity and diversity:** Commenters note that a portfolio bar exam can help address the barriers faced by marginalized groups who may not perform well on standardized tests. They argue that evaluating work experience and skills will allow a more diverse range of individuals to become licensed attorneys.
- **Acquiring practical experience:** Commenters highlight the need for practical training and experience in law schools. They believe that the portfolio system will provide a better opportunity to learn and practice law, compared to the current bar exam system.
- **Support for the pilot proposal and potential for future adoption:** Commenters commend the State Bar of California for exploring alternative options and piloting the portfolio bar exam approach. They express hope that if successful, this approach will be adopted in California and serve as a model for other states.
- **Need for flexibility:** Some individuals mention the need for flexibility in meeting the requirements of the portfolio bar exam, particularly for older applicants who are already working. They suggest allowing volunteering as a way to meet the 700-hour requirement, which would enable applicants to continue working during portfolio preparation.

Themes from Public Comment That Disagree with the Proposal

Of the 1,989 commenters who expressed disagreement, the top three reasons selected for their position were: (1) the Portfolio Bar Examination is a poor way to assess minimum competence; (2) the PBE does not protect the public; and (3) a portfolio of work product cannot be graded as fairly or reliably as a bar exam. Interestingly, the top two reasons selected by those who agree with the proposal are in direct contradiction to the top two reasons selected by those who disagree with the proposal.

Beyond the prepopulated choices, additional themes from submitted written comments emerged:

- Commenters express their view that the PBE "dumbs down" the requirements for becoming a licensed lawyer and sacrifices public protection. They argue that the current bar exam is the best way to ensure standards for admission and demonstrate minimum competence.
- Concerns about fairness and equality: Commenters question the fairness and necessity of creating an alternative pathway to licensure for historically disadvantaged groups. They argue that passing the traditional bar exam can still be achieved through hard work and dedication, and that the proposed PBE may undermine the equal standards set by the current exam.
- Inadequate breadth: There are concerns that the PBE doesn't lead to the same broad subject matter knowledge that the bar exam demands, and that is required to practice law.
- Doubts about the quality and subjectivity of the portfolio assessment: There are concerns about the subjective nature of portfolio assessments, with commenters questioning the ability of graders to assess the adequacy of submissions. They argue that the opinions and biases of graders may affect the outcome and raise doubts about the reliability and objectivity of this assessment method.
- Supervision and support in the portfolio process: Commenters express concerns about the consistency, quality, and effectiveness of supervision and support provided to applicants during the portfolio process. They worry that supervising attorneys may have differing motivations or may not provide enough guidance, potentially resulting in varying outcomes and a lack of standardization.
- Fraud and authenticity of the portfolio work: Commenters raise concerns about the potential for fraud and the lack of mechanisms to ensure the authenticity of portfolio work. They question how the uniqueness and originality of the work can be verified, particularly in the absence of a standardized task that the applicant must complete on their own.
- Distribution of legal services: Some commenters suggest that these programs may not address the areas of law where legal services are most needed. There is a belief that more lawyers will continue to enter fields that are already saturated, rather than focusing on low or pro bono work, public defenders, or addressing the access to legal services issue.
- A not insignificant number of commenters suggest in their comments their belief that the PBE eliminates law school or eliminates the bar exam.

Members of the working group reviewed all comments received and prepared a response to the comments in disagreement with the proposal for the Board's consideration; that document is provided as Attachment C.

STATE BAR STAFF VIEWS AND OPTIONS FOR BOARD CONSIDERATION

Consistent with the recommendations of the Alternative Pathway Working Group, staff supports adoption of a PBE on a pilot basis comprising the remaining individuals in the original Provisional Licensure Program. These individuals would retain provisional licenses and complete an additional 700-1000 hours of legal work under the supervision of a licensed California attorney. They would then submit portfolios of their work product to a group of independent graders appointed by the State Bar. Staff's position is in part informed by the fact that, in addition to the work in California exploring a different path to licensure, Utah, Oregon, Washington, Minnesota, and Montana have bar exam alternatives for licensure in varying stages of approval. The provinces in Canada base their licensure process primarily on "articling" or supervised practice under a licensed attorney. Additionally, staff's recommendation is consistent with the action taken by the board at its November 2022 meeting, where options for extending the Provisional Licensure Program—both the original program contemplated in this item for the pilot phase, and the pathway to licensure for those with a qualifying bar exam score—were submitted to the Supreme Court.¹

Staff has carefully reviewed comments received. While generally it is staff's view that the comments rehash philosophical arguments about the relative merits of the current exam versus a portfolio bar exam, or subjective disagreements about the impact of introduction of a new pathway to licensure on diversity of the attorney population, staff does recommend that the Board consider modification of, or an addendum to, the working group's recommendations in the following area:

Determination of Minimum Competence: As noted above, commenters raise concerns about the potential for fraud and lack of mechanisms to ensure the authenticity of the portfolio work. They question how the uniqueness and originality of the work can be verified, particularly in the absence of a standardized task that the applicant must complete on their own. In addition, commenters expressed doubts about the quality and subjectivity of the portfolio assessment, with commenters questioning the ability of graders to assess the adequacy of submissions. They argue that the opinions and biases of graders may affect the outcome and raise doubts about the reliability and objectivity of this assessment method.

While staff believes that some of the expressed concerns are applicable in the status quo bar exam context, staff recommends that the working group proposal be augmented by the Board of Trustees to include an objective assessment component of up to two performance tests. This approach would be consistent with the planned approach in Utah and the practices in place in several Canadian provinces. The addition

¹ Attachment D

of a standardized assessment taken during the supervised practice period would address questions raised by public commenters regarding the quality and subjectivity of the portfolio assessment and concerns about work product that cannot be verified to be the applicant's own.

While not rising to the level of recommendation modifications, staff has identified aspects of the working group recommendations that need refinement prior to pilot launch:

- Final identification of portfolio components that assess all of the skills and abilities required for minimum competence.
- Scoring rubrics will need to be developed and a cut score established.
- The timing of submission of portfolio components and the expectation for turnaround for graded work products.
- Grader training.
- Supervisor training.
- Consequences of failing the Portfolio Bar Exam.
 - The proposal contemplates that submission of the portfolio contents could be an iterative process. In other words, a candidate can submit a portfolio component and revise and resubmit it if the initial submission is graded as inadequate to demonstrate minimum competence. However, it does not specify if there is a cap on the number of times a portfolio component can be submitted, or a limit on the length of the supervised practice period. Additional specificity is required as to these questions, as well as the next steps for a candidate in such a situation.
- Evaluation criteria and pilot program metrics.

There are additional items that would need to be resolved before fully deploying the program beyond the pilot phase. Areas needing further development post-pilot include:

- Eligibility criteria for the pathway: Before launching future cohorts, staff recommend that the program be evaluated to determine whether to expand it, and if so, how to define the next eligible cohort.
- Creating a matching program: The proposal mentions the next wave of participants being those who have accepted positions with public interest employers or employers in underserved parts of California.² Future cohorts are likely to extend beyond the public interest realm. Based on discussions of the Blue Ribbon Commission, staff recommend that a mechanism be developed for supervisor and supervisee matching in the next iterations of this pathway.

While efforts to address these post-pilot issues would necessarily begin during the pilot period, limited staff and other resources would be spent on such work pending a decision to continue or expand the PBE at the conclusion of the pilot program.

² Analysis should include the ability of the State Bar to scale up for additional participants, and the ability for future participants to secure competent, effective supervisors.

Staff recommends that the Board direct staff to work with representatives of the Committee of Bar Examiners and experts to develop these additional pre-pilot specifications, determine and then assess performance metrics for the pilot program, and provide recommendations for the future of the PBE post-pilot; these recommendations would be received by the Board and submitted to the Supreme Court.

FISCAL/PERSONNEL IMPACT

The costs related to pilot implementation are estimated to total up to \$425,000. Some costs can be roughly estimated based on parallel costs in other Admissions settings (namely the First-Year Law Students' Examination and the bar examination):

- Finalizing rules and portfolio requirements: \$50,000
- Designing and testing rubrics and establishing a cut score: \$225,500
- Additional assessment piece: Up to two performance tests: \$50,000 - \$100,000.
- Additional costs related to pilot implementation will include supervisor training and evaluation: up to \$50,000.

Staff will pursue philanthropic funding to support pilot implementation. Part of the pilot effort will include a determination of the cost of taking a PBE to scale, and an assessment of what applicant fees would need to be in order to achieve full cost recovery. On a permanent, as opposed to pilot, basis, the PBE program should be self-funding, in alignment with all other Admissions functions.

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- a. 2. Revise admissions requirements to be more relevant to the practice of law in alignment with the recommendations of the Blue Ribbon Commission on the Future of the Bar Exam.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees directs staff to transmit the report of the Alternative Pathway Working Group to the California Supreme Court with the following recommendations:

1. That the Court adopt a pilot Portfolio Bar Examination (PBE) as a method for assessing a candidate's minimum competence to practice law with the provisional licensees who remain in the original Provisional Licensure Program;
2. That the pilot program is developed in 2024 and implemented in 2025 to work within the existing timeline of December 31, 2025, when the original Provisional Licensure Program is to sunset; and

3. That the Board direct staff to work with representatives of the Committee of Bar Examiners and experts to finalize requirements for the pilot PBE; study outcomes of the pilot program; and make recommendations regarding continuation, modification and/or extension of the PBE.

FURTHER RESOLVED, that the Board of Trustees recommends an additional objective assessment component to the Portfolio Bar Examination of up to two performance tests.

ATTACHMENTS LIST

- A. [Report to the Board of Trustees of the State Bar of California: Proposal for a Portfolio Bar Examination](#)
- B. [Public Comment Summary and Dashboard](#)
- C. Alternative Pathway Working Group: Response to Public Comment in Disagreement with the Proposal
- D. Letter to Supreme Court Regarding PLL Program

Working Group Notes on Critical Comments

General Note: Many critical comments show little familiarity with the details of the proposal. We are concerned that these commenters did not read the proposal carefully (or at all).

1. Opposition to the proposed Portfolio Bar Exam (PBE) in general: Multiple commenters express their opposition to the PBE, viewing it as a way to "dumb down" the requirements for becoming a licensed lawyer and sacrificing public protection. They argue that the current bar exam is the best way to ensure standards for admission and demonstrate minimum competence.

- There is nothing “dumbed down” about the proposed PBE. Although a PBE Committee will determine the requirements for a pilot program, the Working Group Report suggests that candidates should produce 8-13 different pieces of writing (spread over at least seven doctrinal areas) and demonstrate their competence in negotiations and client encounters (pp. 35-37). This is more writing than the current bar exam requires (5 essays plus 1 performance test) and includes requirements (the negotiations and client encounters) that the bar exam omits. PBE candidates must also log 700-1000 hours of legal work (p. 34). As explained in the joint letter from 11 California law school externship faculty, who collectively supervise close to 2000 placements per year, structured, hands-on, real-world learning translates to practice readiness. (submitted as a public comment by Anahid Gharakhanian)
- The current bar exam uses proxies (e.g., success on multiple choice questions) to assess competence serving clients. The PBE, in contrast, will assess entry-level competence directly—as candidates serve live clients. The PBE will thus offer a more authentic assessment of competence, one that tracks entry-level competencies directly.
- A more authentic assessment is not an easier one. Indeed, it is likely to be harder. Portfolio reviewers, for example, will expect work product to be more organized, thoughtful, and polished than the essays written for the current bar exam.
- We have no evidence that the current bar exam is the “best way” to assess minimum competence. The only studies addressing that issue suggest that other types of assessment are as good or better. The Working Group Report cites one of those studies (p. 31 & n. 94), which showed that candidates pursuing a portfolio pathway were “as competent, or more competent,” than lawyers who had passed a traditional bar exam. That study used a standardized exercise, scored by independent graders, to compare the portfolio candidates to lawyers who had passed the bar exam. The portfolio candidates performed significantly better.
- Similarly, studies have shown no significant difference in discipline rates between Wisconsin lawyers admitted through that state’s diploma privilege and Wisconsin lawyers who passed the bar exam. See Markovic, M, *Protecting the Guild or Protecting the Public? Bar Exams and Diploma Privilege*, 21 TX A&M School of Law 53 (2022).
- As the Working Group Report notes on p. 39, Dr. Buckendahl explained that it would be possible to use a “policy linking study” to ensure that candidates in the PBE meet the same standard of competence as those who take the current bar exam (or any revised version of

that exam). The commenters who raise concerns about the comparability of the PBE and current bar exam probably are not familiar with that psychometric technique.

- Deborah Merritt, a recognized expert who addressed the BRC and our Working Group, notes in her submission that lawyers are not experts in assessment. Their primary contact with assessment is through taking tests, not designing or evaluating them. The Working Group's Report rests on expert insights from multiple psychometricians and other experts on assessment. That evidence, not the views of lawyers, should guide decisions. Merritt notes that many lawyers initially opposed the use of multiple-choice questions for licensing, viewing those questions as "dumbing down" the bar exam.

2. Concerns about fairness and equality: Some commenters question the fairness and necessity of creating an alternative pathway to licensure for historically disadvantaged groups, such as first-generation graduates, women, and candidates of color. They argue that passing the traditional bar exam can still be achieved through hard work and dedication, and that the proposed PBE may undermine the equal standards set by the current exam.

- The PBE is not a special pathway for historically disadvantaged groups: it would be open to all candidates who satisfy the entrance requirements. The Working Group did note the possibility of preferring candidates who live with disabilities when scaling up the PBE (p. 42) because the PBE embraces the principles of universal design. Offering some priority to candidates who live with disabilities would benefit both those candidates (who could more fairly demonstrate their competence) and the State Bar (which would not have to provide costly accommodations for the current exam).
- The Working Group proposed the PBE because it offers a more authentic, comprehensive method of assessing competence than a two-day bar exam. To protect the public, the State Bar should at least explore through a pilot project an assessment method that promises a more thorough measure of minimum competence.
- It is true that first-generation graduates, women, candidates of color, and candidates who live with disabilities face particular challenges with a bar exam that is given only twice a year and requires time-consuming, expensive preparation. If the PBE offers a better measure of minimum competence, as the Working Group believes, then it will be a bonus that this better assessment method also addresses these systemic issues.
- The reference to "hard work and dedication" obscures the fact that the burdens imposed by the bar exam weigh more heavily on some candidates than others. Financially secure, able-bodied candidates who lack caretaking responsibilities find it easiest to pass the current bar exam. Why should some candidates have to demonstrate more hard work and dedication than those candidates? This reference is a form of victim blaming that overlooks the systemic issues created by the current bar exam.
- As noted above, psychometric studies can ensure that passing scores on the PBE show as much (or more) competence than passing scores on the traditional exam. Commenters may be unfamiliar with those psychometric techniques.
- As the Working Group Report notes (p. 22), the State Bar Survey showed that women of color, men of color, and white women were more likely to take advantage of the Pathway

Program than white men. That data, along with other evidence cited by the Report, suggests that members of these historically disadvantaged groups will perceive the PBE as fair and equitable.

- We do not believe that the PBE will lead to two tiers of lawyers. As lawyers learn about the psychometric studies described here and in the Working Group's Report, they will understand that the PBE licenses candidates who are as—or more—competent than those licensed by the traditional bar exam. Evidence from the State Bar Survey of PLP participants (cited in the Working Group's Report at pp. 30-31) suggests that practitioners who interact with PBE-licensed candidates will notice only that they are particularly well qualified. The public may also prefer a trained attorney over a good test taker.
- At least one of the letters submitted during the public comment period (by Jasjit Singh on behalf of California ChangeLawyers) lends further support to that survey finding. Singh writes: "Our belief is that employers would prefer a trained attorney rather than someone who is just a good test taker." He also notes: "We have no knowledge of any discrimination faced by those who became attorneys through an alternative licensure pathway such as the provisional licensure program."

3. Inadequate breadth: that the PBE doesn't lead to the same broad subject matter knowledge that the bar exams demands students have and that lawyers must have regardless of their preferred practice area.

- The Working Group Report addressed this concern at length (pp. 11-14, 34, 36). Among the points made there:
 - The State Bar Survey shows that provisionally licensed lawyers work with knowledge from many different subject areas.
 - The law is a "seamless web." It is very hard to practice in any area without drawing upon principles from all the CAPA/BRC subjects.
 - Indeed, PBE candidates will learn to link principles from different areas more effectively than candidates who study black-letter rules in isolation for a traditional bar exam.
 - Two of the psychometricians who advised the Working Group agreed that "competency in one subject suggests that a candidate has the capacity to gain competency in another subject." (P. 12) In other words, doctrinal competence doesn't consist of a specific set of memorized rules; it means that the candidate has demonstrated their ability to apply doctrinal principles to client problems—and to learn new doctrine as needed.
 - The PBE is broader than the current bar exam because it requires demonstration of skills that the current exam does not test.
- In addition, the Working Group suggested two requirements (p. 12) that would specifically address concerns about doctrinal breadth: (1) PBE candidates must complete law school courses in all nine of the doctrinal subjects identified by CAPA and the BRC. (2) PBE candidates must demonstrate in their portfolios that they have worked with concepts from at least seven of those areas.
 - In connection with that first requirement, note that all ABA-accredited and California-accredited law schools offer those CAPA/BRC courses. Indeed, the California-accredited schools must require their students to take courses in all bar

subjects. In the California-accredited schools, many of those courses are taught as six-credit offerings.

- Candidates who complete full courses in these subjects will have a much better grasp of fundamental concepts than those who study the subjects as part of a bar review course—an approach that some students take for the current exam.
- Concerns about breadth sometimes confuse minimum competence with the requirements for specialist certification. Newly licensed lawyers do not need to have the competence of certified specialists. Nor do they need to satisfy the demands of every potential employer: Employers may legitimately seek more than minimum competence in their practice areas.
- CAPA and the BRC have already reduced number of doctrinal subjects considered foundational. The current bar exam tests thirteen subjects, while CAPA/BRC have recommended testing just nine.
- The breadth of knowledge tested on the current bar exam is somewhat of an illusion. Test-takers do not have to pass every subject on the exam; they may compensate for weaknesses in one subject by knowing more about a different subject. More important, memory of legal principles decays quickly if that knowledge is not regularly applied; this is why most practicing lawyers would struggle to pass the bar exam. The PBE, which will require candidates to apply principles to real client problems, will generate stronger, more long-lasting knowledge.

4. Doubts about the quality and subjectivity of the portfolio assessment: There are concerns about the subjective nature of portfolio assessments, with commenters questioning the ability of graders to adequately assess the adequacy of submissions. They argue that the opinions and biases of graders may affect the outcome and raise doubts about the reliability and objectivity of this assessment method.

- On this issue, the Working Group consulted with three psychometricians and drew upon insights from other jurisdictions that are designing portfolio systems. The Report explains the many mechanisms that will be used to ensure reliability (pp. 15-17, 38-39). Commenters raising this concern may be confusing objectivity and standardization with reliability. Objective questions and standardization are one way to achieve reliability (although they are rarely sufficient on their own), but they are far from the only way to make an assessment reliable. As the Report states (pp. 15-16): “the psychometricians explained that, although candidates using a portfolio system do not complete standardized exercises, the State Bar can standardize the submission expectations and more important, the *evaluation of portfolio components*.”
- The State Bar already uses many techniques to ensure reliability in essay grading. E.g., graders participate in extensive calibration sessions, they serve lengthy apprenticeships before grading, and their scores are regularly analyzed and compared to those of other graders. Some of the same techniques can be used in portfolio review. In particular, as explained on p. 39 of the Report, portfolio graders will calibrate their assessments by scoring the same sample portfolio elements (just as essay graders compare scores on sample essays). Selected pieces will also be embedded in all portfolios to track whether graders score them consistently.

- Many commenters may lack familiarity with rubrics and how they are used. Legal writing and clinical professors, however, have used rubrics effectively for years. Bar exam graders already use rubrics to grade essays.
- The Working Group Report suggests a process for developing rubrics (pp. 38-39) that will include practicing lawyers as well as educators who are experienced with using rubrics. The recommended pilot study will then help determine whether those rubrics, training, and other techniques achieve the reliability desired for the PBE.

5. Supervision and support in the portfolio process: Some commenters express concerns about the quality and effectiveness of supervision and support provided to applicants during the portfolio process. They worry that supervising attorneys may have differing motivations or may not provide enough guidance, potentially resulting in varying outcomes and a lack of standardization.

- All supervisors have a common motivation of serving clients, and they will be paying PBE candidates to assist with that service. Supervisors will thus have a common incentive to train and support PBE candidates effectively.
- The Working Group Report recommends that supervisors receive training on how to mentor and support the candidates working for them (pp. 39-40).
- The State Bar Survey shows that most supervisors in the PLP provided high levels of supervision and training to the provisionally licensed lawyers working with them. This data is noted in the Working Group's Report (pp. 16-17) and discussed further in the article attached to the report.
- The letter from Faculty Externship Directors (submitted as a public comment by Anahid Gharakhanian) contains further evidence about the conscientiousness of supervising attorneys who participate in externship programs.
- The small pilot recommended by the Working Group will allow the State Bar to further explore the effectiveness of supervisors. We note that the supervisors for that pilot have already worked for several years with provisionally licensed licensees and invested significantly in those licensees. They are likely, therefore, to perform their supervisory duties well. They may also be able to advise the State Bar on the kind of supports that are most important for lawyers serving as PBE supervisors.
- At least three submissions during the public comment period suggest that public interest organizations would be particularly effective in supervising PBE candidates. See the letters from Eileen Kaufman (reporting additional data from the State Bar Survey); Salena Copeland (on behalf of the Legal Aid Association of California); and Claudia Center (on behalf of 22 IOLTA-funded nonprofits). These submissions note that IOLTA-funded organizations are already subject to State Bar regulation; that public interest nonprofits already have extensive training and supervision programs in place; that these organizations are eager to hire PBE candidates; and that the PBE would allow them to expand access to justice. The Working Group Report suggests that the PBE could be gradually scaled up by offering places "first to eligible candidates who have accepted positions with public interest employers or

employers in underserved parts of the state.” (Pp. 42-43) Following that recommendation could assuage some concerns about unevenness in supervision or training.

- For candidates who might suffer from inappropriate supervision or training, the Working Group Report offers several guardrails: the mandatory training of supervisors mentioned above, the opportunity to change supervisors, and the availability of an ombudsperson (p. 26).

6. Fraud and authenticity of the portfolio work: Commenters raise concerns about the potential for fraud and lack of mechanisms to ensure the authenticity of the portfolio work. They question how the uniqueness and originality of the work can be verified, particularly in the absence of a standardized task that the applicant must complete on their own.

- The Working Group Report also addressed this concern in some detail. As explained on p. 38, contemporary law practice relies heavily on sources and networks. No competent lawyer would do what the current bar exam demands: analyze a client problem without consulting any sources or other lawyers. Competence in law includes the ability to draw from those resources, identify the best approaches from multiple (sometimes conflicting) suggestions, and apply that synthesis to the client problem. The PBE will assess this key competence, while the current bar exam does not.
- To ensure that the candidate has taken command of this process, rather than simply submitting the work of another person, the Working Group Report suggests two requirements (p. 38). The candidate must provide extensive information about the resources they tapped (AI, other lawyers, etc.) and the supervisor must “attest that, after reviewing the writing and assistance noted by the candidate, they believe that the work product sufficiently reflects the knowledge, research, analysis, and writing of the candidate that an examiner can meaningfully assess the candidate’s competence from the writing.”
- The Working Group also suggested that candidates and supervisors who make intentional misrepresentations on any of these matters would be subject to dismissal from the PBE, adverse character determinations, or discipline.
- Through the recommended pilot, the State Bar will be able to determine whether these attestations are sufficient to ensure assessment of the candidate’s competence or whether different measures are needed. It is essential, however, to devise a method of assessing competence that encompasses the networked way in which clients need their lawyers to perform. The rapid rise of AI, which has continued even since submission of the Working Group’s Report, means that our traditional ways of assessing competence will soon have little meaning.

7. Competency levels and distribution of legal services: Some commenters express concerns about the dropping levels of competency for attorneys and the suggestion that these programs may not address the areas of law where their services are most needed. There is a belief that more lawyers will continue to enter fields that are already saturated, rather than focusing on low or pro bono work, public defenders, or addressing the access to legal services issue.

- As noted above and throughout the Working Group’s Report, the PBE is designed to increase the competence of entry-level lawyers. It will assess their competence in serving real clients, rather than through the proxy of the current bar exam.
- Concerns about market saturation are inappropriate in the context of licensing. The public benefits from the addition of competent lawyers to the market. Concerns about saturation suggest that practitioners are using the bar exam to restrict entry to the profession.
- As noted above, public interest employers may offer particularly suitable supervisors during early stages of the PBE. Using those employers would increase services to underserved clients in several ways:
 - Rather than devoting 10 or more weeks to bar prep, PBE candidates would serve clients directly during that time.
 - Some candidates who earn their licenses with public interest organizations may choose to continue that work.
 - When a new lawyer fails the bar exam, public interest organizations can rarely afford to support that lawyer while they take time off for another period of bar study. With the PBE, public interest organizations can keep candidates who are serving clients effectively while allowing those candidates to compile their portfolios.

8. Some confusion about whether law school is required in the proposal.

- The Working Group’s Report makes very clear that, at least to start, the PBE should be limited to graduates of ABA-accredited law schools and graduates of California-accredited law schools (p. 32). The group made that recommendation in part because of the concerns raised about doctrinal breadth. These two groups of schools offer all the subjects that CAPA/BRC recommended for testing on the bar exam. They also follow a variety of other accreditation requirements that complement the PBE pathway.
- After completing the pilot, and perhaps other early stages of scaling up the program, the PBE could be extended to candidates who have not graduated from schools within these two categories. That is a matter for the State Bar and Supreme Court to determine.



The State Bar of California

OFFICE OF THE EXECUTIVE DIRECTOR

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ATTACHMENT D

SENT VIA EMAIL

December 1, 2022

Honorable Tani Cantil-Sakauye, Chief Justice of California
Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94105

RE: Options for Extension of the State Bar Provisional Licensure Programs

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Just 17 months ago, in July 2020, the Supreme Court directed the State Bar of California “to implement, as soon as possible, a temporary supervised provisional licensure program – a limited license to practice specified areas of the law under the supervision of a licensed attorney.” The Court was moved by the unprecedented upheaval wrought by the COVID-19 pandemic and the need to create a pathway to practice for 2020 law graduates who found themselves stepping out of law school into a world steeped in uncertainty. Two months later the State Bar Board of Trustees (Board) presented a proposal to the Court to adopt rule 9.49 of the California Rules of Court establishing what is now referred to as the Original Provisional Licensure Program (Original PLP). The program launched on November 17, 2020.

In January 2021, the State Bar recommended, and the Supreme Court adopted, rule 9.49.1, expanding the provisional licensure program to include those who scored between 1390 and 1439 on a bar exam administered between July 2015 and February 2020. This program, the Pathway PLP, provides a path to licensure upon completion of 300 hours of supervised legal practice and receipt of a “satisfactory” supervisor evaluation. The Pathway PLP was adopted in recognition of the recent reduction in the passing line for the bar exam in conjunction with pandemic-related challenges with which this cohort was also struggling.

Responding to the persuasive correspondence and testimony received by the State Bar shortly before the scheduled June 1, 2022, termination of both the Original and Pathway PLPs, the Supreme Court extended both programs until December 31, 2022. Although many participants in both programs have been able successfully to meet all requirements for admission to the State Bar, the Board of Trustees strongly believes there are compelling reasons to, at a

minimum, further extend both programs. The Board approved five separate options for the Court's consideration reflecting this sentiment. The Board specifically recommends that the Court adopt the single option presented as related to the Pathway PLP and select among the four options presented with respect to the Original PLP.¹

DATA FOUNDATION FOR OPTIONS PRESENTED

After just over and under two years of track record respectively, the numbers reflect the success of both programs:

Original PLP

- 912 total participants
 - 645 have become fully licensed lawyers.
 - An additional 17 are on their way to licensure after passing the July 2022 bar exam.
 - In total, 72.5 percent of participants are or will soon be fully licensed.

Pathway PLP

- 673 total participants
 - 538 have become fully licensed lawyers.
 - An additional 24 became fully licensed through sitting for the bar exam subsequent to February 2020.
 - In total, 83.5 percent of participants are fully licensed.

The State Bar recently conducted a survey soliciting input from current and former Provisionally Licensed Lawyers (PLLs) in both programs, their supervisors, and those who were eligible for but did not participate in the Pathway PLP (this group is referred to as Eligible PLLs). Response rates for the survey were excellent. Roughly 50 percent of current and former PLLs responded, as well as 34 percent of supervisors. Additionally, 48 percent of Eligible PLLs responded. In terms of race/ethnicity and gender, the demographic characteristics of survey respondents were consistent with the demographics of program participants. Key highlights of the survey data are summarized below:

- 77 percent of respondents spent their time as a PLL in the private sector, 15 percent in nonprofits, and 5 percent in the public sector.
- Satisfaction with the PLP:
 - 92 percent of supervisors reported being satisfied or very satisfied with the work of the PLL.
 - 86 percent of PLLs reported being satisfied or extremely satisfied with the program.
 - 89 percent of PLLs agreed or strongly agreed that the program was valuable in preparing them for the practice of law.
- Benefits to the employer:
 - 83 percent of supervisors reported that they found the PLLs to be especially hard-working.

¹ The November 17, 2022, agenda item outlining these options is provided as Exhibit 1. A standalone table reflecting the options is provided as Exhibit 2.

- 68 percent of supervisors reported that having the PLLs allowed them to serve more clients, while 58 percent stated that the PLLs added diversity to their practice.
- Challenges for the employer:
 - 27 percent of supervisors felt that PLLs needed more direct supervision than newly licensed lawyers.
 - 26 percent reported that PLLs were unable to handle work similar to that handled by newly licensed lawyers.
 - 22 percent indicated that PLLs needed more training than newly licensed lawyers.
 - 15 percent report that PLLs made errors that newly licensed lawyers would not have made.²
- Challenges reported by PLLs:
 - 42 percent found explaining their provisional status awkward, and 20 percent felt they were treated as “second-class lawyers” by clients, lawyers, judges, or others.
 - 36 percent found the salary challenging, and 22 percent found the benefits to be inadequate.
 - With respect to this question, there were interesting differences between Original PLP and Pathway PLP respondents, with the former reporting fewer compensation concerns than the latter.
 - 40 percent of respondents from the Original PLP reported that combining bar study with PLL work was difficult.
 - 26 percent of the Pathway PLLs reported difficulty finding a supervisor.

Attachment C to the Board agenda item provided as Exhibit 1 reflects program and participant data considered by the Board of Trustees in PowerPoint form; Exhibit 3 comprises a revised PowerPoint reflecting post-Board meeting data updates along with an explanatory slide outlining the nature and source of data variations. Exhibit 3 also includes a revised version of the Board’s November 17, 2022, agenda item reflecting the updated data.

DEVELOPMENT OF OPTIONS FOR SUPREME COURT CONSIDERATION

In formulating the slate of options to recommend to the Court, the Board was guided by several policy considerations or objectives:

- **A Return to “Normal” Does Not Need to Equate to a Return to Pre-Pandemic Status Quo.** The pandemic spurred rapid innovation in virtually all sectors of the global economy, civil society, and private life. As is proving true in many areas impacted by such innovation, the return to normalcy does not mean returning to exactly the way we did things previously.
- **Legitimate Challenges to Satisfying Licensure Requirements Exist.** We should be fair

² The percentage of supervisors reporting each of these challenges was slightly higher for Original PLLs than Pathway PLLs. It is unknown if the driver for this difference is the PLL or the type of placement. For example, Pathway PLLs worked more with solo practitioners in comparison to Original PLLs.

and open-minded as relates to participants who have not completed program requirements by the sunset date (this includes recognizing challenges some may have faced in getting a supervisor and starting timely in the program, as well as the real challenges that people face in trying to study for the bar exam while working).

- **Public Protection Is of Primary Importance.** As a preliminary matter, the Board reviewed PLL complaint data as a measurable public protection proxy. For 2020 and 2021 combined, the complaint rate against PLLs was .9 percent (with 19 complaints having been received against 15 PLLs). Of the 12 cases closed to date, one has resulted in a cease-and-desist letter; the remainder have closed with no discipline or nondisciplinary measures. A comparative cohort of licensed attorneys—those with up to two years in practice—has an annual complaint rate of 1.3 percent, slightly *higher* than that for PLLs, although the difference is not statistically significant.

In addition to reviewing complaint data to identify any potential consumer harm concerns related to the programs, the Board determined that all options presented to the Court would contain provisions designed to maximize public protection. Namely, all of the options preclude the possibility for continued program participation for those who do not have an active positive moral character determination, have not passed the Multistate Professional Responsibility Exam (MPRE), or have not completed the required 10-hour New Attorney Training, as of December 31, 2022. The Board believes that there has been sufficient time permitted for completion of these required program elements, and that it would be contrary to public protection to allow individuals who have not satisfied these requirements to continue practicing.³

- **Fairness.** More than three-quarters of Eligible PLLs who responded to the survey (equating to 40 percent of all Eligible PLLs who did not participate and have not yet been admitted to the bar) indicated that they were not aware of the program due to Pathway Program notice failures on the part of the State Bar.
- **Interest in Transitioning Away from Single High Stakes Exams for Licensure and Other Purposes.** While the states of Wisconsin and New Hampshire have long had pathways to licensure that do not require passing a traditional bar exam, over the past couple of years there has been increased interest nationally in alternative paths to licensure. Earlier this year the [Oregon Supreme Court approved two new pathways to licensure](#), and there is growing openness to the notion that there may be other ways to

³ State Bar staff emailed all program participants on Monday, November 21, 2022, to make them aware of the options adopted by the Board of Trustees. In particular, the State Bar wished to ensure that, if the Supreme Court were to adopt any of the options as crafted, applicants had the opportunity to complete any outstanding requirements that could prevent them from continuing on in the program, most especially the 10-hour New Attorney Training, by December 31, 2022. Three comments, provided in Exhibit 4, were received by State Bar staff relating not to the New Attorney Training provision but rather the MPRE passage requirement. One commentor had passed the MPRE in a state with a lower MPRE cut score than California's. California, along with Utah has the highest MPRE cut score in the country (86). Should the Court wish the State Bar to revisit the MPRE satisfaction requirement reflected in all options presented staff suggests that a review of California's MPRE cut score might be appropriate.

demonstrate minimum competence than a traditional bar exam.⁴ Further upstream, the [American Bar Association recently voted to eliminate its testing mandate](#) with respect to law school admissions. All of these decisions have been grounded in concerns about the validity of standardized testing, the relevance of these exams to the competencies and knowledge being assessed, and equity.

THE PATHWAY PLP – Option 1

Option 1 comprises:

1. An extension of the Pathway PLP for one year for 29 of the remaining 53 Pathway PLLs who have not met program hours and/or supervisor evaluation requirements.
2. Reopening the Pathway PLP to new applicants for three years to account for the State Bar's failure to adequately notice all Eligible PLLs at the onset of the program.

This option would extend the existing program for one year, through December 31, 2023, for currently active participants in the program whose only remaining unmet requirements are completion of the required 300 hours of supervised practice or receipt of a supervisor evaluation. Currently active Pathway PLLs would also need to have a supervisor in place by December 31, 2022, to be eligible to continue in the program. This extension would provide additional time for the completion of remaining hours and submission of a supervisor evaluation, time which is needed for those who have struggled to satisfy these required program elements while working, raising a family, or meeting other obligations.

In addition, the Board recommends reopening the Pathway PLP to address the State Bar's inadvertent failure to notice all eligible individuals about the program. As noted in the agenda item, although there was extensive coverage on the State Bar's website and social media, and some coverage in the legal press over the course of several months while both PLPs were being created, this coverage was not sufficient to reach those who had long since stopped reviewing the State Bar's website or following the State Bar on social media. Since scoring 1390 or higher on a bar exam, many individuals moved out of state or did not follow through on plans to move to California, and some certainly began or continued careers outside of the legal field. The State Bar had intended to notice the nearly 2,700 individuals who had scored between 1390 and 1439 on one of the eligible administrations of the bar exam (Eligible PLLs); however, due to a miscommunication or misunderstanding, only those who had started, but not yet completed, an application for the program by the start of April 2021 were notified. Of the nearly 2,700 Eligible PLLs at the start of the program, 1,154 never applied for the program and have not otherwise been admitted. When the State Bar surveyed this cohort, nearly 85 percent of respondents reported that they did not learn about the program before the application deadline. In fact, many learned of the program only upon receiving the survey asking why they did not apply.

The Board of Trustees believes strongly that fairness dictates that the Pathway PLP be reopened for Eligible PLLs and recommends a June 30, 2023, application deadline. To provide a

⁴ Other states exploring such alternatives include Colorado, Massachusetts, Minnesota, Nevada, Utah, and Washington.

roughly commensurate program participation timeframe as current Pathway PLLs have enjoyed, the Board recommends extending the program through December 31, 2025, for this cohort.

THE ORIGINAL PLP

Option 2 – Extension of Time Only

This option would extend the Original PLP for three years, to December 31, 2025, to allow participants additional opportunities to sit for and pass the California bar exam. This option recognizes the significant challenges many PLLs have reported in relation to studying for the bar exam while participating in the program. Using the public protection rationale guiding all of the options, this option would extend only to those individuals who have satisfied all requirements other than bar passage. That number is between 125 and 132 depending on New Attorney Training completion rates prior to December 31, 2022.⁵

Option 3 – Extension of Time and Development of a Supervised Practice Pathway Pilot Project

This option would extend the Original PLP for three years, to December 31, 2025. The option is grounded in a recognition of the fact that other states are in various stages of implementing or assessing nontraditional pathways to legal licensure; that despite our best efforts there may be inherent biases in a traditional bar exam; and related, that there may be better, superior, alternatives for assessing minimum competency. The Board therefore included in the slate of options one that would not only extend the program but also direct the State Bar to develop a Supervised Practice Pathway Pilot Project. Directing staff to indicate its strong support for this option, Board members expressed that the bar exam may not necessarily be a good test of minimum competence for all; for some it may simply be most effective at assessing test-taking skills. The Board believes the type of small, controlled pilot project that selection of this option would afford could benefit the Court and policymakers in future consideration of alternative methods of assessing minimum competence and pathways to legal licensure. Should the Court direct the State Bar to pursue this option, a detailed proposal outlining the specific parameters of the supervised practice pathway would be developed and submitted to the Court by December 31, 2023.

The Board understands and acknowledges that some members of the Blue Ribbon Commission (BRC), an entity that has, in fact, been charged with assessing various approaches to determining minimum competence, oppose the idea of a PLP-based pilot. This opposition generally derives from the idea that the BRC itself has been unable to generate a recommendation regarding a supervised practice pathway to licensure, and that advancing any related effort could be seen as circumventing their ongoing process. These views are reflected

⁵ In addition to the variable related to completion of the 10-Hour New Attorney Training Requirement, this number and range could also increase slightly to the extent there are those who terminated their participation in the program because they no longer had a supervisor. If these former participants are able to identify a supervisor prior to the December 31 deadline and otherwise meet the eligibility requirements, they could resume participation in the program. Note that this range of impacted individuals (125–132) applies to options 2–5.

in the letter submitted to the Board by the California Lawyers Association, included in the public comment received on the options considered by the Board, aggregated as Exhibit 4. While the Board appreciates this perspective, the Board believes that the value of an extremely limited scope pilot in advancing what has clearly been a challenging policy debate outweighs expressed concerns.

Option 4 – Extension of Time and Development of an Alternate License Status for PLLs

Option 4 would extend the Original PLP for three years and direct the State Bar to explore alternative licenses for PLLs that remain in the program after January 1, 2025. This option recognizes [the growing list of states](#) that have implemented or are exploring alternative licenses for nonlawyers. The Board agenda item describes two alternative licensure structures that could be developed, one which would essentially be a permanent PLL, permitted to engage in the full scope of legal work but remaining permanently under supervision of a California attorney. The second alternative structure outlined is a limited scope license, which would allow licensees to perform a limited scope of work, likely in defined subject areas, but without supervision. As noted in the Board agenda item, if the Supreme Court directs the State Bar to pursue this option, the development of an alternative licensure status would be delayed to January 1, 2025, in conformity with the requirements of Business and Professions Code section 6034.1. The State Bar would submit any recommendations for an alternate license status prior to December 31, 2025.

Option 5 – Extension of Time and Allowance to Take the Attorneys’ Exam in Lieu of the General Bar Exam

Like options 2, 3, and 4, this option would extend the Original PLP for three years, until December 31, 2025. However, this option would still require bar passage by the end of that period to become fully licensed. Option 5 differs from option 2, which also requires bar passage, in that this option would allow Original PLLs, upon completion of a set number of hours of supervised legal practice, and verification of those hours by their supervisors, to sit for the one-day Attorneys’ Exam in lieu of the two-day General Bar Exam.⁶ This option is essentially equating, for purposes of rule 9.49, four years of active licensure in another U.S. jurisdiction (which allows out-of-state attorneys to sit for the Attorneys’ Exam) with the to-be-determined number of hours of verified supervised legal practice.⁷

CONCLUSION

The Board recognizes that at least some of these options are not without controversy. Nonetheless, based on qualitative and quantitative data analysis and guided by the policy objectives and considerations discussed above, the Board believes that extension of both programs is appropriate and fair. The Board therefore recommends that the Court adopt option

⁶ The State Bar Board of Trustees defers to the Supreme Court to select the appropriate number of hours if the Court adopts this option.

⁷ While facially such an equating might cause concern, there is no assessment of the number of hours of legal work conducted during the four years of active licensure; thus, an out-of-state attorney can be active for four or more years without practicing law in another state *at all* and still be eligible to sit for the Attorneys’ Exam.

1 related to the Pathway PLP, and one of the remaining four options regarding the Original PLP. As noted above, the Board expressed particular support for option 3, the creation of a Supervised Practice Pathway Pilot Project, which would both establish a pathway to permanent licensure for remaining Original PLLs and provide empirical data to inform future discussions regarding the future of legal licensing in California.

At the Board's direction, State Bar staff have drafted proposed amendments to rules 9.49 and 9.49.1 in support of each of the items. The five proposals are provided as Exhibit 4.

The State Bar stands ready to respond to any questions the Court may have or to supply any additional data that may be useful in the Court's deliberations.⁸ I conclude by expressing my gratitude for the Court's willingness to tackle the unprecedented and challenging situations that we have encountered over the last two and one-half years, and doing so with laser focus, innovation, and a sense of enduring fairness to those impacted.

Sincerely,



Leah T. Wilson

Enclosures

cc: Ruben Duran, Chair, State Bar Board of Trustees
Brandon Stallings, Vice-Chair, State Bar Board of Trustees

Exhibit 1: Board Agenda Item

Exhibit 2: New Standalone Table with Options

Exhibit 3: Updated Data Analysis and Revised Agenda Item

Exhibit 4: Written Public Comment

Exhibit 5: Draft Rule Language

⁸ Staff continues to analyze survey data and has found interesting distinctions between Original and Pathway PLLs in some areas, including compensation. Should the Court direct the State Bar to pursue options 3 or 4, both of which suggest some type of permanent status for remaining PLLs, the State Bar will use this data and related follow up to shape future recommendations to be submitted to the Court as outlined in each of these respective options.

EXHIBIT 1:
NOVEMBER 17, 2022,
BOARD AGENDA ITEM
WITH ATTACHMENTS



The State Bar of California

OPEN SESSION AGENDA ITEM 701 NOVEMBER 2022

DATE: November 17, 2022

TO: Members, Board of Trustees

FROM: Donna S. Hershkowitz, Chief of Programs & Legislative Director
Leah T. Wilson, Executive Director

SUBJECT: Recommendation to Supreme Court Regarding Pending Sunset of the
Provisional Licensure Program

EXECUTIVE SUMMARY

Pursuant to Rule of Court 9.49 and 9.49.1, the two Provisional Licensure Programs (PLPs) operated by the State Bar will sunset on December 31, 2022, unless the Supreme Court takes action to extend the programs. The programs were initially scheduled to sunset on June 1, 2022, but following the Court's consideration of the recommendation from State Bar Executive Director Leah Wilson (see Attachment A), the Supreme Court extended the programs for seven months. As the sunset date has approached, the State Bar has examined data on the participants still in the programs and surveyed the participants and their supervisors. The State Bar also surveyed individuals who were eligible for the Pathway Program (described fully below) but did not apply. Based on the review of the data, the analysis of the surveys, and consideration of public comments that the Board and the Blue Ribbon Commission (BRC) on the Future of the Bar Exam have received in the last several months, staff recommends that the Board of Trustees recommend to the Supreme Court that the programs be extended. This agenda item recommends a set of options for presentation to the Court, which range from simple extension to a path to permanent licensure for all remaining program participants.

BACKGROUND

On July 16, 2020, the California Supreme Court directed the State Bar to "implement, as soon as possible, a temporary supervised provisional licensure program—a limited license to practice specified areas of law under the supervision of a licensed attorney." (See Attachment B)

In explaining the rationale for this direction, the Court expressed that “[t]he changing circumstances surrounding the ongoing COVID-19 pandemic in California . . . have had an unprecedented impact on professional licensure testing. . . . The court understands that many law school graduates are being substantially affected by the resulting disruption. Some graduates have lost job offers. Many are about to lose health insurance, cannot find a job to pay bills, or are in fear of deportation if they cannot enter the bar in time retain job offers. Many more have student loan payments that become due in mid-November, but without a law licensure and the ability to work, they fear going into default.” The Court further noted that “postponement of the bar examination (from summer to fall 2020) may impact employment prospects, delay incomes, and otherwise impair the livelihoods of persons who recently have graduated from law school. Moreover, the court recognizes 2020 graduates may not be in a position to study and prepare for” a fall bar examination.

THE ORIGINAL PROVISIONAL LICENSURE PROGRAM (ORIGINAL PLP)

On October 22, 2020, upon recommendation of the Board of Trustees, the Supreme Court adopted rule 9.49 of the California Rules of Court, effective November 17, 2020, establishing the original Provisional Licensure Program (Original PLP). This program, as initially enacted and subsequently amended, was open to 2020 law graduates who:

- Had not yet passed the bar exam (whether or not they sat for exam).
- Either had an active (i.e., not expired) positive moral character determination or had submitted a complete application for determination of moral character that was pending.
- Either had passed the Multistate Professional Responsibility Exam (MPRE) or, within 30 days after entry into the program, completed the four hours of ethics e-learning that is part of the State Bar’s 10-hour New Attorney Training.
- Submitted a declaration of an eligible California licensed attorney indicating that they would supervise the participant.
- Within one year after entry into the program, completed the remainder of the 10-hour New Attorney Training.

The Original PLP was not a pathway to licensure. Participants still needed to take and pass the bar exam before the end of the program and meet all other requirements for admission to continue practicing upon the expiration of the program.

The program was originally scheduled to sunset on June 1, 2022. On May 26, 2022, the Supreme Court extended the program to December 31, 2022.

Original PLP By the Numbers

There have been a total 912¹ participants in the Original PLP. As of November 10, 2022:

- 645 have become fully licensed lawyers, having passed the bar exam and meeting all

¹ The May 24, 2022, letter to the Supreme Court incorrectly put this number at 915, having mistakenly counted some duplicate entries.

other requirements for admission.

- 72 have been terminated from the program.
- 5 have been suspended from the program, but not yet terminated.
- 190 remain as active program participants. The 190 includes 17 who successfully passed the July 2022 bar exam and who had no other requirements to satisfy other than passing the bar. These 17 will therefore become fully licensed prior to the expiration of the program, leaving 173 active participants.

Of the remaining 173 active program participants, 168 have yet to pass the bar exam; 125 of these 168 participants have satisfied all other program requirements.²

EXPANDED PROVISIONAL LICENSURE PROGRAM WITH A PATHWAY TO LICENSURE (PATHWAY PROGRAM)

In response to public comment received while developing the Original PLP, the State Bar's Provisional Licensure Working Group reconvened after the proposal for the Original PLP was submitted to the Court and developed a recommendation to expand the PLP to include those who had scored between 1390 and 1439 on a bar examination administered between July 2015 and February 2020. The Court adopted rule 9.49.1, creating the Pathway PLP on January 28, 2021, and the program launched on February 24, 2021.

This program created a pathway to licensure (thus referred to as the Pathway Program), without the need to take another bar exam. The rationale for this program leading to licensure whereas the Original PLP did not was that in July 2020, at the same time the Court directed the creation of the Original PLP, it lowered the passing line for the bar exam from 1440 to 1390. Participants in the Pathway PLP received a score that would have been considered passing had they achieved that score on the October 2020 or subsequent bar exam.

Other than passing the bar exam, participants in the Pathway PLP needed to satisfy similar requirements as those in the Original PLP. However, Pathway Program requirements also included 300 hours of supervised legal work and a positive supervisor evaluation. Like the Original PLP, the Pathway PLP was initially scheduled to sunset on June 1, 2022, but was extended by the Court until December 31, 2022.

Pathway PLP By the Numbers

There have been a total of 673 participants in the Pathway PLP.³ As of November 10, 2022:

- 538 completed the Pathway PLP and have become fully licensed lawyers
- 24 sat for and passed a bar exam, which enabled them to exit the Pathway PLP and become fully licensed
- 28 were terminated from the program
- 5 have had their participation suspended

² A total of 168 have yet to pass the bar exam, but 43 have other outstanding program requirements. Of those 168, 28 did not sit for any of the four bar exams administered during the PLP; 26 sat for the bar exam once during the PLP; 43 sat twice; 45 sat three times; and 26 sat for all four administrations of the bar exam during the PLP.

³ The May 24 2022, letter to the Supreme Court underreported this count by two individuals.

- 71 remain with an active status in the program. Of those 71, 18 have met all requirements, and are likely pending getting sworn into the bar, leaving only 53 active participants.

Of the remaining 53 active participants who have not yet completed all program requirements, 29 have as their only remaining requirement to complete their 300 hours of supervised practice or 18, to receive a positive supervisor evaluation.⁴

PLP SURVEY

On October 3, 2022, the State Bar sent a survey to nearly all of the 1,585⁵ current and former participants in the Original and Pathway PLPs, 1,393 supervisors of current and former PLLs, as well as to 1,154 individuals who were eligible for the Pathway PLP (Eligible PLLs) but who did not apply and who are not yet admitted to the bar.

Response rates for the survey were excellent. Roughly 50 percent of current and former PLLs responded, and 34 percent of supervisors responded. Additionally, 48 percent of Eligible PLLs responded. In terms of race/ethnicity and gender, the demographic characteristics of survey respondents were consistent with the demographics of program participants.

Other highlights from the survey include:

- 77 percent of respondents spent their time as a PLL in the private sector, 15 percent in nonprofit, and 5 percent in government.
- 24 percent of PLLs worked on a volunteer basis, with the remaining being paid.
- Satisfaction with the PLP⁶:
 - 92 percent of supervisors reported being satisfied or very satisfied with the work of the PLL.
 - 86 percent of PLLs reported being satisfied or extremely satisfied with the program.
 - 89 percent of PLLs agreed or strongly agreed that the program was valuable in preparing them for the practice of law.
- Benefits to the employer:
 - 83 percent of supervisors reported that they found the PLLs to be especially hard working.
 - 68 percent of supervisors reported that having the PLLs allowed them to serve more clients, while 58 percent stated that the PLLs added diversity to their practice.
- Challenges for the employer:
 - 27 percent of supervisors felt that PLLs needed more direct supervision than newly licensed lawyers.

⁴ Of the 18 applicants who have not completed their 300 hours, 14 have not reported completing any hours as of the writing of this agenda item.

⁵ We recently discovered that 21 individuals did not receive the survey due to a since-remedied data issue.

⁶ The demographic breakdown of level of satisfaction was consistent with the demographic breakdown of survey respondents and program participants.

- 26 percent reported that PLLs were unable to handle work similar to that handled by newly licensed lawyers.
- 22 percent indicated that PLLs needed more training than newly licensed lawyers.
- 15 percent report that PLLs made errors that newly licensed lawyers would not have made.⁷
- Challenges reported by PLLs
 - 42 percent found explaining their provisional status awkward, and 20 percent felt they were treated as “second class lawyers” by clients, lawyers, judges, or others.
 - 36 percent found the salary challenging, and 22 percent found the benefits to be inadequate.
 - 40 percent of respondents from the Original PLP reported that combining bar study with PLL work was difficult.
 - 26 percent of the Pathway PLLs reported difficulty finding a supervisor.

For more information on the results of the survey, see Attachment C.

Views on Continuing the Programs

The survey asked supervisors and PLLs their opinions about whether the programs should continue, expire, or change. PLLs were asked only about the program in which they participated (Original or Pathway); supervisors were asked their opinions about both programs.

Original Provisionally Licensed Lawyers

- 87 percent of Original PLLs supported an extension of the program
- 9 percent did not support extending the program
- 4 percent were unsure

Pathway Provisionally Licensed Lawyers

- 92 percent of Pathway PLLs supported extending the program
 - 36 percent only for existing Pathway participants
 - 56 percent also supported reopening the program for all eligible candidates.
- 4 percent did not support either extending or reopening the program
- 4 percent were unsure

Supervisors

- 76 percent of supervisors favored extending the Original PLP, but their support weighed more heavily toward extending the program to provide more opportunities to pass the bar exam as opposed to allowing admission to the bar through supervised practice.
- 67 percent of supervisors supported extension of the Pathway PLP, with approximately

⁷ The percentage of supervisors reporting each of these challenges was slightly higher for Original PLLs than Pathway PLLs. It is unknown if the driver for this difference is the PLL or the type of placement. For example, Pathway PLLs worked more with solo practitioners in comparison to Original PLLs.

one-half of those supervisors supporting also reopening the Pathway to all eligible participants.

- 17 percent of supervisors recommended not extending the Original PLP. Interestingly, 68 percent of those responding in this way had indicated they were satisfied or very satisfied with the PLL they supervised.
- 20 percent recommended against extending or reopening the Pathway PLP. Similarly, 61 percent of those responding in this manner indicated they were satisfied or very satisfied with the PLL they supervised.

Eligible PLLs

When the Pathway PLP was established, it was advertised extensively on the State Bar's website and via the State Bar's social media. The State Bar issued a news release, as did the Supreme Court, and there was media coverage in the legal press in the months from July 2020 through February 2021, when the programs were being created. As many Board members will recall, there were well-attended publicly noticed meetings, and the Bar sought public comment on the proposed rules, for which we received several hundred comments.

Unfortunately, some of those eligible for the program had long since stopped reviewing the State Bar's website or following State Bar social media posts. Many moved out of state, and some started careers outside the legal field. There were nearly 2,700 individuals who had scored between 1390 and 1439 on a bar exam administered between July 2015 and February 2020 and who had not yet, as of the start of the program, been admitted to the State Bar. Direct emails were not sent to this cohort.

By October 2022, 863 had become fully licensed by having passed the bar exam, and 673 had participated or were still participating in the Pathway PLP. The State Bar surveyed the remaining 1,154 Eligible PLLs who had not applied for the Pathway PLP to learn more about why they did not apply. Nearly 85 percent of respondents reported they did not hear about the program in time to do so. Thirteen percent of respondents noted that they were unable to afford to quit or reduce hours at their current places of employment so they could complete the required supervised hours. Fourteen percent did not participate for "other" reasons. Eighty-nine percent of respondents reported their continuing interest in obtaining a license to practice law in California, with 81 percent indicating that they were interested in applying should the program be reopened to allow them to participate.

DISCUSSION

The conditions brought about by the COVID-19 pandemic were devastating and life-altering in so many ways. There is no doubt, however, that the crisis resulted in a number of innovations, including improved health care processes, new drugs, medical devices, and telemedicine options, new collaboration techniques, an openness to remote work, education, and testing, and so much more. As a famous quote, often attributed to Albert Einstein, states, "In the midst of every crisis lies opportunity." The need to respond quickly to address a crisis creates more openness to broad innovation and allows us to create rapid, impactful change. The PLPs operated by the State Bar are two examples of such impactful change. Nearly three-quarters of

2020 law graduates who joined the Original PLP have been or are about to become fully licensed to practice law in California, having had the opportunity to practice under supervision and gain real-world experience. Over 80 percent of the participants in the Pathway Program have or are about to become fully licensed. The survey of supervisors revealed that more than 90 percent were satisfied or very satisfied with the work of the PLL. And importantly, the program did not come at the expense of public protection. State Bar data reflect that for attorneys with up to two years in practice, the annual rate of complaints received is 1.3 percent (i.e., of all attorneys in the cohort, complaints are made against 1.3 percent of them). For 2020 and 2021 combined, the complaint rate against PLLs was .9 percent (with 19 complaints having been received against 15 PLLs). Of the 12 cases closed to date, one has resulted in a cease-and-desist letter; the remainder have closed with no discipline or nondisciplinary measures.

As the December 31, 2022, sunset date approaches, staff have evaluated various options for the programs, including allowing them to sunset or recommending a limited extension through, for example, the next bar exam cycle. An argument can certainly be made that these programs were created to address a once-in-a-generation global pandemic, that crisis has largely subsided, and therefore the programs should be allowed to expire. The counter argument, however, is that although there were unique circumstances supercharging the innovation that led to the creation of these programs, the programs have now demonstrated their value as a meaningful way to train motivated individuals in the practice of law.

OPTIONS FOR BOARD CONSIDERATION

Staff recommendations are guided by the following policy considerations and objectives:

- We have learned a lot of things due to innovations adopted during the pandemic. As is proving true in many areas impacted by such innovation, the return to normalcy does not mean returning to exactly the way we did things previously.
- We should be fair and open-minded as it relates to participants who have not completed program requirements by the sunset date (this includes recognizing challenges some may have faced in getting a supervisor and starting in the program, as well as the real challenges that people face in trying to both work and study for the bar exam).
- Public protection is of primary importance.
- Fairness. More than three-quarters of Eligible PLLs who responded to the survey (equaling 40 percent of all Eligible PLLs who did not participate and have not yet been admitted to the bar) indicated that they were not aware of the program.
- Over the past couple of years, there has been increased interest, nationally, in advancing other methods for admission to the bar apart from a traditional bar exam. There is growing openness to the notion that there may be other ways to demonstrate minimum competence than a traditional bar exam.

Taking these policy considerations and objectives into account, staff present the below options for Board consideration. Staff recommends that the Board present this entire set of options to the Supreme Court. Because of the different posture of Original and Expanded Pathway PLLs, staff recommends that the Board request that the Court direct the State Bar to pursue at least

one option that explicitly addresses each program. Attachment D comprises a chart that depicts the recommended global provisions and options described in narrative form below.

Global Provisions Applicable to All Options

To meet the policy objective of ensuring public protection, every one of the recommended options would preclude extending the program to participants who do not have an active, unexpired positive moral character determination on December 31, 2022, who have not received the required score on the MPRE, or who have not satisfied the 10-hour New Attorney Training requirements by the end of the year.⁸ There has been sufficient time allotted to meet these requirements, and it would be contrary to the interests of public protection to allow individuals who have not satisfied these requirements to continue practicing, even under supervision.

Option 1: Extend the Pathway PLP for Remaining Participants and Reopen the Pathway PLP to New Participants

This option would extend the existing program for one year, through December 31, 2023, for currently active participants in the program whose only remaining unmet requirements are completion of the required 300 hours of supervised practice and/or receipt of the evaluation of their supervisor upon completion of those hours. They would also need to have a supervisor currently in place to qualify to continue on in the program.

There are currently 29 Pathway PLLs who have not met the hours or evaluation requirement. There are four more whose only additional unmet requirement is Minimum Continuing Legal Education, a requirement which can be satisfied before the end of the year.

As noted above, 1,154 individuals were eligible for the Pathway Program but did not apply. The vast majority of survey respondents indicated the reason for not applying was that they had not learned about the program before the application deadline. Staff believes that most of those in fact had not learned of the program until they received the survey asking why they did not participate. The failure to email eligible participants directly was in error, and staff strongly believe the program should be reopened to permit these remaining candidates the opportunity to apply. Staff recommend opening the application period to June 30, 2022, and sunseting the program December 31, 2025. This timeframe is recommended in order to afford this second Expanded Pathway cohort a roughly equivalent amount of time to complete program requirements as the current cohort will have if the first part of this option is adopted.

Option 2: Extend the Original PLP for Remaining Participants to Provide More Opportunities to Pass the Bar Exam

This option would extend the Original Program by three years, to December 31, 2025, for those participants whose only outstanding requirement is passage of the California Bar Exam. As with

⁸ Under the current rules, participants who receive a negative moral character determination are suspended from the program pending their appeal of that determination. If they succeed in having the adverse determination reversed, they are allowed back in the program and to become licensed. None of the options below would seek to undo that protection.

option 1, they would need to have a supervisor currently in place to qualify to continue in the program.

There are currently 168 participants in the Original PLP who have not passed the bar exam, 125 of whom have no outstanding requirements other than bar passage.

Studying to take the bar exam while working as a PLL has been difficult for some. Combining bar study with PLL work was one of the top five challenges reported by PLLs in the Original Program, with 41 percent identifying this as a challenge. This option would allow program participants additional opportunities to be able to pass the exam, while continuing to provide value to their supervisors and clients.

Option 3: Extend the Original PLP for Remaining Participants to Allow Development of a Pilot Supervised Practice Pathway to Licensure

This option would extend the Original PLP for the same length of time and under the same conditions as option 2. However, instead of requiring the continuing participants to sit for and to pass a bar exam before the termination of the program, this option would have the State Bar develop for Supreme Court approval a supervised practice pathway to licensure for this small cohort. The program would be developed during the course of the program extension.

The BRC has had several meetings devoted to consideration of a pathway to licensure that does not involve a traditional bar exam; discussing supervised practice, changes in law school curricula, and the development of assessments either as part of or separate from supervised practice. The discussions have been fulsome, the information presented has been interesting and useful, but the BRC is divided. They have not been able to pass a motion to recommend pursuing such a path to licensure, nor have they been successful in passing a motion that would prohibit it.

Staff believe that conducting a pilot project using this cohort would be helpful in allowing the BRC, or a future body, to make a more informed decision based on empirical data about the value of a permanent supervised practice pathway to licensure. Developing a new, untested (in California) model for licensure applicable to thousands of people annually is a daunting task; it is understandable why, without more data, the BRC has been unable to come to consensus. While some may so posit, staff do not believe this option inappropriately wades into territory that is more properly the purview of the BRC. Rather, this option would enable for better thinking on whether to implement a more global program in the future—and if so, how.

In addition, the Legislature has, at least implicitly, expressed interest in the State Bar exploring such options. In adding new Business and Professionals Code section 6034.1 this year, which imposed limitations on the bar's consideration of certain innovative programs, the Legislature expressly stated that "[t]his section does not limit the State Bar's ability to provide limited practice licenses to law students and law graduates under certain conditions, and with the supervision of active State Bar-licensed attorney." The State Bar's exploration of a supervised licensure program would be in alignment with this provision.

Option 4: Extend the Original PLP for Remaining Participants to Allow Development of a Permanent Alternative Licensure Status

This option is the same as option 3, except instead of developing a supervised practice pathway during the period of program extension, the State Bar would, beginning January 1, 2025, develop a plan to segue the remaining Original PLLs into a permanent alternative licensure status. Staff envision that this could take one of two forms:

- A permanent PLL license, under which licensees would be permitted to perform the full scope of services of a fully licensed lawyer, but always under supervision; or
- A limited scope license, under which licensees would be able to perform certain tasks, in defined areas, but without supervision.

The development of this alternative licensure status would be delayed to January 1, 2025, in conformity with Business and Professional Code section 6034.1, which permits the State Bar to reinstate conversations about such limited scope licenses at that time.

Option 5: Extend the Original PLP for Remaining Participants and Allow Participants to Take the One-Day Attorneys' Exam Instead of the Full Two-Day Bar Exam

This option would extend the Original PLP for three years, through December 31, 2025, and allow continuing participants to demonstrate minimum competence by passing the one-day Attorneys' Exam in lieu of the full two-day bar exam. Today, attorneys licensed in other U.S. jurisdictions, who have been active licensees in good standing for at least four years immediately preceding the California bar examination they are sitting for, may elect to take the Attorneys' Examination rather than the general bar examination. (See Business and Professions Code section 6062.)⁹ In short, these attorneys need only to take the essays and performance test but are not required to sit for the 200-question multiple choice, Multistate Bar Exam.

This option would recognize the value of the work performed as a PLL in the same manner that having practiced for at least four years in another jurisdiction is ascribed value. To ensure fairness and protection of the public, staff recommend that the Supreme Court establish a minimum number of hours that must be worked as a PLL before this option is made available. This condition is necessary because, even though the program has been in existence for two years, we have only limited anecdotal information about how many hours Original PLLs have actually worked in a PLL capacity. Staff recommend, however, that time worked as a PLL before December 31, 2022, is allowed to be considered along with hours worked subsequent to that date, both with verification from the supervisor.

Options Not Recommended

Staff considered but do not recommend the following options, as they do not further the policy objectives and considerations discussed above:

⁹ The requirement is simply that they be licensed and have been in active status for at least the four years immediately preceding the exam. There is no requirement that they have performed a minimum amount of hours of legal practice prior to being eligible to sit for the Attorneys' Exam.

- Permit the Original PLP to sunset.
- Reopen the Pathway PLP for those who did not previously apply; sunset the program as to the remaining participants.
- Terminate and do not reopen the Pathway PLP.

Committee of Bar Examiners Input

Because there was not sufficient time to seek the input of the CBE as a whole prior to this meeting of the Board of Trustees, staff sought members' individual opinions about what they would recommend to the Board. Five of the 19 members of the committee responded.¹⁰

- 1 recommended creating a permanent licensure status for PLLs that does not require passage of a bar exam.
- 2 recommended sunseting both programs at the end of this calendar year as currently set forth in the California Rules of Court.
- 1 recommended sunseting the Original PLP but extending the Pathway PLP for current participants and reopening the program for those who did not previously apply due to lack of notice.
- 1 recommended sunseting the Original PLP and the sunseting the Pathway PLP for those who haven't met all the requirements but re-opening the Pathway for those who did not receive notice and therefore did not apply for the program.

Arguments made by these committee members in support of termination of the Original PLP include the fact that the purpose of the program was to provide relief to those graduating during the height of the pandemic. The feeling is that conditions leading to the creation of the program have passed, and the bar exam has returned to an in-person event. There was also an issue of fairness raised—vis-à-vis 2021 and 2022 law graduates who were afforded no similar ability to practice as PLL. Three of the five respondents also referred to or alluded in their responses to the work the BRC has been undertaking, suggesting that a Board recommendation to create a permanent pathway would not be appropriate at this time, due to both purview and complexity reasons.

FISCAL/PERSONNEL IMPACT

When the State Bar launched the PLP, admitting nearly 1,600 individuals to the two programs, workload was absorbed by existing staff in the Office of Admissions. Reopening or extending the programs would have the following impacts:

Option 1: Reopening the Pathway PLP to as many as 1,154 applicants will require application processing. In addition, data suggests that very few of these applicants have a current positive moral character determination. Moral character receives and processes 7,000 to 7,500 cases per year. The cost of processing moral character applications exceeds the revenue received for this purpose. The cost of applying for the PLP is \$55, or \$50 if the PLP work will be performed with an Interest on Lawyers' Trust Account-funded program. This revenue is not sufficient to

¹⁰ Two members were just named to the committee in the weeks before their input was solicited. They likely did not feel they were in a position to respond.

cover the costs of processing each participant, which includes not only the review of the application but also the review of hours reported and supervisor evaluations. Adding up to 1,154 new moral character applications without additional staff will impact staff's ability to process all applications timely, though the exact number of Eligible PLLs who will apply to participate in the program, as well as the timing of submission of their corresponding moral character applications, is unknown.

The costs and workload associated with extending the current program for the roughly 30 participants who meet the criteria would be minor and absorbable.

Option 2: Continuing this program for the approximately 130 remaining applicants eligible under this option would have minor and absorbable costs. Over the course of the three-year period of the extension, it would be expected that as many as two-thirds of the applicants could change supervisors, requiring staff to process new supervisor declarations and confirm eligibility.

Option 3: The costs of developing and launching a pilot supervised practice program envisioned by this option are unknown at this time and would vary depending on the level of oversight built into the new licensure status, as well as the revenue to be generated from new licensing fees. The fiscal and personnel implications of this approach would be taken into consideration in developing a specific program design if and when the Court directs the State Bar to do so. The fact that this program would be capped at roughly 130 people will assist in keeping the costs under control.

Option 4: The costs of developing and launching a plan to segue the remaining Original PLLs into a permanent alternative licensure status are unknown at this time and would vary depending on the level of oversight built into the new licensure status, as well as the revenue generated from new licensing fees. The fiscal and personnel implications of this approach would be taken into consideration in developing a specific program design if and when the Court directs the State Bar to do so. The fact that this program would be capped at roughly 130 people will assist in keeping the costs under control.

Option 5: The costs of extending the program for approximately 130 participants and permitting them to take the Attorneys' Exam instead of the general bar exam would be minimal.

AMENDMENTS TO RULES OF PRACTICE OF THE STATE BAR COURT

Title 9, Division 4, Rules 9.49 and 9.49.1

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- a. 1. Increase the number of attorneys admitted through special admissions programs.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees directs staff to transmit to the Supreme Court for its consideration options 1 to 5 as discussed in this agenda item and set forth in Attachment D, with the recommendation that the Court adopt option 1 and one of the options set forth as options 2 through 5; and it is

FURTHER RESOLVED, the Board of Trustees directs staff to assist the Court by preparing draft language for each of the options transmitted.

ATTACHMENTS LIST

- A.** Letter from Leah T. Wilson to the Justices of the California Supreme Court, May 24, 2022
- B.** Letter from Supreme Court to Alan K. Steinbrecher, July 16, 2020
- C.** 2022 Provisional Licensure Program Survey: Preliminary Findings
- D.** Provisional Licensure Program: Options for Continuation



The State Bar of California

OFFICE OF THE EXECUTIVE DIRECTOR

180 Howard Street, San Francisco, CA 94105

leaht.wilson@calbar.ca.gov

SENT VIA EMAIL

May 24, 2022

Honorable Chief Justice Tani Cantil-Sakauye
Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

RE: Request for Extension of Provisional Licensure Programs under Rules 9.49 and 9.49.1 of the California Rules of Court

Dear Chief Justice Cantil-Sakauye and Associate Justices:

I want to begin by thanking the Court for its leadership in creating the Provisional Licensure Program (PLP) in 2020. The Court's recognition of the circumstances faced by 2020 graduates and the direction to provide an opportunity for them to practice law while they struggled with many challenges in the early part of the pandemic provided an unprecedented opportunity for this initial PLP cohort. For ease of reference, this cohort will be described as 2020 graduate Provisionally Licensed Lawyers (PLL), and the program created under rule 9.49 as the 2020 graduate PLP. The Court's subsequent recognition of the importance of expanding the program to include those who scored between 1390 and 1439 on a California Bar Examination administered within the prior five years increased the reach and scope of the PLP. The cohort who participated in this expanded pathway PLP will be described as expanded pathway PLLs.

As of May 18, 2022, of the 915 individuals in the 2020 graduate PLP, 619, or 68 percent, have been admitted to the State Bar. Of the 671 individuals in the expanded pathway PLP, 458, or 68 percent, have been admitted. With two-thirds of participants admitted to the State Bar prior to the program's June 1 sunset, it is safe to say that for many the PLP has been a success.

However, in recent weeks the State Bar has heard from 2020 graduate PLLs and expanded pathway PLLs who have not yet satisfied the relevant requirements for licensure. We have also received compelling correspondence about the value of the PLP for participants, clients, and employer organizations. In response to this feedback the State Bar conducted a thorough review of the circumstances of the PLLs who will not qualify for admission as of June 1; the causes are myriad and include failure to pass the bar exam or the Multistate Professional

Responsibility Examination (MPRE), delays in the moral character determination process, and lack of sufficient supervised practice hours.¹ Based on this review and in light of requests received from both PLLs and their employers, the State Bar is requesting that the Supreme Court extend until December 31, 2022, both the 2020 graduate and expanded pathway PLPs. This proposed expansion would provide participants with the opportunity to satisfy all outstanding licensure criteria, including, for the 2020 graduate PLP, passage of the bar exam.

In the event that the Court considers this proposed expansion overbroad, an additional, more limited, expansion option is also provided; under this option both the 2020 graduate PLP and the expanded pathway PLP would be extended until September 30, 2022. This more narrow approach would provide continuity for those currently active PLLs who have not satisfied all other program requirements, but have not yet achieved the required score on the Multistate Professional Responsibility Examination (MPRE) or are still awaiting initial action by State Bar staff on their Application for Determination of Moral Character or Application for Extension of Determination of Moral Character.

Each option is described more fully below.

THE 2020 GRADUATE PROVISIONAL LICENSURE PROGRAM, RULE 9.49 OF THE CALIFORNIA RULES OF COURT

Option 1: Requested Extension to December 31, 2022

As of May 18, 2022, there were 217 active 2020 graduate PLLs² who had not yet met one or more of the following requirements for admission to the State Bar:

- Passing the MPRE
- Receiving an initial moral character determination from State Bar staff or a decision on a request for extension of a positive moral character determination
- Passing the California Bar Exam

Correspondence and testimony received from 2020 graduate PLLs who have not satisfied all requirements necessary for licensure have included examples of the ways in which limited license practice is occurring in many different settings and benefitting a wide array of clients. Legal services organizations in particular have voiced strong support for a continuation of the

¹ There are also a number of PLLs who have not completed the required 10 Hour New Attorney Training and remain active in the PLPs because the one-year deadline for completion has not passed. This requirement is not highlighted in this letter because for most PLLs, this is not the lone requirement not yet completed, and for 2020 graduate PLLs, as long as the time for completion does not pass before they become fully licensed, failure to meet this requirement does not stand in the way of licensure.

² There were 10 active 2020 graduate PLLs as of May 18, 2022, who met all of the requirements. We expect that they are in the process of getting sworn into the State Bar, at which time they will no longer be able to be active in the 2020 graduate PLP.

PLP, reinforcing the message that PLL services are valuable to both under-resourced providers and the clients they serve.³

There are 209 active 2020 graduate PLLs who have not yet passed the bar exam. A small number (28) did not sit for any of the four exams administered since the start of the pandemic (October 2020, February 2021, July 2021, or February 2022); the rest sat for at least 1, and as many as 4 exams. Many of these 209 PLLs have been working full-time as a PLL, working part-time as a PLL and part-time in another capacity to meet financial obligations, or even working full-time as a PLL and part-time in another capacity. Whatever the specific circumstance, full-time work (or full-time *plus* work) has likely significantly impacted these PLLs' ability to devote the necessary attention to bar exam study. We have also heard from some 2020 graduate PLLs who did not sit for the February bar exam because it was administered in person and they were uncomfortable about the risk of exposure to COVID-19, either for themselves or immunocompromised family members.

In addition to the significant number of 2020 graduate PLLs who have not satisfied the bar passage requirement, there are 16 2020 graduate PLLs who will not receive an initial moral character determination from State Bar staff, or a decision on a request for extension of a positive moral character determination, prior to the June 1 deadline. Processing delays on the part of both impacted 2020 graduate PLLs and the State Bar are responsible for this circumstance.

An extension of the program to December 31, 2022, would provide 2020 graduate PLLs one additional opportunity to sit for and pass the bar exam (July 2022), up to two additional opportunities to achieve a passing score on the MPRE, and sufficient time for the initial moral character determination process to occur. In light of the totality of factors that have resulted in over 200 2020 graduate PLLs not satisfying the requirements for licensure, the State Bar believes that such an extension is appropriate and would not create a risk to public protection. Therefore, we respectfully request that the Court amend rule 9.49 to implement this option.

Option 2: Limited Extension to September 30, 2022, to Receive Initial Moral Character Determination or Pass the MPRE

If the Court does not agree to an extension of the program of this duration or scope, the State Bar requests that the Court consider extending the program through September 30, 2022, to enable currently active 2020 graduate PLLs who have met all other program and admission requirements as of June 1, 2022, to continue to practice while awaiting the initial staff

³ Many participants and employer organizations have advocated for a permanent nonexam pathway to licensure for the 2020 graduate PLL population. If an extension of the PLP is granted, the State Bar will survey PLP participants and employers to understand more about these cohorts. An evaluation of survey responses will provide valuable insight to the State Bar and the Court as we examine the future of these programs, the paraprofessional program proposal likely to be submitted to the Court by the State Bar later this year, and the nonexam pathway currently under consideration by the Blue Ribbon Commission on the Future of the California Bar Examination.

determination on their Application to Determine Moral Character or Application for Extension of Determination of Moral Character and/or to pass the MPRE. As of May 18, 2022, there were 16 active 2020 graduate PLLs who are awaiting a determination on their moral character application, and 50 active 2020 graduate PLLs who have yet to pass the MPRE (with some overlap between the two groups). The MPRE will next be administered in August, and results are anticipated to be released to the State Bar by the end of September. The State Bar heard from a number of PLLs over the course of the program who were concerned that while the bar exam was administered remotely up until the February 2022 exam, the MPRE was only administered in person. For some, health considerations for themselves and their loved ones stood in the way of their taking the MPRE before March 2022. This abbreviated extension will give eligible 2020 graduate PLLs one more opportunity to sit for the MPRE. Additionally, the State Bar believes that with each applicant's cooperation, we will be able to issue the initial staff determination of moral character by September 30.

THE EXPANDED PROVISIONAL LICENSURE PROGRAM WITH A PATHWAY TO LICENSURE

Option 1: Requested Extension to December 31, 2022

There are currently 129⁴ active expanded pathway PLLs who have not met one or more of the following program requirements and are therefore not eligible for admission to the State Bar:

- Passing the MPRE
- Receiving an initial moral character determination from State Bar staff or a decision on a request for extension of a positive moral character determination
- Completing at least 300 hours with a positive supervisor evaluation

Additionally, there are a small number of expanded pathway PLLs who have met the hours requirement and all other requirements for admission, but are awaiting supervisor evaluation. Although the State Bar anticipates being able to issue the initial moral character determination for all active expanded pathway PLLs prior to the June 1 deadline, an extension of the program paralleling the approach for the 2020 graduate PLP will prevent unnecessary disruption for the expanded pathway PLLs, their employers, and the public, and minimize confusion about the rules being applied to the two distinct (yet similar) provisionally licensed populations.

Option 2: Limited Extension to September 30, 2022, to Receive Initial Moral Character Determination or Pass the MPRE

As of May 18, 2022, there were 27 active expanded pathway PLLs who had not received either an initial moral character determination or action on their request for extension of their moral character application; of these 27 expanded pathway PLLs, 3 had not yet achieved a passing score on the MPRE. There are an additional 15 expanded pathway PLLs who have received a

⁴ There were 56 active PLLs as of May 18, 2022, who have satisfied all program requirements. It is assumed that they are in the process of getting sworn in to the State Bar, and are maintaining the PLL status so as to be able to continue work pending the swearing in.

positive moral character determination but have not yet reported a passing score on the MPRE. As noted above, the State Bar anticipates that August MPRE scores will be released by September 30. An extension to September 30, 2022, will therefore allow the State Bar to complete the initial or extension moral character determination for qualifying expanded pathway PLLs and will provide them with an additional opportunity to pass the MPRE.

CONCLUSION

Based on the foregoing, the State Bar respectfully requests that the Supreme Court amend rules 9.49 and 9.49.1 of the California Rules of Court to extend the Provisional Licensure Programs, both the original program and the expanded pathway program, to December 31, 2022, for all currently active PLLs. The State Bar believes this extension is appropriate and would not pose a significant risk to public protection. If the Court does not agree that an extension of this duration and scope is warranted, the State Bar requests that both programs be extended until September 30, 2022, for currently active PLLs who have met all program and admission requirements, with the exception of having an active positive moral character determination, having received a passing score on the MPRE, or both. This limited extension will allow qualifying PLLs to keep practicing for their current employers while these two final licensing requirements are resolved in one fashion or another.

Thank you for your consideration of this request. Please let me know if I can provide additional information to the Supreme Court to facilitate deliberation or answer any questions the Court may have.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leah T. Wilson", with a stylized, cursive script.

Leah T. Wilson
Executive Director

cc: Ruben Duran, Chair, State Bar Board of Trustees
Brandon Stallings, Vice-Chair, State Bar Board of Trustees
Hailyn Chen, Member, Board of Trustees, Former Chair of the Provisional Licensure Program Working Group



Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

July 16, 2020

SENT VIA USPS AND EMAIL

Alan K. Steinbrecher, Chair
State Bar of California, Board of Trustees
180 Howard Street
San Francisco, CA 94105
asteinbrecher@steinbrecherspan.com

RE: California Bar Exam

Dear Mr. Steinbrecher,

The changing circumstances surrounding the ongoing COVID-19 pandemic in California, and throughout the country, have had an unprecedented impact on professional licensure testing for graduates seeking admission to many professions, including not only law, but medicine, nursing, architecture, and engineering. The court understands that many law school graduates are being substantially affected by the resulting disruption. Some graduates have lost job offers. Many are about to lose health insurance, cannot find a job to pay bills, or are in fear of deportation if they cannot enter the bar in time to retain job offers. Many more have student loan payments that become due in mid-November, but without a law license and the ability to work, they fear going into default.

With these considerations in mind, the court has sought the safest, most humane and practical options for licensing law graduates by encouraging and working with the State Bar to pursue the option of administering the California Bar Examination online as a remote test, to avoid the need for, and dangers posed by, mass in-person testing. The court also directed the State Bar to engage in focused conversations with the National Conference of Bar Examiners (NCBE) to address the ability to administer an online version of the multiple-choice Multistate Bar Examination.

Our sister states also struggle with similar issues. Many have recently canceled in-person testing plans and have increasingly turned to online solutions. Although a few less populous states have been able to accommodate a diploma privilege that grants entry for all of the graduates of their states' constituent American Bar Association (ABA)-accredited law schools, the law schools in California, unlike in other states, represent a diverse array of ABA-accredited, California-accredited, and California-registered schools. If California were to adopt diploma-privilege criteria used by other states, graduates of nearly four dozen California law schools would not meet those criteria and would be excluded.

With these considerations in mind, the court seeks a path that ensures the fair and equal treatment of all graduates, regardless of law school accreditation status, while also ensuring that protections remain in place for consumers of legal services.

After considering all letters, comments, the actions of other states, discussions with the NCBE, consultations with the informal state bar workgroup on the status of the bar exam, and having given careful thought to the expressed needs of bar applicants, the court directs the State Bar as follows:

The September 9-10 administration is cancelled. Joining at least 15 other jurisdictions that have, to date, taken similar measures, the State Bar is directed to make the necessary arrangements for the online remote administration of the bar examination on October 5-6, 2020, and extend registration for this exam through July 24, 2020. The State Bar has worked diligently on measures for the successful deployment of the exam online. Based on that work and current information, the court has determined that an online exam can be administered and delivered without the need for an examinee to have a high-speed or constant internet connection. The court asks that the State Bar clearly explain the necessary system requirements and other details concerning the circumstances of an online exam in a “Frequently Asked Questions” guide.

The court strongly encourages law schools to assist those graduates who lack internet access at home, or who have home environments not amenable to two days of uninterrupted examination, by employing the same and similar measures, including the use of school facilities and equipment, that schools have utilized to allow students to complete the Spring 2020 semester.

In consideration of the fact that California is one of two states with the highest pass score for its minimum competency exam, and based on findings from recently completed bar examination studies as well as data from ongoing studies, the court directs the State Bar to modify the pass score for the California Bar Examination to allow for a minimum passing score of 1390, which is approximately two standard errors below the median recommended cut score of 1439 from the 2017 Standard Setting Study. This modified minimum passing score is effective for the administration of the bar examination on October 5-6, 2020, and will be applied prospectively to future administrations of the California Bar Examination (irrespective of whether the exam is administered online in the future). The court will consider any further changes pending recommendations offered by the forthcoming Blue-Ribbon Commission on the Future of the California Bar Examination.

The court recognizes that postponement of the bar examination may impact employment prospects, delay incomes, and otherwise impair the livelihoods of persons who recently have graduated from law school. Moreover, the court recognizes 2020 graduates may not be in a position to study and prepare for a fall bar 2020 examination. Therefore, in order to mitigate these hardships faced by graduates while fulfilling the responsibility to protect the public by ensuring that persons engaged in the practice of law are minimally competent to do so, the court directs the State Bar to implement, as soon as possible, a temporary supervised provisional licensure program — a limited license to practice specified areas of law under the supervision of a licensed attorney.

This program will be made available for all 2020 graduates of law schools based in California or those 2020 graduates of law schools outside California who are permitted to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061. More information will be forthcoming regarding this program, and the State Bar will issue a

July 16, 2020

3

“Frequently Asked Questions” guide concerning the details. At a minimum, this provisional licensure program shall remain in effect until at least June 1, 2022 to permit 2020 graduates maximum flexibility. This timeframe will afford the 2020 graduates several opportunities to take the exam of their choosing through February 2022 and await the exam results. In addition, in order to expedite relief and pursuant to the court’s inherent authority over the admission of attorneys into the practice of law, the State Bar should afford a public comment period of at least 15 days for any proposed supervised provisional licensure program rules. (*In re Attorney Discipline System* (1998) 19 Cal.4th 582; Cal. Rules of Court, Rule 9.3.)

With the exception of postponing the October 2020 First-Year Law Students’ Examination to November 2020 or any amendments to the rules governing the number of times an examinee can sit for that exam, this letter supersedes the court’s prior April 27, 2020 letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jorjie E. Navarrete", with a stylized, looped design.

JORJIE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

cc: Donna Hershkowitz



The State Bar *of California*

2022 Provisional Licensure Program (PLP) Survey: Preliminary Findings

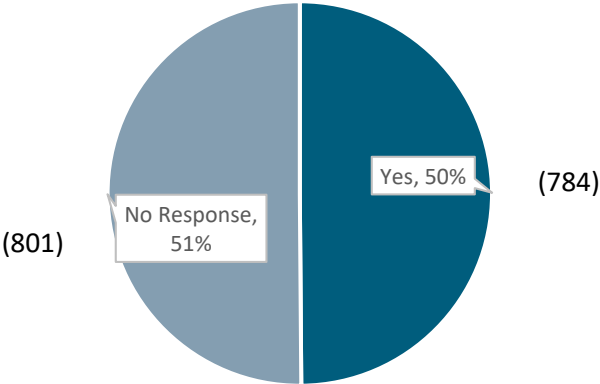
Mission Accountability & Advancement Division

November 2022

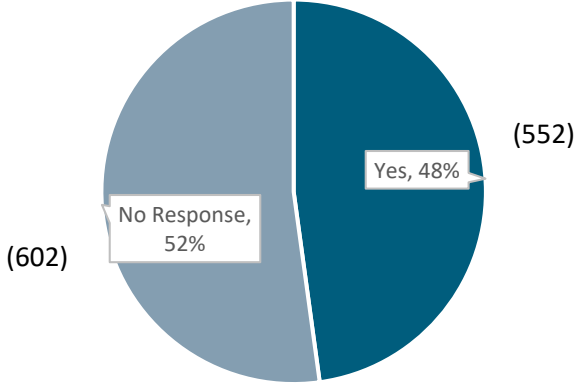
2022 PLP Survey Response Rates

- Three separate surveys were administered to PLL participants (Original and Pathway), their supervisors, and State Bar applicants that were eligible for the Pathway program.
- Response rate ranged between 34 percent to 50 percent.
- The respondents are representative of the pool of participants surveyed for PLP participants, supervisors, and Expanded PLP (Pathway).

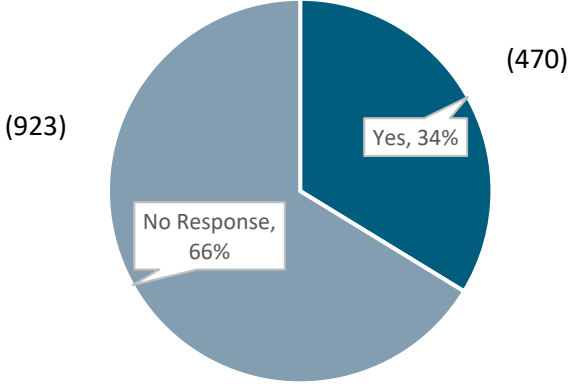
PLL Participants



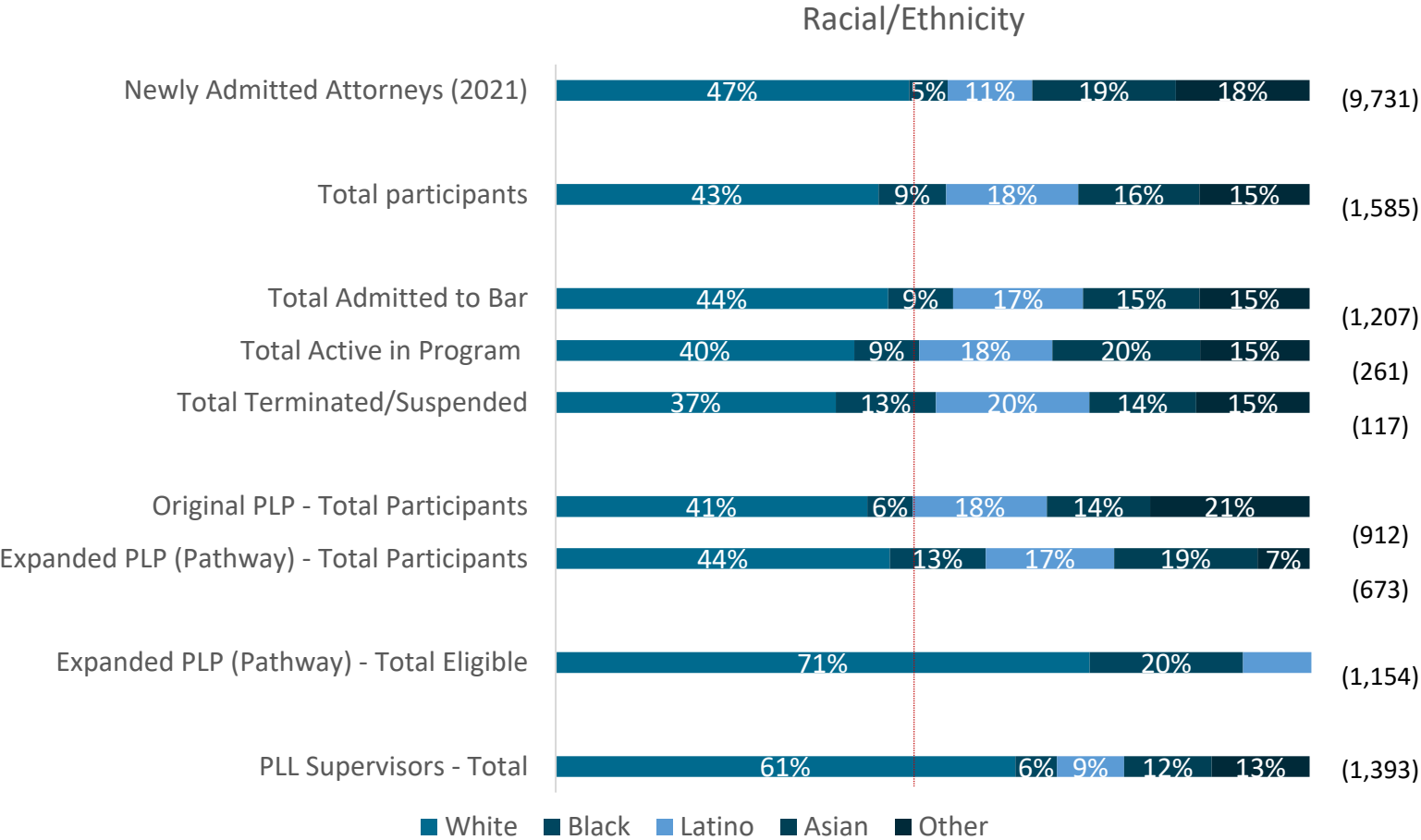
Pathway Eligible (Non-participants)



PLL Supervisors



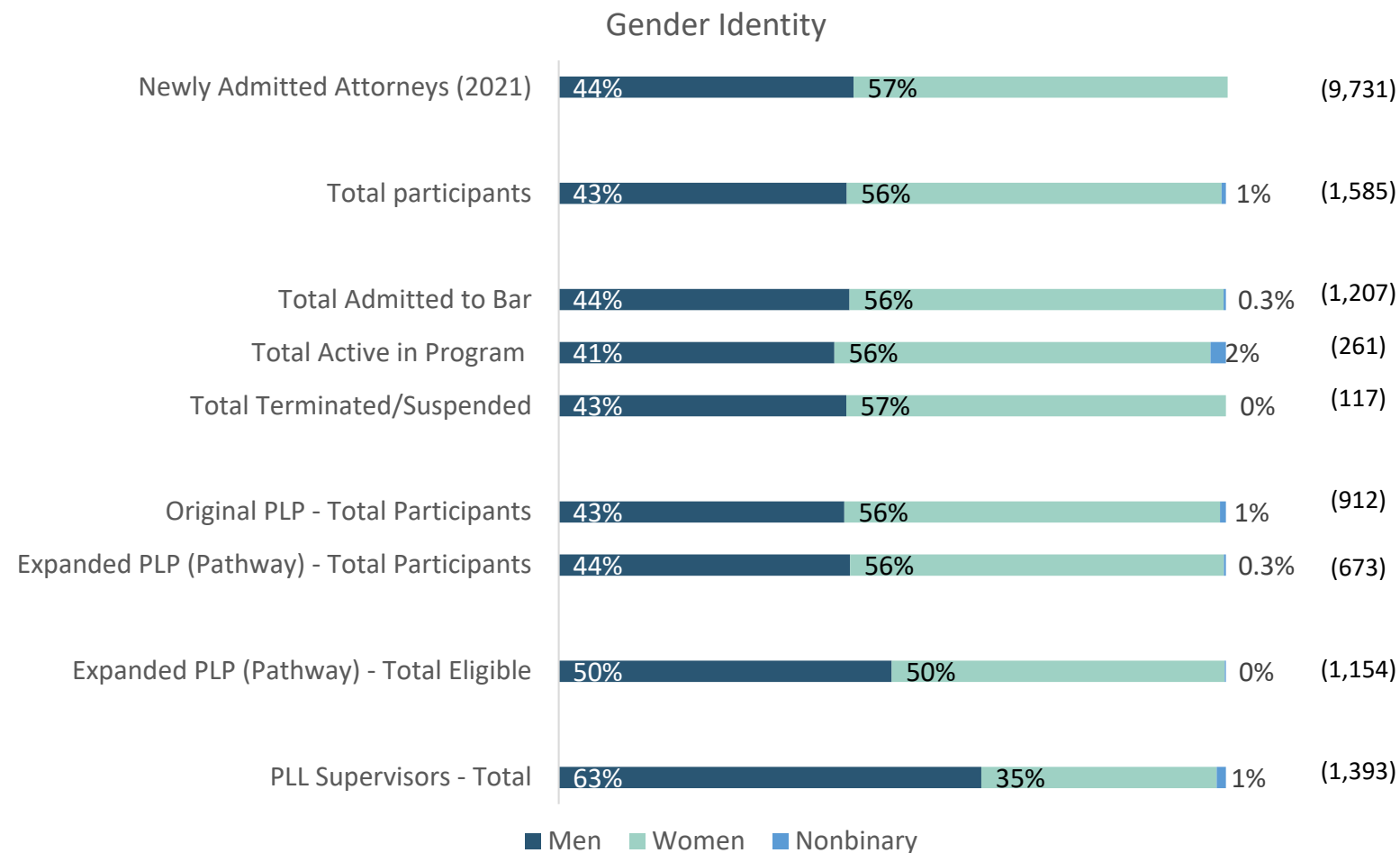
PLP: Race/Ethnicity



- PLL participants are more diverse than newly admitted attorneys and PLL supervisors.



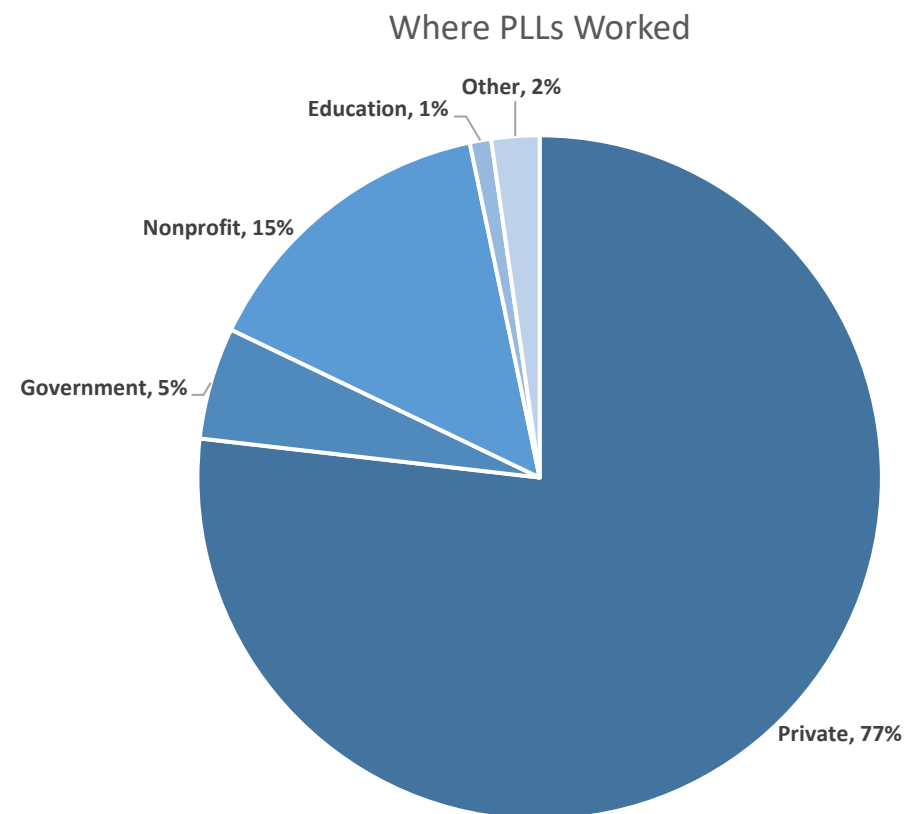
PLP: Gender Identity



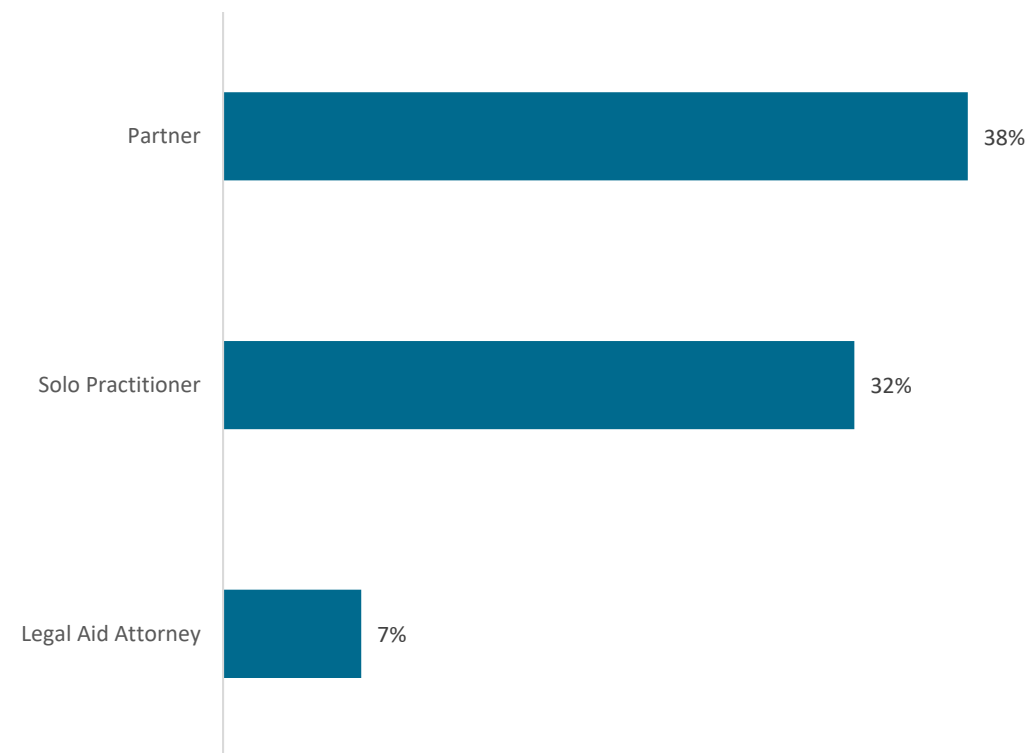
- The share of women among PLL participants is comparable to newly admitted attorneys. However, there were fewer women among applicants eligible for the Expanded PLP (Pathway) program and PLL supervisors.



Workplace Settings

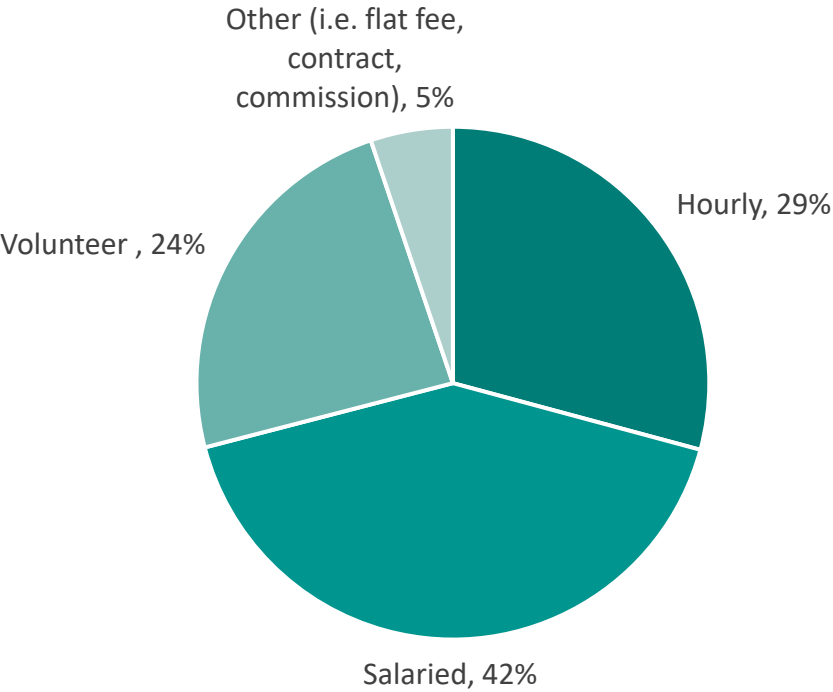


Top Three Occupations of PLL Supervisors

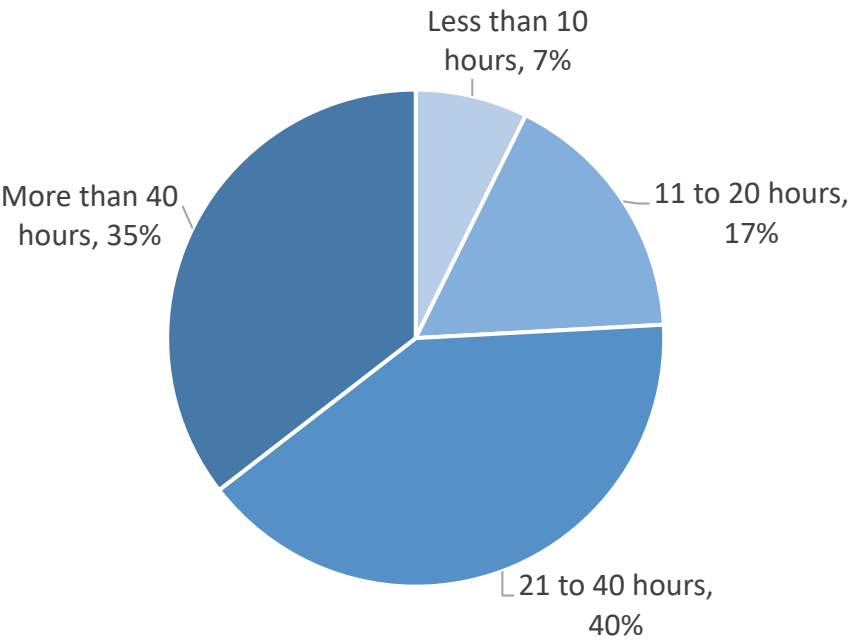


Compensation Type

PLL Compensation Type

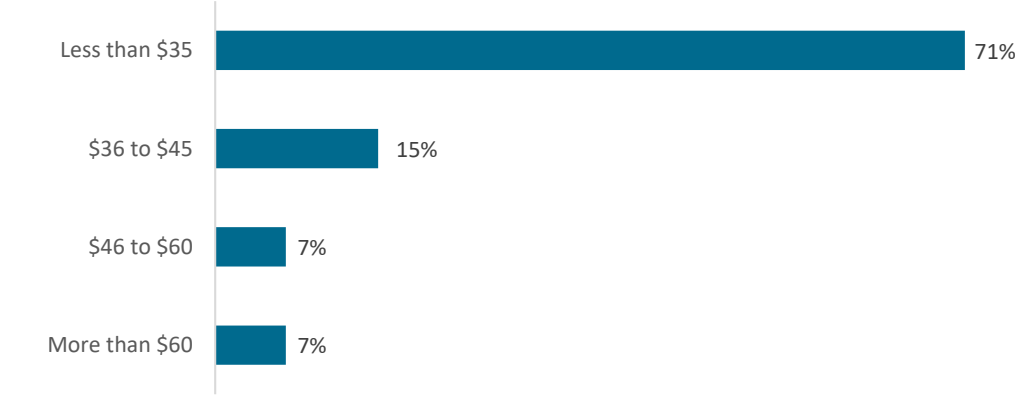


Average Hours PLL Worked Per Week

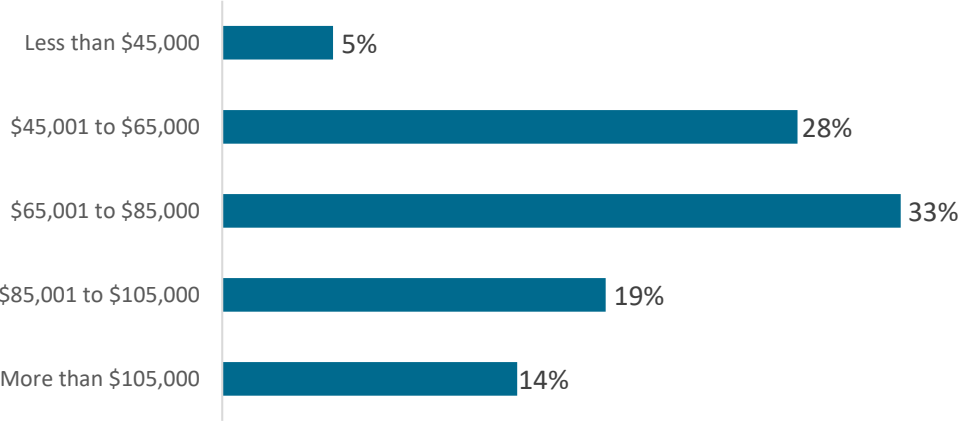


Compensation

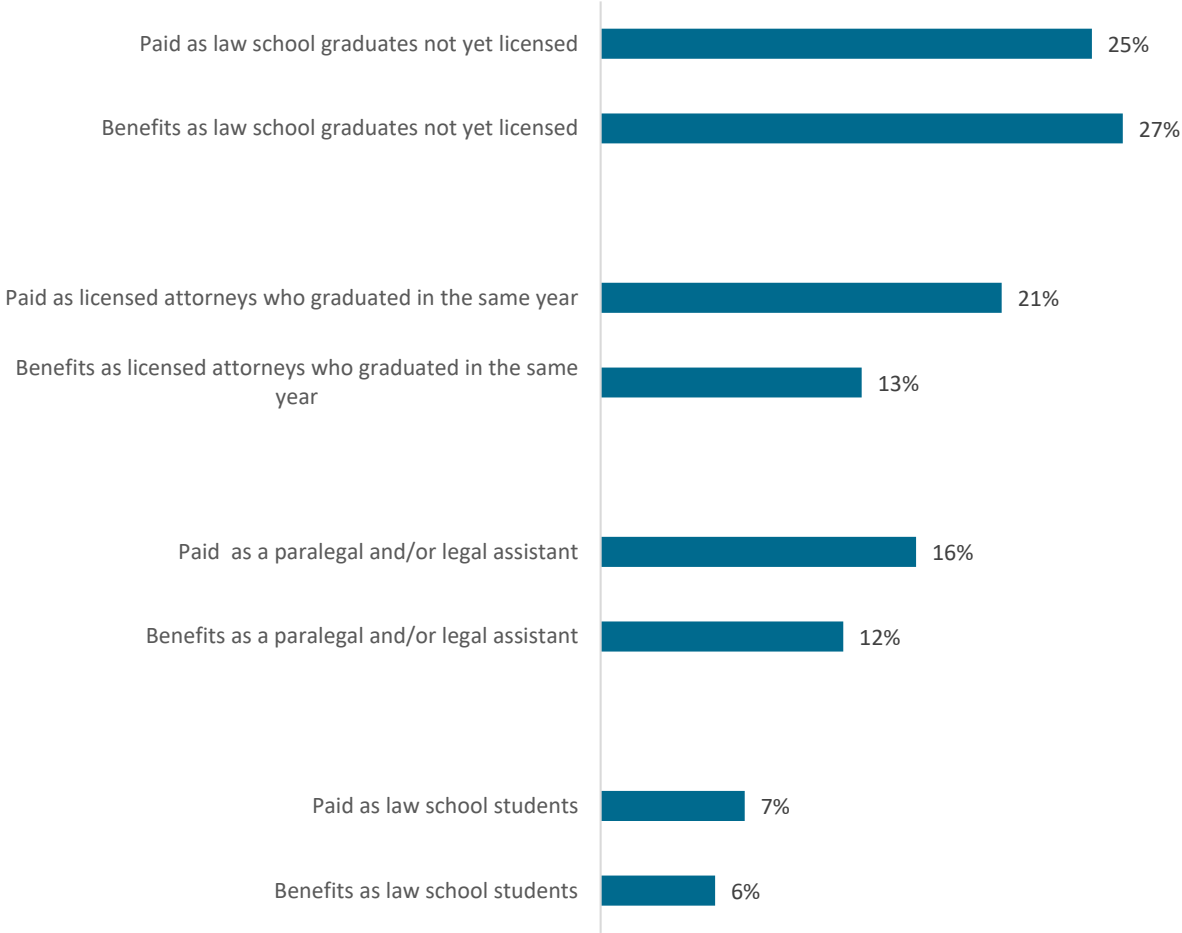
PLL Reported Compensation: Hourly



PLL Reported Compensation: Salaried

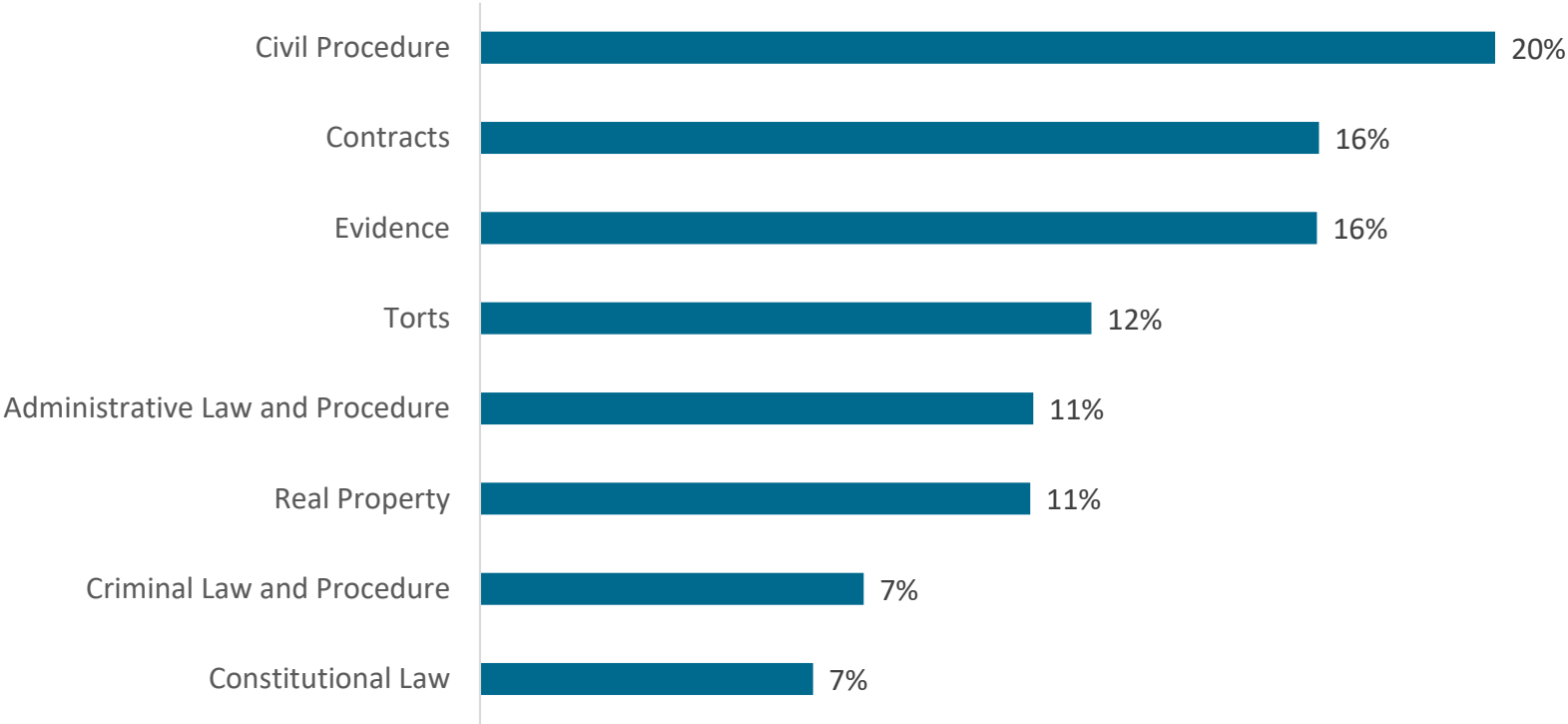


Comparison of PLL Compensation (reported by PLL Supervisors)



Knowledge and Skills

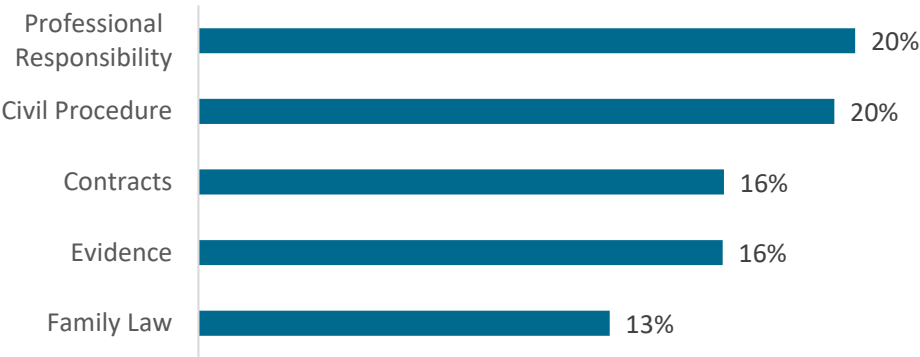
8 Core Competencies PLLs Drew Upon



*Average of PLL and supervisor responses

Knowledge and Skills

Top Five Subject Areas PLLs Utilized



Skills PLL Utilized



*Average of PLL and supervisor responses

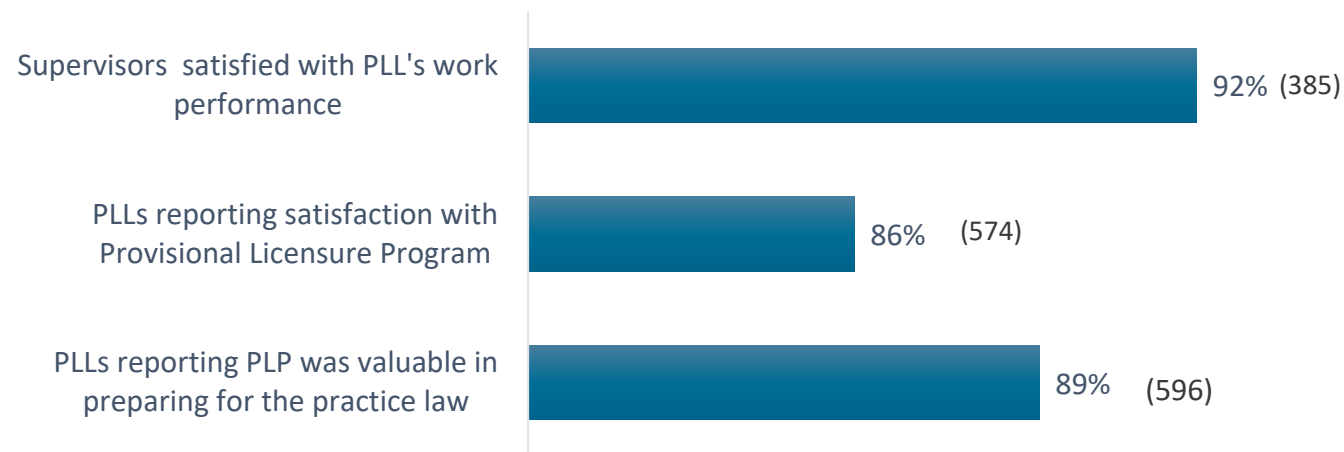
Legal Aid PLLs Work Included:

- Advocacy for children with disabilities
- Civil Rights
- Criminal
- COVID 19 Disaster Relief
- Domestic violence/Sexual Assault
- Emergency Rental Assistance, Eviction Defense, and Homelessness prevention work
- Human Trafficking
- Immigration services
- Non-litigation civil legal matters
- Occupational Safety, workers compensation, unemployment insurance
- Veteran benefits and support



Satisfaction Levels Reported by PLP Participants and Supervisors

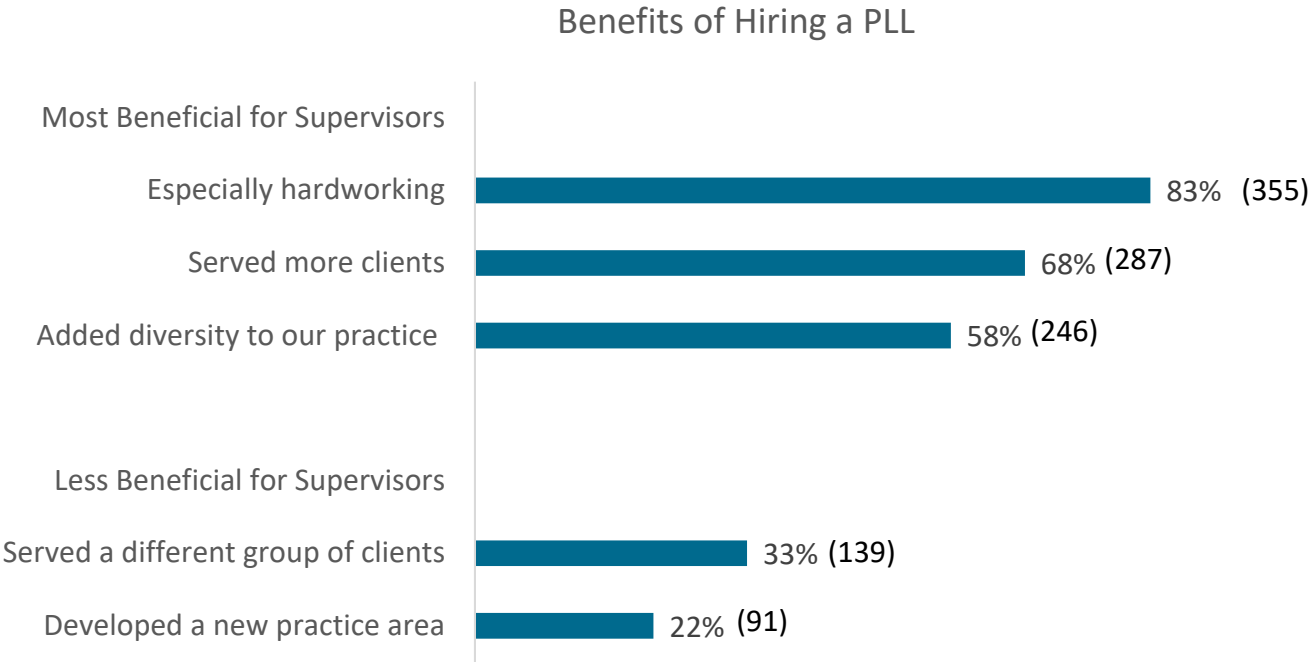
Satisfaction with the Provisional Licensure Program



- There was no differences in satisfaction rates by race/ethnicity or gender identity.
- Similarly, the percentage of PLP participants reporting the program to valuable preparing for the practice of law did not vary by race/ethnicity, or gender identity.



Benefits of PLP Reported by PLL Supervisors



Benefits of PLP Reported by PLL

Benefits of Working as a PLL

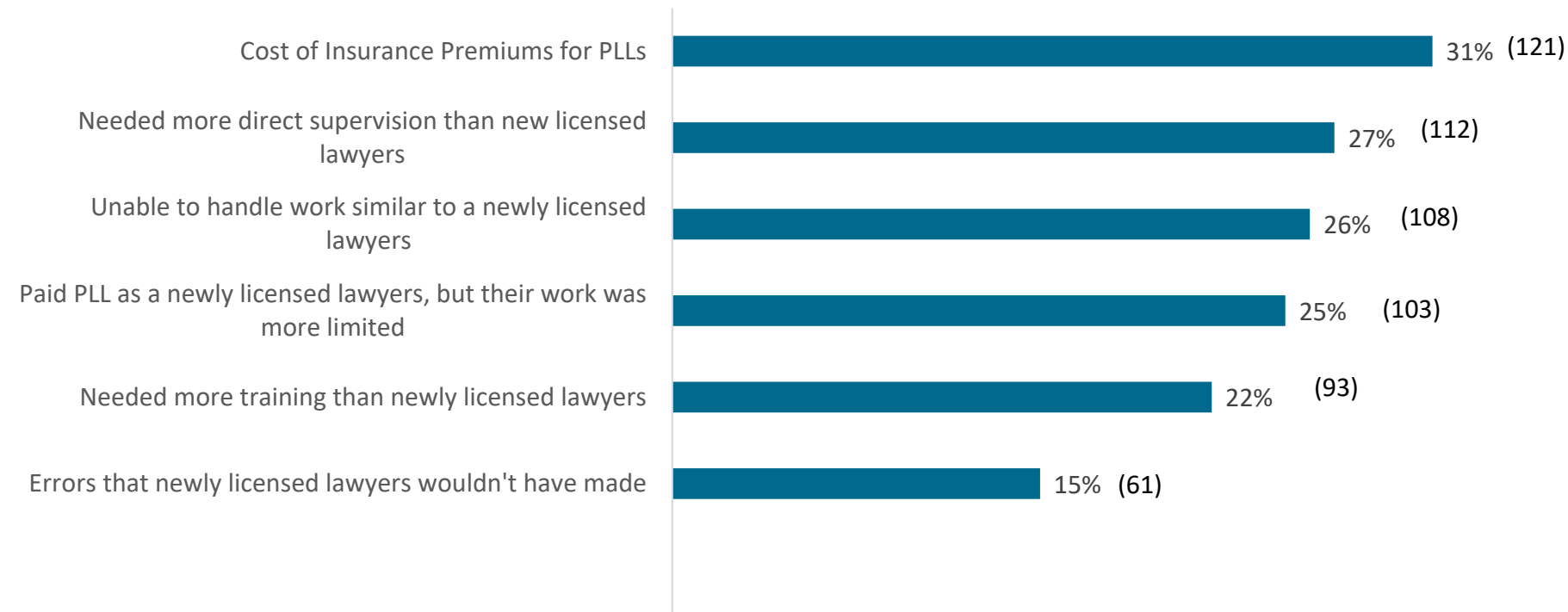


- Additional Benefits: Career Advancement Opportunity, Mentorship, Ability to serve diverse communities, and Self-fulfilling work
- PLLs currently active in the program for both Original and Pathway rated benefits of working across all nine factors at higher levels than those admitted, terminated, or suspended from the PLP.



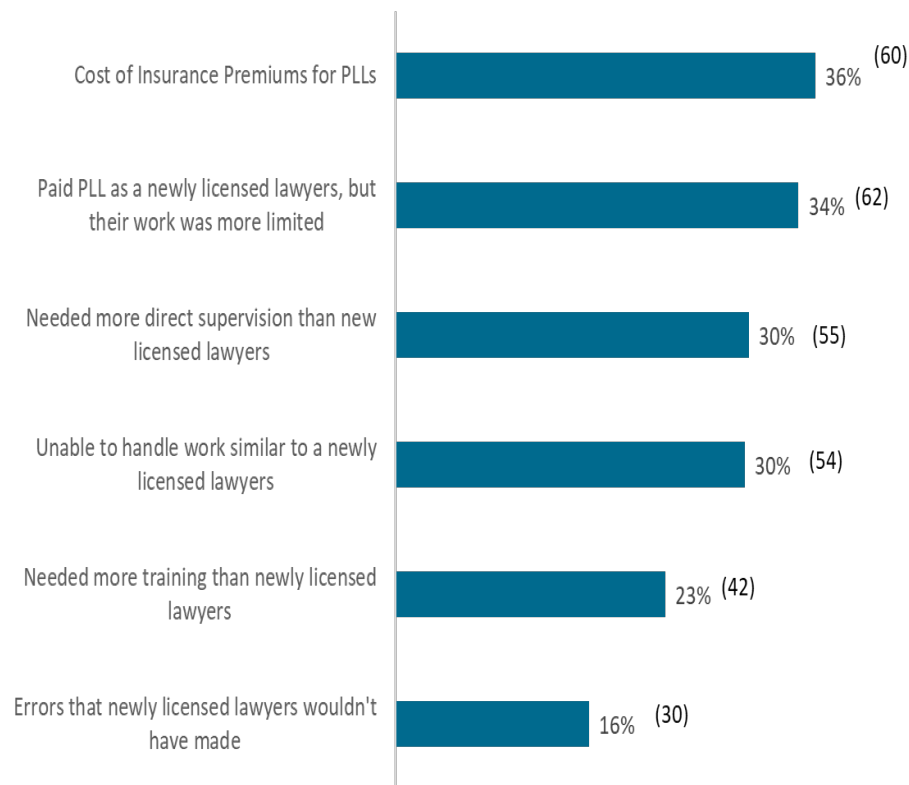
Total Supervisors: Challenges

Challenges Reported by PLL Supervisors

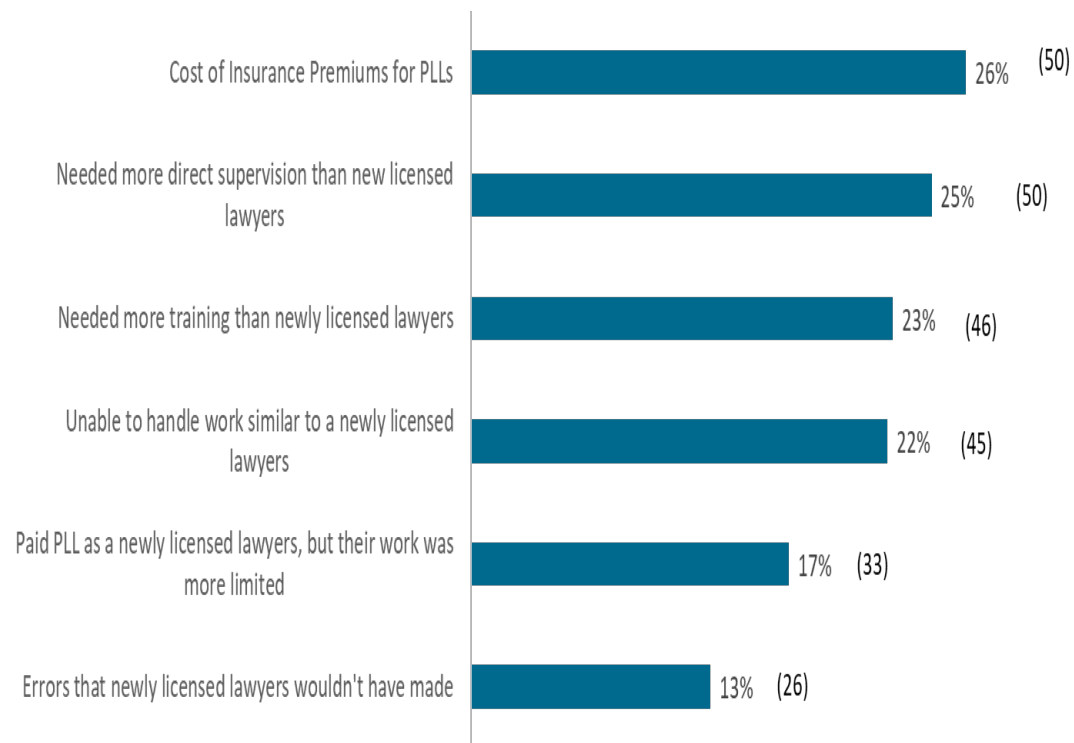


Supervisors of PLLs: Challenges Reported by Program

Challenges Reported by Supervisors of Original PLLs



Challenges Reported by Supervisors of Pathways PLLs

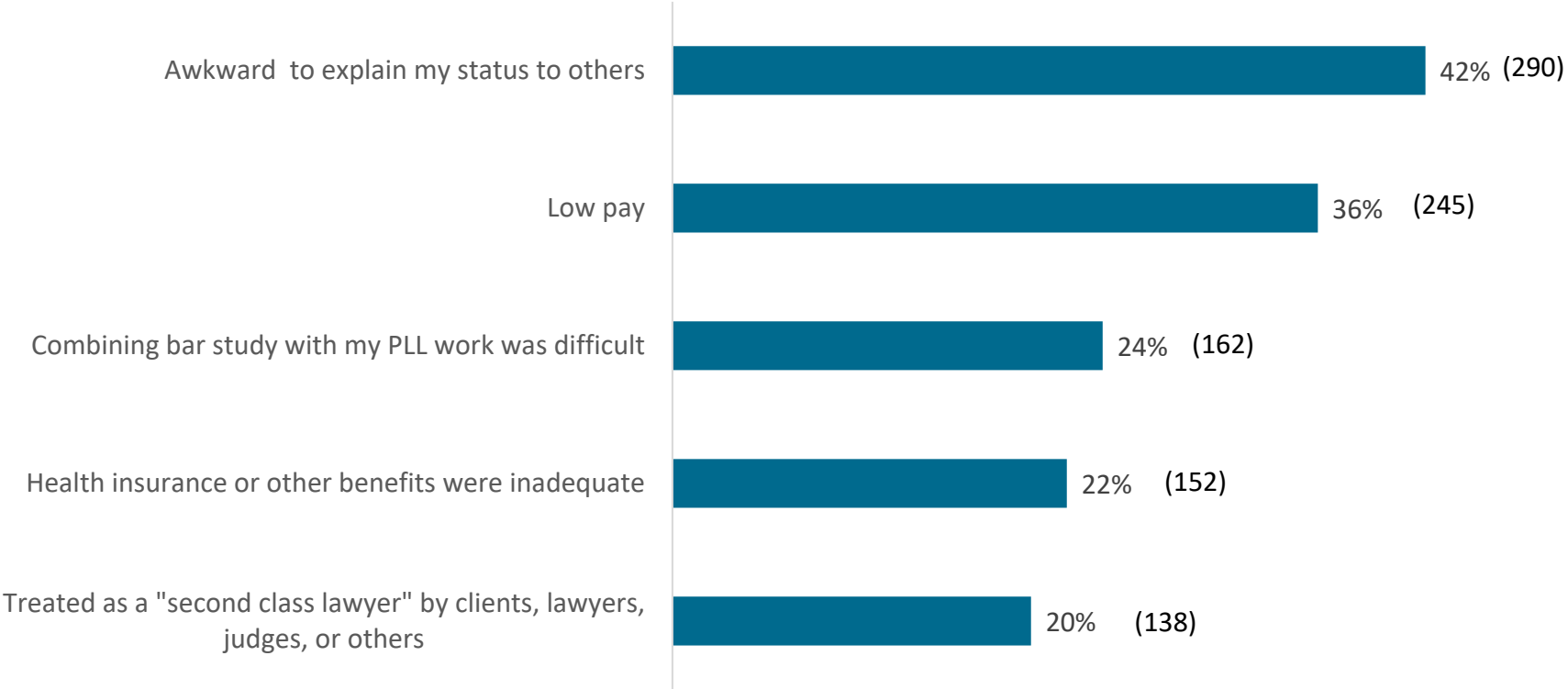


- Supervisors reported the cost of insurance premium for PLLs as the top challenge.
- However, the second most frequent challenge identified by supervisors of Original PLLs was that PLLs' work was more limited given that they were paid as newly licensed lawyers. In contrast, the second most frequent challenge identified by supervisors of Pathways PLLs was the need to provide more supervision and training than is required for newly licensed lawyers.



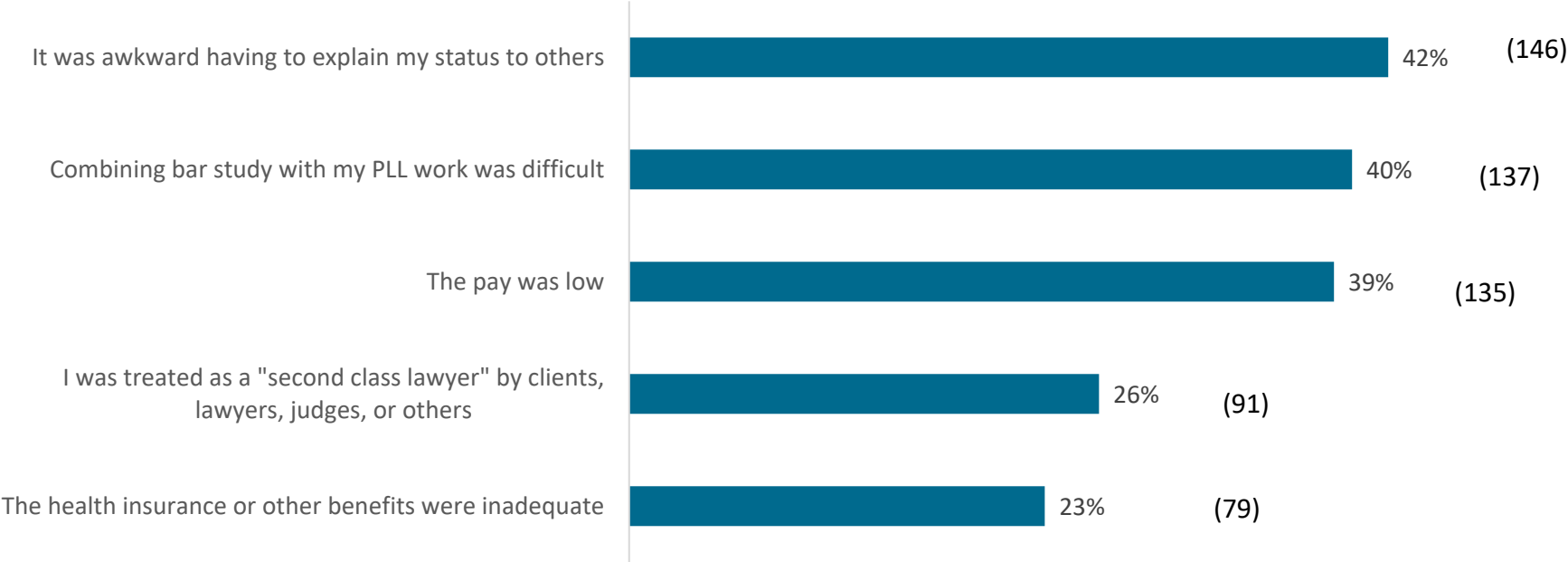
Challenges Reported by Total PLLs

Top Five Challenges Reported by PLLs



Challenges Reported by Original PLLs

Top Five Challenges Reported by Original PLLs

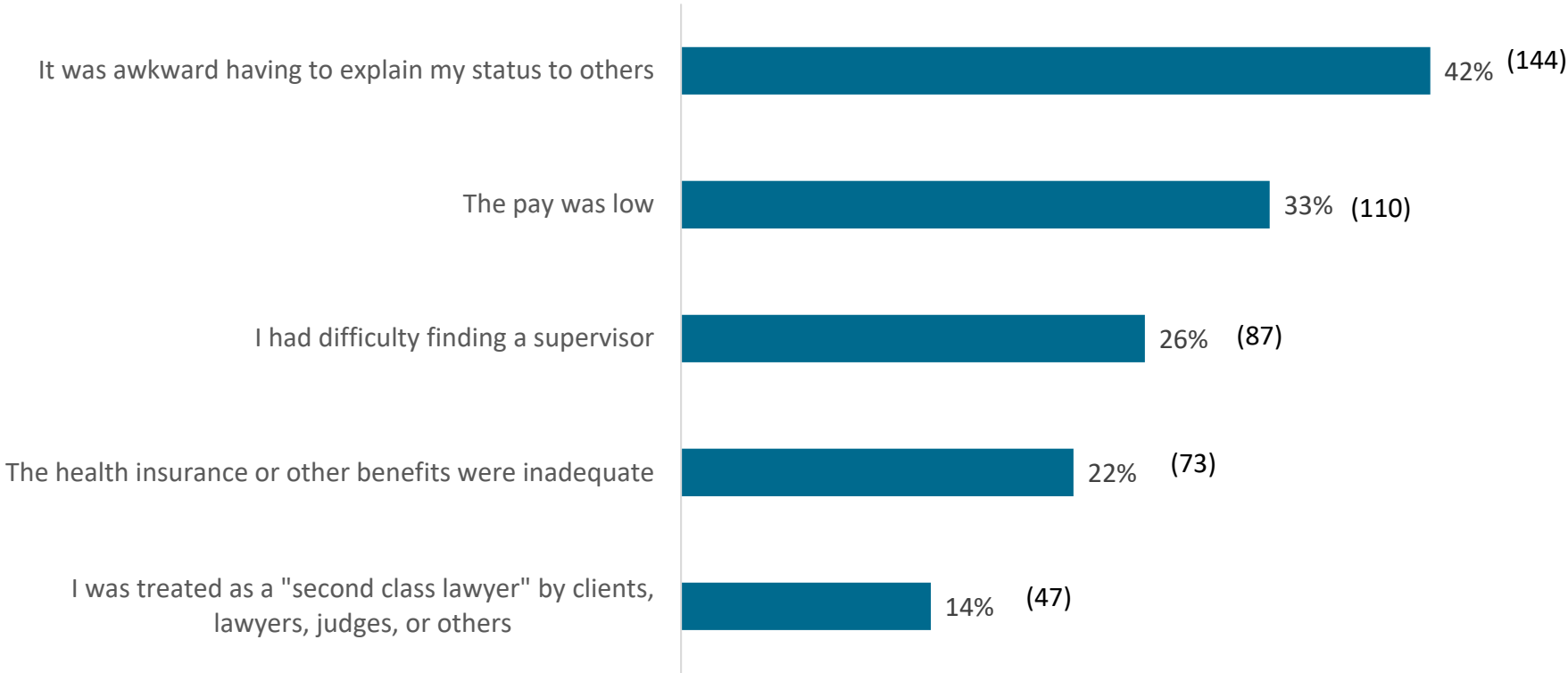


- Both Original and Pathway PLLs reported the awkwardness in explaining their PLP status to others as the top challenge.
- However, the second most frequent challenge identified by Original PLLs was combining the study of the Bar with working as a PLL. In contrast, the second most frequent challenge identified by Pathways PLLs was low compensation.



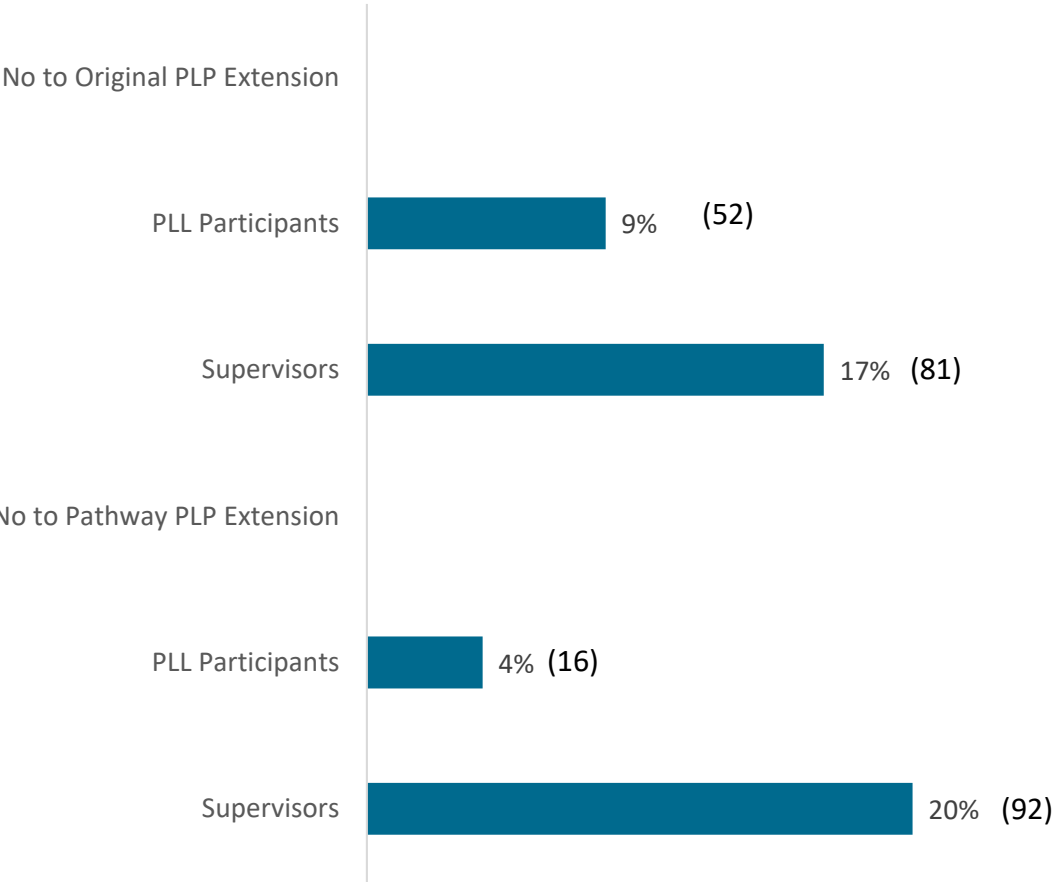
Challenges Reported by Pathway PLLs

Top Five Challenges Reported by Pathways PLLs

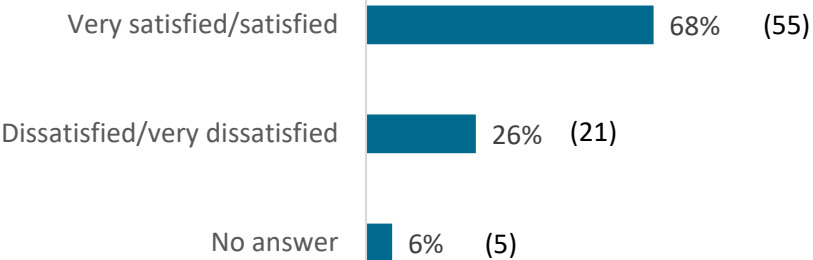


Not in Support of a PLP Extension

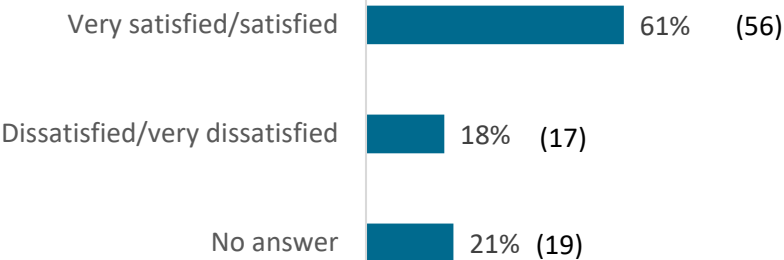
Not in Support of a PLP Extension



Level of Satisfaction for Supervisors
Recommending No Extension of Original PLP

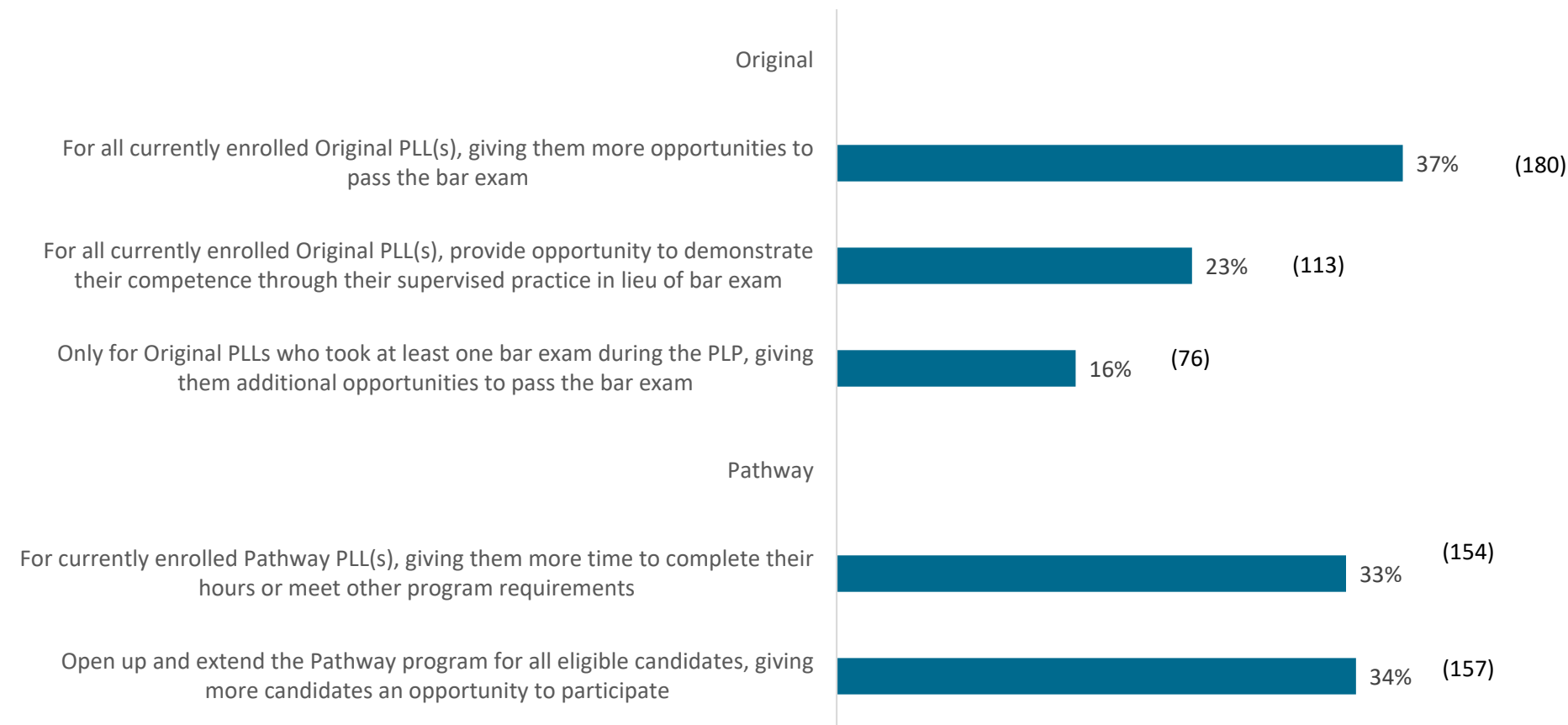


Level of Satisfaction for Supervisors
Recommending No Extension of Pathway PLP



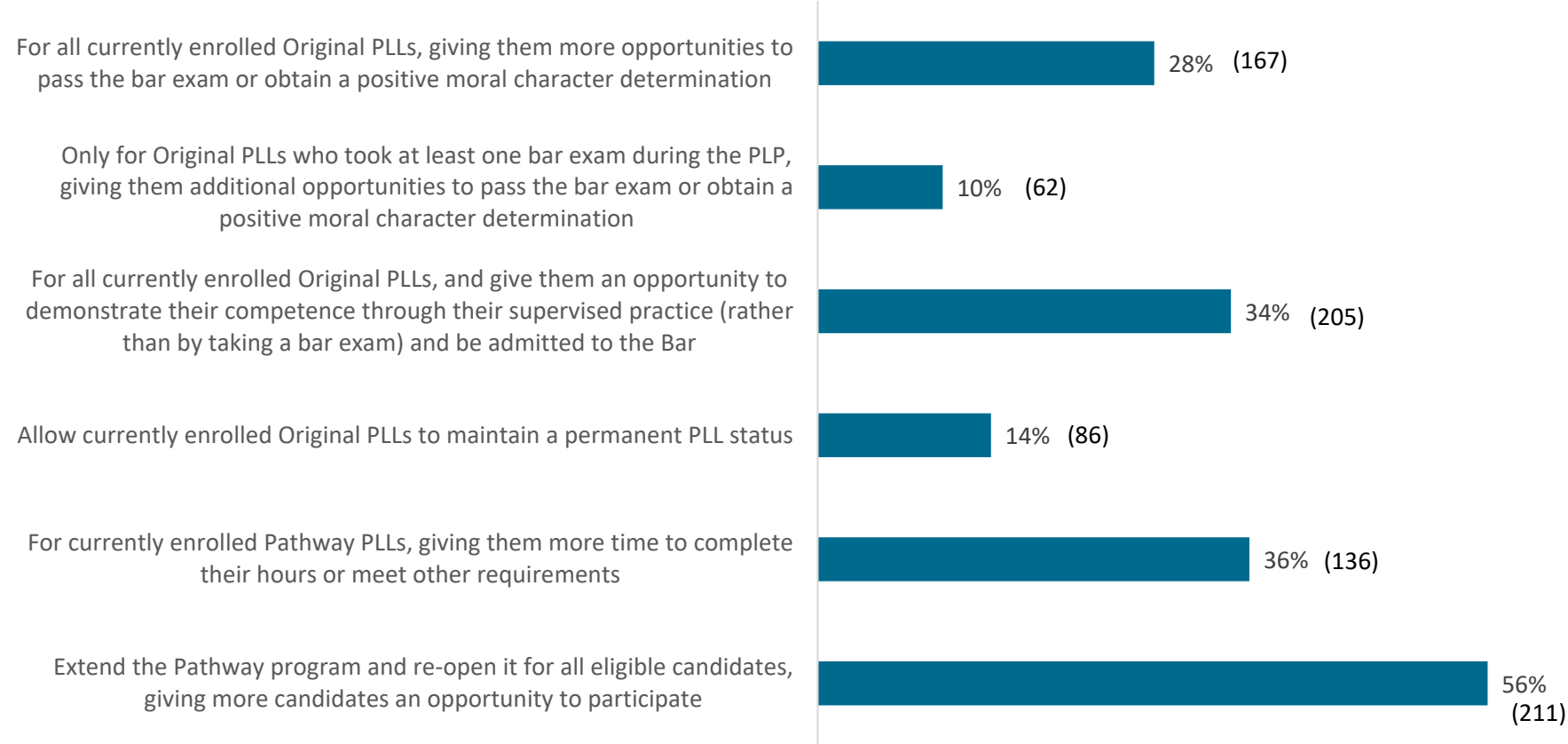
Supervisors In Support of a PLP Extension

PLL Supervisor Recommendations for PLP Extension

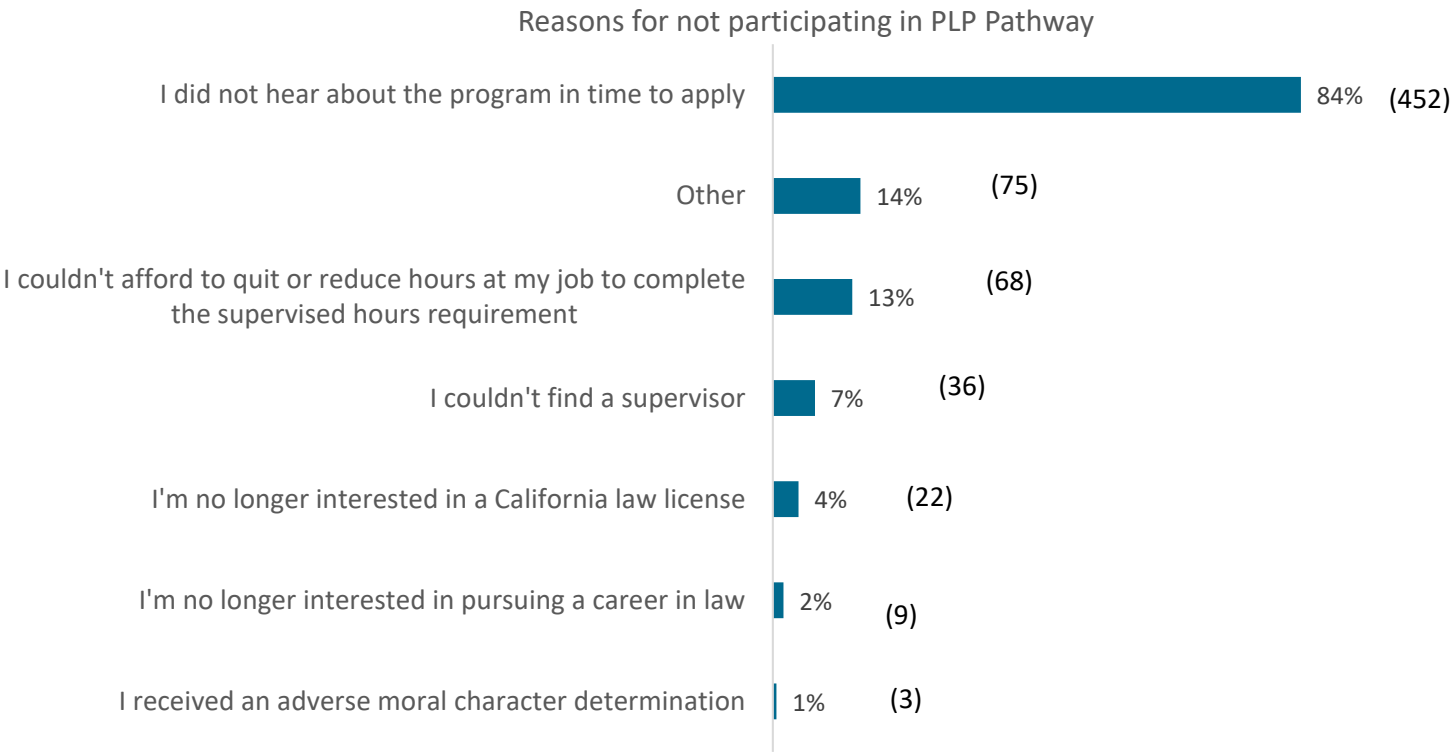


PLLs In Support of a PLP Extension

PLL Participant Recommendations for PLP Extension

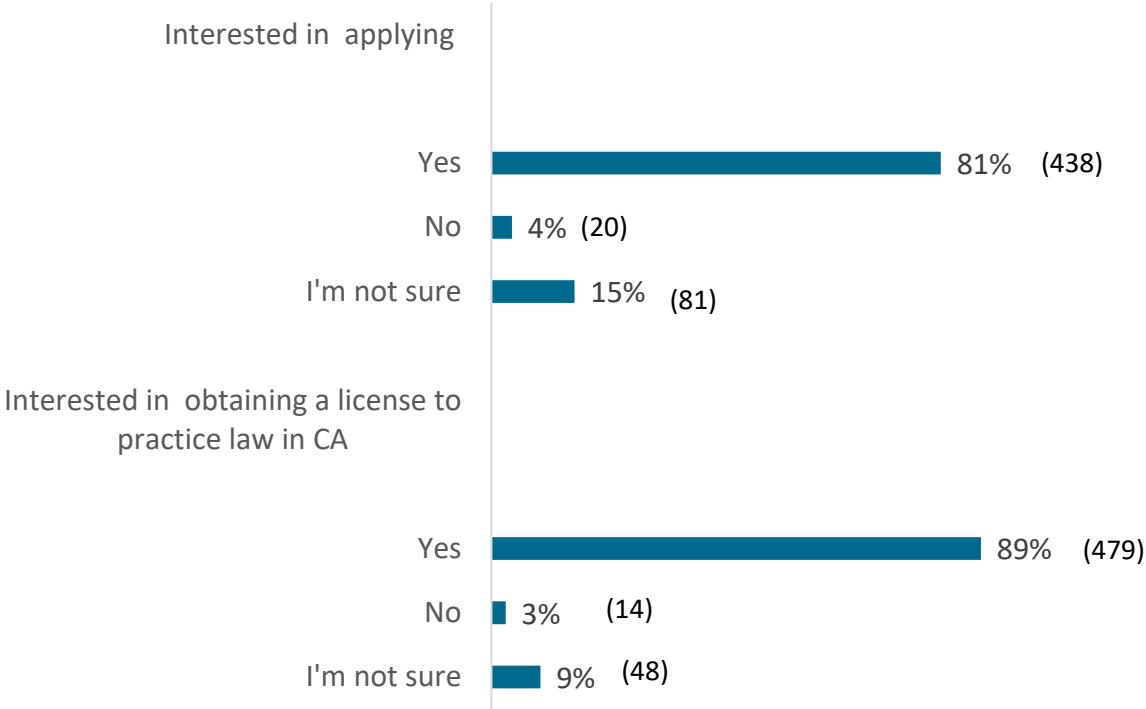


PLP Pathway Eligible (Non-Participants)



PLP Pathway Eligible (Non-participants)

PLP Pathway Eligible Interested in PLP and Practicing Law in CA



PROVISIONAL LICENSURE PROGRAM: OPTIONS FOR CONTINUATION

Option	Program	Description	Applies To Those Who:
1	Pathway	<p>Extend the program for 1 year (through December 31, 2023) for those who are currently in it but have not yet reached the required 300 hours or do not have the required positive supervisor evaluation</p> <p>Re-open the program to those who did not apply previously. Applications due June 30, 2023; program expires 12/31/2025</p>	<ul style="list-style-type: none"> • Are active PLLs (i.e., not suspended or terminated) as of 12/31/2022 • Have achieved a passing MPRE score • Have an active positive moral character determination as of 12/31/2022 • Have completed the 10-hour New Attorney Training • Have an approved supervisor in place as of 12/31/2022
2	Original	Extend the program for 2 years – through December 31, 2024 - to provide more opportunities to pass the bar.	<ul style="list-style-type: none"> • Have achieved a passing MPRE score • Have an active positive moral character determination as of 12/31/2022 • Have completed the 10-hour New Attorney Training as of 12/31/2022 • Have an approved supervisor in place as of 12/31/2022
3	Original	<p>Extend to 12/31/2025 for those who have met every other requirement but have yet to pass bar exam; for all others, the program will terminate on 12/31/2022.</p> <p>During the pendency of the program the State Bar will develop a pilot supervised practice pathway to licensure, with appropriate assessments to determine minimum competence. This will serve as a small, monitored pilot to provide empirical data, experience-based qualitative information, and insight to the Supreme Court and any successor to the Blue Ribbon Commission considering a path to determine minimum competence through means other than a traditional bar exam.</p>	<ul style="list-style-type: none"> • Have achieved a passing MPRE score • Have an active positive moral character determination as of 12/31/2022 • Have completed the 10-hour New Attorney Training • Have an approved supervisor in place as of 12/31/2022
4	Original	<p>Extend to 12/31/2025 for those who have met every other requirement but have yet to pass CBX; for all others, the program will terminate on 12/31/2022</p> <p>Beginning 1/1/2025, the State Bar will develop a plan to segue this group into a permanent alternative license status, which could take the form of a permanent PLL (full scope of licensure but always under supervision) or a limited scope license but without supervision.</p>	<ul style="list-style-type: none"> • Have achieved a passing MPRE score • Have an active positive moral character determination as of 12/31/2022 • Have completed the 10-hour New Attorney Training • Have an approved supervisor in place as of 12/31/2022

PROVISIONAL LICENSURE PROGRAM: OPTIONS FOR CONTINUATION

Option	Program	Description	Applies To Those Who:
5	Original	Extend to 12/31/2025 for those who have met every other requirement but have yet to pass the CBX; permit them to demonstrate minimum competence by getting a passing score on the attorney exam in lieu of the full bar exam.	<ul style="list-style-type: none">• Have achieved a passing MPRE score• Have an active moral character determination as of 12/31/2022• Have completed the 10-hour New Attorney Training as of 12/31/2022• Have an approved supervisor in place as of 12/31/2022• Have completed a minimum number of hours of supervised legal work (over the course of their work as a PLL), as verified by their supervisor and have a positive evaluation.

EXHIBIT 2:
NEW STANDALONE
TABLE WITH OPTIONS

PROVISIONAL LICENSURE PROGRAM: TABLE OF OPTIONS FOR CONTINUATION

Option	Program	Description	Applies To Those Who:
1	Pathway	<p>Extend the program for 1 year (through December 31, 2023) for those who are currently in it but have not yet reached the required 300 hours or do not have the required positive supervisor evaluation</p> <p>Re-open the program to those who did not apply previously. Applications due June 30, 2023; program expires 12/31/2025</p>	<ul style="list-style-type: none"> • Are active PLLs (i.e., not suspended or terminated) as of 12/31/2022 • Have achieved a passing MPRE score • Have an active positive moral character determination as of 12/31/2022 • Have completed the 10-hour New Attorney Training • Have an approved supervisor in place as of 12/31/2022
2	Original	<p>Extend the program for 3 years – through December 31, 2025 - to provide more opportunities to pass the bar.*</p> <p>*The timeline was revised from what was presented to the Board in the November 17, 2022, agenda to correct the termination date.</p>	<ul style="list-style-type: none"> • Have achieved a passing MPRE score • Have an active positive moral character determination as of 12/31/2022 • Have completed the 10-hour New Attorney Training as of 12/31/2022 • Have an approved supervisor in place as of 12/31/2022
3	Original	<p>Extend to 12/31/2025 for those who have met every other requirement but have yet to pass bar exam; for all others, the program will terminate on 12/31/2022.</p> <p>During the pendency of the program the State Bar will develop a pilot supervised practice pathway to licensure, with appropriate assessments to determine minimum competence. This will serve as a small, monitored pilot to provide empirical data, experience-based qualitative information, and insight to the Supreme Court and any successor to the Blue Ribbon Commission considering a path to determine minimum competence through means other than a traditional bar exam.</p>	<ul style="list-style-type: none"> • Have achieved a passing MPRE score • Have an active positive moral character determination as of 12/31/2022 • Have completed the 10-hour New Attorney Training • Have an approved supervisor in place as of 12/31/2022
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PROVISIONAL LICENSURE PROGRAM: OPTIONS FOR CONTINUATION

Option	Program	Description	Applies To Those Who:
		under supervision) or a limited scope license but without supervision.	
5	Original	Extend to 12/31/2025 for those who have met every other requirement but have yet to pass the CBX; permit them to demonstrate minimum competence by getting a passing score on the attorney exam in lieu of the full bar exam.	<ul style="list-style-type: none"> • Have achieved a passing MPRE score • Have an active moral character determination as of 12/31/2022 • Have completed the 10-hour New Attorney Training as of 12/31/2022 • Have an approved supervisor in place as of 12/31/2022 • Have completed a minimum number of hours of supervised legal work (over the course of their work as a PLL), as verified by their supervisor and have a positive evaluation.

EXHIBIT 3:
REVISED POWERPOINT
AND BOARD AGENDA
ITEM



The State Bar *of California*

2022 Provisional Licensure Program (PLP) Survey: Post November Board Meeting Update

Mission Advancement and Accountability Division

Updated November 16, 2022

Summary of Changes

This slide deck contains updates to data reported in Attachment C of the November 2022 State Bar Board of Trustees Agenda Item 701: Recommendation to Supreme Court Regarding Pending Sunset of the Provisional Licensure Program.

Reason for updates:

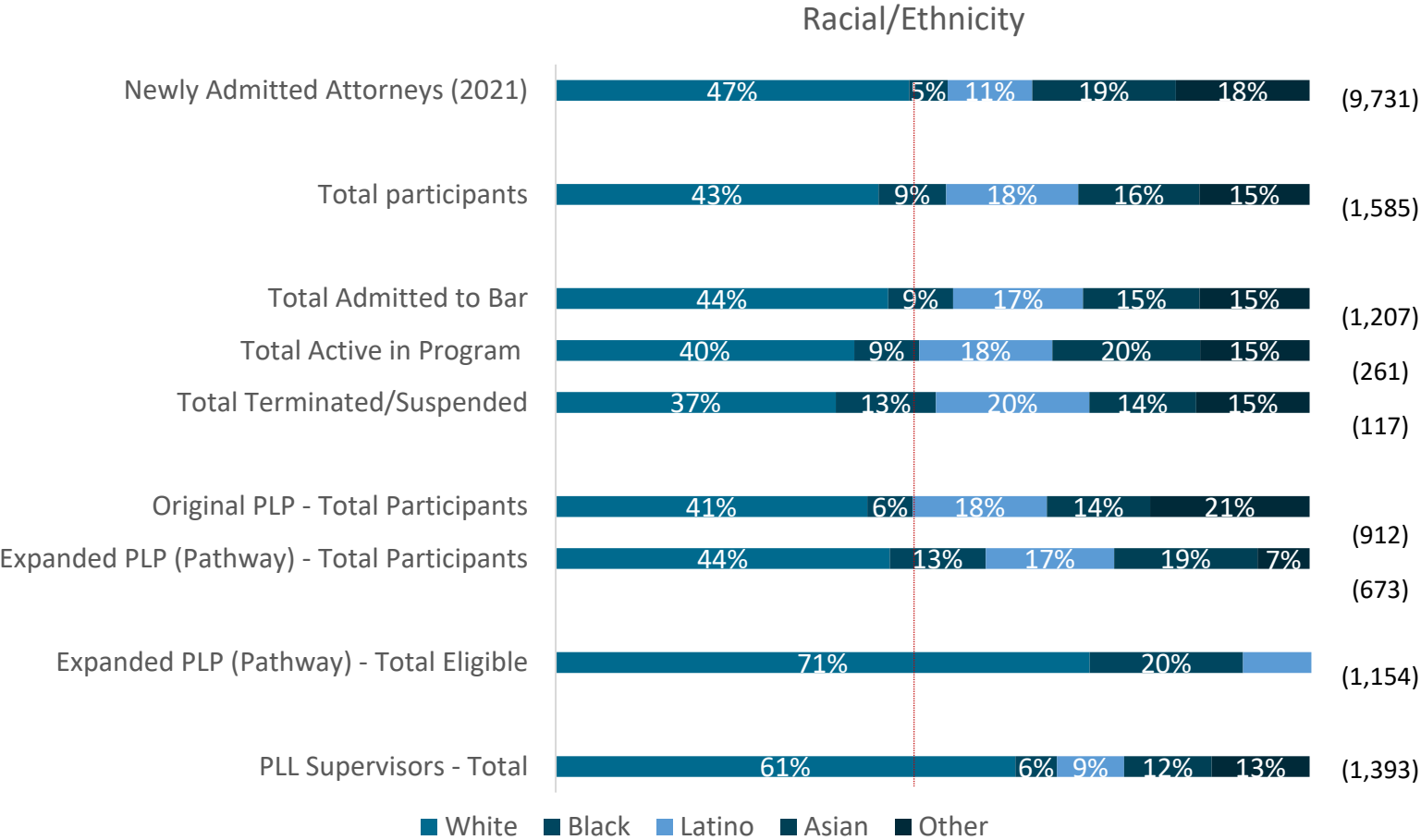
A calculation error for generating results for questions regarding PLLs knowledge, skills, and subject areas was identified; and

- Updates to the administrative data on PLL supervisors impacted response totals for questions regarding recommendations on the future of the Provisional Licensure Program.

Impact:

- **Knowledge Areas, Subject Areas and Skills.** The values reported in slides “Knowledge Areas” and “Subject Areas and Skills” increased with no change in patterns observed (slides 9 and 10 this deck).
- **Recommendations on the Future of the Provisional Licensure Program.** All values reported in the following slide increased: “Not in Support of a PLP Extension” (slide 18). All values except for one increased in the slide, “Supervisors in Support of a PLP extension” (slide 19). Although values reported changed in these two slides, there was no change in patterns observed.

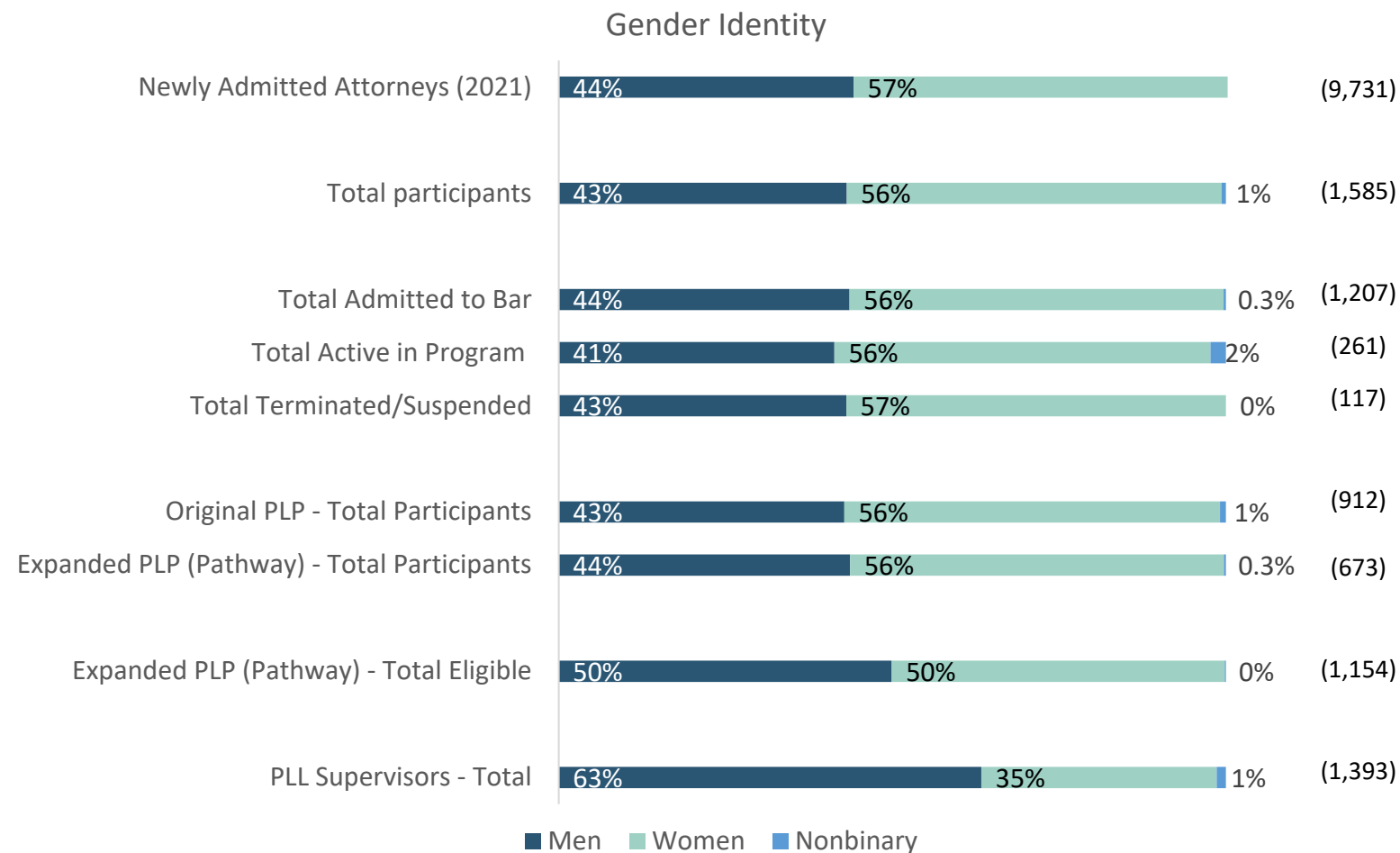
PLP: Race/Ethnicity



- PLL participants are more diverse than newly admitted attorneys and PLL supervisors.



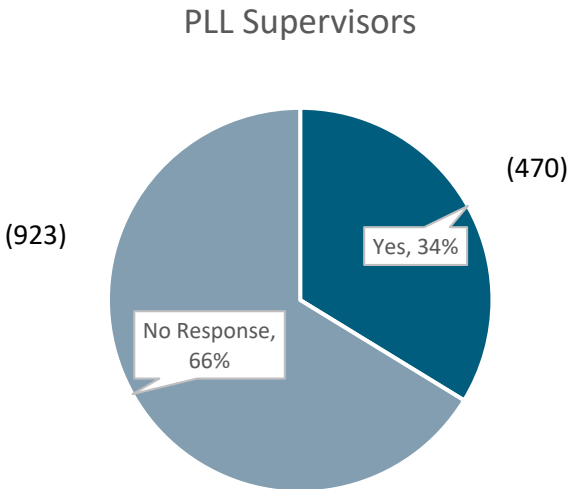
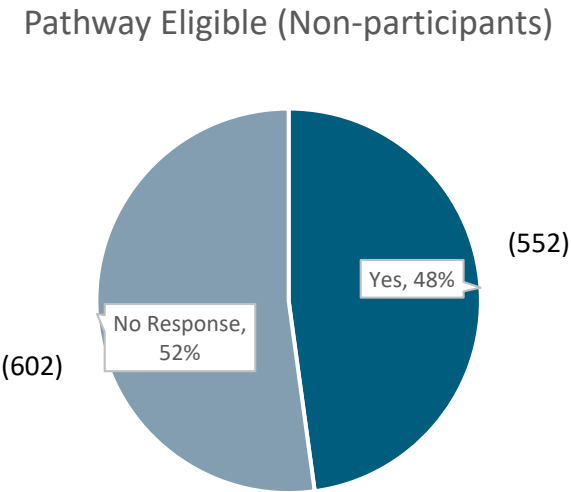
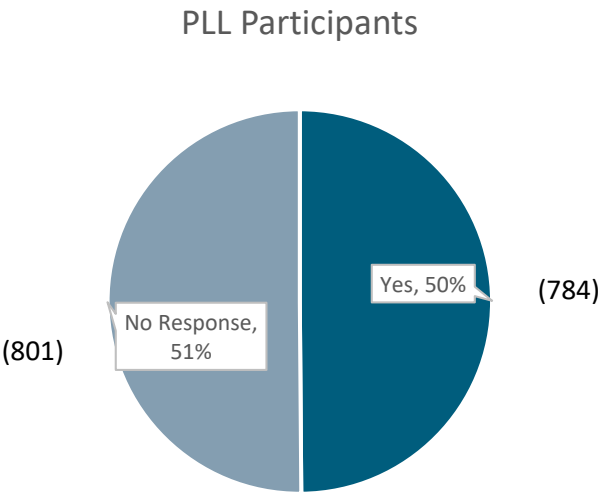
PLP: Gender Identity



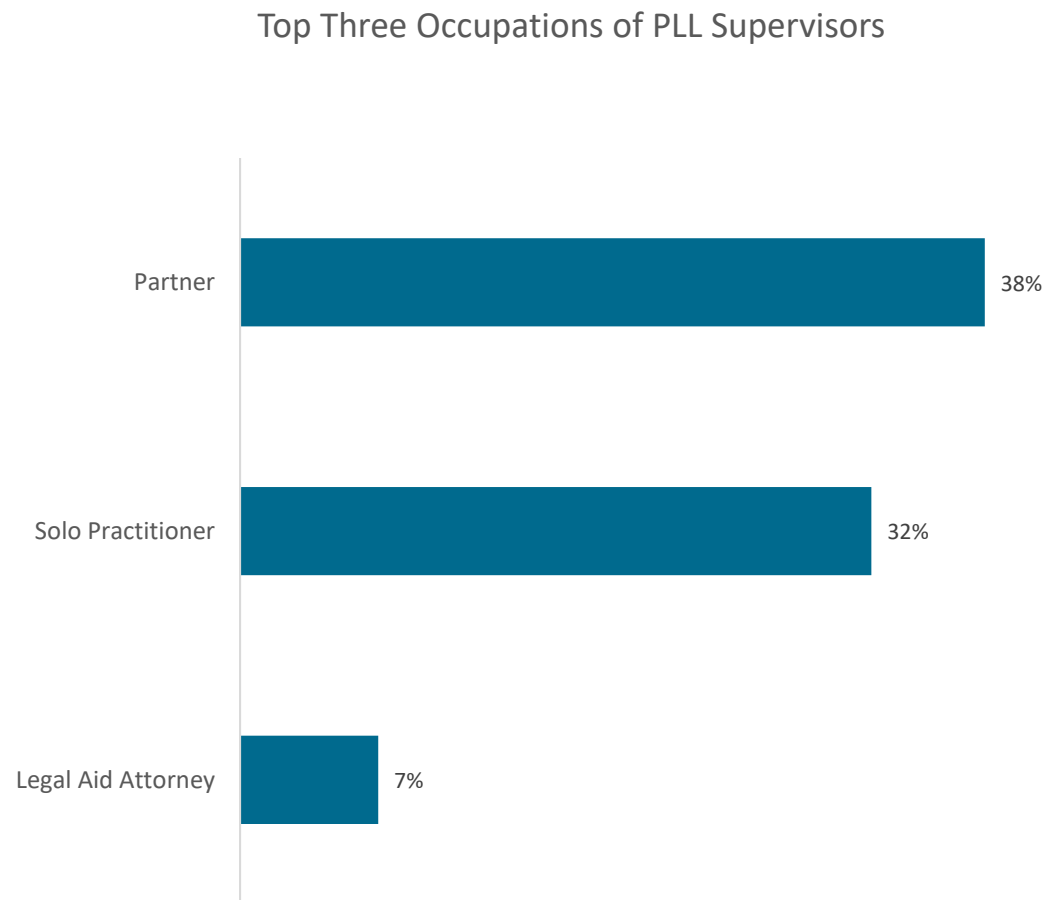
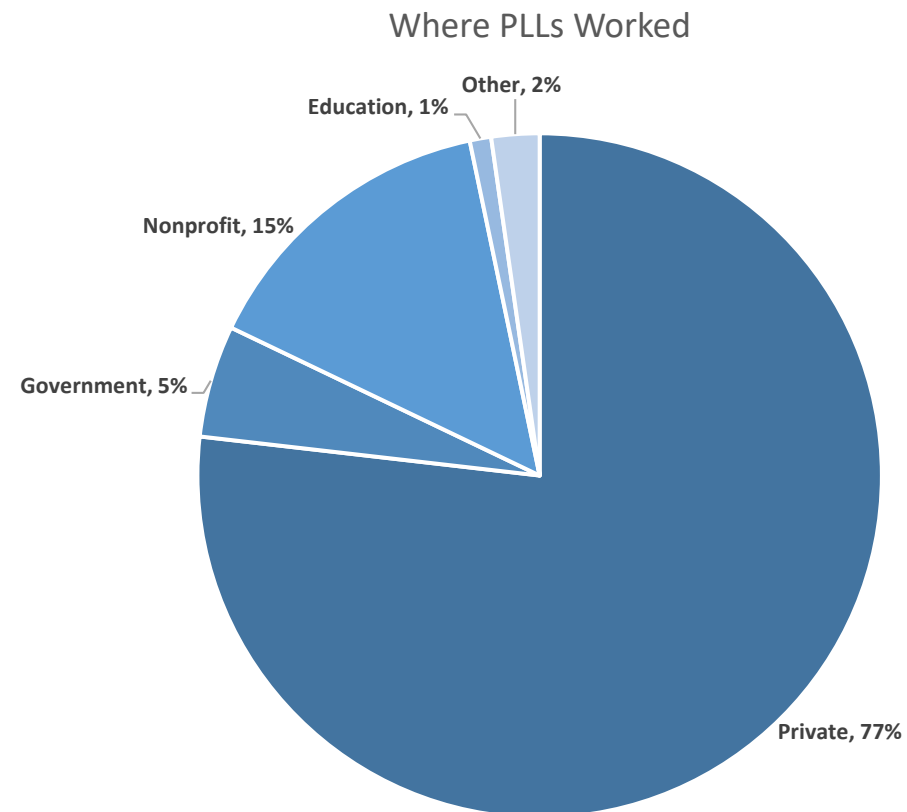
- The share of women among PLL participants is comparable to newly admitted attorneys. However, there were fewer women among applicants eligible for the Expanded PLP (Pathway) program and PLL supervisors.

2022 PLP Survey Response Rates

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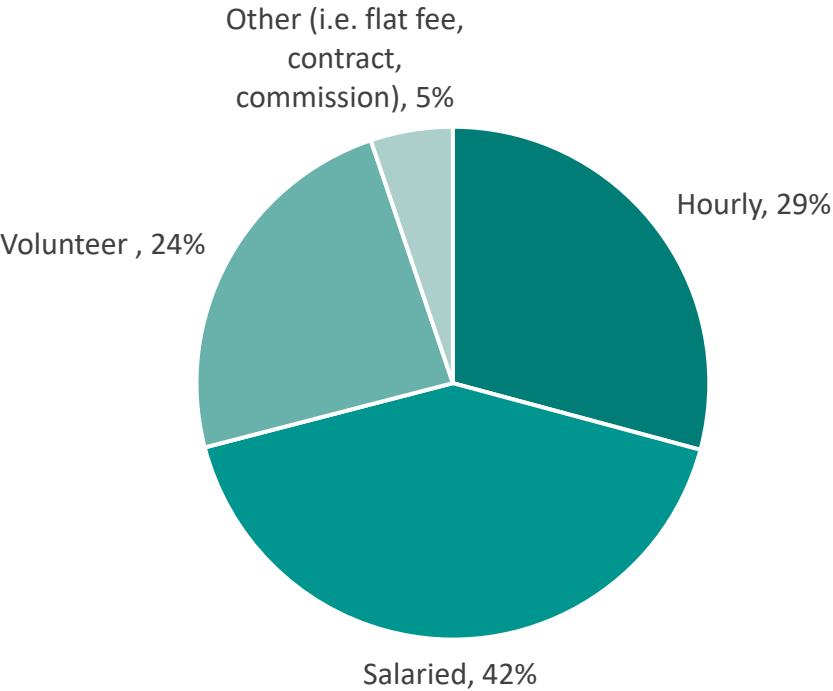


Workplace Settings

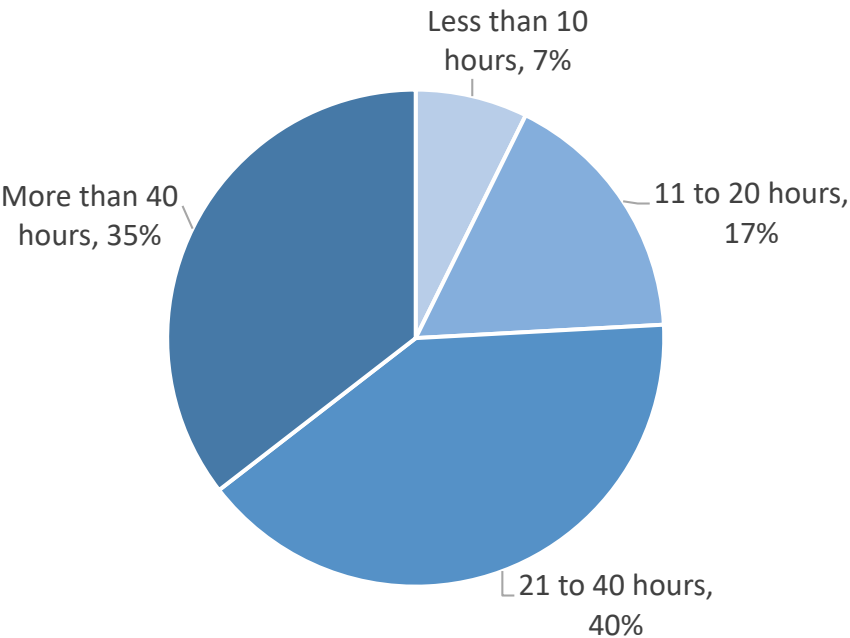


Compensation Type

PLL Compensation Type

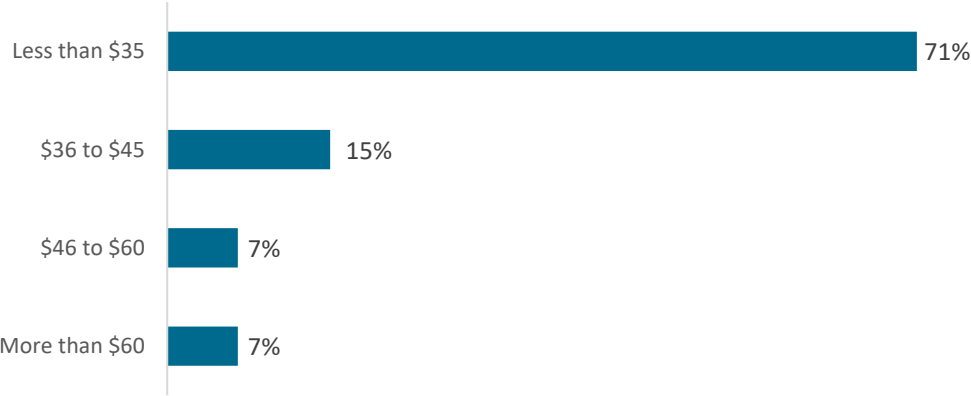


Average Hours PLL Worked Per Week

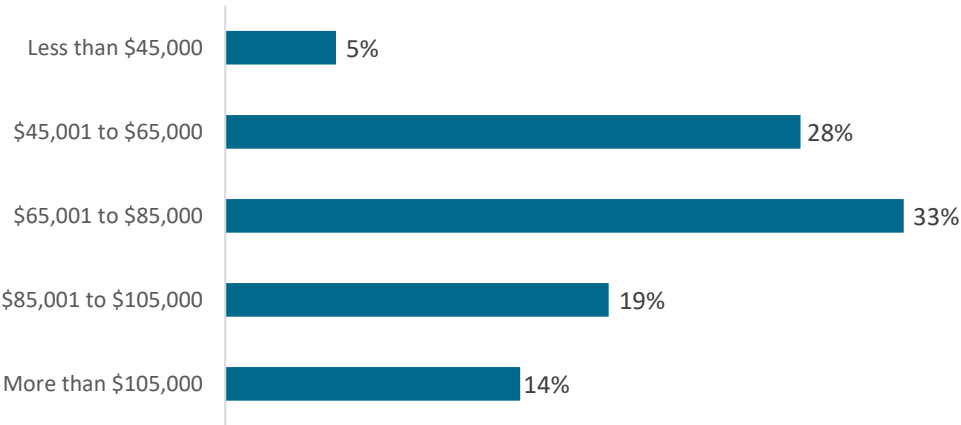


Compensation

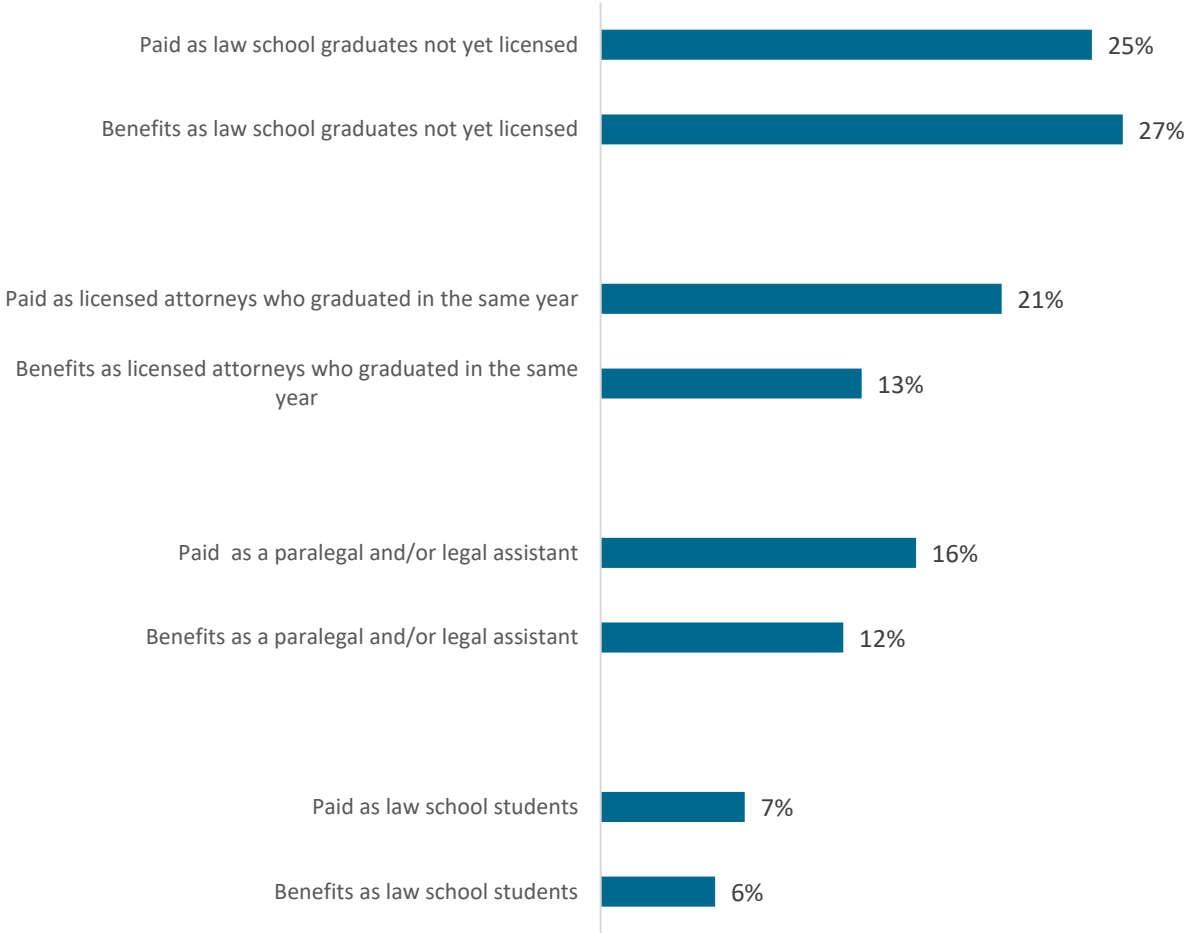
PLL Reported Compensation: Hourly



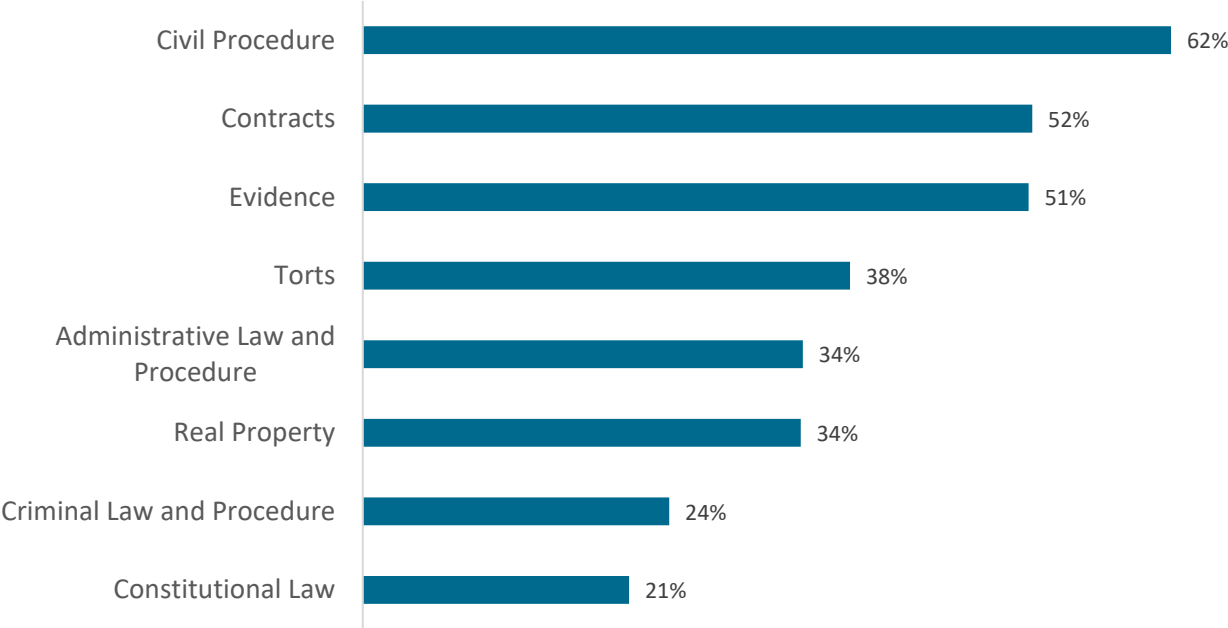
PLL Reported Compensation: Salaried



Comparison of PLL Compensation (reported by PLL Supervisors)



8 Knowledge Areas Utilized by PLLs

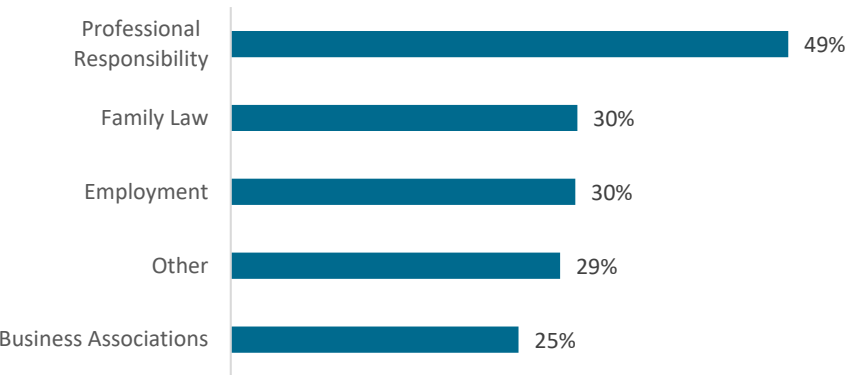


*Average of PLL and supervisor responses



Knowledge and Skills

Top Five Subject Areas PLL Drew Upon



Skills PLL Utilized



*Average of PLL and supervisor responses

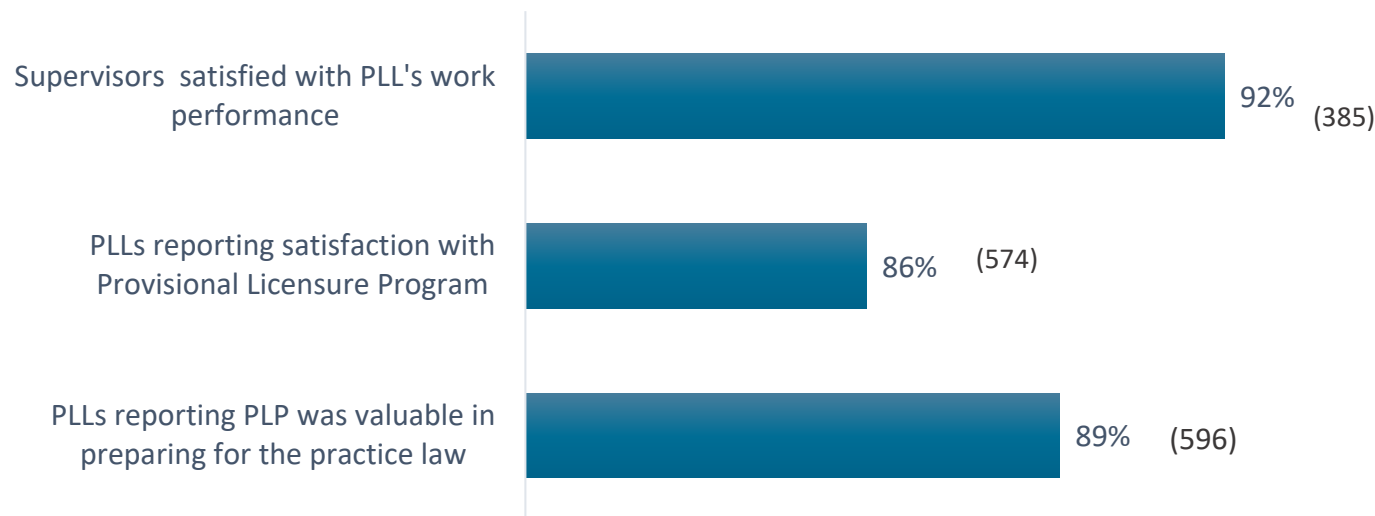
Legal Aid PLLs Work Included:

- Advocacy for children with disabilities
- Civil Rights
- Criminal
- COVID 19 Disaster Relief
- Domestic violence/Sexual Assault
- Emergency Rental Assistance, Eviction Defense, and Homelessness prevention work
- Human Trafficking
- Immigration services
- Non-litigation civil legal matters
- Occupational Safety, workers compensation, unemployment insurance
- Veteran benefits and support



Satisfaction Levels Reported by PLLs and Supervisors

Satisfaction with the Provisional Licensure Program



- Supervisors of PLLs currently active in the program report higher levels of satisfaction with the work performed by them compared with supervisors of former PLLs who have been admitted to the State Bar.
- Similarly, PLLs currently active in the program reported higher levels of satisfaction and beliefs that their work as a PLL was valuable in preparing them for the practice of law than former PLLS who have been admitted to the State Bar.
- In contrast, satisfaction beliefs that the PLP was valuable for preparing for the practice of law did not vary by race/ethnicity, or gender identity.

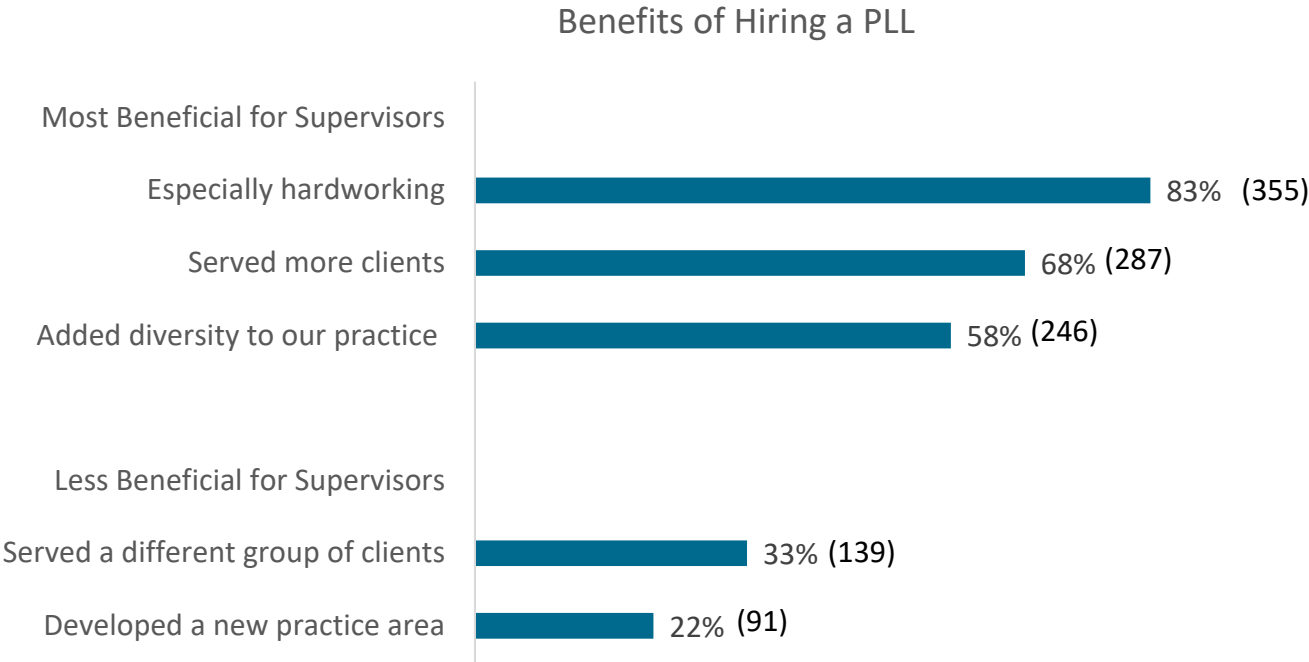
Benefits of PLP Reported by PLL

Benefits of Working as a PLL



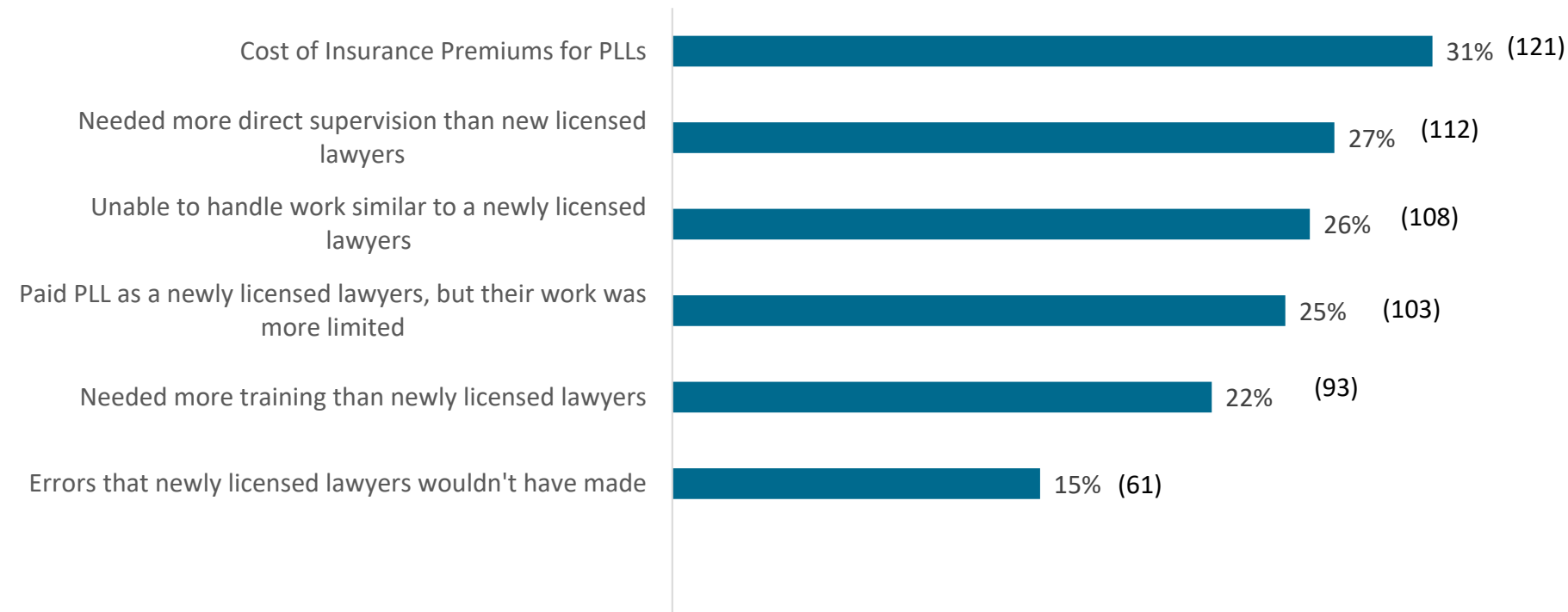
- Additional Benefits: Career Advancement Opportunity, Mentorship, Ability to serve diverse communities, and Self-fulfilling work
- PLLs currently active in the program rated benefits of working across all nine factors at higher levels than those admitted to the State Bar and those who were terminated or suspended from the PLP.

Benefits of PLP Reported by PLL Supervisors



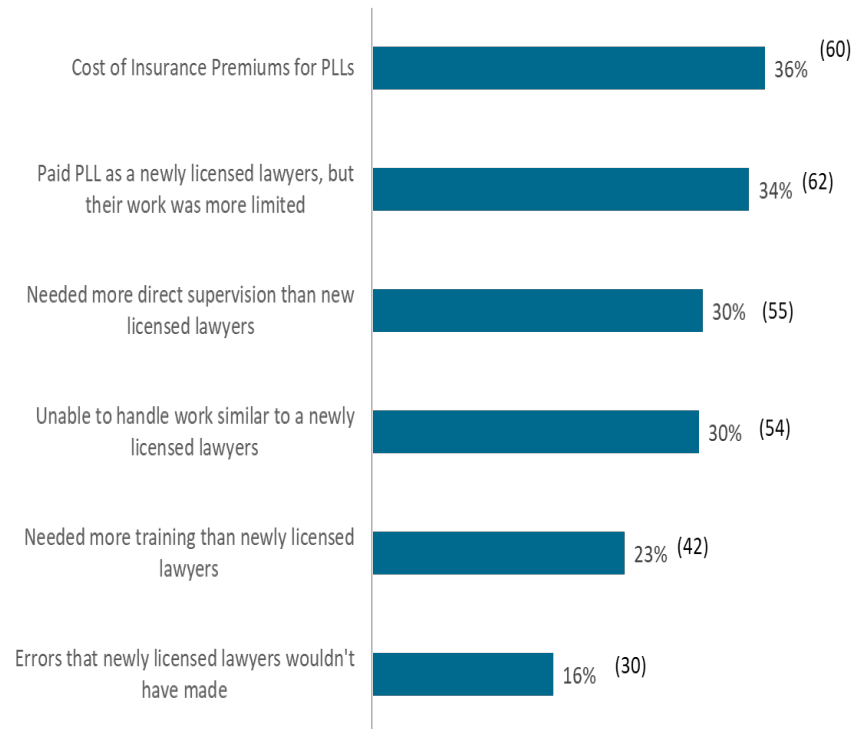
Total Supervisors: Challenges

Challenges Reported by PLL Supervisors

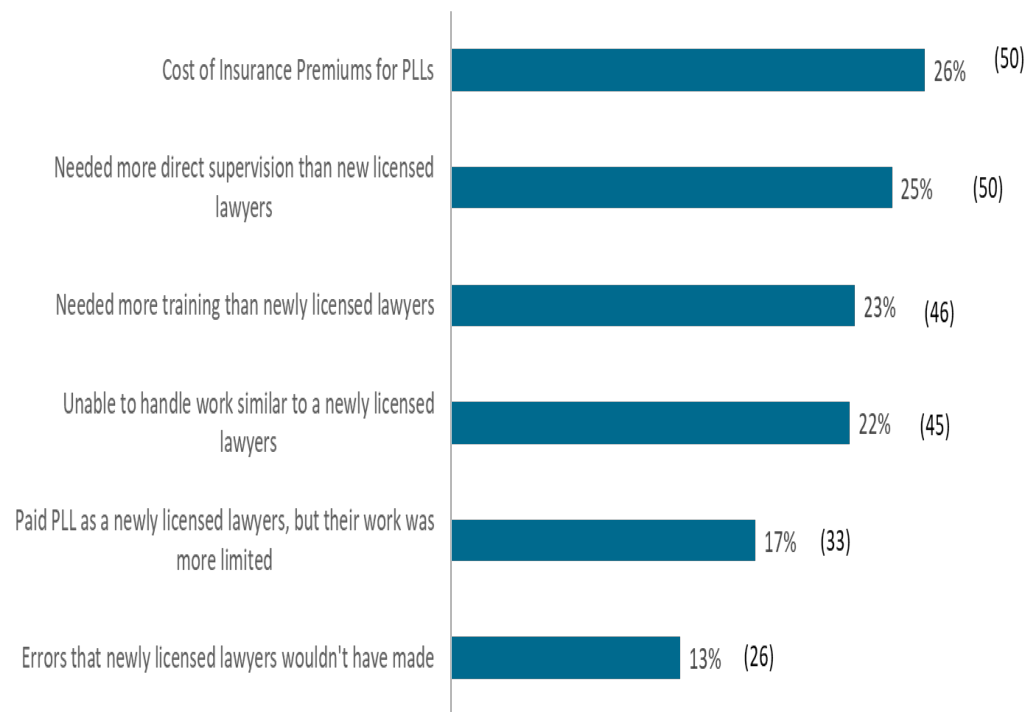


Supervisors of PLLs: Challenges Reported by Program

Challenges Reported by Supervisors of Original PLLs



Challenges Reported by Supervisors of Pathways PLLs

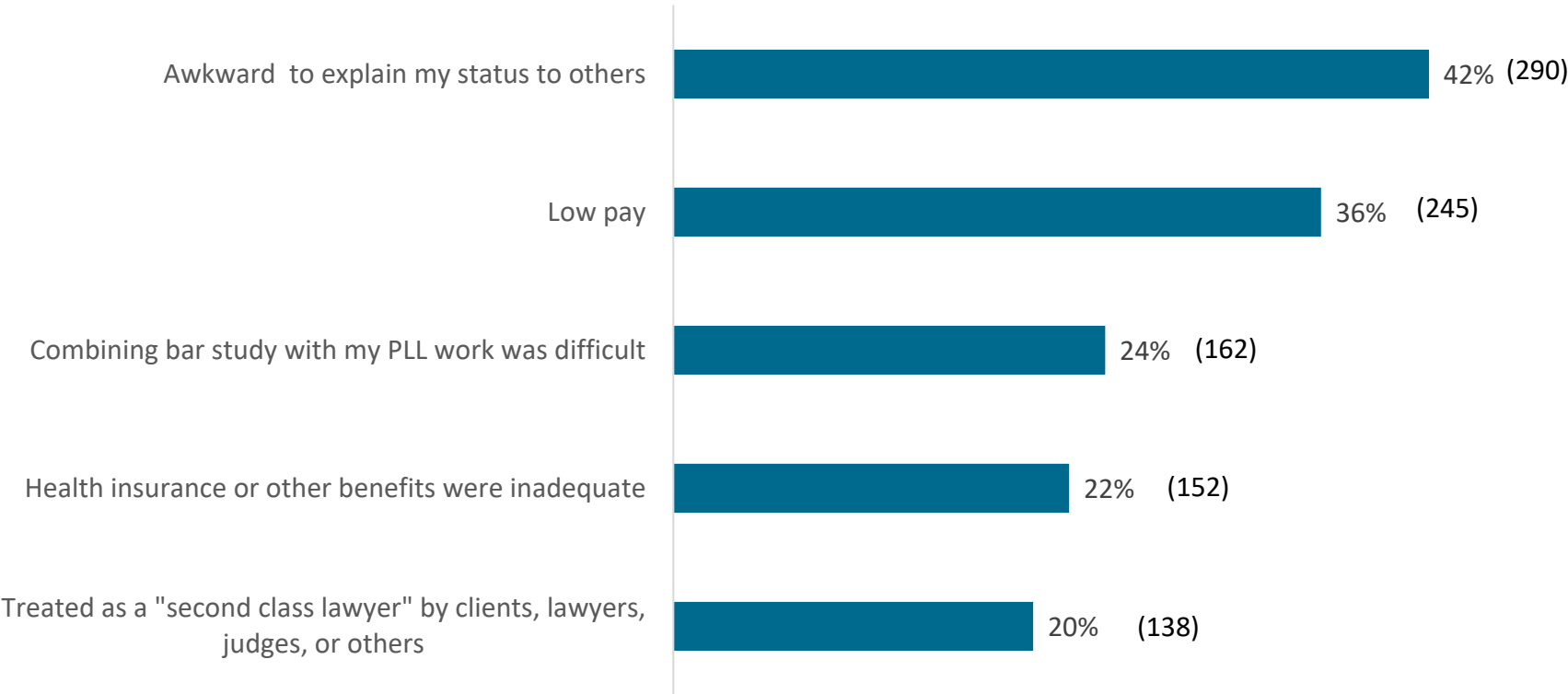


- Supervisors reported the cost of insurance premiums for PLLs as the top challenge.
- However, the second most frequent challenge identified by supervisors of Original PLLs was that PLLs' work was more limited given that they were paid as newly licensed lawyers. In contrast, the second most frequent challenge identified by supervisors of Pathways PLLs was the need to provide more supervision and training than is required for newly licensed lawyers.

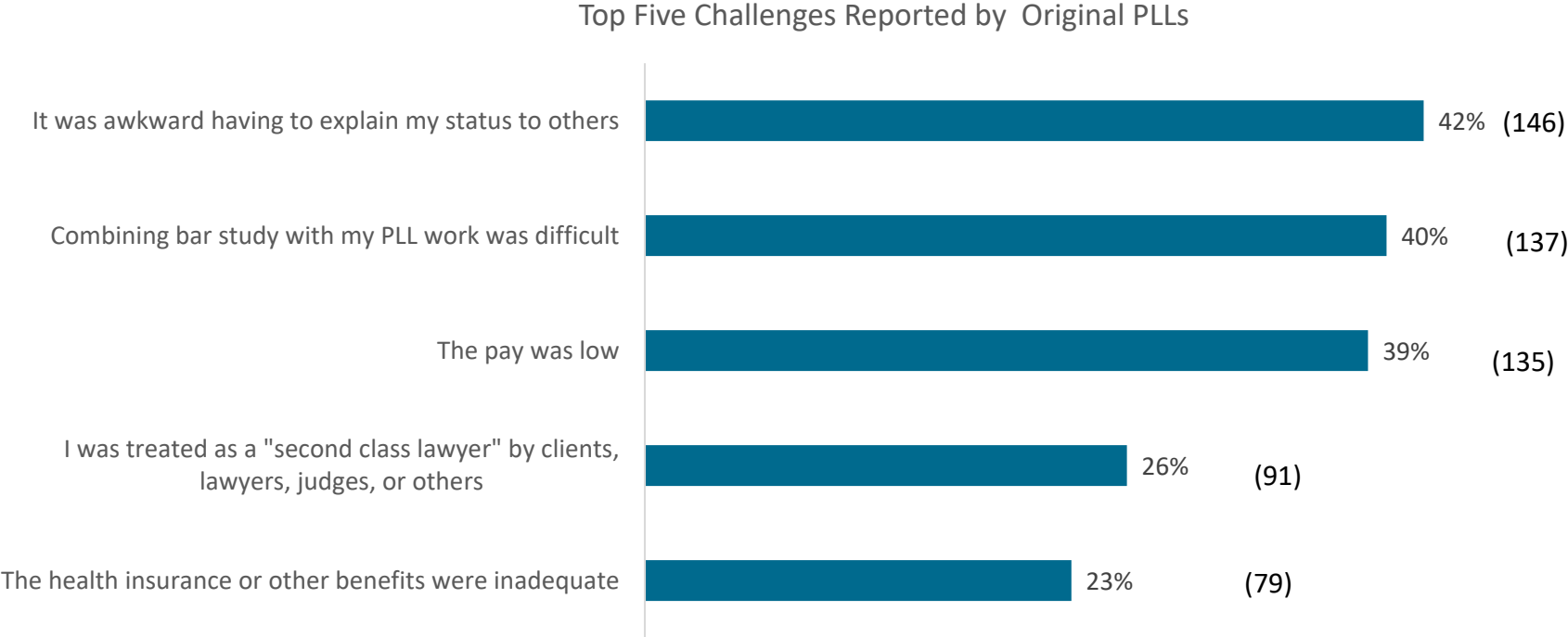


Challenges Reported by Total PLLs

Top Five Challenges Reported by PLLs



Challenges Reported by Original PLLs

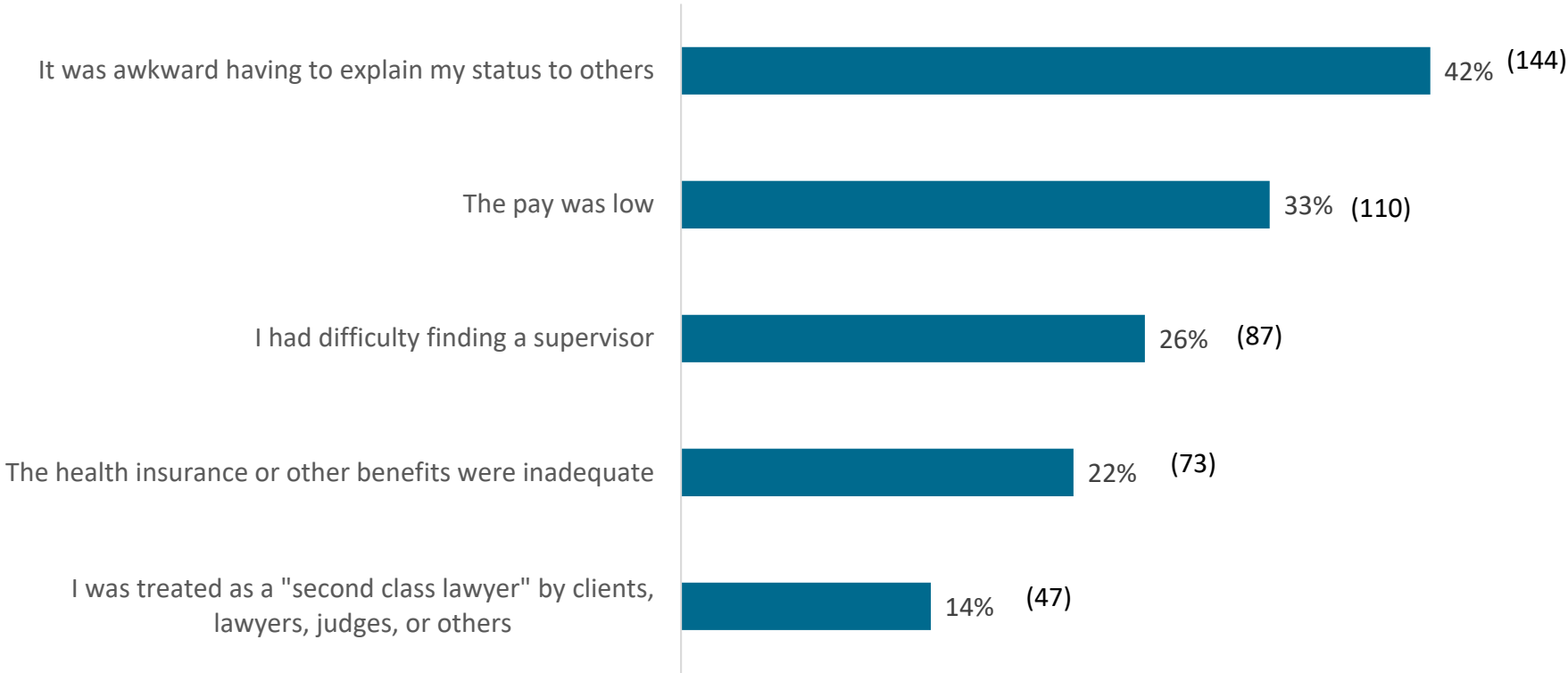


- Both Original and Pathway PLLs reported the awkwardness in explaining their PLP status to others as the top challenge.
- However, the second most frequent challenge identified by Original PLLs was combining the study of the Bar with working as a PLL. In contrast, the second most frequent challenge identified by Pathways PLLs was low compensation.

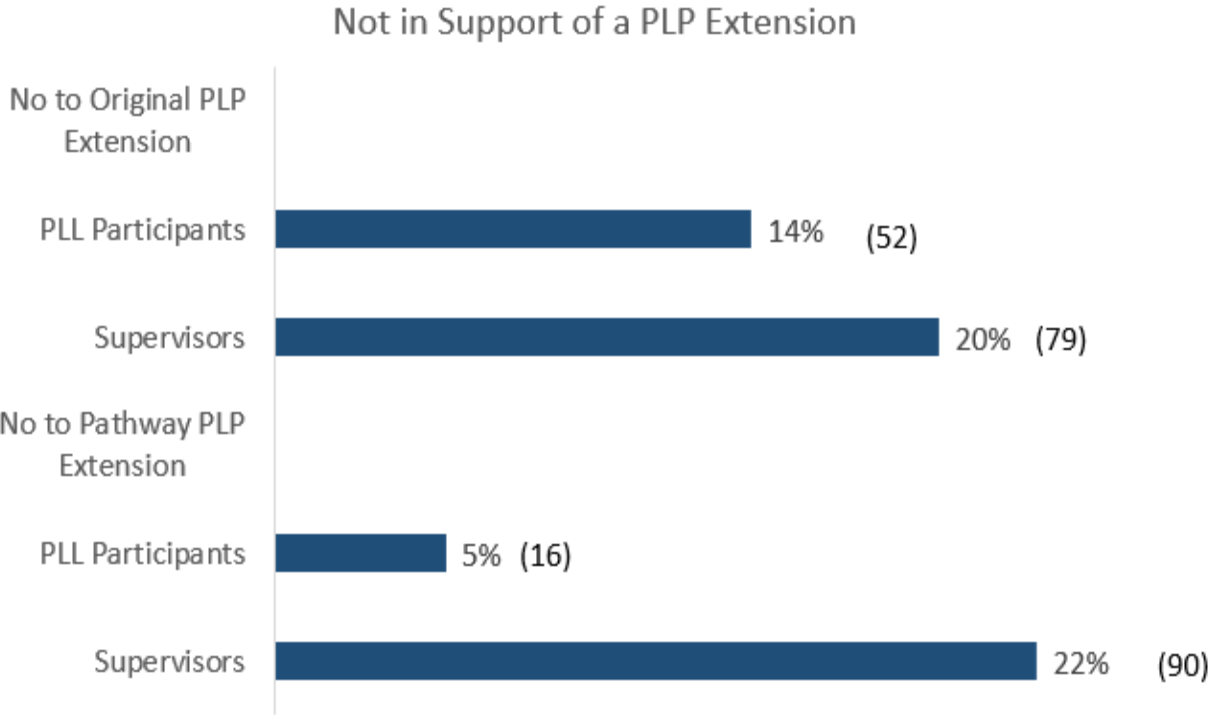


Challenges Reported by Pathway PLLs

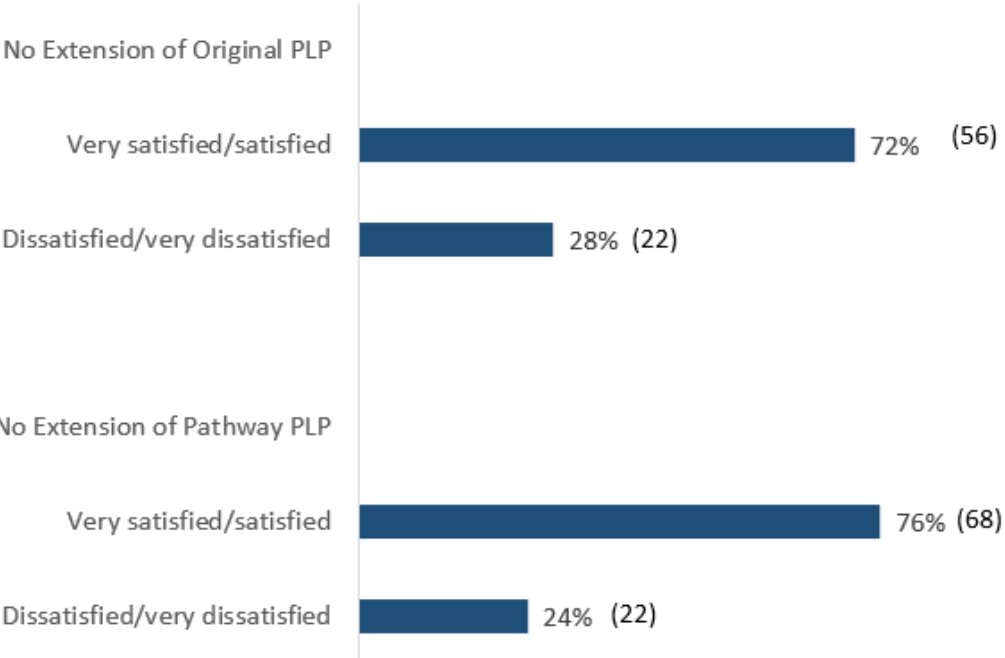
Top Five Challenges Reported by Pathways PLLs



Not in Support of a PLP Extension

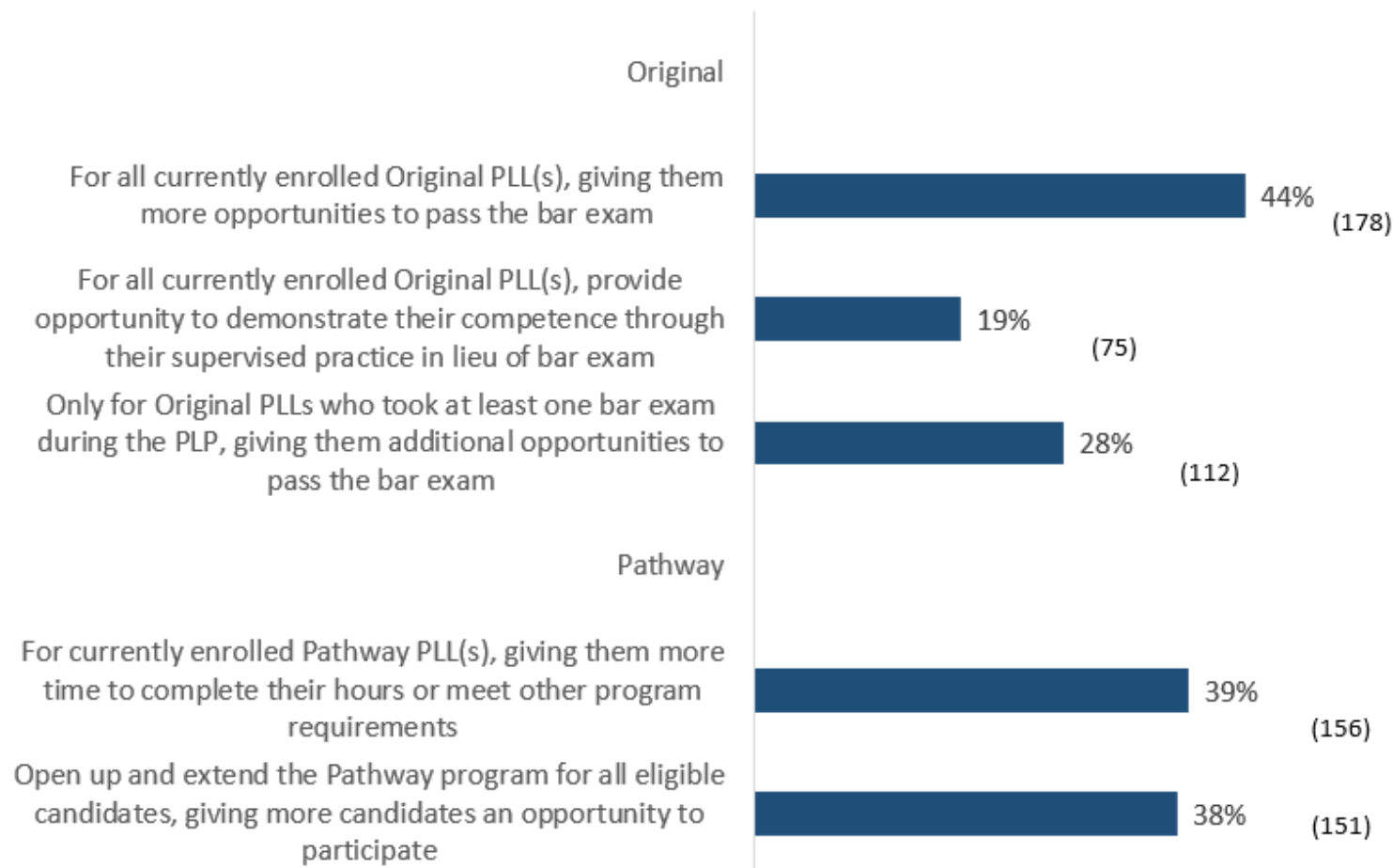


Level of Satisfaction of Supervisors Recommending No Extension



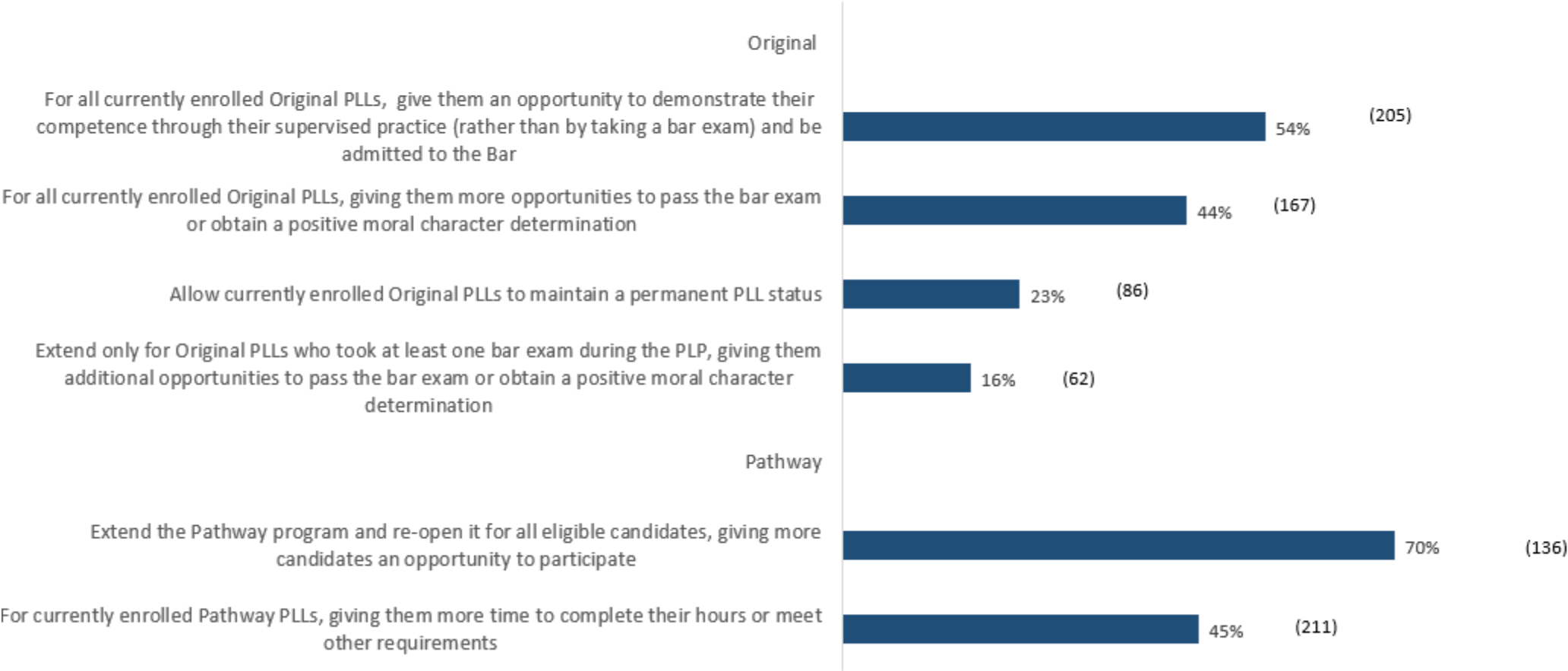
Supervisors In Support of a PLP Extension

PLL Supervisor Recommendations for PLP Extension

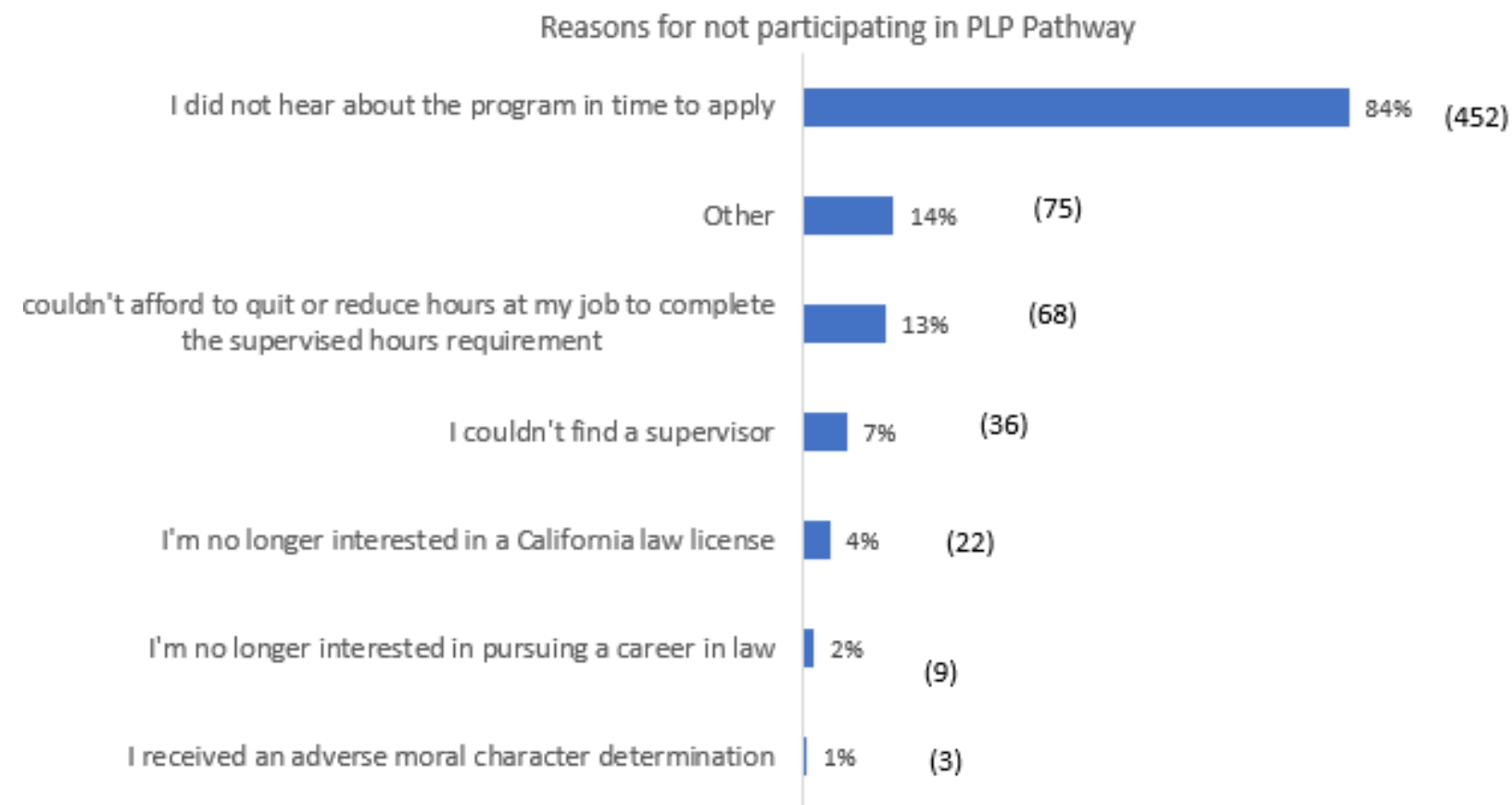


PLLs In Support of a PLP Extension

PLL Participant Recommendations for PLP Extension

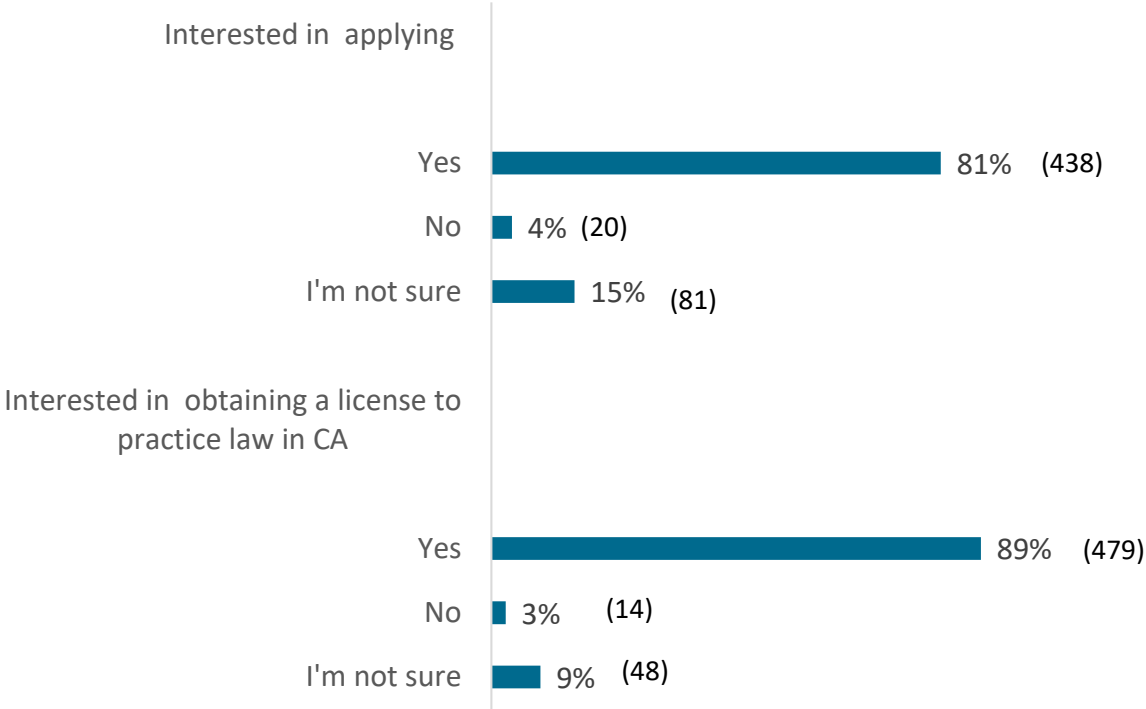


PLP Pathway Eligible (Non-Participants)



PLP Pathway Eligible (Non-participants)

PLP Pathway Eligible Interested in PLP and Practicing Law in CA





The State Bar of California

DATA UPDATED NOVEMBER 21, 2022¹

OPEN SESSION

AGENDA ITEM

701 NOVEMBER 2022

DATE: November 17, 2022

TO: Members, Board of Trustees

FROM: Donna S. Hershkowitz, Chief of Programs & Legislative Director
Leah T. Wilson, Executive Director

SUBJECT: Recommendation to Supreme Court Regarding Pending Sunset of the
Provisional Licensure Program

EXECUTIVE SUMMARY

Pursuant to Rule of Court 9.49 and 9.49.1, the two Provisional Licensure Programs (PLPs) operated by the State Bar will sunset on December 31, 2022, unless the Supreme Court takes action to extend the programs. The programs were initially scheduled to sunset on June 1, 2022, but following the Court's consideration of the recommendation from State Bar Executive Director Leah Wilson (see Attachment A), the Supreme Court extended the programs for seven months. As the sunset date has approached, the State Bar has examined data on the participants still in the programs and surveyed the participants and their supervisors. The State Bar also surveyed individuals who were eligible for the Pathway Program (described fully below) but did not apply. Based on the review of the data, the analysis of the surveys, and consideration of public comments that the Board and the Blue Ribbon Commission (BRC) on the Future of the Bar Exam have received in the last several months, staff recommends that the Board of Trustees recommend to the Supreme Court that the programs be extended. This agenda item recommends a set of options for presentation to the Court, which range from simple extension to a path to permanent licensure for all remaining program participants.

BACKGROUND

¹ In presenting this agenda item to the Board of Trustees on November 17, 2022, staff noted that errors had been identified in some of the data and those errors would be corrected in the version of the item submitted to the Supreme Court. In addition, minor typographical errors have been corrected.

On July 16, 2020, the California Supreme Court directed the State Bar to “implement, as soon as possible, a temporary supervised provisional licensure program—a limited license to practice specified areas of law under the supervision of a licensed attorney.” (See Attachment B)

In explaining the rationale for this direction, the Court expressed that “[t]he changing circumstances surrounding the ongoing COVID-19 pandemic in California . . . have had an unprecedented impact on professional licensure testing. ... The court understands that many law school graduates are being substantially affected by the resulting disruption. Some graduates have lost job offers. Many are about to lose health insurance, cannot find a job to pay bills, or are in fear of deportation if they cannot enter the bar in time retain job offers. Many more have student loan payments that become due in mid-November, but without a law licensure and the ability to work, they fear going into default.” The Court further noted that “postponement of the bar examination (from summer to fall 2020) may impact employment prospects, delay incomes, and otherwise impair the livelihoods of persons who recently have graduated from law school. Moreover, the court recognizes 2020 graduates may not be in a position to study and prepare for” a fall bar examination.

THE ORIGINAL PROVISIONAL LICENSURE PROGRAM (ORIGINAL PLP)

On October 22, 2020, upon recommendation of the Board of Trustees, the Supreme Court adopted rule 9.49 of the California Rules of Court, effective November 17, 2020, establishing the original Provisional Licensure Program (Original PLP). This program, as initially enacted and subsequently amended, was open to 2020 law graduates who:

- Had not yet passed the bar exam (whether or not they sat for exam).
- Either had an active (i.e., not expired) positive moral character determination or had submitted a complete application for determination of moral character that was pending.
- Either had passed the Multistate Professional Responsibility Exam (MPRE) or, within 30 days after entry into the program, completed the four hours of ethics e-learning that is part of the State Bar’s 10-hour New Attorney Training.
- Submitted a declaration of an eligible California licensed attorney indicating that they would supervise the participant.
- Within one year after entry into the program, completed the remainder of the 10-hour New Attorney Training.

The Original PLP was not a pathway to licensure. Participants still needed to take and pass the bar exam before the end of the program and meet all other requirements for admission to continue practicing upon the expiration of the program.

The program was originally scheduled to sunset on June 1, 2022. On May 26, 2022, the Supreme Court extended the program to December 31, 2022.

Original PLP By the Numbers

There have been a total 912² participants in the Original PLP. As of November 10, 2022:

- 645 have become fully licensed lawyers, having passed the bar exam and meeting all other requirements for admission.
- 72 have been terminated from the program.
- 5 have been suspended from the program, but not yet terminated.
- 190 remain as active program participants. The 190 includes 17 who successfully passed the July 2022 bar exam and who had no other requirements to satisfy other than passing the bar. These 17 will therefore become fully licensed prior to the expiration of the program, leaving 173 active participants.

Of the remaining 173 active program participants, 168 have yet to pass the bar exam; 125 of these 168 participants have satisfied all other program requirements.³

EXPANDED PROVISIONAL LICENSURE PROGRAM WITH A PATHWAY TO LICENSURE (PATHWAY PROGRAM)

In response to public comment received while developing the Original PLP, the State Bar's Provisional Licensure Working Group reconvened after the proposal for the Original PLP was submitted to the Court and developed a recommendation to expand the PLP to include those who had scored between 1390 and 1439 on a bar examination administered between July 2015 and February 2020. The Court adopted rule 9.49.1, creating the Pathway PLP on January 28, 2021, and the program launched on February 24, 2021.

This program created a pathway to licensure (thus referred to as the Pathway Program), without the need to take another bar exam. The rationale for this program leading to licensure whereas the Original PLP did not was that in July 2020, at the same time the Court directed the creation of the Original PLP, it lowered the passing line for the bar exam from 1440 to 1390. Participants in the Pathway PLP received a score that would have been considered passing had they achieved that score on the October 2020 or subsequent bar exam.

Other than passing the bar exam, participants in the Pathway PLP needed to satisfy similar requirements as those in the Original PLP. However, Pathway Program requirements also included 300 hours of supervised legal work and a positive supervisor evaluation. Like the Original PLP, the Pathway PLP was initially scheduled to sunset on June 1, 2022, but was extended by the Court until December 31, 2022.

Pathway PLP By the Numbers

There have been a total of 673 participants in the Pathway PLP.⁴ As of November 10, 2022:

- 538 completed the Pathway PLP and have become fully licensed lawyers

² The May 24, 2022, letter to the Supreme Court incorrectly put this number at 915, having mistakenly counted some duplicate entries.

³ A total of 168 have yet to pass the bar exam, but 43 have other outstanding program requirements. Of those 168, 28 did not sit for any of the four bar exams administered during the PLP; 26 sat for the bar exam once during the PLP; 43 sat twice; 45 sat three times; and 26 sat for all four administrations of the bar exam during the PLP.

⁴ The May 24 2022, letter to the Supreme Court underreported this count by two individuals.

- 24 sat for and passed a bar exam, which enabled them to exit the Pathway PLP and become fully licensed
- 28 were terminated from the program
- 5 have had their participation suspended
- 71 remain with an active status in the program. Of those 71, 18 have met all requirements, and are likely pending getting sworn into the bar, leaving only 53 active participants.

Of the remaining 53 active participants who have not yet completed all program requirements, 29 have as their only remaining requirement to complete their 300 hours of supervised practice; an additional 11 have receipt of a positive supervisor evaluation as the only pending item.⁵

PLP SURVEY

On October 3, 2022, the State Bar sent a survey to nearly all of the 1,585⁶ current and former participants in the Original and Pathway PLPs, 1,393 supervisors of current and former PLLs, as well as to 1,154 individuals who were eligible for the Pathway PLP (Eligible PLLs) but who did not apply and who are not yet admitted to the bar.

Response rates for the survey were excellent. Roughly 50 percent of current and former PLLs responded, and 34 percent of supervisors responded. Additionally, 48 percent of Eligible PLLs responded. In terms of race/ethnicity and gender, the demographic characteristics of survey respondents were consistent with the demographics of program participants.

Other highlights from the survey include:

- 77 percent of respondents spent their time as a PLL in the private sector, 15 percent in nonprofit, and 5 percent in government.
- 24 percent of PLLs worked on a volunteer basis, with the remaining being paid.
- Satisfaction with the PLP⁷:
 - 92 percent of supervisors reported being satisfied or very satisfied with the work of the PLL.
 - 86 percent of PLLs reported being satisfied or extremely satisfied with the program.
 - 89 percent of PLLs agreed or strongly agreed that the program was valuable in preparing them for the practice of law.
- Benefits to the employer:
 - 83 percent of supervisors reported that they found the PLLs to be especially hard working.
 - 68 percent of supervisors reported that having the PLLs allowed them to serve

⁵ Of the 18 applicants who have not completed their 300 hours, 14 have not reported completing any hours as of the writing of this agenda item.

⁶ We recently discovered that 21 individuals did not receive the survey due to a since-remedied data issue.

⁷ The demographic breakdown of level of satisfaction was consistent with the demographic breakdown of survey respondents and program participants.

more clients, while 58 percent stated that the PLLs added diversity to their practice.

- Challenges for the employer:
 - 27 percent of supervisors felt that PLLs needed more direct supervision than newly licensed lawyers.
 - 26 percent reported that PLLs were unable to handle work similar to that handled by newly licensed lawyers.
 - 22 percent indicated that PLLs needed more training than newly licensed lawyers.
 - 15 percent report that PLLs made errors that newly licensed lawyers would not have made.⁸
- Challenges reported by PLLs
 - 42 percent found explaining their provisional status awkward, and 20 percent felt they were treated as “second class lawyers” by clients, lawyers, judges, or others.
 - 36 percent found the salary challenging, and 22 percent found the benefits to be inadequate.
 - 40 percent of respondents from the Original PLP reported that combining bar study with PLL work was difficult.
 - 26 percent of the Pathway PLLs reported difficulty finding a supervisor.

For more information on the results of the survey, see Attachment C.

Views on Continuing the Programs

The survey asked supervisors and PLLs their opinions about whether the programs should continue, expire, or change. PLLs were asked only about the program in which they participated (Original or Pathway); supervisors were asked their opinions about both programs.

Original Provisionally Licensed Lawyers

- 80 percent of Original PLLs supported an extension of the program
- 14 percent did not support extending the program
- 7 percent were unsure

Pathway Provisionally Licensed Lawyers

- 89 percent of Pathway PLLs supported extending the program
 - 45 percent only for existing Pathway participants
 - 70 percent also supported reopening the program for all eligible candidates.
- 5 percent did not support either extending or reopening the program
- 5 percent were unsure

⁸ The percentage of supervisors reporting each of these challenges was slightly higher for Original PLLs than Pathway PLLs. It is unknown if the driver for this difference is the PLL or the type of placement. For example, Pathway PLLs worked more with solo practitioners in comparison to Original PLLs.

Supervisors

- 72 percent of supervisors favored extending the Original PLP, but their support weighed more heavily toward extending the program to provide more opportunities to pass the bar exam as opposed to allowing admission to the bar through supervised practice.
- 69 percent of supervisors supported extension or reopening of the Pathway PLP, with approximately one-half supporting extension only and one-half supporting both extension to existing participants and reopening the Pathway to all eligible participants.
- 20 percent of supervisors recommended not extending the Original PLP. Interestingly, 72 percent of those responding in this way had indicated they were satisfied or very satisfied with the PLL they supervised.
- 22 percent recommended against extending or reopening the Pathway PLP. Similarly, 76 percent of those responding in this manner indicated they were satisfied or very satisfied with the PLL they supervised.

Eligible PLLs

When the Pathway PLP was established, it was advertised extensively on the State Bar's website and via the State Bar's social media. The State Bar issued a news release, as did the Supreme Court, and there was media coverage in the legal press in the months from July 2020 through February 2021, when the programs were being created. As many Board members will recall, there were well-attended publicly noticed meetings, and the Bar sought public comment on the proposed rules, for which we received several hundred comments.

Unfortunately, some of those eligible for the program had long since stopped reviewing the State Bar's website or following State Bar social media posts. Many moved out of state, and some started careers outside the legal field. There were nearly 2,700 individuals who had scored between 1390 and 1439 on a bar exam administered between July 2015 and February 2020 and who had not yet, as of the start of the program, been admitted to the State Bar. Direct emails were not sent to this cohort.

By October 2022, 863 had become fully licensed by having passed the bar exam, and 673 had participated or were still participating in the Pathway PLP. The State Bar surveyed the remaining 1,154 Eligible PLLs who had not applied for the Pathway PLP to learn more about why they did not apply. Nearly 85 percent of respondents reported they did not hear about the program in time to do so. Thirteen percent of respondents noted that they were unable to afford to quit or reduce hours at their current places of employment so they could complete the required supervised hours. Fourteen percent did not participate for "other" reasons. Eighty-nine percent of respondents reported their continuing interest in obtaining a license to practice law in California, with 81 percent indicating that they were interested in applying should the program be reopened to allow them to participate.

DISCUSSION

The conditions brought about by the COVID-19 pandemic were devastating and life-altering in so many ways. There is no doubt, however, that the crisis resulted in a number of innovations, including improved health care processes, new drugs, medical devices, and telemedicine

options, new collaboration techniques, an openness to remote work, education, and testing, and so much more. As a famous quote, often attributed to Albert Einstein, states, “In the midst of every crisis lies opportunity.” The need to respond quickly to address a crisis creates more openness to broad innovation and allows us to create rapid, impactful change. The PLPs operated by the State Bar are two examples of such impactful change. Nearly three-quarters of 2020 law graduates who joined the Original PLP have been or are about to become fully licensed to practice law in California, having had the opportunity to practice under supervision and gain real-world experience. Over 80 percent of the participants in the Pathway Program have or are about to become fully licensed. The survey of supervisors revealed that more than 90 percent were satisfied or very satisfied with the work of the PLL. And importantly, the program did not come at the expense of public protection. State Bar data reflect that for attorneys with up to two years in practice, the annual rate of complaints received is 1.3 percent (i.e., of all attorneys in the cohort, complaints are made against 1.3 percent of them). For 2020 and 2021 combined, the complaint rate against PLLs was .9 percent (with 19 complaints having been received against 15 PLLs). Of the 12 cases closed to date, one has resulted in a cease-and-desist letter; the remainder have closed with no discipline or nondisciplinary measures.

As the December 31, 2022, sunset date approaches, staff have evaluated various options for the programs, including allowing them to sunset or recommending a limited extension through, for example, the next bar exam cycle. An argument can certainly be made that these programs were created to address a once-in-a-generation global pandemic, that crisis has largely subsided, and therefore the programs should be allowed to expire. The counter argument, however, is that although there were unique circumstances supercharging the innovation that led to the creation of these programs, the programs have now demonstrated their value as a meaningful way to train motivated individuals in the practice of law.

OPTIONS FOR BOARD CONSIDERATION

Staff recommendations are guided by the following policy considerations and objectives:

- We have learned a lot of things due to innovations adopted during the pandemic. As is proving true in many areas impacted by such innovation, the return to normalcy does not mean returning to exactly the way we did things previously.
- We should be fair and open-minded as it relates to participants who have not completed program requirements by the sunset date (this includes recognizing challenges some may have faced in getting a supervisor and starting in the program, as well as the real challenges that people face in trying to both work and study for the bar exam).
- Public protection is of primary importance.
- Fairness. More than three-quarters of Eligible PLLs who responded to the survey (equaling 40 percent of all Eligible PLLs who did not participate and have not yet been admitted to the bar) indicated that they were not aware of the program.
- Over the past couple of years, there has been increased interest, nationally, in advancing other methods for admission to the bar apart from a traditional bar exam. There is growing openness to the notion that there may be other ways to demonstrate minimum competence than a traditional bar exam.

Taking these policy considerations and objectives into account, staff present the below options for Board consideration. Staff recommends that the Board present this entire set of options to the Supreme Court. Because of the different posture of Original and Expanded Pathway PLLs, staff recommends that the Board request that the Court direct the State Bar to pursue at least one option that explicitly addresses each program. Attachment D comprises a chart that depicts the recommended global provisions and options described in narrative form below.

Global Provisions Applicable to All Options

To meet the policy objective of ensuring public protection, every one of the recommended options would preclude extending the program to participants who do not have an active, unexpired positive moral character determination on December 31, 2022, who have not received the required score on the MPRE, or who have not satisfied the 10-hour New Attorney Training requirements by the end of the year.⁹ There has been sufficient time allotted to meet these requirements, and it would be contrary to the interests of public protection to allow individuals who have not satisfied these requirements to continue practicing, even under supervision.

Option 1: Extend the Pathway PLP for Remaining Participants and Reopen the Pathway PLP to New Participants

This option would extend the existing program for one year, through December 31, 2023, for currently active participants in the program whose only remaining unmet requirements are completion of the required 300 hours of supervised practice and/or receipt of the evaluation of their supervisor upon completion of those hours. They would also need to have a supervisor currently in place to qualify to continue on in the program.

There are currently 29 Pathway PLLs who have not met the hours or evaluation requirement. There are four more whose only additional unmet requirement is Minimum Continuing Legal Education, a requirement which can be satisfied before the end of the year.

As noted above, 1,154 individuals were eligible for the Pathway Program but did not apply. The vast majority of survey respondents indicated the reason for not applying was that they had not learned about the program before the application deadline. Staff believes that most of those in fact had not learned of the program until they received the survey asking why they did not participate. The failure to email eligible participants directly was in error, and staff strongly believe the program should be reopened to permit these remaining candidates the opportunity to apply. Staff recommend opening the application period to June 30, 2023, and sunsetting the program December 31, 2025. This timeframe is recommended in order to afford this second Expanded Pathway cohort a roughly equivalent amount of time to complete program requirements as the current cohort will have if the first part of this option is adopted.

⁹ Under the current rules, participants who receive a negative moral character determination are suspended from the program pending their appeal of that determination. If they succeed in having the adverse determination reversed, they are allowed back in the program and to become licensed. None of the options below would seek to undo that protection.

Option 2: Extend the Original PLP for Remaining Participants to Provide More Opportunities to Pass the Bar Exam

This option would extend the Original Program by three years, to December 31, 2025, for those participants whose only outstanding requirement is passage of the California Bar Exam. As with option 1, they would need to have a supervisor currently in place to qualify to continue in the program.

There are currently 168 participants in the Original PLP who have not passed the bar exam, 125 of whom have no outstanding requirements other than bar passage.

Studying to take the bar exam while working as a PLL has been difficult for some. Combining bar study with PLL work was one of the top five challenges reported by PLLs in the Original Program, with 41 percent identifying this as a challenge. This option would allow program participants additional opportunities to be able to pass the exam, while continuing to provide value to their supervisors and clients.

Option 3: Extend the Original PLP for Remaining Participants to Allow Development of a Pilot Supervised Practice Pathway to Licensure

This option would extend the Original PLP for the same length of time and under the same conditions as option 2. However, instead of requiring the continuing participants to sit for and to pass a bar exam before the termination of the program, this option would have the State Bar develop for Supreme Court approval a supervised practice pathway to licensure for this small cohort. The program would be developed during the course of the program extension.

The BRC has had several meetings devoted to consideration of a pathway to licensure that does not involve a traditional bar exam; discussing supervised practice, changes in law school curricula, and the development of assessments either as part of or separate from supervised practice. The discussions have been fulsome, the information presented has been interesting and useful, but the BRC is divided. They have not been able to pass a motion to recommend pursuing such a path to licensure, nor have they been successful in passing a motion that would prohibit it.

Staff believe that conducting a pilot project using this cohort would be helpful in allowing the BRC, or a future body, to make a more informed decision based on empirical data about the value of a permanent supervised practice pathway to licensure. Developing a new, untested (in California) model for licensure applicable to thousands of people annually is a daunting task; it is understandable why, without more data, the BRC has been unable to come to consensus. While some may so posit, staff do not believe this option inappropriately wades into territory that is more properly the purview of the BRC. Rather, this option would enable for better thinking on whether to implement a more global program in the future—and if so, how.

In addition, the Legislature has, at least implicitly, expressed interest in the State Bar exploring such options. In adding new Business and Professionals Code section 6034.1 this year, which imposed limitations on the bar's consideration of certain innovative programs, the Legislature expressly stated that "[t]his section does not limit the State Bar's ability to provide limited

practice licenses to law students and law graduates under certain conditions, and with the supervision of active State Bar-licensed attorney.” The State Bar’s exploration of a supervised licensure program would be in alignment with this provision.

Option 4: Extend the Original PLP for Remaining Participants to Allow Development of a Permanent Alternative Licensure Status

This option is the same as option 3, except instead of developing a supervised practice pathway during the period of program extension, the State Bar would, beginning January 1, 2025, develop a plan to segue the remaining Original PLLs into a permanent alternative licensure status. Staff envision that this could take one of two forms:

- A permanent PLL license, under which licensees would be permitted to perform the full scope of services of a fully licensed lawyer, but always under supervision; or
- A limited scope license, under which licensees would be able to perform certain tasks, in defined areas, but without supervision.

The development of this alternative licensure status would be delayed to January 1, 2025, in conformity with Business and Professional Code section 6034.1, which permits the State Bar to reinstitute conversations about such limited scope licenses at that time.

Option 5: Extend the Original PLP for Remaining Participants and Allow Participants to Take the One-Day Attorneys’ Exam Instead of the Full Two-Day Bar Exam

This option would extend the Original PLP for three years, through December 31, 2025, and allow continuing participants to demonstrate minimum competence by passing the one-day Attorneys’ Exam in lieu of the full two-day bar exam. Today, attorneys licensed in other U.S. jurisdictions, who have been active licensees in good standing for at least four years immediately preceding the California bar examination they are sitting for, may elect to take the Attorneys’ Examination rather than the general bar examination. (See Business and Professions Code section 6062.)¹⁰ In short, these attorneys need only to take the essays and performance test but are not required to sit for the 200-question multiple choice, Multistate Bar Exam.

This option would recognize the value of the work performed as a PLL in the same manner that having practiced for at least four years in another jurisdiction is ascribed value. To ensure fairness and protection of the public, staff recommend that the Supreme Court establish a minimum number of hours that must be worked as a PLL before this option is made available. This condition is necessary because, even though the program has been in existence for two years, we have only limited anecdotal information about how many hours Original PLLs have actually worked in a PLL capacity. Staff recommend, however, that time worked as a PLL before December 31, 2022, is allowed to be considered along with hours worked subsequent to that date, both with verification from the supervisor.

¹⁰ The requirement is simply that they be licensed and have been in active status for at least the four years immediately preceding the exam. There is no requirement that they have performed a minimum amount of hours of legal practice prior to being eligible to sit for the Attorneys’ Exam.

Options Not Recommended

Staff considered but do not recommend the following options, as they do not further the policy objectives and considerations discussed above:

- Permit the Original PLP to sunset.
- Reopen the Pathway PLP for those who did not previously apply; sunset the program as to the remaining participants.
- Terminate and do not reopen the Pathway PLP.

Committee of Bar Examiners Input

Because there was not sufficient time to seek the input of the CBE as a whole prior to this meeting of the Board of Trustees, staff sought members' individual opinions about what they would recommend to the Board. Five of the 19 members of the committee responded.¹¹

- 1 recommended creating a permanent licensure status for PLLs that does not require passage of a bar exam.
- 2 recommended sunsetting both programs at the end of this calendar year as currently set forth in the California Rules of Court.
- 1 recommended sunsetting the Original PLP but extending the Pathway PLP for current participants and reopening the program for those who did not previously apply due to lack of notice.
- 1 recommended sunsetting the Original PLP and the sunsetting the Pathway PLP for those who haven't met all the requirements but re-opening the Pathway for those who did not receive notice and therefore did not apply for the program.

Arguments made by these committee members in support of termination of the Original PLP include the fact that the purpose of the program was to provide relief to those graduating during the height of the pandemic. The feeling is that conditions leading to the creation of the program have passed, and the bar exam has returned to an in-person event. There was also an issue of fairness raised—vis-à-vis 2021 and 2022 law graduates who were afforded no similar ability to practice as PLL. Three of the five respondents also referred to or alluded in their responses to the work the BRC has been undertaking, suggesting that a Board recommendation to create a permanent pathway would not be appropriate at this time, due to both purview and complexity reasons.

FISCAL/PERSONNEL IMPACT

When the State Bar launched the PLP, admitting nearly 1,600 individuals to the two programs, workload was absorbed by existing staff in the Office of Admissions. Reopening or extending the programs would have the following impacts:

Option 1: Reopening the Pathway PLP to as many as 1,154 applicants will require application processing. In addition, data suggests that very few of these applicants have a current positive

¹¹ Two members were just named to the committee in the weeks before their input was solicited. They likely did not feel they were in a position to respond.

moral character determination. Moral character receives and processes 7,000 to 7,500 cases per year. The cost of processing moral character applications exceeds the revenue received for this purpose. The cost of applying for the PLP is \$55, or \$50 if the PLP work will be performed with an Interest on Lawyers' Trust Account-funded program. This revenue is not sufficient to cover the costs of processing each participant, which includes not only the review of the application but also the review of hours reported and supervisor evaluations. Adding up to 1,154 new moral character applications without additional staff will impact staff's ability to process all applications timely, though the exact number of Eligible PLLs who will apply to participate in the program, as well as the timing of submission of their corresponding moral character applications, is unknown.

The costs and workload associated with extending the current program for the roughly 30 participants who meet the criteria would be minor and absorbable.

Option 2: Continuing this program for the approximately 130 remaining applicants eligible under this option would have minor and absorbable costs. Over the course of the three-year period of the extension, it would be expected that as many as two-thirds of the applicants could change supervisors, requiring staff to process new supervisor declarations and confirm eligibility.

Option 3: The costs of developing and launching a pilot supervised practice program envisioned by this option are unknown at this time and would vary depending on the level of oversight built into the new licensure status, as well as the revenue to be generated from new licensing fees. The fiscal and personnel implications of this approach would be taken into consideration in developing a specific program design if and when the Court directs the State Bar to do so. The fact that this program would be capped at roughly 130 people will assist in keeping the costs under control.

Option 4: The costs of developing and launching a plan to segue the remaining Original PLLs into a permanent alternative licensure status are unknown at this time and would vary depending on the level of oversight built into the new licensure status, as well as the revenue generated from new licensing fees. The fiscal and personnel implications of this approach would be taken into consideration in developing a specific program design if and when the Court directs the State Bar to do so. The fact that this program would be capped at roughly 130 people will assist in keeping the costs under control.

Option 5: The costs of extending the program for approximately 130 participants and permitting them to take the Attorneys' Exam instead of the general bar exam would be minimal.

AMENDMENTS TO RULES OF PRACTICE OF THE STATE BAR COURT

Title 9, Division 4, Rules 9.49 and 9.49.1

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- a. 1. Increase the number of attorneys admitted through special admissions programs.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees directs staff to transmit to the Supreme Court for its consideration options 1 to 5 as discussed in this agenda item and set forth in Attachment D, with the recommendation that the Court adopt option 1 and one of the options set forth as options 2 through 5; and it is

FURTHER RESOLVED, the Board of Trustees directs staff to assist the Court by preparing draft language for each of the options transmitted.

ATTACHMENTS LIST

- A. None provided in November 21, 2022, revision.

EXHIBIT 4:
WRITTEN PUBLIC
COMMENT



The State Bar *of California*

OFFICE OF THE EXECUTIVE DIRECTOR

Date: November 16, 2022

To: Members, Board of Trustees

From: Louisa Ayrapetyan, Board Secretary, Office of the Executive Director

Subject: Received Written Comment for November 17-18, 2022, Board of Trustees Meeting

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Provisional Licensure Extension

Luke Wagner <lukewagner7@gmail.com>

Wed 11/9/2022 9:46 AM

To: secretariat <secretariat@calbar.ca.gov>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Board of Trustees of the California Bar,

I am reaching out regarding the provisional licensure program, which I only discovered recently due to the survey you sent out. During law school I was an accomplished student who served on the editing board of the San Diego International Law Journal, earned an LLM in Taxation, and won a national legal writing contest that resulted in publication of my work in Tax Notes, the most prestigious tax law journal.

Coming out of law school, I was all set for a promising career that would make my immense student loans manageable. After easily passing the ethics exam and moral character background check, all that remained was the bar exam itself.

When my turn finally came to take on the bar exam, the format completely changed and the cut score dramatically increased. Each exam became objectively more difficult to pass than the last. I narrowly failed one of those exams and was heartbroken.

After years of taking exams and paying for specialized tutors, I ran out of money in December 2019. I had to move back in with my parents, learn software engineering skills from scratch, and work a retail job during the pandemic to make ends meet while hoping something would come through. After a year of scrambling I was able to find acceptable work well below my qualifications that required moving halfway across the country.

Then I watched as the bar suddenly dropped its exam standards during Covid. When I received your survey indicating a program existed for provisional licensure but I was never notified and therefore now ineligible, I felt thoroughly betrayed by the system I dedicated years of my life to serving.

Given the short time window for response, I indicated no interest in another program and included negative comments because I believed it was the only chance my voice would be heard. If there is a way to finally receive the licensure I worked for years to attain, I am open to it. Under the same rules of the provisional licensure program, I would qualify due to my bar scores and years of experience interning for The Wagner Law Firm.

The bar association is supposed to be all about justice, and I hope we can resolve the injustice that occurred here.

Thanks,

John Luke Wagner
JD, LLM

FW: Nov. 17-18 Board of Trustees Meeting, Support for Development of a Pilot Supervised Practice Pathway to Licensure

Hernandez, Alfredo <Alfredo.Hernandez@calbar.ca.gov>

Wed 11/16/2022 9:31 AM

To: Hernandez, Alfredo <Alfredo.Hernandez@calbar.ca.gov>

From: Julian Sarkar <jsarkar@sarkar.law>

Date: November 15, 2022 at 9:02:52 PM PST

To: "Ayrapetyan, Louisa" <Louisa.Ayrapetyan@calbar.ca.gov>

Cc: secretariat <secretariat@calbar.ca.gov>

Subject: Nov. 17-18 Board of Trustees Meeting, Support for Development of a Pilot Supervised Practice Pathway to Licensure

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Dear Ms. Ayrapetyan,

Please share with the Board of Trustees ahead of their November 17-18 meeting regarding agenda item 701 that I support the adoption of Option 3: Extend the Original PLP for Remaining Participants to Allow Development of a Pilot Supervised Practice Pathway to Licensure.

Thank you.

Julian Sarkar (he/him/his)

SarkarLaw

345 Franklin Street

San Francisco, CA 94102

(415) 795-8795

jsarkar@sarkar.law

The Law Office of James M. Blucker

3800 E. Concourses St., Ste. 300 – Ontario, CA 91764
www.bluckerlaw.com – info@bluckerlaw.com – (909) 684-5454

November 16, 2022

State Bar of California, Board of Trustees

Via: Email:

donna.hershkowitz@calbar.ca.gov
ruben.duran@bbklaw.com

Re: Board of Trustees Meeting November 17, 2022 12:00 p.m./November 18, 2022 9:00 a.m. – Public Comment – Agenda Item 701

To Board Members and State Bar Staff,

I am a law school professor at the University of La Verne College of Law based in Ontario, California and a practicing attorney with my law office based in Ontario, California. I have been a supervising attorney for an original pathway Provisionally Licensed Lawyer, (CRC, Rule 9.49) who has been licensed under my supervision for this program since December 2020. This PLL has completed roughly 3,800 hours of full-time litigation and transactional work under my supervision since being provisionally licensed. Previously this PLL was a Rule 9.42 Certified Law Student, performing permitted extensive legal activities under my directive supervision since December 2018 and has been employed by my law firm commencing in December 2016. Having been exposed to this PLL for almost six years, I can attest that he is one of the most legally competent “lawyers”, for a more recent provisionally licensed “practitioner” compared to other legal professionals I’ve come across, including newly licensed attorneys who are fully licensed and have practiced less than two years. The PLP program has been immensely successful in developing competent, provisional practitioners.

I have read the agenda item for this meeting. I want to express my gratitude to the Board of Trustees who have taken adequate time to lay out a comprehensive roadmap that details several options for the California Supreme Court’s consideration relating to PLL’s moving forward as the original pathway and expanded pathway is scheduled to sunset on December 31, 2022. After reviewing all recommendations proposed by the Board of Trustees to the California Supreme Court, for the remaining original pathway PLL’s, I wholeheartedly support Option 3, “Extend the Original PLP for Remaining Participants to Allow Development of a Pilot Supervised Practice Pathway to Licensure”.

Over the past few years, there has been widespread discussions within the Blue Ribbon Commission if there should ever be a supervised practice model that leads to full licensure in lieu of taking a bar exam. I understand the BRC’s position being hesitant to create such a pathway when there is no past empirical data to rely on within the State of California. That’s where the original pathway PLL’s could factor in. I agree that Option 3 above, in conducting a pilot project for a supervised practice pathway to licensure is the most auspicious option for using this original cohort which would be helpful in allowing the BRC, or a future body, to make a more informed

decision based on empirical data about the value of a permanent supervised practice pathway to licensure. 168 original pathway PLL's, although a small number, would still be a strong sample size enough to ascertain meaningful empirical data.

For Option 3, what should the requirements be relating to a pilot program that leads to full licensure? I have suggestions based on my 3 years as a professor and 2 years supervising the original pathway PLL. Protecting the public is of the utmost importance when factoring this analysis.

I believe Option 3 could be further developed and narrowly tailored as a further apprenticeship option for the 168 original pathway PLL's. Many original pathway PLL's have already completed hundreds of hours, some thousands like my PLL. However, it is not known what type of work-product and legal work these PLL's have engaged in under supervision that would make them "minimally competent" to be fully licensed to practice law. For any type of pilot program to work to access minimum competence, the State Bar should be involved with creating additional criteria that monitors the PLL's progress each month under the pilot program. (Something somewhat similar to the expanded pathway PLL's, but require more data from supervisors besides logging hours)

This would consist of monthly reports where supervisors of PLL's report back to the State Bar the type of legal services that the supervisor and PLL provide; record-keeping of the amount of hours worked for particular type of legal services – whether litigation and/or transactional; and have supervisors and PLL's produce work-template/work-product that was actually created and utilized within the law practice (while preserving client confidentiality). These are a few options that a law school clinic externship would utilize to assess a law student's competency and analyze their growth over a period of time. This type of approach is similarly utilized at the law school I teach at. For the creation of a pilot program, I would propose a 750-1500 hour requirement. If the average PLL works 35 hours a week for 6 months, that would equate to 840 hours under supervision. I would further propose that this pilot program be in effect for 2 years to allow a PLL to gain 750-1,500 hours of supervision. Once the hour requirement is met, along with any other requirements met as part of the pilot program, then the PLL would become fully licensed. Having this type of pilot program overseeing roughly 168 PLL's progress would allow to analyze and determine meaningful empirical data that comes of it. The sample size of 168 PLL individuals is a small cohort compared to those that apply to take the bar exam each year. This type of oversight by the State Bar over the pilot program would still protect the public since it requires constant supervision by all participants involved.

I can relay from first-hand experience that the supervised practice method has had extensive auspicious results, not only for my PLL; but also our clients who have put trust in my law firm for the PLL to effectively assist in advocating for them on their legal matters.

My law office is a private practice that specializes in real estate litigation; landlord/tenant litigation; general civil litigation; real estate transactions; and transactional estate planning. The PLL has worked within every facet that's related to civil litigation which includes, but not limited to: initiating client intake, assisting with legal strategy for all litigation matters, drafting specialized complaints/answers; propounding/answering discovery; researching discovery response objections, taking and defending depositions, drafting of all specialized court pleadings – including

all dispositive motions (oppositions, replies, demurrers, motion to strike, ex parte pleadings, motion for directed verdict, motion for judgment on the pleadings, motion for summary judgment, stipulations for entry of judgment – all while meeting and conferring with opposing attorneys under supervision), including taking cases to trial as first chair. (bench and jury – along with all necessary jury trial preparation documents – all under my direct supervision) The PLL makes weekly court appearances in all Inland Empire Courts where our law office litigates matters.

It's my understanding that the Oregon Supreme Court has approved a supervised practice model for February 2022 examinees who failed the bar exam. The sample size of these examinees could range anywhere from 10 to 40 examinees. The amount of current original pathway Rule 9.49 PLL's are roughly 168 individuals; a small sample size compared to what a normal number of individuals who take the bar exam each time it's offered in California. The District of Columbia had implemented a 3-year supervised practice pathway option for 2020 graduates that will lead to full licensure for those individuals after they complete the program. By the Board of Trustees recommending Option 3 to the California Supreme Court, there is precedence in other states that will allow supervised practice to lead to full licensure. With the creation of the pilot program and mandating certain requirements leading to full licensure, California will be able to realistically offer data that other states have not been able to provide – The State Bar will be able to provide in depth qualitative analysis of the pilot program which could be used as a model for the BRC or other bodies, and other state bar's consideration for supervised practice leading to full licensure. California can lead the way.

For any pilot program to be successful, all original pathway PLL's must be treated equally if it will lead to conducive results. By instituting further requirements of the pilot program besides a blanket hour requirement, it ensures fairness and protects the public at large. The PLL Program has been a positive benefit overall; not just for my PLL in a personal sense and his professional career; (and other PLL's) it has helped members of the public who have sought legal services from various law firms the most during their darkest hours. I applaud the Board of Trustees for furnishing Option 3 to the California Supreme Court's consideration as an alternative pathway that leads to full admission for this small cohort. I am always available to provide further insight if needed. Thank you for your consideration.

With Warm Regards,

A handwritten signature in black ink, appearing to read 'J. Blucker', with a stylized flourish at the end.

James M. Blucker, Esq.
Professor, Real Property – University of La Verne College of Law
Law Office of James M. Blucker

Supporting PLL Program Option 3

Raymond Hayden <ray@rayhayden.us>

Wed 11/16/2022 6:06 PM

To: secretariat <secretariat@calbar.ca.gov>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi,

Thank you for your assistance, and my apologies for any tardiness in this note.

Support for Option 3 of the Recommendations of the PLL Program:

When the Pandemic had occurred, the California Supreme Court along with the California Bar, put together a program for Newly Graduated Law Students to participate in a program so that they did not suffer additional issues with the inability to start moving forward with their careers in the Profession of Law.

This accidental Beta Test of such a program is what the PLL Program has been - out of a disaster, not only has a viable solution to a short term problem been realized, but the opportunity to exceed "Minimum Competency" while assuring "Public Protection" was born.

While the Blue Ribbon Commission on the Future of the California Bar Exam was discussing alternative pathways for admission, the PLL Program has been demonstrating great success in addressing that very issue.

I fully support Option 3 of the Recommendations set forth by the California Bar Staff - they had been working tirelessly with the Blue Ribbon Commission in assisting them with everything required to move forward with a viable opportunity to create, and tweak, a program which should lead to the Admission to the California Bar.

"Options Not Recommended"

Further, I also fully support the discussion in the section on Options Not Recommended.

The PLL Program has actually been quite successful, and this opportunity for an Alternative Pathway to Admission to the California Bar should not be lost.

Thank you very much for your time and assistance,

Ray

Ray Hayden, J.D.

November 16, 2022

Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: November 17, 2022, Agenda Item 701 - Recommendation to Supreme Court Regarding Pending Sunset of the Provisional Licensure Program

Dear Board of Trustees:

We write on behalf of the California Lawyers Association (CLA) regarding Item 701 on the agenda for the November 17, 2022, Board of Trustees meeting. We note that Option 3 in the Agenda Item would extend the original Provisional Licensure Programs for remaining participants to allow development of a pilot supervised practice pathway to licensure that would not require the continuing participants to sit for and to pass a bar exam before the termination of the program, but instead would have the State Bar develop for Supreme Court approval a supervised practice pathway to licensure for this cohort.

We have attached the following CLA letters addressing the issues this proposal raises:

1. July 14, 2020, letter to the Supreme Court of California regarding prompt entry into practice of 2020 law school graduates, stating, in part: "We believe that any solution must require 2020 law school graduates to eventually pass the California bar exam in some reasonable time period and until such time, any provisional licensure arrangement must include the supervision of law school graduates by licensed attorneys, and disclosure of any provisional status as a matter of public protection."
2. September 15, 2020, letter to the Board of Trustees supporting the proposed new provisional licensure rule, stating, in part: "As we wrote in our letter of July 14, 2020, we believe that any solution must require 2020 law school graduates to eventually pass the California bar exam in some reasonable time period and until such time, any provisional licensure arrangement must include the supervision of law school graduates by licensed attorneys, and disclosure of any provisional status as a matter of public protection."

3. December 18, 2020, letter to the Board of Trustees supporting in principle the proposal to expand the Provisional Licensure Program to previous California bar exam takers scoring 1390 or above.
4. October 11, 2022, letter to the Blue Ribbon Commission on the Future of the Bar Exam expressing CLA's concerns with the proposal under consideration to establish a "non-exam pathway" for licensure to practice law in California as an alternative to the California Bar Exam.

Consistent with our prior comments, CLA has concerns with and does not favor a "non-exam pathway" (whether for provisional licensees or others) as presented in Item 701, particularly in light of the recent and ongoing work of the Blue Ribbon Commission.

We appreciate your consideration of our comments.

Sincerely,



Oyango A. Snell
CEO and Executive Director



Jeremy M. Evans
President

October 11, 2022

Blue Ribbon Commission on the Future of the Bar Exam
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposal to Establish a Non-Exam Pathway for Licensure in California

Dear Members of the Blue Ribbon Commission:

The California Lawyers Association (CLA) submits these comments expressing our concerns with the proposal under consideration by the Blue Ribbon Commission (BRC) to establish a “non-exam pathway” for licensure to practice law in California as an alternative to the California Bar Exam. For the reasons discussed below, CLA urges the BRC not to recommend a non-exam pathway. At the same time, we encourage the BRC’s continued exploration of other issues under consideration, including potential revisions to the California Bar Exam.

1. A Non-Exam Pathway Would Eliminate Any Form of Objective Testing

We recognize that the current California Bar Exam is not a perfect method of measuring the qualities, training, and capabilities necessary to ensure that an individual is competent to practice law in this state. The bar exam is, however, an objective and controlled test. The proposed non-exam pathway would eliminate testing entirely as a method of determining minimum competence. Instead, it would rely upon a combination of experiential education units and post-graduation, supervised practice.

A non-exam pathway would not ensure substantive knowledge of foundational legal concepts, legal writing skills, or analytical skills under an objective and uniform standard. Experiential education and supervised practice would vary widely and allow licensure based on vague and subjective standards. Given these wide variations, the State Bar would not be able to implement a single standard of competence. In addition, experiential programs are generally designed to achieve completion of the program, or some set number of hours, which is fundamentally different than testing minimal competence. We believe consumers of legal services will not be adequately protected if there is no requirement that a person seeking to be licensed to practice law in California demonstrate a basic working knowledge of key legal principles and concepts under some objectively measurable standard.

2. A Non-Exam Pathway Raises Significant Implementation and Integrity Concerns

CLA is concerned about the ability to implement and maintain the integrity of a non-exam pathway.

The proposed non-exam pathway could open the door to supervision by unqualified and potentially unscrupulous law firms and lawyers. Experience with Ontario's Articling Program, an experiential training component of their lawyer licensing process, illustrates the nature of these concerns. *Options for Licensing*, the May 24, 2018 consultation paper from the Law Society of Ontario, Professional Development & Competence Committee, noted that the "power imbalance inherent in articling can lead to abuses." (*Options for Licensing* at p.11.) A survey conducted about the program revealed the extent to which candidates were subject to sexual harassment, as well as racial, gender, and other forms of discrimination, and felt they had received differential or unequal treatment due to personal characteristics.

Even without actual misconduct by supervising lawyers, there are considerable questions and concerns relating to approval, oversight, and consistency of supervising lawyers. As noted in the Ontario report:

The nature of the articling experience depends on the individual circumstances of the candidate and the Articling principal, and therefore consistent exposure to competencies can be an issue.

(*Options for Licensing* at p.11.)

Finally, we note that effective monitoring and quality control of experiential programs will be time-consuming, labor intensive, and costly. We question whether sufficient resources would be available to adequately ensure that individuals licensed to practice through such programs are competent to practice law in this state.

3. A Non-Exam Pathway May Have an Adverse Impact on Efforts to Increase Diversity in the Legal Profession

CLA's mission is promoting excellence, diversity, and inclusion in the legal profession and fairness in the administration of justice and the rule of law. We are deeply committed to increasing diversity in the legal profession and understand that one goal of establishing a non-exam pathway would be to increase diversity within the profession. We believe that establishing a non-exam pathway is not the right way to increase diversity and that it could – at least indirectly – exacerbate the problem.

Given the sheer number of California licensure applicants every year, we anticipate a gap between the demand for supervisors and the available opportunities to secure a supervisor. It is likely that the demographics of the pool of available supervisors would skew toward those who are currently the most represented in the legal profession and against those who are the least represented. Some may easily secure a colleague or have ready access to a supervisor while others may be far removed from any such possibilities. Equity issues related to securing a supervisor could therefore create a two-tiered system, undermining any effort to increase diversity in the profession.

4. The Blue Ribbon Commission Should Pursue Other Potential Reforms

Instead of recommending elimination of the bar exam entirely, we urge the BRC to focus on potential reforms to the bar exam itself, including continued exploration of ways to ensure that the exam is an effective tool for testing the knowledge, skills, and abilities required of entry-level California attorneys and to help eliminate disparate bar exam passage rates.

The impact of bar exam reformation efforts should be studied before California introduces an entirely new process that would eliminate the bar exam. Ultimately, experiential education or post-graduation, supervised practice may be a desirable component as an adjunct to, but not a substitute for, the California Bar Exam.

We appreciate your consideration of our comments.

Sincerely,



Oyango A. Snell
CEO and Executive Director



Jeremy M. Evans
President

December 18, 2020

Board of Trustees
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Provisional Licensure with a Pathway to Full Licensure

Dear Trustees:

We write on behalf of the California Lawyers Association (CLA) in response to the proposal that would expand the Provisional Licensure Program to previous California Bar Examination takers scoring 1390 or above, with a pathway to full licensure. CLA supports the proposal in principle but takes no position on Option A versus Option B or the number of hours of supervised legal practice that should be required.

As the statewide, voluntary bar association for all California attorneys, including students, newly admitted professionals, and those awaiting admission, we have previously written in support of the adoption of new rule 9.49 governing the current Provisional Licensure Program. In addition, we have closely followed the analysis and discussions ultimately resulting in the California Supreme Court's decision to lower the minimum passing score for the California Bar Examination to 1390 for those taking the bar exam in October 2020 and beyond. We also look forward to the work of the Blue-Ribbon Commission on the Future of the California Bar Examination and strongly endorse the approach of taking a fresh look at the bar exam, with potential long-term modifications, and whether to adopt alternative or additional testing or tools to ensure minimum competence to practice law.

Against this background, CLA believes the framework of the current proposal strikes the proper balance. It appropriately includes elements of the existing Provisional Licensure Program while, at the same time, acknowledging the new minimum passing score of 1390 and the fact that those who may be eligible under the expanded program are likely to have been away from law-related jobs or legal education for longer periods of time.

We appreciate your consideration of our comments.

Sincerely,



Ona Alston Dosunmu
C.E.O. & Executive Director



Emilio Varanini
President

cc: Donna Hershkowitz

September 15, 2020

Board of Trustees
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed New Provisional Licensure Rule

Dear Trustees:

We write on behalf of the California Lawyers Association in support of the proposed new provisional licensure rule.

As the statewide, voluntary bar association for all California attorneys, including students, newly admitted professionals and those awaiting admission, we have previously written the State Bar and the Supreme Court offering our support and perspective with respect to options to facilitate the prompt entry into practice of 2020 law school graduates. As we wrote in our letter of July 14, 2020, we believe that any solution must require 2020 law school graduates to eventually pass the California bar exam in some reasonable time period and until such time, any provisional licensure arrangement must include the supervision of law school graduates by licensed attorneys, and disclosure of any provisional status as a matter of public protection. We are pleased to see that these components have all been carried forward into the proposed new rule.

We appreciate the Provisional Licensure Working Group's analysis of these and other components of a supervised provisional licensure program. We agree with the working group's recommendations, following its examination of other states that have implemented a provisional licensure program, California's own Practical Training of Law Students program, and other special admissions programs that allow out-of-state attorneys to practice in California in limited ways, as a means of helping to design this short-term but important program.

Sincerely,



Ona Alston Dosunmu
C.E.O. & Executive Director



Emilio Varanini
President

cc: Donna Hershkowitz

July 14, 2020

Chief Justice Tani Cantil-Sakauye
The Honorable Ming Chin
The Honorable Carol Corrigan
The Honorable Goodwin Liu
The Honorable Mariano-Florentino Cuéllar
The Honorable Leondra Kruger
The Honorable Joshua Groban
Supreme Court of California
350 McAllister Street
San Francisco, CA 94107

Re: 2020 California Law School Graduates

Dear Chief Justice and Associate Justices of the Supreme Court of California:

We write on behalf of the California Lawyers Association to follow up on our letter of April 6, 2020, encouraging the State Bar and the Supreme Court to explore options to facilitate the prompt entry into practice of 2020 law school graduates, and to note our interest in the proposal from California law schools deans, law students, and others in support of a “Diploma Privilege” for 2020 California law school graduates.

As the statewide, voluntary bar association for all California attorneys, including students, newly admitted professionals and those awaiting admission, we write to offer our support and perspective with respect to options you may consider to facilitate the prompt entry into practice of 2020 law school graduates. We recognize and appreciate the extraordinary efforts the State Bar and Supreme Court have made and continue to make to offer a fall bar exam and to pursue other options to facilitate the ability to practice for the law school graduating class of 2020. We understand how truly extraordinary this moment in history is and how it may not be possible to safely and fairly administer the bar exam to everyone who is eligible to sit for the test in the fall. We also recognize that studying for and taking the bar exam is a stressful experience under the best of circumstances and are sympathetic that these are uniquely difficult times. We further acknowledge the disparate effects these challenging times have had on many diverse and first-generation graduates, many of whom have been impacted by both COVID-19 and racial inequities.

July 14, 2020

Page 2

We have followed these issues and acknowledge that those tasked with the ultimate decisions must strike the right balance among sub-optimum choices. We believe that any solution must require 2020 law school graduates to eventually pass the California bar exam in some reasonable time period and until such time, any provisional licensure arrangement must include the supervision of law school graduates by licensed attorneys, and disclosure of any provisional status as a matter of public protection. We note that this would be analogous to provisions in the State Bar Rules and California Rules of Court, rule 9.42, governing law school students and graduates under the Practical Training of Law Students Program and in essence is the same as the request contained in the July 9, 2020 letter from Assemblymembers Mark Stone and Lorena Gonzalez to the Supreme Court, with the exception of the disclosure requirement which we would recommend. To be clear, the California Lawyers Association supports reasonable accommodations for the 2020 law school graduates seeking admission to practice law in California, but opposes any arrangement that would forever exempt law school graduates from the requirement that they pass the California bar exam. As you deliberate over how to simultaneously protect the public and not further exacerbate the stresses and challenges recent graduates face in this unparalleled historic moment, CLA stands ready to assist in any way we can.

Sincerely,



Ona Alston Dosunmu
C.E.O. & Executive Director



Emilio Varanini
President



Howard F. Wilkins III
Chair

cc: Alan Steinbrecher
Donna Hershkowitz

State Bar of California,

the COVID pandemic has caused many changes of a social, economic, or administrative nature around the world. There is no doubt that the times in which we live today are unique but also very difficult. Ubiquitous inflation and social problems are still not stabilized after the pandemic. Actions taken by governments and various organizations in response to the difficult social situation have often been very effective and have brought many interesting solutions. Such was the California Bar's establishment of a provisional licensing program. Thanks to this program, many law school graduates affected by the pandemic have the opportunity to develop themselves as lawyers under the guidance of their superiors. The program was and is an excellent solution to this difficult situation, and it works very well. Therefore, there is no doubt that the California Bar should find a solution that will stabilize the situation of those enrolled in the program and allow them to access the profession on full-fledged terms.

Many of the members of the programs have practiced as professional licensed lawyers since the very beginning of the program, that is, for more than 2 years. It counts not to many hours worked under the guidance of a licensed attorney, as well as meetings with clients or even representation of clients before the court. There is no doubt that this kind of training perfectly prepares one for the legal profession by gaining adequate experience.

The program has given and continues to give its members opportunities for professional growth and should be a pass to full licensure. Its termination will contribute to the irreversible loss of the professional experience that was gained during the program. The requirement to pass the bar exam during the program is not necessarily a good thing in the current situation, as those in the program often worked full time, which was very difficult to combine with studying for the exam.

In many places around the world, training under the guidance of a professional is the ticket to becoming a professional lawyer, such approaches have been practiced for years in Europe and pass the test very well. Those in the program, have both theoretical knowledge gained during law school, as well as practical knowledge, which they have learned from many hours of practice under eight of their supervisors.

The California Bar is partly responsible for the future of those in the program, as it has allowed them to practice law under the guidance of supervisors, thereby making them part of California's legal community. Now those in the program are counting on the Bar to come up with a solution that will help them obtain a full license as a result of the practice and training gained during the provisional license.

At present, the program is coming to an end, so decisive action is necessary on the part of the Bar to ensure stability for those covered by the provisional license, as well as their employers and clients with whom the provisional lawyers are working and handling their cases.

There is a lot of talk from members of the California Bar that people covered by a provisional license are doing a wonderful job as provisional attorneys and are achieving excellent results in the cases in which they are involved. Without a doubt, these individuals are ready to practice as fully licensed lawyers. Members of the program have more experience than lawyers who have passed the exam but are fresh out of law school. The California Bar cannot allow this kind of training and experience to lead to basically nothing. No solution has been offered to those in the program at this time.

We propose that those who practiced law under the supervision of supervisors be fully licensed as of the last day of the program. These individuals have accumulated many hours of experience as a lawyer, which they can document and present. This experience is essential in working as a professional lawyer, and cannot be replaced by anything else. Many of the

program's participants have been working using their licenses for more than 2 years, often full time, which adds up to tens of thousands of hours worked as a provisional lawyer.

Alternatively, the program should be extended until the bar works out a suitable solution for the provisionally licensed that will lead to a full license.

We are ready to present many letters in support of a full license for provisionally licensed attorneys, as well as statements from its participants and fully licensed attorneys, confirming that they have the knowledge and skills to be listed as attorneys without having to take the exam.

Participation in the program gives law graduates an amazing opportunity to work as lawyers under the supervision of a supervisor and thus develop them and acquire the skills necessary for the work of a lawyer. These individuals have received and continue to receive excellent training and are ready to handle cases on their own.

Kinga Paprocka
Provisional Licensed Lawyer

11/15/2022

Public Comment re PLP Proposal

Martin Pritikin <martin.pritikin@purdueglobal.edu>

Wed 11/16/2022 10:01 PM

To: secretariat <secretariat@calbar.ca.gov>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern,

I am writing to express my support for the "Option 3," found on page 9 of the applicable attachment, for the extension of the Provisional Licensure Program (PLP) and development of a pilot supervised pathway to practice program. Unfortunately, I likely will not be able to attend the live CBE meeting itself, but wanted to share my thoughts.

The State Bar had already commissioned a Blue Ribbon Commission (BRC) to study potential changes to the bar exam. And the formation of the BRC was motivated, in part, by uncertainty as to whether or to what extent the current incarnation of the bar exam actually serves its goal of public protection by testing what new lawyers actually need to know and do. In light of this, it only stands to reason that the State Bar should also take the opportunity to gather empirical data as to whether there is an avenue beside the bar exam--like supervised practice--that could serve the same goals as well or better, while potentially addressing the concerns about diversifying the profession that the bar exam has so far failed to address.

Although bar examinations have been ascendant in the last 90 years or so, it was not always that way: apprenticeships were the dominant method of preparing new lawyers to enter the profession. I am not aware of empirical evidence that shows that bar exams do a better job of screening future lawyers than apprenticeships did. But there is empirical evidence that bar exams have done little to diversify the profession, which is purportedly a goal of the State Bar. Creating the recommended pilot would be a commonsense way to gather evidence about what the best course(s) may be moving forward.

Thank you or your consideration of this comment.

Martin Pritikin

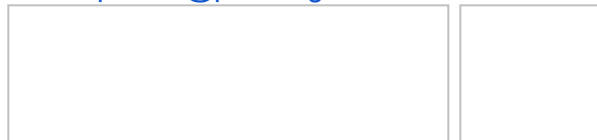
Dean and Vice President

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10100 Santa Monica Blvd., Suite 300

Los Angeles, CA 90067

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Public Comment - BOT item 701

Linda Keller <lkeller@tjssl.edu>

Wed 11/16/2022 10:51 PM

To: secretariat <secretariat@calbar.ca.gov>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

RE Item 701:

Thomas Jefferson School of Law is in support of Option 2, to extend the Original Program for three years for those participants whose only outstanding requirement is passage of the California Bar. Our graduates in this program come from diverse backgrounds and have provided much needed access to justice in their communities. Allowing them additional opportunities to pass the bar exam will only further the interests of the State Bar and will allow for continued, uninterrupted service for their clients. The Law School would also support passage of Option 3 to the extent it allows this same group to continue to thrive under the PLP. It is understood that additional data is necessary before the BRC or a future group can adequately assess alternative pathways to licensure, and this cohort could provide that valuable opportunity likely not obtained elsewhere.

Linda M. Keller
Dean & Professor of Law
Thomas Jefferson School of Law
701 B Street, Suite 110
San Diego, CA 92101
619-961-4282

Pronouns: she/her/hers

<http://www.tjssl.edu/directory/linda-m-keller>

<https://www.ssrn.com/index.cfm/en/thomas-jefferson-legal-studies/>

https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=352672

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November 16, 2022

To: Whomever it may concern,

Presently, my firm, Gibbons & Gibbons, employs Provisionally Licensed Attorney, Chelsea Krueger. Ms. Krueger has been employed with my firm while in law school and after graduation. This letter is to inform the committee of not only Ms. Krueger's demonstrated abilities as an attorney, but the program in general.

As a Provisionally Licensed Attorney, Ms. Krueger has appeared in court over 150 times representing clients in restraining order and criminal matters. I have spoken with the judges or commissioners that she has appeared before, and all have raved about her professionalism, her preparedness, and her ability to marshal the facts with the relevant statutes and case law. She works with minimal supervision and always asks questions and has either my partner or I review her work. She assists both myself and my partner with trial briefs and drafting questions. The questions she wants us to ask during a trial are always on point as if she was a seasoned trial attorney. In short, Ms. Krueger is an actual attorney, an extremely competent one, without being fully licensed.

As for the Provisionally Licensed Attorney Program, I fully support it and expanding it. As you know, law schools train students to think like lawyers. Although law schools are trying to give their students practical experience, it is not enough training to make them competent lawyers. Too many newly admitted attorneys open their own practice and poorly representing their clients. In short, they are walking malpractice. I see it in court daily. The best part of the Provisional License is that it allows graduates to practice law, under the general supervision of a lawyer. These individuals are receiving the practical experience that they are not receiving in law school because law schools cannot replicate an actual law firm.

Ms. Krueger deserves to be fully licensed. I reviewed the attachment to the agenda item regarding the pending sunset of the provisional licensure program and I must say, I was taken aback. I can only speak to the experience my firm has had with Ms. Krueger, but I do not say this lightly, she is as competent as a fully licensed attorney and deserves to be. I support and encourage the option to fully license these individuals because these last two years Ms. Krueger has proven her competence in the best way possible, through real life scenarios.

Best regards,

Marc Gibbons



SCHOOL OF LAW
NORTHWESTERN CALIFORNIA UNIVERSITY

2151 RIVER PLAZA DRIVE, SUITE 306
SACRAMENTO, CA 95833

November 16, 2022

TELEPHONE (916) 920-9470
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Ruben Duran, Chair
State Bar of California Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, CA 94105

**Re: Support of Option 1 of the Recommendation to Supreme Court Regarding
Pending Sunset of the Provisional Licensure Program**

Dear Members of the Board of Trustees:

On behalf of Northwestern California University School of Law, I am writing to strongly support 'Option 1' of the proposed 'Recommendation to Supreme Court Regarding Pending Sunset of the Provisional Licensure Program.'

The position of support for Option 1 is taken because it is the only one that would be appropriately fair to the individuals who could have participated in the Pathway Provisional Licensure (PLL) program but did not because notification of its existence was not sent to them. Allowing them to participate in it and meet its requirements through an extended period of eligibility is reasonable and most appropriate under the circumstances.

Opening the application period to June 30, 2023 and sunseting the program on December 31, 2025 seems absolutely fitting and fair, especially considering the awful sense of loss and unfairness that those who were eligible for participation in the program, but who were simply unaware of it, would always feel.

The school, otherwise, supports the suggestion that is referenced on page 11 of the Executive Summary of creating a permanent licensure status for Provisionally Licensed Lawyers that does not require the passage of a bar examination.

Thank you for considering the above-stated comments.

Respectfully Submitted,

Michael P. Clancey, Dean

FOUNDED IN 1982



LOS ANGELES COUNTY BAR ASSOCIATION

200 South Spring Street | Los Angeles, CA 90012
Telephone: 213.627.2727 | www.lacba.org

November 16, 2022

Board of Trustees
California State Bar
181 Howard Street
San Francisco, California 94105

Re: November 17, 2022 Meeting Agenda Item 701 - Recommendation to
Supreme Court Regarding Pending Sunset of the Provisional Licensure
Program

Dear Board of Trustees:

The Los Angeles County Bar Association writes to oppose a proposal by the State Bar to circumvent votes by the Blue Ribbon Commission on the Future of the Bar Exam (BRC) and create a “non-exam pathway to licensure” at the upcoming November 17, 2022 Board of Trustees Meeting.

Specifically, Agenda Item #701 is “Regarding Pending Sunset of the Provisional Licensure Program.” This agenda item relates to a pending sunset of the Provisional Licensure Program (PLL) and potential suggested options for the Board to consider. As part of this agenda item, the State Bar includes an Option #3 entitled “Extend the Original PLP for Remaining Participants to Allow Development of a Pilot Supervised Practice Pathway to Licensure.” Option #3 establishes a “pilot program” for a non-exam pathway to licensure that would allow future candidates to circumvent the bar exam through supervised practice. This pathway has been specifically rejected by the BRC and should not be considered by the Board of Trustees.

As you are aware, the BRC was established in 2020 to evaluate what, if any, changes to make to the bar exam and licensure. The BRC concluded its agenda on November 3, 2022 and will issue a preliminary report in January 2023, which will be followed by a public comment period. On four different occasions, the BRC voted on various proposals to “explore” a non-exam pathway to licensure, as envisioned by Option #3 of Agenda Item #701. Each of these proposals was rejected by the BRC.

In addition to the BRC's rejection of the exploration of a non-exam pathway to licensure, 27 bar associations signed letters opposing the establishment of a non-exam pathway. Letters from LACBA and the California Lawyer's Association are attached to this letter. The bar associations that joined the letter include regional bar associations across our state, and also minority and affinity bar organizations, such as the John M. Langston Bar Association, Asian Pacific American Bar Association, the Arab American Lawyers Association, the South Asian Bar Association, and the Black Women Lawyers Association. The bar association letters make clear that practicing attorneys oppose the establishment of a non-exam pathway or any program that circumvents the California Bar Exam as a requirement for licensure.

The current attempt by the State Bar to include an option for a non-exam pathway "pilot program" runs contrary to the votes of the BRC and the opinions of the bar associations. Option #3 would also establish a non-exam pathway without public comment or prior to the final report of the BRC. We urge you to reject any attempts by the State Bar to explore a non-exam pathway and circumvent the BRC and the bar associations.

We therefore request that the Board of Trustees reject these proposals or remove Agenda Item #701 from the Agenda and allow public comment from bar associations and others prior to voting on these proposals.

Thank you very much for your consideration.

Sincerely,

Ann Park
President
Los Angeles County Bar Association



LOS ANGELES COUNTY BAR ASSOCIATION

200 South Spring Street | Los Angeles, CA 90012

Telephone: 213.627.2727 | www.lacba.org

October 10, 2022

Blue Ribbon Commission on the Future of the Bar Exam
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposal to Establish a Non-Exam Pathway for Licensure in California

Dear Members of the Blue Ribbon Commission:

We understand that on October 13, 2022, the Blue Ribbon Commission on the Future of the Bar Exam ("BRC") is voting on a proposal to establish a "non-exam pathway" which would involve an experiential or internship based approach as an alternative to the bar examination in allowing new admittees to practice law in California.¹ On behalf of the Los Angeles County Bar Association and the undersigned bar associations, we write to express our concerns regarding this proposal.

The undersigned bar associations are strongly committed to increase diversity in the legal profession and have implemented numerous programs to increase the diversity pipeline and provide support to minority law students and attorneys. However, we respectfully submit that establishing a "non-exam pathway" for licensure may not be the right way to increase diversity. Instead, the bar examination could be reformed to help eliminate any disparate bar passage rates and further efforts should be made to ensure that law schools, accredited and unaccredited, ensure proficiency in legal writing and knowledge of foundational subjects in California law.

Materials available on the State Bar's website do not make clear what the precise contours of the "non-exam pathway" would be, and we would request that the BRC provide more information about the "non-exam pathway" proposal and seek input from the undersigned bar organizations and the public before

¹ The undersigned bar organizations do not express an opinion as to whether the bar examination should be waived for experienced lawyers from other states. Many states allow reciprocal admission, and this may be appropriate for California as well.

taking any vote to approve any such program. We are concerned that a “non-exam pathway” to bar admission could be contrary to the State Bar’s mission to protect the public. Such a pathway could eliminate the ability of the State Bar to ensure that all licensed attorneys possess the minimum competence to practice law. The “non-exam pathway” appears unlikely to ensure substantive knowledge of the law, legal writing, or analytical skills under an objective and uniform standard, and instead would allow licensure based on a varying and subjective standard that can be easily manipulated. The availability of a “non-exam pathway” also would disincentivize law schools to teach classes in foundational state and federal legal subjects that are currently tested on the bar exam.

The proposed “non-exam pathway” would also likely allow students in internships supervised by unscrupulous law firms and lawyers to enter the practice of law without the knowledge, skills, or abilities to competently practice law. This result would be particularly alarming in California, which permits students of non-ABA accredited, non-California accredited, and correspondence law schools to apply for licensure.²

As the State Bar is well aware through the many cases of attorney discipline it is required to investigate and prosecute every year, many unqualified lawyers and non-lawyers are currently operating in California. The establishment of a “non-exam pathway” could open the floodgates to unqualified and unscrupulous legal practitioners to the detriment of needy clients, particularly in immigrant and underserved communities.

In addition to the important questions of how the “non-exam pathway” program would work, and how the integrity of the program could be maintained, we are concerned about the significant cost of the program. In California, on average over 10,000 persons take the bar each year — a far larger number than the number of persons seeking to enter the bar each year in New Hampshire or Oregon, where a “non-exam pathway” is being implemented. The proposed “portfolio review” process for the “non-exam pathway” is time-consuming and labor intensive and will require a significant investment of funds for the hiring and training of numerous “regulators” needed to perform the reviews in a timely fashion. We do not know how extensive that “portfolio review” would be. We are concerned that the State Bar does not have the resources to effectively monitor the integrity of thousands of experiential internship programs and perform the detailed “portfolio review” by regulators to ensure that persons choosing the “non-exam pathway” are competent to practice law.

For these reasons, we cannot support a proposal that could damage the public and legal profession by hastily and unnecessarily establishing a “non-exam pathway” for licensure without the concerns we articulate above being addressed. To that end, the State Bar should provide a long-enough comment period for bar associations to provide input regarding any concrete proposal for substantive revisions to licensure, including changes to the bar exam or a potential

² An internship or apprenticeship program may be desirable for all new admittees, but as an adjunct to, and not as a substitute for, the bar examination.

Proposal to Establish a Non-Exam Pathway for Licensure in California

non-exam pathway, prior to the BRC or State Bar making a recommendation to the Supreme Court.

Sincerely,

Ann I. Park
President
Los Angeles County Bar Association

Cat Cabalo
President
Alameda-Contra Costa Trial Lawyers' Association

Hannah Sweiss
President
Arab American Lawyers Association of Southern California

Derek Ishikawa
President
Asian Pacific American Bar Association of Los Angeles County

Marta Alcumbrac
President
Association of Southern California Defense Counsel

Lisa M. McLean
President
Black Women Lawyers Association of Los Angeles

Nina L. Hong
President
Century City Bar Association

Douglas N. Silverstein
President
Consumer Attorneys Association of Los Angeles

Cristina Jelladian-Buchner
President
Fresno County Bar Association Board

Proposal to Establish a Non-Exam Pathway for Licensure in California

David Mannion
President
Irish American Bar Association – Los Angeles

Anthony V. Costanzo
President
Italian American Lawyers Association

Staci M. Tomita
President
Japanese American Bar Association

Daniel Prince
President
John M. Langston Bar Association

Jesse A. Arana
President
Los Angeles County Criminal Courts Bar Association

Robert S. Rosborough
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Orange County Bar Association

Neil Okazaki
President
Riverside County Bar Association

John W. Short
President
San Bernardino County Bar Association

Mark Johannessen
President
Santa Cruz Bar Association

October 10, 2022

Page 5

Proposal to Establish a Non-Exam Pathway for Licensure in California

Alexander Gruft

President

Santa Monica Bar Association

Pooja V. Patel and Taiyyeba Safri Skomra

Co-Presidents

South Asian Bar Association of Southern California

Deborah Keesey

President

South Bay Bar Association

Celene Chan Andrews

President

Southern California Chinese Lawyers Association

Daniel Forouzan

President

Westside Bar Association



The State Bar *of California*

OFFICE OF THE EXECUTIVE DIRECTOR

Date: November 29, 2022

To: Members, Board of Trustees

From: Louisa Ayrpetyan, Principal Program Analyst, Office of the Executive Director

Subject: Public Comment Received after the Board of Trustees November Meeting
Regarding the Provisional Licensure Program

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From: [Kinga Clara Paprocka](#)
To: [ADMSE](#); [secretariat](#)
Subject: Re: Provisional license program question
Date: Tuesday, November 22, 2022 10:57:36 AM

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TO: Members, Board of Trustees

FROM: Donna S. Hershkowitz, Chief of Programs & Legislative Director
Leah T. Wilson, Executive Director

SUBJECT: Recommendation to Supreme Court Regarding Pending Sunset of the
Provisional Licensure Program

EXECUTIVE SUMMARY

Pursuant to Rule of Court 9.49 and 9.49.1, the two Provisional Licensure Programs (PLPs) operated by the State Bar will sunset on December 31, 2022, unless the Supreme Court takes action to extend the programs. The programs were initially scheduled to sunset on June 1, 2022, but following the Court's consideration of the recommendation from State Bar Executive Director Leah Wilson (see Attachment A), the Supreme Court extended the programs for seven months. As the sunset date has approached, the State Bar has examined data on the participants still in the programs and surveyed the participants and their supervisors. The State Bar also surveyed individuals who were eligible for the Pathway Program (described fully below) but did not apply. Based on the review of the data, the analysis of the surveys, and consideration of public comments that the Board and the Blue Ribbon Commission (BRC) on the Future of the Bar Exam have received in the last several months, staff recommends that the Board of Trustees recommend to the Supreme Court that the programs be extended. This agenda item recommends a set of options for presentation to the Court, which range from simple extension to a path to permanent licensure for all remaining program participants.

BACKGROUND

On July 16, 2020, the California Supreme Court directed the State Bar to "implement, as soon as possible, a temporary supervised provisional licensure program—a limited license to practice specified areas of law under the supervision of a licensed attorney." (See Attachment B)

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180 Howard Street
San Francisco, CA 94105

www.calbar.ca.gov

Los Angeles Office
845 South Figueroa Street
Los Angeles, CA 90017

In explaining the rationale for this direction, the Court expressed that "[t]he changing circumstances surrounding the ongoing COVID-19 pandemic in California... have had an

circumstances surrounding the ongoing COVID-19 pandemic in California . . . have had an unprecedented impact on professional licensure testing. . . . The court understands that many law school graduates are being substantially affected by the resulting disruption. Some graduates have lost job offers. Many are about to lose health insurance, cannot find a job to pay bills, or are in fear of deportation if they cannot enter the bar in time retain job offers. Many more have student loan payments that become due in mid-November, but without a law licensure and the ability to work, they fear going into default.” The Court further noted that “postponement of the bar examination (from summer to fall 2020) may impact employment prospects, delay incomes, and otherwise impair the livelihoods of persons who recently have graduated from law school. Moreover, the court recognizes 2020 graduates may not be in a position to study and prepare for” a fall bar examination.

THE ORIGINAL PROVISIONAL LICENSURE PROGRAM (ORIGINAL PLP)

On October 22, 2020, upon recommendation of the Board of Trustees, the Supreme Court adopted rule 9.49 of the California Rules of Court, effective November 17, 2020, establishing the original Provisional Licensure Program (Original PLP). This program, as initially enacted and subsequently amended, was open to 2020 law graduates who:

- Had not yet passed the bar exam (whether or not they sat for exam).
- Either had an active (i.e., not expired) positive moral character determination or had submitted a complete application for determination of moral character that was

On Tue, Nov 22, 2022 at 9:31 AM Kinga Clara Paprocka <kinga.clara.p@gmail.com> wrote:
Hello, yesterday I received the California Bar's recommendations regarding the provisional license program and I am very concerned. I have been working successfully as a provisional lawyer for two years and I value this program very much. The original version stipulated that there was an opportunity to pass ethics by going through a 4-hour program on a site designed for attorneys, which I have been doing without hesitation. The new recommendations of the bar stipulate as a condition for continuation the passing of the MPRE, which can no longer be done before December 2022. This program is my whole life and my work, I request that the participants of the program be given additional time to pass the MPRE, otherwise, it will be an improper and not fair solution because you can comply with other requirements before the deadline. The program should be extended for all its original participants, possibly giving reasonable time to meet the new criteria. I would very much like to ask for an answer as soon as possible, as this is an issue that could change my entire life and for which I do not have enough time to react and prepare. please note that many people will be deprived of their livelihoods without an extension of the program for them. The program works very well, it should be emphasized that the MPRE requirement is a requirement for a full license, not a temporary one. I would very much like to ask you to work out a fair solution. Enclosed I am sending my letter of support. Kinga Paprocka

From: Tyler G <tgesbeck@gmail.com>

Sent: Tuesday, November 29, 2022 11:31 AM

To: Wilson, Leah <Leaht.Wilson@calbar.ca.gov>; Ruben Duran <ruben.duran@bbklaw.com>

Subject: Urgent: Re PLP Requirements

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Duran and Ms. Wilson,

I am a provisionally licensed lawyer, and I recently gave public comment to the board of trustees regarding the PLP. I respect and appreciate the feedback I received from the board and the hard work done so far.

That said, I would like to take this opportunity to address the board regarding value judgments that were made by the programs chief with respect to PLL's who have not yet met the MPRE and Moral Character Determination

requirements as of November 17, 2022. First, I was shocked when the programs chief called the referenced class of PLL's entitled after having heard their sincere and compelling testimony in support of extending the

PLP. Second, the argument that PLL's "should have" completed all of the requirements by now is juxtaposed to the entire spirit and expressed intent of the PLP in its current form. The very concept of a natural order or progression to meeting the admission requirements has no basis. There are applicants who have passed the bar but not the MPRE and applicants who have passed the bar and the MPRE but have not received a positive moral character determination. Outside of the five-year limit this body just agreed to do away with, an applicant can complete the requirements for admission to practice in any order they see fit before being certified to practice. I want to emphasize this point, because it is particularly deranging. The board proposed ending the five-year limit to meeting all requirements for admission to practice and at the same meeting the board proposed a completely new and arbitrary two-year limit for the PLP.

I heard a nearly identical comment from the programs chief about the five-year limit and why extensions should not be granted during a committee of bar examiners meeting on June 17, 2022. To paraphrase, if something terrible happens to someone at four (4) years and two (2) months when they had planned to meet a requirement, tough. They should have met the requirement if they could have met the requirement in years one (1) through four (4). If the five-year limit is five (5) years, but everything should be done much sooner, why not set the deadline to four (4) years or one (1) year? If the deadline was one (1) year, would the same argument be applied against an extension if a triggering event for an applicant occurred after the second month of the first year?

Personally, I am at the end of the second year and I have not met one (1) requirement because there was a pandemic, I have been working sixty (60) plus hours a week to meet my client's needs, studying for the bar and the MPRE, and caring for my autistic son so that he has the best chance at a decent life. I am also disabled and have been at my absolute limit since I started law school at the end of 2017. I have taken the MPRE and the bar twice, but due to myriad factors, I have not been successful. I am in year two (2) of the typical five (5) and a program was created in light of circumstances like mine, but the programs chief has imposed this deadline that will—imminently—cull up to 43 PLLs.

The reason many of the PLLs have not met all of the requirements has already been testified to and acknowledged by the board, and that is why the PLP exists to begin with. The program was designed to give additional time for the bar exam only, and was extended to offer additional time to meet all requirements for admission as well. The extension in May of 2022 came with an acknowledgement that offering time for active PLLs to meet all requirements would not pose a significant risk to the public. The board has acknowledged the difficulties some of us have faced and continue to face. The board also acknowledged that there is no outsized risk to the public and that PLLs do not have a higher incidence of misconduct compared to fully licensed attorneys. In fact, the data showed lower incidence of misconduct when comparing PLLs to fully licensed attorneys. We have proven through our actions that we are ethical and possess good moral character. We have also completed the new attorney training and additional mandatory ethics training to further mitigate ethics concerns. We are also supervised by licensed attorneys who monitor our interactions with the public to further allay ethics concerns. It was unnecessary to make a moral value judgment of the participants that continue to struggle for one reason or another. As someone who has worked diligently and met the requirements of the PLP—including ethics training—I can tell you that the comment was not well taken.

It is also worth noting that if I had passed the bar exam in 2020, but had not yet met the MPRE or moral character determination requirements as of now, I would still have until 2025 to complete the same, but my PLL status would terminate on December 31, 2022. I understand that the PLP's sunset deadline and the five-year limit are not exactly apples to apples, but the board has completely done away with one and created another without good cause. At the end of the day, a PLL will still need to meet all requirements for admission prior to being certified and extending the PLP for all active PLLs has no bearing on that fact. The only caveat is that the bar exam requirement may be removed in a potential future pilot program.

The proposal that PLLs meet all requirements other than passing the bar by December 31, 2022 now and without notice or any further opportunity to meet those requirements is absolutely unnecessary and harmful to the 43 active PLLs

that have met all requirements of the PLP. The reasons to extend the PLP for those currently enrolled in it were good enough without raising this non-issue, making moral value judgments against us, and casting a pall over the good work we have done. I am calling on Leah Wilson and the Board of Trustees to recognize that the policy objectives toward protecting the public are being met without sacrificing 43 program participants. I further request that the executive summary be amended and transmitted to the Supreme Court of California so that the original PLP will be extended for all active participants that currently meet the PLP requirements.

Respectfully,
Tyler S. Gesbeck

From: Tyler G <tgesbeck@gmail.com>

Sent: Thursday, November 17, 2022 12:48 PM

To: Wilson, Leah <Leah.T.Wilson@calbar.ca.gov>

Subject: URGENT: Re PLP Extension Letter and MPRE Language

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Good Afternoon Ms. Wilson,

Unfortunately, I ran out of time today during public comment. I have read the options, and I am hopeful for the extension of the PLP but I do not exactly understand the MPRE language. There is no suspense for passing the MPRE, but the options say "have passed" the MPRE. Does that mean by today's date, the date the order is signed, or by the sundown date? My hope is that clarifying language will be added with respect to the original intent of the extension that would give PLLs up to two more opportunities (August and November 2022) to pass the MPRE.

Any reply to this email with insight into the suspense for completing the MPRE would be greatly appreciated. I am currently awaiting my MPRE results from last week.

Thank you, and take good care.

From: Nicole Cheatham <nicoleecheatham@gmail.com>
Sent: Thursday, November 17, 2022 7:16 PM
To: Ruben Duran <ruben.duran@bbklaw.com>; Wilson, Leah
<Leaht.Wilson@calbar.ca.gov>
Subject: PLL Program recommendation to Supreme Court

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Dear Ms. Wilson and Mr. Duran,

First thank you for the time and effort that the Bar and Board of Trustees have put into the PLL program. I am a current participant in the Original PLL Program. I have completed all requirements set forth at the time the program became effective in 2020. According to the agenda for item 701 for today's meeting, the program if extended, would require passage of the MPRE by December 31, 2022 in order to continue. I have not taken the MPRE as I chose to prioritize work and studying for the bar exam, with plans to take the MPRE while I awaited bar results. If MPRE passage becomes a new requirement, it will defacto exclude me from participation in the program without a chance to meet the requirement since the next MPRE exam is not until March of 2023. I respectfully ask that extending the time to pass the MPRE be considered when drafting the formal recommendation to the Supreme Court and that those of us who haven't taken the exam be given time to take the March 2023 MPRE. In the alternative, if this reasonable request is not possible, then I ask that we be given the opportunity for reinstatement to the program upon passing the MPRE.

Thank You for your time and consideration.

Respectfully,
Nicole Cheatham

From: Farrah <farrah.usmani@gmail.com>
Sent: Wednesday, November 16, 2022 8:43 PM
To: Wilson, Leah <Leaht.Wilson@calbar.ca.gov>
Subject: Expanded PLP Program Requirements

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Hello Ms. Wilson,

My name is Farrah Usmani, and I am currently an expanded pathway PLL. I was scheduled to take the MPRE for the most-recent administration, but was exposed to covid and advised to self-quarantine for 10 days while my household recovered from the virus. This means that I won't have satisfied the MPRE requirement before the end of the year. That said, I am on track to complete my supervised hours and I've already completed my MCLE courses.

As such, is there any way to apply for an extension of the MPRE requirement? I have previously passed the MPRE in the State of Tennessee (where I am fully licensed), so I have established at least some proficiency and qualifications for professional responsibility.

If you do not think an extension will be possible, do you advise that I just go ahead and advise the CA Bar that I cannot complete the program in time, and thus no longer intend to pursue licensure through the program?

Thank you for your time.

Best,
Farrah Usmani

From: [Amanda Alvarado Ford](#)
To: [Amanda Alvarado Ford](#); [secretariat](#); [Salena Copeland](#)
Subject: Re: Multiple pathways to bar licensure are needed now
Date: Friday, November 18, 2022 7:59:20 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Cal Bar Committee Members,

As the executive director of La Raza Centro Legal San Francisco, a 50-year old award - winning legal aid in the Mission district of San Francisco, I can say there need to be more ways to become a licensed attorney than merely passing the CA bar. Legal aids can be a vetted mechanism to accomplish this goal. For example, our legal aid LRCL-SF is a non profit law office staffed with bilingual bicultural Spanish-speaking licensed attorneys providing free legal services in immigration law, workers rights and Elder and Disability Law with 9 attorneys.

Over the 11 years I've been at our legal aid I have known over half a dozen JD Caseworkers who utilized our one month paid union (SEIU) bar leave to study and then take the bar exam. All test takers were Latinx immigrants or adult children of immigrants. I have seen multiple leaves needed to pass the bar - up to four or more. Of the seven Latinx test takers, only four people passed. Three took the bar four plus times with many paid leaves, and could not pass the bar - and in between paid leaves they worked full time helping us accomplish our mission of being the most trusted provider of legal services in California.

This is a sad statistic that three wonderful J. D. legal workers never could pass the bar. I believe that a test does not gauge one's ability to practice law competently. Low income Californians were deprived of access to free legal services because these three law school grads never passed the bar. Of those several that never passed the bar, one J. D caseworker left the profession entirely; one moved to his home country and tragically, ultimately passed away before reaching age 50. The last J. D. caseworker is still employed at our agency and is a valuable asset and trusted non-licensed member of our legal team... for now. They are disheartened and signaled they likely will also leave the legal profession imminently. The state bar needs to act quickly.

If there had been a pathway to bar licensure in CA by apprenticeship at our CA state legal aids - all of these bar examinees would be licensed attorneys serving the underserved community members of our state who desperately need more qualified legal aid attorneys. This is why I support an alternate pathway to licensure.

In addition to these individuals - I also have many colleagues of color who are law school grads who could not pass the bar and now work in other professions. The situation - with one test standing between one's ability to practice law - is in dire need of reform. Additionally there should be a more minimal test of reciprocity for those admitted in other states to practice in CA, especially when they commit to public service / legal aid careers.

I also believe there is a correlation between people of color - such as our Latinx J.D. staff members - and a lower pass rate. The reasons for Latinx bar examinees passing at lower rates should be investigated and resolved. Thank you for your consideration.

(Note I am resending this comment to correct typos).

Kind Regards,

Amanda Alvarado Ford, Esq.
La Raza Centro Legal
474 Valencia St., #295
San Francisco CA 94103

**EXHIBIT 5:
DRAFT RULE
LANGUAGE**

Rule 9.49.1: Proposed Amendments to Implement State Bar Option 1

(a) Expansion of the Provisional Licensure Program

(1) The Provisional Licensure Program established pursuant to Rule 9.49 shall, no later than March 1, 2021, be expanded to include individuals who scored 1390 or higher on a California Bar Examination administered between July 2015 and February 2020, as determined by the first read score or final score, regardless of year of law school graduation or year satisfying the educational requirements to sit for the bar examination.

(2) For all applicants who applied for the program prior to June 1, 2021, whether or not they were admitted to or began the program, ~~the~~ The Provisional Licensure Program under this rule shall terminate on December 31, 2022, unless the applicant, on or by December 31, 2022, satisfies all of the following:

(A) Completed the State Bar New Attorney Training Program;

(B) Received a passing score on the Multistate Professional Responsibility Exam;

(C) Has an active positive moral determination, unless the applicant has been suspended pending resolution of a final review or appeal under rule 9.49(i)(1)(C);

(D) Submitted all other documentation of completion in the format required by the State Bar;

(E) Has an approved supervisor in place committed to supervise the applicant during 2023. ~~unless the California Supreme Court extends that date.~~

(3) For applicants who have not completed or reported the number of hours of supervised legal practice under (i)(1) – (3) or submitted a satisfactory evaluation(s) required under (i)(2), but have satisfied all the requirements under (a)(2), the Provisional Licensure Program under this rule shall be extended for one year, and shall terminated on December 31, 2023. This extension shall apply to applicants who have been placed in abeyance subject to (i)(5) as long as the requirements under (a)(2) are satisfied.

(4) Applicants who did not apply for the program prior to June 1, 2021, whether or not they completed the application or were admitted into the program, may submit an application for the Provisional Licensure Program before June 30, 2023. Applications shall not be accepted after that date. For such applicants, the Provisional Licensure Program under this rule shall terminate on December 31, 2025.

(b) Definitions

(1) The definitions of "Supervising Lawyer" and "Firm" or "Law Firm" as set forth in rule 9.49(b) shall apply to this rule.

(2) For purposes of this rule, "Provisionally Licensed Lawyer" means an individual who:

(A) Scored between 1390 and 1439 on any California Bar Examination administered between July 2015 and February 2020, as determined by the first read score or

final score, regardless of year of law school graduation or year satisfying the educational requirements to sit for the bar examination; and

(B) Meets the eligibility criteria under (d) and is granted provisional licensure by the State Bar.

(3) For purposes of this rule, "legal practice" means the provision of permitted legal services to clients in compliance with rule 9.49(f) and (g).

(c) Application Requirements

(1) All of the application requirements of rule 9.49(c) apply to applicants for provisional licensure under this rule. ~~An application for provisional licensure under this rule must be submitted to the State Bar no later than May 31, 2021. Applications shall not be accepted after that date.~~

(d) Eligibility Requirements

Except as provided in (a) of this rule, and with ~~With~~ the exception of (d)(1)(A) of rule 9.49, all eligibility requirements of rule 9.49(d) apply to applicants for provisional licensure under this rule. However, an applicant who has previously received an adverse moral character determination is ineligible to apply under this rule unless more than two years has elapsed from the date of the final determination or after some other time set by the State Bar, for good cause shown, at the time of its adverse determination, within the meaning of State Bar Rule 4.49.

(e) Responsibilities of Provisionally Licensed Lawyer

All requirements of rule 9.49(e) and (f) apply to Provisionally Licensed Lawyers under this rule with the exception that the State Bar New Attorney Training program described in rule 9.49(e)(1) must be completed in order for a Provisionally Licensed Lawyer to qualify for admission to the State Bar of California under this rule.

(f) Permitted activities

All of the permitted activities set forth in rule 9.49(g) apply to Provisionally Licensed Lawyers under this rule.

(g) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer under this rule shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(h) Termination of Provisional Licensure

The conditions for termination of a provisional license under rule 9.49(j) apply to Provisionally Licensed Lawyers under this rule.

(i) Admission to the State Bar of California

A Provisionally Licensed Lawyer, under this rule, shall be eligible for admission to the State Bar of California upon compliance with all of the following requirements.

- (1) The Provisionally Licensed Lawyer shall complete 300 total hours of supervised legal practice in the Provisional Licensure Program:
- (2) Provisionally Licensed Lawyers under rule 9.49 who also qualify for participation under this rule may receive credit for hours of supervised legal practice completed as a provisional licensee under rule 9.49 for purposes of meeting the hours requirement under (i)(1). Such individuals must comply with all of the application and eligibility requirements under this rule to qualify for admission to the State Bar of California.
- (3) The Provisionally Licensed Lawyer shall submit, in the format developed by the State Bar of California, a record of the hours of supervised legal practice completed under supervision of the Supervising Lawyer(s).
- (4) The Provisionally Licensed Lawyer must complete the required total number of hours of supervised legal practice, satisfy all eligibility requirements for admission not met at the time of application to the program, have an active positive moral character determination, submit a satisfactory evaluation(s) pursuant to (j)(2), and submit all other documentation of completion in the format required by the State Bar by ~~December 31, 2022~~ the program termination date to qualify for admission to the State Bar.
- (5) A Provisionally Licensed Lawyer who satisfies the requirements of (i)(4), but has a disciplinary matter pending with the Office of Chief Trial Counsel or the State Bar Court shall, prior to the date the Provisional Licensure Program terminates under (a) and (h), be permitted to continue practicing as a Provisionally Licensed Lawyer if all other requirements of this rule have been met. If the disciplinary matter is pending as of the date the program terminates, the Provisionally Licensed Lawyer shall be placed in an abeyance status until the matter is resolved, and shall not continue to practice as Provisionally Licensed Lawyer.
 - (A) If the complaint is resolved with no disciplinary action, before or after the termination of the Provisional Licensure Program under (a) and (h), the Provisionally Licensed Lawyer shall qualify for admission to the State Bar as long as all other requirements for admission remain current and satisfied.
 - (B) If the complaint is resolved with a determination that the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California, the Provisionally

Licensed Lawyer shall not qualify for admission to the State Bar under this program and shall be terminated from the Provisional Licensure Program.

- (6) The Provisionally Licensed Lawyer must comply with all the eligibility requirements for certification to the California Supreme Court for admission to the practice of law under Business and Professions Code section 6060 and rule 4.15 of the Rules of the State Bar of California. A Provisionally Licensed Lawyer who satisfies the requirements of (i)(4) shall be deemed to meet the requirement of Business and Professions Code section 6060, subdivision (g).

(j) Supervision and Evaluation of Provisionally Licensed Lawyer

- (1) In addition to the requirements under (j)(2), all of the eligibility requirements, duties and responsibilities of a Supervising Lawyer set forth under rule 9.49(i) apply to Supervising Lawyers under this rule.
- (2) Each Supervising Lawyer shall provide an evaluation of the Provisionally Licensed Lawyer in the format developed by the State Bar of California. The evaluation shall include the following:
 - (A) Verification of the number of hours of supervised legal practice completed;
 - (B) A general description of the types of supervised legal practice performed by the Provisionally Licensed Lawyer;
 - (C) Whether, in the opinion of the Supervising Lawyer, based on the supervised legal practice performed during the program, the Provisionally Licensed Lawyer possesses the minimum competence expected of an entry level attorney; and
 - (D) Other criteria established by the State Bar.
- (3) If a Supervising Lawyer cannot attest that a Provisionally Licensed Lawyer possesses the minimum competence of an entry level attorney, the Provisionally Licensed Lawyer may not be admitted to the State Bar of California under this program without additional hours of supervised legal practice sufficient to establish to the Supervising Lawyer that the Provisionally Licensed Lawyer possesses the minimum competence of an entry level attorney, and submission of a satisfactory evaluation by that Supervising Lawyer before the termination of the program.

Rule 9.49.1 amended effective May 26, 2022; adopted effective February 1, 2021; previously amended effective March 17, 2021.

Rule 9.49: Proposed Amendments to Implement State Bar Option 2

(a) State Bar Provisional Licensure Program

- (1) The State Bar shall administer a program for provisionally licensing eligible 2020 Law School Graduates ~~through December 31, 2022~~. The program shall be referred to as the "Provisional Licensure Program."
- (2) The Provisional Licensure Program shall terminate on December 31, 2022, unless the ~~California Supreme Court extends that date~~ applicant, on or by December 31, 2022, satisfies all of the following:
 - (A) Completed the State Bar New Attorney Training Program;
 - (B) Received a passing score on the Multistate Professional Responsibility Exam;
 - (C) Has an active positive moral determination, unless the applicant has been suspended pending resolution of a final review or appeal under (j)(1)(C);
 - (D) Submitted all other documentation of completion in the format required by the State Bar;
 - (E) Has an approved supervisor in place committed to supervise the applicant during 2023.
- (3) For applicants who have not received a passing score on the California Bar Exam, but have satisfied all the requirements under (a)(2), the Provisional Licensure Program under this rule shall terminate on December 31, 2025.
- (4) Upon termination of the Provisional Licensure Program, no one who was provisionally licensed pursuant to this rule shall be permitted to continue to practice as a Provisionally Licensed Lawyer, nor shall they represent that they remain provisionally licensed or are otherwise authorized to practice law in the State of California unless they have been admitted to the practice of law in California after meeting all criteria for admission including passage of the California Bar Examination, or are otherwise authorized to practice law in this state other than under this rule. The temporary authorization to practice under supervision under the Provisional Licensure Program does not confer either a plenary license or any vested or implied right to be licensed.

(Subd (a) amended effective May 26, 2022.)

(b) Definitions

- (1) A "2020 Law School Graduate" means a person who became eligible to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061 between December 1, 2019 and December 31, 2020, either by graduating from a qualifying law school with a juris doctor (J.D.) or master of laws (LLM) degree during that time period, or by otherwise meeting the legal education requirements of Business and Professions Code sections 6060 and 6061 during that time period.

- (2) For purposes of this rule, a "Provisionally Licensed Lawyer" means a 2020 Law School Graduate who meets the eligibility criteria of this rule and is granted provisional licensure by the State Bar.
- (3) "Supervising Lawyer" means a lawyer who meets the eligibility criteria of this rule and who supervises one or more Provisionally Licensed Lawyers.
- (4) "Firm" or "law firm" means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division, or office of a corporation, of a governmental organization, or of another organization as defined by rule 1.01 of the Rules of Professional Conduct and the commentary thereto.

(Subd (b) amended effective February 1, 2021.)

(c) Application Requirements

- (1) To participate in the Provisional Licensure Program, an applicant must complete the following application requirements no later than June 1, 2022.
 - (A) Submit an Application for Provisional Licensure with the State Bar, along with a fee of \$75, or \$50 if the employer paying the fee receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute. There shall be no fee for applicants whose sole use of the Provisional License will be in an unpaid volunteer capacity under the direction of the Supervising Lawyer;
 - (B) Submit to the State Bar a declaration signed by the applicant agreeing that the applicant will be subject to the disciplinary authority of the Supreme Court of California and the State Bar with respect to the laws of the State of California and governing the conduct of lawyers, and attesting that the applicant will not practice California law other than under the supervision of a Supervising Lawyer during the time the applicant is provisionally licensed under this rule; and attesting that the applicant will not practice law in a jurisdiction where to do so would be in violation of laws of the profession in that jurisdiction; and
 - (C) Submit to the State Bar a declaration signed by a Supervising Lawyer who meets the requirements of this rule attesting that the applicant is employed by or volunteers at, or has a conditional offer to be employed by or volunteer with the firm where the Supervising Lawyer works and that the firm has an office located in California; that the nature of the employment conforms with the requirements of this rule; whether the employment is paid or unpaid; and that the Supervising Lawyer meets the eligibility requirements of and will comply with this rule. If an applicant works or volunteers for more than one firm concurrently as a Provisionally Licensed Lawyer, the applicant shall have a Supervising Lawyer at each firm and shall submit a declaration from each Supervising Lawyer.

(2) An Application for Provisional Licensure may be denied if:

- (A) An applicant fails to comply with eligibility or application requirements;
- (B) In connection with the Application for Provisional Licensure, an applicant makes a statement of material fact that the applicant knows to be false or makes the statement with reckless disregard as to its truth or falsity; or
- (C) In connection with the Application for Provisional Licensure, an applicant fails to disclose a fact necessary to correct a statement known by the applicant to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) or rule 1.6 of the California Rules of Professional Conduct.

(d) Eligibility Requirements

Except as provided in (a), to ~~To~~ qualify as a Provisionally Licensed Lawyer under this rule, the applicant must:

- (1) Meet all of the requirements for admission to the State Bar with the following exceptions:
 - (A) The applicant need not have sat for or passed the California Bar Examination;
 - (B) The applicant need not have obtained a positive moral character determination, so long as the applicant submitted a complete Application for Determination of Moral Character to the State Bar prior to submission of an Application for Provisional Licensure and that application has not resulted in issuance of an adverse moral character determination by the State Bar; and
 - (C) The applicant need not have sat for or passed the Multistate Professional Responsibility Exam prior to submission of an Application for Provisional Licensure if the applicant attests they will complete the legal ethics components of the New Attorney Training, described under (e)(1) of this rule, within the first 30 days of licensure as a Provisionally Licensed Attorney. If the legal ethics components of the New Attorney Training are not made available to the applicant at the time of licensure, the 30 days shall run from the first day the training components are made available. The exemption set forth in (e)(1) of this rule does not apply to Provisionally Licensed Lawyers who must take the legal ethics components in lieu of passage of the MPRE.
- (2) Comply with any rules or guidelines adopted by the State Bar relating to the State Bar's Provisional Licensure Program;
- (3) Be employed by or volunteering with, or have a conditional offer of employment from or to volunteer with a firm that has an office located in California.; and

- (4) Practice law under a Supervising Lawyer who is an active licensee in good standing of the State Bar or is a current judge of a court of record within the California judicial branch, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

(Subd (d) amended effective February 1, 2021.)

(e) Responsibilities of Provisionally Licensed Lawyers

Provisionally Licensed Lawyers must comply with all of the following requirements. Failure to comply with these requirements shall result in immediate termination from the Provisional Licensure Program:

- (1) Complete the State Bar New Attorney Training program, as described in State Bar Rule 2.53, during the first 12 months of licensure as a Provisionally Licensed Lawyer, unless they would otherwise be exempt from this requirement under the State Bar Rules if they were admitted to the State Bar as a lawyer;
- (2) Expressly refer to themselves orally, including but not limited to, in conversations with clients or potential clients, and in writing, including but not limited to, in court pleadings or other papers filed in any court or tribunal, on letterhead, business cards, advertising, and signature blocks, as a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program, and not describe themselves as a fully-licensed lawyer, or imply in any way orally or in writing that they are a fully-licensed lawyer;
- (3) Include on every document the Provisionally Licensed Lawyer files in court or with any other tribunal the following information about the Supervising Lawyer: name, mailing address, telephone number, and State Bar number;
- (4) Maintain with the State Bar a current e-mail address and an address of record that is the current California office address of the Provisionally Licensed Lawyer's firm;
- (5) Report to the State Bar immediately upon termination of supervision by the Supervising Lawyer for any reason;
- (6) Report to the State Bar any information required of lawyers by the State Bar Act, such as that required by Business and Professions Code sections 6068(o) and 6068.8(c), or by other legal authority;
- (7) If reassigned to a new Supervising Lawyer for the same firm, submit a declaration from the new Supervising Lawyer in compliance with (c)(1)(C) and obtain State Bar approval before the new Supervising Lawyer assumes supervisory responsibility over the Provisionally Licensed Lawyer.
- (8) Submit a new Application for Provisional Licensure and obtain State Bar approval before beginning employment with a new firm;

- (9) Abide by the laws of the State of California relating to the practice of law, the California Rules of Professional Conduct, and the rules and regulations of the State Bar.

(Subd (e) amended effective February 1, 2021.)

(f) Prohibition on Accessing Client Trust Accounts

While practicing law under this rule, the Provisionally Licensed Lawyer must not open, maintain, withdraw funds from, deposit funds into, or attempt to open, maintain, or withdraw from or deposit into any client trust account.

(g) Permitted Activities

Subject to all applicable rules, regulations, and statutes, a Provisionally Licensed Lawyer may provide legal services to a client, including but not limited to appearing before a court or administrative tribunal, drafting legal documents, contracts or transactional documents, and pleadings, engaging in negotiations and settlement discussions, and providing other legal advice and counsel, provided that the work is performed under the supervision of a Supervising Lawyer.

(h) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(i) Supervision

- (1) To meet the requirements of this rule, a Supervising Lawyer must:
- (A) Work for the same firm by which the Provisionally Licensed Lawyer is or will be employed or at which the Provisionally Licensed Lawyer is or will be volunteering;
 - (B) Have practiced law for at least four years in any United States jurisdiction and have actively practiced law in California or taught law at a California Law School for at least two years immediately preceding the time of supervision, and be a licensee in good standing of the State Bar of California or be a current judge of a court of record within the California judicial branch;
 - (C) Exercise competence in any area of legal service authorized under California law in which the Supervising Lawyer is supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;
 - (D) With the exception of a current judge of a court of record within the California judicial branch, not be inactive in California, or ineligible to practice, actually

suspended, under a stayed suspension order, or have resigned or been disbarred in any jurisdiction;

- (E) Disclose in writing, via email or other means, at the outset of representation or before the Provisionally Licensed Lawyer begins to provide legal services, that a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program may provide legal services related to the client's matter;
 - (F) Be prepared to assume personal representation of the Provisionally Licensed Lawyer's clients if the Provisionally Licensed Lawyer becomes ineligible to practice under this rule or is otherwise unavailable to continue the representation;
 - (G) Agree to assume professional responsibility for any work that the Provisionally Licensed Lawyer performs under this rule; and
 - (H) Agree to notify the State Bar of California, in writing, within 10 calendar days if the Supervising Lawyer becomes aware or reasonably should have become aware that:
 - i. The Provisionally Licensed Lawyer has terminated employment;
 - ii. The Provisionally Licensed Lawyer is no longer eligible for participation in the Provisional Licensure Program;
 - iii. The Supervising Lawyer no longer meets the requirements of this rule;
 - iv. The Supervising Lawyer is no longer supervising the Provisionally Licensed Lawyer; or
 - v. The Supervising Lawyer has changed offices or email addresses.
- (2) A Supervising Lawyer may delegate some or all day-to-day supervisory responsibilities or supervisory responsibilities related to certain practice areas or assignments to another lawyer in the same organization who otherwise meets the requirements for Supervising Lawyers, without the need for those additional supervisors to file a declaration with the State Bar. The Supervising Lawyer's obligations under (i)(1)(G) are not affected by any such delegation.
- (3) A Supervising Lawyer who is a current judge of a court of record within the California judicial branch and lawyers to whom the judge delegates day-to-day supervisory responsibilities pursuant to (2) shall not be subject to the requirements of (i)(D) through (G).

(Subd (i) amended effective February 1, 2021.)

(j) Termination of Provisional Licensure

- (1) A Provisionally Licensed Lawyer's provisional license terminates:

- (A) Upon determination by the State Bar Court that the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California, or upon imposition of any sanction for misconduct by any court or tribunal, or any professional or occupational licensing authority, including administrative or stayed suspension against the Provisionally Licensed Lawyer;
 - (B) Upon imposition of any discipline for misconduct by the State Bar of California, the Supreme Court, or any other bar, including administrative or stayed suspension, against the Supervising Lawyer, unless the Provisionally Licensed Lawyer has, within 15 calendar days of imposition of such discipline, obtained approval from the State Bar for a new Supervising Lawyer as required by this rule;
 - (C) Upon initial issuance of an adverse moral character determination by the State Bar. If the Provisionally Licensed Lawyer requests a review of the adverse determination under rule 4.47.1 of the Rules of the State Bar or appeals the adverse moral character determination of the Committee under rule 4.47 of the Rules of the State Bar, in lieu of termination the provisional license shall be suspended until final resolution of the review or appeal.
 - (D) Upon admission to the State Bar of California;
 - (E) Upon cessation of the Provisional Licensure Program;
 - (F) Upon request of the Provisionally Licensed Lawyer;
 - (G) For failure to complete the State Bar New Attorney Training Program consistent with (e)(1)(A) of this rule or failure to complete the legal ethics components under (d)(1)(C) of this rule;
 - (H) For failure to pay any fees required by the State Bar; or
 - (I) If the Provisionally Licensed Lawyer no longer meets the requirements of this rule.
- (2) A notice of termination is effective ten calendar days from the date of receipt. Receipt is deemed to be five calendar days from the date of mailing to a California address or emailing to the provisional licensee's email address of record; ten calendar days from the date of mailing to an address elsewhere in the United States; and twenty calendar days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.
- (3) A Provisionally Licensed Lawyer whose provisional licensure terminated upon request or upon imposition of discipline against the Supervising Lawyer may be reinstated if they meet all eligibility and application requirements of this rule.

(Subd (j) amended effective May 26, 2022.)

(k) Public Records

State Bar records for Provisionally Licensed Lawyers, including office address and discipline records, are public to the same extent as State Bar records related to fully-licensed lawyers.

(l) Inherent Power of Supreme Court

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

Rule 9.49 amended effective May 26, 2022; adopted effective November 17, 2020; previously amended effective February 1, 2021.

Rule 9.49: Proposed Amendments to Implement State Bar Option 3

(a) State Bar Provisional Licensure Program

- (1) The State Bar shall administer a program for provisionally licensing eligible 2020 Law School Graduates ~~through December 31, 2022~~. The program shall be referred to as the "Provisional Licensure Program."
- (2) The Provisional Licensure Program shall terminate on December 31, 2022, unless the ~~California Supreme Court extends that date~~. applicant, on or by December 31, 2022, satisfies all of the following:
 - (A) Completed the State Bar New Attorney Training Program;
 - (B) Received a passing score on the Multistate Professional Responsibility Exam;
 - (C) Has an active positive moral determination, unless the applicant has been suspended pending resolution of a final review or appeal under (j)(1)(C);
 - (D) Submitted all other documentation of completion in the format required by the State Bar;
 - (E) Has an approved supervisor in place committed to supervise the applicant during 2023.
- (3) For applicants who have not received a passing score on the California Bar Exam, but have satisfied all the requirements under (a)(2), the Provisional Licensure Program under this rule shall terminate on December 31, 2025.
- (4) Upon termination of the Provisional Licensure Program, no one who was provisionally licensed pursuant to this rule shall be permitted to continue to practice as a Provisionally Licensed Lawyer, nor shall they represent that they remain provisionally licensed or are otherwise authorized to practice law in the State of California unless they have been admitted to the practice of law in California after meeting all criteria for admission ~~including passage of the California Bar Examination~~, or are otherwise authorized to practice law in this state other than under this rule. The temporary authorization to practice under supervision under the Provisional Licensure Program does not confer either a plenary license or any vested or implied right to be licensed.

(Subd (a) amended effective May 26, 2022.)

(b) Definitions

- (1) A "2020 Law School Graduate" means a person who became eligible to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061 between December 1, 2019 and December 31, 2020, either by graduating from a qualifying law school with a juris doctor (J.D.) or master of laws (LLM) degree during that time period, or by otherwise meeting the legal education requirements of Business and Professions Code sections 6060 and 6061 during that time period.

- (2) For purposes of this rule, a "Provisionally Licensed Lawyer" means a 2020 Law School Graduate who meets the eligibility criteria of this rule and is granted provisional licensure by the State Bar.
- (3) "Supervising Lawyer" means a lawyer who meets the eligibility criteria of this rule and who supervises one or more Provisionally Licensed Lawyers.
- (4) "Firm" or "law firm" means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division, or office of a corporation, of a governmental organization, or of another organization as defined by rule 1.01 of the Rules of Professional Conduct and the commentary thereto.

(Subd (b) amended effective February 1, 2021.)

(c) Application Requirements

- (1) To participate in the Provisional Licensure Program, an applicant must complete the following application requirements no later than June 1, 2022.
 - (A) Submit an Application for Provisional Licensure with the State Bar, along with a fee of \$75, or \$50 if the employer paying the fee receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute. There shall be no fee for applicants whose sole use of the Provisional License will be in an unpaid volunteer capacity under the direction of the Supervising Lawyer;
 - (B) Submit to the State Bar a declaration signed by the applicant agreeing that the applicant will be subject to the disciplinary authority of the Supreme Court of California and the State Bar with respect to the laws of the State of California and governing the conduct of lawyers, and attesting that the applicant will not practice California law other than under the supervision of a Supervising Lawyer during the time the applicant is provisionally licensed under this rule; and attesting that the applicant will not practice law in a jurisdiction where to do so would be in violation of laws of the profession in that jurisdiction; and
 - (C) Submit to the State Bar a declaration signed by a Supervising Lawyer who meets the requirements of this rule attesting that the applicant is employed by or volunteers at, or has a conditional offer to be employed by or volunteer with the firm where the Supervising Lawyer works and that the firm has an office located in California; that the nature of the employment conforms with the requirements of this rule; whether the employment is paid or unpaid; and that the Supervising Lawyer meets the eligibility requirements of and will comply with this rule. If an applicant works or volunteers for more than one firm concurrently as a Provisionally Licensed Lawyer, the applicant shall have a Supervising Lawyer at each firm and shall submit a declaration from each Supervising Lawyer.

(2) An Application for Provisional Licensure may be denied if:

- (A) An applicant fails to comply with eligibility or application requirements;
- (B) In connection with the Application for Provisional Licensure, an applicant makes a statement of material fact that the applicant knows to be false or makes the statement with reckless disregard as to its truth or falsity; or
- (C) In connection with the Application for Provisional Licensure, an applicant fails to disclose a fact necessary to correct a statement known by the applicant to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) or rule 1.6 of the California Rules of Professional Conduct.

(d) Eligibility Requirements

Except as provided in (a), to ~~To~~ qualify as a Provisionally Licensed Lawyer under this rule, the applicant must:

- (1) Meet all of the requirements for admission to the State Bar with the following exceptions:
 - (A) The applicant need not have sat for ~~or passed~~ the California Bar Examination;
 - (B) The applicant need not have obtained a positive moral character determination, so long as the applicant submitted a complete Application for Determination of Moral Character to the State Bar prior to submission of an Application for Provisional Licensure and that application has not resulted in issuance of an adverse moral character determination by the State Bar; and
 - (C) The applicant need not have sat for or passed the Multistate Professional Responsibility Exam prior to submission of an Application for Provisional Licensure if the applicant attests they will complete the legal ethics components of the New Attorney Training, described under (e)(1) of this rule, within the first 30 days of licensure as a Provisionally Licensed Attorney. If the legal ethics components of the New Attorney Training are not made available to the applicant at the time of licensure, the 30 days shall run from the first day the training components are made available. The exemption set forth in (e)(1) of this rule does not apply to Provisionally Licensed Lawyers who must take the legal ethics components in lieu of passage of the MPRE.
- (2) Comply with any rules or guidelines adopted by the State Bar relating to the State Bar's Provisional Licensure Program;
- (3) Be employed by or volunteering with, or have a conditional offer of employment from or to volunteer with a firm that has an office located in California.; and

- (4) Practice law under a Supervising Lawyer who is an active licensee in good standing of the State Bar or is a current judge of a court of record within the California judicial branch, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

(Subd (d) amended effective February 1, 2021.)

(e) Responsibilities of Provisionally Licensed Lawyers

Provisionally Licensed Lawyers must comply with all of the following requirements. Failure to comply with these requirements shall result in immediate termination from the Provisional Licensure Program:

- (1) Complete the State Bar New Attorney Training program, as described in State Bar Rule 2.53, during the first 12 months of licensure as a Provisionally Licensed Lawyer, unless they would otherwise be exempt from this requirement under the State Bar Rules if they were admitted to the State Bar as a lawyer;
- (2) Expressly refer to themselves orally, including but not limited to, in conversations with clients or potential clients, and in writing, including but not limited to, in court pleadings or other papers filed in any court or tribunal, on letterhead, business cards, advertising, and signature blocks, as a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program, and not describe themselves as a fully-licensed lawyer, or imply in any way orally or in writing that they are a fully-licensed lawyer;
- (3) Include on every document the Provisionally Licensed Lawyer files in court or with any other tribunal the following information about the Supervising Lawyer: name, mailing address, telephone number, and State Bar number;
- (4) Maintain with the State Bar a current e-mail address and an address of record that is the current California office address of the Provisionally Licensed Lawyer's firm;
- (5) Report to the State Bar immediately upon termination of supervision by the Supervising Lawyer for any reason;
- (6) Report to the State Bar any information required of lawyers by the State Bar Act, such as that required by Business and Professions Code sections 6068(o) and 6068.8(c), or by other legal authority;
- (7) If reassigned to a new Supervising Lawyer for the same firm, submit a declaration from the new Supervising Lawyer in compliance with (c)(1)(C) and obtain State Bar approval before the new Supervising Lawyer assumes supervisory responsibility over the Provisionally Licensed Lawyer.
- (8) Submit a new Application for Provisional Licensure and obtain State Bar approval before beginning employment with a new firm;

- (9) Abide by the laws of the State of California relating to the practice of law, the California Rules of Professional Conduct, and the rules and regulations of the State Bar.

(Subd (e) amended effective February 1, 2021.)

(f) Prohibition on Accessing Client Trust Accounts

While practicing law under this rule, the Provisionally Licensed Lawyer must not open, maintain, withdraw funds from, deposit funds into, or attempt to open, maintain, or withdraw from or deposit into any client trust account.

(g) Permitted Activities

Subject to all applicable rules, regulations, and statutes, a Provisionally Licensed Lawyer may provide legal services to a client, including but not limited to appearing before a court or administrative tribunal, drafting legal documents, contracts or transactional documents, and pleadings, engaging in negotiations and settlement discussions, and providing other legal advice and counsel, provided that the work is performed under the supervision of a Supervising Lawyer.

(h) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(i) Supervision

- (1) To meet the requirements of this rule, a Supervising Lawyer must:
- (A) Work for the same firm by which the Provisionally Licensed Lawyer is or will be employed or at which the Provisionally Licensed Lawyer is or will be volunteering;
 - (B) Have practiced law for at least four years in any United States jurisdiction and have actively practiced law in California or taught law at a California Law School for at least two years immediately preceding the time of supervision, and be a licensee in good standing of the State Bar of California or be a current judge of a court of record within the California judicial branch;
 - (C) Exercise competence in any area of legal service authorized under California law in which the Supervising Lawyer is supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;
 - (D) With the exception of a current judge of a court of record within the California judicial branch, not be inactive in California, or ineligible to practice, actually

suspended, under a stayed suspension order, or have resigned or been disbarred in any jurisdiction;

- (E) Disclose in writing, via email or other means, at the outset of representation or before the Provisionally Licensed Lawyer begins to provide legal services, that a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program may provide legal services related to the client's matter;
 - (F) Be prepared to assume personal representation of the Provisionally Licensed Lawyer's clients if the Provisionally Licensed Lawyer becomes ineligible to practice under this rule or is otherwise unavailable to continue the representation;
 - (G) Agree to assume professional responsibility for any work that the Provisionally Licensed Lawyer performs under this rule; and
 - (H) Agree to notify the State Bar of California, in writing, within 10 calendar days if the Supervising Lawyer becomes aware or reasonably should have become aware that:
 - i. The Provisionally Licensed Lawyer has terminated employment;
 - ii. The Provisionally Licensed Lawyer is no longer eligible for participation in the Provisional Licensure Program;
 - iii. The Supervising Lawyer no longer meets the requirements of this rule;
 - iv. The Supervising Lawyer is no longer supervising the Provisionally Licensed Lawyer; or
 - v. The Supervising Lawyer has changed offices or email addresses.
- (2) A Supervising Lawyer may delegate some or all day-to-day supervisory responsibilities or supervisory responsibilities related to certain practice areas or assignments to another lawyer in the same organization who otherwise meets the requirements for Supervising Lawyers, without the need for those additional supervisors to file a declaration with the State Bar. The Supervising Lawyer's obligations under (i)(1)(G) are not affected by any such delegation.
- (3) A Supervising Lawyer who is a current judge of a court of record within the California judicial branch and lawyers to whom the judge delegates day-to-day supervisory responsibilities pursuant to (2) shall not be subject to the requirements of (i)(D) through (G).

(Subd (i) amended effective February 1, 2021.)

(j) Termination of Provisional Licensure

- (1) A Provisionally Licensed Lawyer's provisional license terminates:

- (A) Upon determination by the State Bar Court that the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California, or upon imposition of any sanction for misconduct by any court or tribunal, or any professional or occupational licensing authority, including administrative or stayed suspension against the Provisionally Licensed Lawyer;
 - (B) Upon imposition of any discipline for misconduct by the State Bar of California, the Supreme Court, or any other bar, including administrative or stayed suspension, against the Supervising Lawyer, unless the Provisionally Licensed Lawyer has, within 15 calendar days of imposition of such discipline, obtained approval from the State Bar for a new Supervising Lawyer as required by this rule;
 - (C) Upon initial issuance of an adverse moral character determination by the State Bar. If the Provisionally Licensed Lawyer requests a review of the adverse determination under rule 4.47.1 of the Rules of the State Bar or appeals the adverse moral character determination of the Committee under rule 4.47 of the Rules of the State Bar, in lieu of termination the provisional license shall be suspended until final resolution of the review or appeal.
 - (D) Upon admission to the State Bar of California;
 - (E) Upon cessation of the Provisional Licensure Program;
 - (F) Upon request of the Provisionally Licensed Lawyer;
 - (G) For failure to complete the State Bar New Attorney Training Program consistent with (e)(1)(A) of this rule or failure to complete the legal ethics components under (d)(1)(C) of this rule;
 - (H) For failure to pay any fees required by the State Bar; or
 - (I) If the Provisionally Licensed Lawyer no longer meets the requirements of this rule.
- (2) A notice of termination is effective ten calendar days from the date of receipt. Receipt is deemed to be five calendar days from the date of mailing to a California address or emailing to the provisional licensee's email address of record; ten calendar days from the date of mailing to an address elsewhere in the United States; and twenty calendar days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.
- (3) A Provisionally Licensed Lawyer whose provisional licensure terminated upon request or upon imposition of discipline against the Supervising Lawyer may be reinstated if they meet all eligibility and application requirements of this rule.

(Subd (j) amended effective May 26, 2022.)

(k) Public Records

State Bar records for Provisionally Licensed Lawyers, including office address and discipline records, are public to the same extent as State Bar records related to fully-licensed lawyers.

(l) Pathway to Licensure

(1) No later than December 31, 2023, the State Bar shall submit to the Supreme Court for consideration a proposal for a Supervised Practice Pathway pilot project with a pathway to licensure for those Provisionally Licensed Lawyers remaining in the program pursuant to (a)(3).

(2) The Supervised Practice Pilot Pathway recommended by the State Bar shall:

(A) Include one or more objective assessments to determine if the participant possesses the minimum competence required of entry level attorneys. The assessments shall be designed to demonstrate that a Provisionally Licensed Lawyer possesses the knowledge, skills, and abilities recommended by the Blue Ribbon Commission on the Future of the Bar Exam, unless amended by the Supreme Court.

(B) Require the assessment(s) to be evaluated by the regulator.

(m) Inherent Power of Supreme Court

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

Rule 9.49 amended effective May 26, 2022; adopted effective November 17, 2020; previously amended effective February 1, 2021.

Rule 9.49: Proposed Amendments to Implement State Bar Option 4

(a) State Bar Provisional Licensure Program

- (1) The State Bar shall administer a program for provisionally licensing eligible 2020 Law School Graduates ~~through December 31, 2022~~. The program shall be referred to as the "Provisional Licensure Program."
- (2) The Provisional Licensure Program shall terminate on December 31, 2022, unless the ~~California Supreme Court extends that date~~, applicant, on or by December 31, 2022, satisfies all of the following:
 - (A) Completed the State Bar New Attorney Training Program;
 - (B) Received a passing score on the Multistate Professional Responsibility Exam;
 - (C) Has an active positive moral determination, unless the applicant has been suspended pending resolution of a final review or appeal under (j)(1)(C);
 - (D) Submitted all other documentation of completion in the format required by the State Bar;
 - (E) Has an approved supervisor in place committed to supervise the applicant during 2023.
- (3) For applicants who have not received a passing score on the California Bar Exam, but have satisfied all the requirements under (a)(2), the Provisional Licensure Program under this rule shall terminate on December 31, 2025.
- (4) Upon termination of the Provisional Licensure Program, no one who was provisionally licensed pursuant to this rule shall be permitted to continue to practice as a Provisionally Licensed Lawyer, nor shall they represent that they remain provisionally licensed or are otherwise authorized to practice law in the State of California unless they have been admitted to the practice of law in California after meeting all criteria for admission ~~including passage of the California Bar Examination~~, or are otherwise authorized to practice law in this state other than under this rule. The temporary authorization to practice under supervision under the Provisional Licensure Program does not confer either a plenary license or any vested or implied right to be licensed.

(Subd (a) amended effective May 26, 2022.)

(b) Definitions

- (1) A "2020 Law School Graduate" means a person who became eligible to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061 between December 1, 2019 and December 31, 2020, either by graduating from a qualifying law school with a juris doctor (J.D.) or master of laws (LLM) degree during that time period, or by otherwise meeting the legal education requirements of Business and Professions Code sections 6060 and 6061 during that time period.

- (2) For purposes of this rule, a "Provisionally Licensed Lawyer" means a 2020 Law School Graduate who meets the eligibility criteria of this rule and is granted provisional licensure by the State Bar.
- (3) "Supervising Lawyer" means a lawyer who meets the eligibility criteria of this rule and who supervises one or more Provisionally Licensed Lawyers.
- (4) "Firm" or "law firm" means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division, or office of a corporation, of a governmental organization, or of another organization as defined by rule 1.01 of the Rules of Professional Conduct and the commentary thereto.

(Subd (b) amended effective February 1, 2021.)

(c) Application Requirements

- (1) To participate in the Provisional Licensure Program, an applicant must complete the following application requirements no later than June 1, 2022.
 - (A) Submit an Application for Provisional Licensure with the State Bar, along with a fee of \$75, or \$50 if the employer paying the fee receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute. There shall be no fee for applicants whose sole use of the Provisional License will be in an unpaid volunteer capacity under the direction of the Supervising Lawyer;
 - (B) Submit to the State Bar a declaration signed by the applicant agreeing that the applicant will be subject to the disciplinary authority of the Supreme Court of California and the State Bar with respect to the laws of the State of California and governing the conduct of lawyers, and attesting that the applicant will not practice California law other than under the supervision of a Supervising Lawyer during the time the applicant is provisionally licensed under this rule; and attesting that the applicant will not practice law in a jurisdiction where to do so would be in violation of laws of the profession in that jurisdiction; and
 - (C) Submit to the State Bar a declaration signed by a Supervising Lawyer who meets the requirements of this rule attesting that the applicant is employed by or volunteers at, or has a conditional offer to be employed by or volunteer with the firm where the Supervising Lawyer works and that the firm has an office located in California; that the nature of the employment conforms with the requirements of this rule; whether the employment is paid or unpaid; and that the Supervising Lawyer meets the eligibility requirements of and will comply with this rule. If an applicant works or volunteers for more than one firm concurrently as a Provisionally Licensed Lawyer, the applicant shall have a Supervising Lawyer at each firm and shall submit a declaration from each Supervising Lawyer.

(2) An Application for Provisional Licensure may be denied if:

- (A) An applicant fails to comply with eligibility or application requirements;
- (B) In connection with the Application for Provisional Licensure, an applicant makes a statement of material fact that the applicant knows to be false or makes the statement with reckless disregard as to its truth or falsity; or
- (C) In connection with the Application for Provisional Licensure, an applicant fails to disclose a fact necessary to correct a statement known by the applicant to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) or rule 1.6 of the California Rules of Professional Conduct.

(d) Eligibility Requirements

Except as provided in (a), to ~~To~~ qualify as a Provisionally Licensed Lawyer under this rule, the applicant must:

- (1) Meet all of the requirements for admission to the State Bar with the following exceptions:
 - (A) The applicant need not have sat for ~~or passed~~ the California Bar Examination;
 - (B) The applicant need not have obtained a positive moral character determination, so long as the applicant submitted a complete Application for Determination of Moral Character to the State Bar prior to submission of an Application for Provisional Licensure and that application has not resulted in issuance of an adverse moral character determination by the State Bar; and
 - (C) The applicant need not have sat for or passed the Multistate Professional Responsibility Exam prior to submission of an Application for Provisional Licensure if the applicant attests they will complete the legal ethics components of the New Attorney Training, described under (e)(1) of this rule, within the first 30 days of licensure as a Provisionally Licensed Attorney. If the legal ethics components of the New Attorney Training are not made available to the applicant at the time of licensure, the 30 days shall run from the first day the training components are made available. The exemption set forth in (e)(1) of this rule does not apply to Provisionally Licensed Lawyers who must take the legal ethics components in lieu of passage of the MPRE.
- (2) Comply with any rules or guidelines adopted by the State Bar relating to the State Bar's Provisional Licensure Program;
- (3) Be employed by or volunteering with, or have a conditional offer of employment from or to volunteer with a firm that has an office located in California.; and

- (4) Practice law under a Supervising Lawyer who is an active licensee in good standing of the State Bar or is a current judge of a court of record within the California judicial branch, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

(Subd (d) amended effective February 1, 2021.)

(e) Responsibilities of Provisionally Licensed Lawyers

Provisionally Licensed Lawyers must comply with all of the following requirements. Failure to comply with these requirements shall result in immediate termination from the Provisional Licensure Program:

- (1) Complete the State Bar New Attorney Training program, as described in State Bar Rule 2.53, during the first 12 months of licensure as a Provisionally Licensed Lawyer, unless they would otherwise be exempt from this requirement under the State Bar Rules if they were admitted to the State Bar as a lawyer;
- (2) Expressly refer to themselves orally, including but not limited to, in conversations with clients or potential clients, and in writing, including but not limited to, in court pleadings or other papers filed in any court or tribunal, on letterhead, business cards, advertising, and signature blocks, as a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program, and not describe themselves as a fully-licensed lawyer, or imply in any way orally or in writing that they are a fully-licensed lawyer;
- (3) Include on every document the Provisionally Licensed Lawyer files in court or with any other tribunal the following information about the Supervising Lawyer: name, mailing address, telephone number, and State Bar number;
- (4) Maintain with the State Bar a current e-mail address and an address of record that is the current California office address of the Provisionally Licensed Lawyer's firm;
- (5) Report to the State Bar immediately upon termination of supervision by the Supervising Lawyer for any reason;
- (6) Report to the State Bar any information required of lawyers by the State Bar Act, such as that required by Business and Professions Code sections 6068(o) and 6068.8(c), or by other legal authority;
- (7) If reassigned to a new Supervising Lawyer for the same firm, submit a declaration from the new Supervising Lawyer in compliance with (c)(1)(C) and obtain State Bar approval before the new Supervising Lawyer assumes supervisory responsibility over the Provisionally Licensed Lawyer.
- (8) Submit a new Application for Provisional Licensure and obtain State Bar approval before beginning employment with a new firm;

- (9) Abide by the laws of the State of California relating to the practice of law, the California Rules of Professional Conduct, and the rules and regulations of the State Bar.

(Subd (e) amended effective February 1, 2021.)

(f) Prohibition on Accessing Client Trust Accounts

While practicing law under this rule, the Provisionally Licensed Lawyer must not open, maintain, withdraw funds from, deposit funds into, or attempt to open, maintain, or withdraw from or deposit into any client trust account.

(g) Permitted Activities

Subject to all applicable rules, regulations, and statutes, a Provisionally Licensed Lawyer may provide legal services to a client, including but not limited to appearing before a court or administrative tribunal, drafting legal documents, contracts or transactional documents, and pleadings, engaging in negotiations and settlement discussions, and providing other legal advice and counsel, provided that the work is performed under the supervision of a Supervising Lawyer.

(h) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(i) Supervision

- (1) To meet the requirements of this rule, a Supervising Lawyer must:
- (A) Work for the same firm by which the Provisionally Licensed Lawyer is or will be employed or at which the Provisionally Licensed Lawyer is or will be volunteering;
 - (B) Have practiced law for at least four years in any United States jurisdiction and have actively practiced law in California or taught law at a California Law School for at least two years immediately preceding the time of supervision, and be a licensee in good standing of the State Bar of California or be a current judge of a court of record within the California judicial branch;
 - (C) Exercise competence in any area of legal service authorized under California law in which the Supervising Lawyer is supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;
 - (D) With the exception of a current judge of a court of record within the California judicial branch, not be inactive in California, or ineligible to practice, actually

suspended, under a stayed suspension order, or have resigned or been disbarred in any jurisdiction;

- (E) Disclose in writing, via email or other means, at the outset of representation or before the Provisionally Licensed Lawyer begins to provide legal services, that a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program may provide legal services related to the client's matter;
 - (F) Be prepared to assume personal representation of the Provisionally Licensed Lawyer's clients if the Provisionally Licensed Lawyer becomes ineligible to practice under this rule or is otherwise unavailable to continue the representation;
 - (G) Agree to assume professional responsibility for any work that the Provisionally Licensed Lawyer performs under this rule; and
 - (H) Agree to notify the State Bar of California, in writing, within 10 calendar days if the Supervising Lawyer becomes aware or reasonably should have become aware that:
 - i. The Provisionally Licensed Lawyer has terminated employment;
 - ii. The Provisionally Licensed Lawyer is no longer eligible for participation in the Provisional Licensure Program;
 - iii. The Supervising Lawyer no longer meets the requirements of this rule;
 - iv. The Supervising Lawyer is no longer supervising the Provisionally Licensed Lawyer; or
 - v. The Supervising Lawyer has changed offices or email addresses.
- (2) A Supervising Lawyer may delegate some or all day-to-day supervisory responsibilities or supervisory responsibilities related to certain practice areas or assignments to another lawyer in the same organization who otherwise meets the requirements for Supervising Lawyers, without the need for those additional supervisors to file a declaration with the State Bar. The Supervising Lawyer's obligations under (i)(1)(G) are not affected by any such delegation.
- (3) A Supervising Lawyer who is a current judge of a court of record within the California judicial branch and lawyers to whom the judge delegates day-to-day supervisory responsibilities pursuant to (2) shall not be subject to the requirements of (i)(D) through (G).

(Subd (i) amended effective February 1, 2021.)

(j) Termination of Provisional Licensure

- (1) A Provisionally Licensed Lawyer's provisional license terminates:

- (A) Upon determination by the State Bar Court that the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California, or upon imposition of any sanction for misconduct by any court or tribunal, or any professional or occupational licensing authority, including administrative or stayed suspension against the Provisionally Licensed Lawyer;
 - (B) Upon imposition of any discipline for misconduct by the State Bar of California, the Supreme Court, or any other bar, including administrative or stayed suspension, against the Supervising Lawyer, unless the Provisionally Licensed Lawyer has, within 15 calendar days of imposition of such discipline, obtained approval from the State Bar for a new Supervising Lawyer as required by this rule;
 - (C) Upon initial issuance of an adverse moral character determination by the State Bar. If the Provisionally Licensed Lawyer requests a review of the adverse determination under rule 4.47.1 of the Rules of the State Bar or appeals the adverse moral character determination of the Committee under rule 4.47 of the Rules of the State Bar, in lieu of termination the provisional license shall be suspended until final resolution of the review or appeal.
 - (D) Upon admission to the State Bar of California;
 - (E) Upon cessation of the Provisional Licensure Program;
 - (F) Upon request of the Provisionally Licensed Lawyer;
 - (G) For failure to complete the State Bar New Attorney Training Program consistent with (e)(1)(A) of this rule or failure to complete the legal ethics components under (d)(1)(C) of this rule;
 - (H) For failure to pay any fees required by the State Bar; or
 - (I) If the Provisionally Licensed Lawyer no longer meets the requirements of this rule.
- (2) A notice of termination is effective ten calendar days from the date of receipt. Receipt is deemed to be five calendar days from the date of mailing to a California address or emailing to the provisional licensee's email address of record; ten calendar days from the date of mailing to an address elsewhere in the United States; and twenty calendar days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.
- (3) A Provisionally Licensed Lawyer whose provisional licensure terminated upon request or upon imposition of discipline against the Supervising Lawyer may be reinstated if they meet all eligibility and application requirements of this rule.

(Subd (j) amended effective May 26, 2022.)

(k) Public Records

State Bar records for Provisionally Licensed Lawyers, including office address and discipline records, are public to the same extent as State Bar records related to fully-licensed lawyers.

(l) Alternative Licensure

(1) The State Bar shall, before December 31, 2025, submit to the Supreme Court for consideration a proposal to create an alternative license for those Provisionally Licensed Lawyers remaining in the program pursuant to (a)(3).

(2) The State Bar shall not commence work on this proposal prior to January 1, 2025, unless the relevant prohibition of Business and Professions Code section 6034.1 is lifted before that date.

(m) Inherent Power of Supreme Court

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

Rule 9.49 amended effective May 26, 2022; adopted effective November 17, 2020; previously amended effective February 1, 2021.

Rule 9.49: Proposed Amendments to Implement State Bar Option 5

(a) State Bar Provisional Licensure Program

- (1) The State Bar shall administer a program for provisionally licensing eligible 2020 Law School Graduates ~~through December 31, 2022~~. The program shall be referred to as the "Provisional Licensure Program."
- (2) The Provisional Licensure Program shall terminate on December 31, 2022, unless the ~~California Supreme Court extends that date~~, applicant, on or by December 31, 2022, satisfies all of the following:
 - (A) Completed the State Bar New Attorney Training Program;
 - (B) Received a passing score on the Multistate Professional Responsibility Exam;
 - (C) Has an active positive moral determination, unless the applicant has been suspended pending resolution of a final review or appeal under (j)(1)(C);
 - (D) Submitted all other documentation of completion in the format required by the State Bar;
 - (E) Has an approved supervisor in place committed to supervise the applicant during 2023.
- (3) (A) For applicants who have not received a passing score on the California Bar Exam, but have satisfied all the requirements under (a)(2), the Provisional Licensure Program under this rule shall terminate on December 31, 2025.

(B) A Provisionally Licensed Lawyer participating in the program under paragraph (3) and completes at least (insert number) _____ hours of supervised legal practice in the Provisional Licensure Program, as verified by their supervisor(s), may, while participating in the program, elect to sit for the Attorneys' Exam, as defined in State Bar rule 4.3 in lieu of the General Bar Exam. For purposes of this rule, until termination of this program, completion of (insert number) _____ hours of supervised legal practice in California's Provisional Licensure Program shall be treated as equivalent to four years of active practice in another U.S. jurisdiction.
- (4) Upon termination of the Provisional Licensure Program, no one who was provisionally licensed pursuant to this rule shall be permitted to continue to practice as a Provisionally Licensed Lawyer, nor shall they represent that they remain provisionally licensed or are otherwise authorized to practice law in the State of California unless they have been admitted to the practice of law in California after meeting all criteria for admission including passage of the California Bar Examination, or are otherwise authorized to practice law in this state other than under this rule. The temporary authorization to practice under supervision under the Provisional Licensure Program does not confer either a plenary license or any vested or implied right to be licensed.

(Subd (a) amended effective May 26, 2022.)

(b) Definitions

- (1) A "2020 Law School Graduate" means a person who became eligible to sit for the California Bar Examination under Business and Professions Code sections 6060 and 6061 between December 1, 2019 and December 31, 2020, either by graduating from a qualifying law school with a juris doctor (J.D.) or master of laws (LLM) degree during that time period, or by otherwise meeting the legal education requirements of Business and Professions Code sections 6060 and 6061 during that time period.
- (2) For purposes of this rule, a "Provisionally Licensed Lawyer" means a 2020 Law School Graduate who meets the eligibility criteria of this rule and is granted provisional licensure by the State Bar.
- (3) "Supervising Lawyer" means a lawyer who meets the eligibility criteria of this rule and who supervises one or more Provisionally Licensed Lawyers.
- (4) "Firm" or "law firm" means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division, or office of a corporation, of a governmental organization, or of another organization as defined by rule 1.01 of the Rules of Professional Conduct and the commentary thereto.

(Subd (b) amended effective February 1, 2021.)

(c) Application Requirements

- (1) To participate in the Provisional Licensure Program, an applicant must complete the following application requirements no later than ~~June 1~~December 31, 2022.
 - (A) Submit an Application for Provisional Licensure with the State Bar, along with a fee of \$75, or \$50 if the employer paying the fee receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute. There shall be no fee for applicants whose sole use of the Provisional License will be in an unpaid volunteer capacity under the direction of the Supervising Lawyer;
 - (B) Submit to the State Bar a declaration signed by the applicant agreeing that the applicant will be subject to the disciplinary authority of the Supreme Court of California and the State Bar with respect to the laws of the State of California and governing the conduct of lawyers, and attesting that the applicant will not practice California law other than under the supervision of a Supervising Lawyer during the time the applicant is provisionally licensed under this rule; and attesting that the applicant will not practice law in a jurisdiction where to do so would be in violation of laws of the profession in that jurisdiction; and
 - (C) Submit to the State Bar a declaration signed by a Supervising Lawyer who meets the requirements of this rule attesting that the applicant is employed by or volunteers at, or has a conditional offer to be employed by or volunteer with the

firm where the Supervising Lawyer works and that the firm has an office located in California; that the nature of the employment conforms with the requirements of this rule; whether the employment is paid or unpaid; and that the Supervising Lawyer meets the eligibility requirements of and will comply with this rule. If an applicant works or volunteers for more than one firm concurrently as a Provisionally Licensed Lawyer, the applicant shall have a Supervising Lawyer at each firm and shall submit a declaration from each Supervising Lawyer.

(2) An Application for Provisional Licensure may be denied if:

- (A) An applicant fails to comply with eligibility or application requirements;
- (B) In connection with the Application for Provisional Licensure, an applicant makes a statement of material fact that the applicant knows to be false or makes the statement with reckless disregard as to its truth or falsity; or
- (C) In connection with the Application for Provisional Licensure, an applicant fails to disclose a fact necessary to correct a statement known by the applicant to have created a material misapprehension in the matter, except that this rule does not authorize disclosure of information protected by Business and Professions Code section 6068, subdivision (e) or rule 1.6 of the California Rules of Professional Conduct.

(d) Eligibility Requirements

Except as provided in (a), to ~~To~~ qualify as a Provisionally Licensed Lawyer under this rule, the applicant must:

- (1) Meet all of the requirements for admission to the State Bar with the following exceptions:
 - (A) The applicant need not have sat for ~~or passed~~ the California Bar Examination;
 - (B) The applicant need not have obtained a positive moral character determination, so long as the applicant submitted a complete Application for Determination of Moral Character to the State Bar prior to submission of an Application for Provisional Licensure and that application has not resulted in issuance of an adverse moral character determination by the State Bar; and
 - (C) The applicant need not have sat for or passed the Multistate Professional Responsibility Exam prior to submission of an Application for Provisional Licensure if the applicant attests they will complete the legal ethics components of the New Attorney Training, described under (e)(1) of this rule, within the first 30 days of licensure as a Provisionally Licensed Attorney. If the legal ethics components of the New Attorney Training are not made available to the applicant at the time of licensure, the 30 days shall run from the first day the training components are made available. The exemption set forth in (e)(1) of this rule does not apply to

Provisionally Licensed Lawyers who must take the legal ethics components in lieu of passage of the MPRE.

- (2) Comply with any rules or guidelines adopted by the State Bar relating to the State Bar's Provisional Licensure Program;
- (3) Be employed by or volunteering with, or have a conditional offer of employment from or to volunteer with a firm that has an office located in California.; and
- (4) Practice law under a Supervising Lawyer who is an active licensee in good standing of the State Bar or is a current judge of a court of record within the California judicial branch, who satisfies the requirements for serving as a Supervising Lawyer under this rule.

(Subd (d) amended effective February 1, 2021.)

(e) Responsibilities of Provisionally Licensed Lawyers

Provisionally Licensed Lawyers must comply with all of the following requirements. Failure to comply with these requirements shall result in immediate termination from the Provisional Licensure Program:

- (1) Complete the State Bar New Attorney Training program, as described in State Bar Rule 2.53, during the first 12 months of licensure as a Provisionally Licensed Lawyer, unless they would otherwise be exempt from this requirement under the State Bar Rules if they were admitted to the State Bar as a lawyer;
- (2) Expressly refer to themselves orally, including but not limited to, in conversations with clients or potential clients, and in writing, including but not limited to, in court pleadings or other papers filed in any court or tribunal, on letterhead, business cards, advertising, and signature blocks, as a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program, and not describe themselves as a fully-licensed lawyer, or imply in any way orally or in writing that they are a fully-licensed lawyer;
- (3) Include on every document the Provisionally Licensed Lawyer files in court or with any other tribunal the following information about the Supervising Lawyer: name, mailing address, telephone number, and State Bar number;
- (4) Maintain with the State Bar a current e-mail address and an address of record that is the current California office address of the Provisionally Licensed Lawyer's firm;
- (5) Report to the State Bar immediately upon termination of supervision by the Supervising Lawyer for any reason;
- (6) Report to the State Bar any information required of lawyers by the State Bar Act, such as that required by Business and Professions Code sections 6068(o) and 6068.8(c), or by other legal authority;

- (7) If reassigned to a new Supervising Lawyer for the same firm, submit a declaration from the new Supervising Lawyer in compliance with (c)(1)(C) and obtain State Bar approval before the new Supervising Lawyer assumes supervisory responsibility over the Provisionally Licensed Lawyer.
- (8) Submit a new Application for Provisional Licensure and obtain State Bar approval before beginning employment with a new firm;
- (9) Abide by the laws of the State of California relating to the practice of law, the California Rules of Professional Conduct, and the rules and regulations of the State Bar.

(Subd (e) amended effective February 1, 2021.)

(f) Prohibition on Accessing Client Trust Accounts

While practicing law under this rule, the Provisionally Licensed Lawyer must not open, maintain, withdraw funds from, deposit funds into, or attempt to open, maintain, or withdraw from or deposit into any client trust account.

(g) Permitted Activities

Subject to all applicable rules, regulations, and statutes, a Provisionally Licensed Lawyer may provide legal services to a client, including but not limited to appearing before a court or administrative tribunal, drafting legal documents, contracts or transactional documents, and pleadings, engaging in negotiations and settlement discussions, and providing other legal advice and counsel, provided that the work is performed under the supervision of a Supervising Lawyer.

(h) Communications and Work Product

For purposes of applying the privileges and doctrines relating to lawyer-client communications and lawyer work product, the Provisionally Licensed Lawyer shall be considered a subordinate of the Supervising Lawyer and thus communications and work product of the Provisionally Licensed Lawyer shall qualify for protection under such privileges and doctrines on the same basis.

(i) Supervision

- (1) To meet the requirements of this rule, a Supervising Lawyer must:
 - (A) Work for the same firm by which the Provisionally Licensed Lawyer is or will be employed or at which the Provisionally Licensed Lawyer is or will be volunteering;
 - (B) Have practiced law for at least four years in any United States jurisdiction and have actively practiced law in California or taught law at a California Law School for at least two years immediately preceding the time of supervision, and be a licensee in good standing of the State Bar of California or be a current judge of a court of record within the California judicial branch;

- (C) Exercise competence in any area of legal service authorized under California law in which the Supervising Lawyer is supervising the Provisionally Licensed Lawyer, consistent with the requirements of rule 1.1 of the Rules of Professional Conduct;
 - (D) With the exception of a current judge of a court of record within the California judicial branch, not be inactive in California, or ineligible to practice, actually suspended, under a stayed suspension order, or have resigned or been disbarred in any jurisdiction;
 - (E) Disclose in writing, via email or other means, at the outset of representation or before the Provisionally Licensed Lawyer begins to provide legal services, that a Provisionally Licensed Lawyer and/or participant in the State Bar's Provisional Licensure Program may provide legal services related to the client's matter;
 - (F) Be prepared to assume personal representation of the Provisionally Licensed Lawyer's clients if the Provisionally Licensed Lawyer becomes ineligible to practice under this rule or is otherwise unavailable to continue the representation;
 - (G) Agree to assume professional responsibility for any work that the Provisionally Licensed Lawyer performs under this rule; and
 - (H) Agree to notify the State Bar of California, in writing, within 10 calendar days if the Supervising Lawyer becomes aware or reasonably should have become aware that:
 - i. The Provisionally Licensed Lawyer has terminated employment;
 - ii. The Provisionally Licensed Lawyer is no longer eligible for participation in the Provisional Licensure Program;
 - iii. The Supervising Lawyer no longer meets the requirements of this rule;
 - iv. The Supervising Lawyer is no longer supervising the Provisionally Licensed Lawyer; or
 - v. The Supervising Lawyer has changed offices or email addresses.
- (2) A Supervising Lawyer may delegate some or all day-to-day supervisory responsibilities or supervisory responsibilities related to certain practice areas or assignments to another lawyer in the same organization who otherwise meets the requirements for Supervising Lawyers, without the need for those additional supervisors to file a declaration with the State Bar. The Supervising Lawyer's obligations under (i)(1)(G) are not affected by any such delegation.
- (3) A Supervising Lawyer who is a current judge of a court of record within the California judicial branch and lawyers to whom the judge delegates day-to-day supervisory responsibilities pursuant to (2) shall not be subject to the requirements of (i)(D) through (G).

(Subd (i) amended effective February 1, 2021.)

(j) Termination of Provisional Licensure

- (1) A Provisionally Licensed Lawyer's provisional license terminates:
 - (A) Upon determination by the State Bar Court that the Provisionally Licensed Lawyer is culpable of conduct that would result in discipline if the Provisionally Licensed Lawyer were fully licensed by the State Bar of California, or upon imposition of any sanction for misconduct by any court or tribunal, or any professional or occupational licensing authority, including administrative or stayed suspension against the Provisionally Licensed Lawyer;
 - (B) Upon imposition of any discipline for misconduct by the State Bar of California, the Supreme Court, or any other bar, including administrative or stayed suspension, against the Supervising Lawyer, unless the Provisionally Licensed Lawyer has, within 15 calendar days of imposition of such discipline, obtained approval from the State Bar for a new Supervising Lawyer as required by this rule;
 - (C) Upon initial issuance of an adverse moral character determination by the State Bar. If the Provisionally Licensed Lawyer requests a review of the adverse determination under rule 4.47.1 of the Rules of the State Bar or appeals the adverse moral character determination of the Committee under rule 4.47 of the Rules of the State Bar, in lieu of termination the provisional license shall be suspended until final resolution of the review or appeal.
 - (D) Upon admission to the State Bar of California;
 - (E) Upon cessation of the Provisional Licensure Program;
 - (F) Upon request of the Provisionally Licensed Lawyer;
 - (G) For failure to complete the State Bar New Attorney Training Program consistent with (e)(1)(A) of this rule or failure to complete the legal ethics components under (d)(1)(C) of this rule;
 - (H) For failure to pay any fees required by the State Bar; or
 - (I) If the Provisionally Licensed Lawyer no longer meets the requirements of this rule.
- (2) A notice of termination is effective ten calendar days from the date of receipt. Receipt is deemed to be five calendar days from the date of mailing to a California address or emailing to the provisional licensee's email address of record; ten calendar days from the date of mailing to an address elsewhere in the United States; and twenty calendar days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.

- (3) A Provisionally Licensed Lawyer whose provisional licensure terminated upon request or upon imposition of discipline against the Supervising Lawyer may be reinstated if they meet all eligibility and application requirements of this rule.

(Subd (j) amended effective May 26, 2022.)

(k) Public Records

State Bar records for Provisionally Licensed Lawyers, including office address and discipline records, are public to the same extent as State Bar records related to fully-licensed lawyers.

(l) Inherent Power of Supreme Court

Nothing in these rules may be construed as affecting the power of the Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

Rule 9.49 amended effective May 26, 2022; adopted effective November 17, 2020; previously amended effective February 1, 2021.