

**Agenda of the Apprenticeship/Practice Alternatives Subcommittee to the
Alternatives to the Exam Task Force
May 12, 2021
Zoom Videoconference**

Note: This meeting was recorded by Oregon State Bar staff.

Wednesday, May 12, 2021 at 3:30 p.m.

- 1. Call to Order**
 - Roll of attendees taken

- 2. Consent Agenda**
 - Approve minutes from April 21, 2021 meeting **Exhibit 1**

- 3. Review Drafting Committee's Report**
 - Discuss elements of model in report
 - Consider whether any elements should be deleted or modified
 - Consider whether elements are missing
 - Suggest specific edits
 - Consider potential unintended consequences of model
 - Can these consequences be mitigated or avoided by changes in model

- 4. Final Report Process – Next Steps.**
 - Drafting committee to incorporate edits
 - Submit to OSB staff for inclusion in Task Force Agenda
 - Deadline is May 17, 2021
 - If consensus not reached, objecting member(s) should be prepared to present their position at the task force meeting on May 21, 2021.

- 5. Adjourn**

Apprentice/Practice Alternative to the Bar Exam

Draft 5/11/2021

IAALS Minimum Competence Components

- The ability to act professionally and in accordance with the rules of professional conduct
- An understanding of the legal process and sources of law
- An understanding of the threshold concepts in many subjects
- The ability to interpret legal materials
- The ability to interact effectively with clients
- The ability to identify legal issues
- The ability to conduct research
- The ability to communicate as a lawyer
- The ability to see the “big picture” of client matters
- The ability to manage a law-related workload responsibly
- The ability to cope with the stresses of legal practice
- The ability to pursue self-directed learning

The Apprentice/Practice Alternatives Subcommittee (APAS) met several times over the course of three months. The APAS researched and evaluated apprentice and practice models (APMs) currently in place in Canada, Utah, and Washington, D.C. The APAS discussed the pros and cons of these models and envisioned ways in which an APM could be initiated in OR. The purpose of adopting an apprentice/practice model (APM) is to create an *alternative* to the bar exam for admission to the Oregon bar. The bar exam will remain as an option for licensure. An APM would allow Oregon to create an avenue for licensure that meets IAALS minimum competence components while reducing the barriers faced by some in taking the bar exam. The following draft APM proposal represents the work of the APAS. It will indicate where there was consensus, and areas where there are multiple things to consider in making a final decision. An implementation taskforce would need to further evaluate these issues.

1. Who is Eligible?

- a. Consensus point: This is an alternative admission to sitting for and passing the bar exam. People who are eligible to pursue APM for admission should mirror (but not expand or contract) the people who are able to sit for the bar exam. This can be accomplished by applying Rule of Admission 3.05.
- b. Consensus point: graduation from an ABA accredited law school. This is also covered by Rule of Admission 3.05.
- c. Consensus point: no limitation on who can apply in a particular year. Recognition that there may be resource issues to consider depending on how supervisors are selected and other aspects of the APM.
- d. Consensus point: no time limitation on when an applicant received their JD and when they apply for admission via the APM. If an applicant would be eligible to sit for the bar, then they would be eligible to participate in the APM. There may be a need to be a time limit on when supervision hours are attained in reference to application for APM. (see below).

- i. Alternative viewpoint offered by BBX staff attorney: from a consumer protection perspective the passage of time can be considered meaningful and the implementation taskforce should consider whether there should be different requirements for people who have significant distance between seeking admission and attending law school. A potentially meaningful time frame would be five years because if one is inactive for five years, there is a requirement that one retake the bar; thus, if one has been not admitted for five years, an applicant one can take the bar or _____ (fill in the blank for the requirements of pursuing the apprentice track for admission that gap in time). One suggestion would be to increase the term of supervised practice.
- e. Consensus point: the ability to pursue APB should not be tied to their law school's bar exam passage rate.
- f. Consensus point: prior failure of a bar exam should not prohibit pursuing the APM.
 - i. For both e. and f. tying the ability to pursuing the APM to the ability to pass a bar exam is counter to the APM. The APM recognizes a different way to establish minimum competency.
- g. Consensus point: MPRE and character & fitness review still required.

2. What are the requirements?

The APAS discussed requirements for an APM at length. The APAS did not come to consensus on all requirements, but did come to consensus on many elements that should be included. One consensus point is that all requirements should be created using an equity lens to ensure that is the driving goal in the creation of the APM.

a. **Supervised Practice leading to licensure**

- i. How long? Additional consideration of how long the period of supervision should be, is needed and should be considered by the implementation taskforce. In Canada APM is 4 months, in Utah it is 3 months, in D.C. it is 3 years. The APAS agreed that the period should be in months, not years. The amount of time that had the most consensus was 6 – 9 months of full time supervised practice, or 240-360 hours.
- ii. What type of work? There was consensus that the supervised work could take place during law school or after graduating with an APM supervisor. There are several issues to consider where there was not consensus.
 1. The supervised work allowed would need to be consistent whether done in law school or after graduation.
 2. Timing of supervision: it was generally agreed that the supervised practice needs to be relatively close in time to when the person is seeking admission. For example, a person who graduated from law school 10 years ago would not be able to use hours of supervised practice that occurred in law school towards their minimum

requirements for the APM. This doesn't mean they cannot participate in the APM, just that they would need to complete all requisite hours.

3. Where supervision takes place: more consideration is needed on how to evaluate supervision that took place outside of Oregon (either before or after graduating from law school. An implementation taskforce would need to consider whether any supervision outside of Oregon should be counted.
4. Consensus point: work can be paid (and should be paid).
5. Legal aid issue – if people can qualify for supervision through pro bono work, we need to have mechanisms in place to support legal aid and other pro bono service providers. They do not have the resources to supervise an unlimited number of people to the extent needed.

iii. Who can supervise?

1. Further consideration is needed on whether the supervisor needs to be a licensed OR attorney. If yes, is that just for post graduate supervision as part of the APM? What about applicants who went to school outside of OR and were supervised in clinics by attorneys licensed in other jurisdictions?
2. Guidelines will need to be set for how supervisors are chosen/approved/evaluated.
 - a. There was general agreement that supervising attorneys would be given training that focused on both their tasks/obligations as supervisors as well as educating them on the eligibility requirements for admission to practice in OR. The supervisor's obligation would not be to make admission decisions, but rather to meet the obligations of supervision outlined in the rules.
 - b. The APAS also discussed the fact that generally attorneys in supervisory positions are already ensuring that their employees are meeting their ethical and professional obligations, so this would also be the case for an attorney supervising an applicant.
3. See program logistics section below for criteria/concerns about recruiting, training, and overseeing supervisors.

iv. How can the APM program ensure that there are sufficient supervisors?

1. One issue that the Canadian programs have run in to, is that not all participants have equal access to qualified and willing supervisors. Their program has been in place for decades, and is now being evaluated and criticized for equity barriers. It is easier for dominant culture people to get supervisors than non-dominant culture applicants if the APM allows participants and supervisors self-select. The APM could be just like a job where an applicant is hired and the employer is the supervisor and helps the applicant become licensed.
2. Other considerations include: Who is regulating this to make sure everyone has a fair shot? Something the implementation taskforce would need to consider is what role the oversight group (OSB, or

wherever the program lands) has in connecting applicants to supervisors.

- v. How is the supervised work evaluated? The APAS discussed this issue and came up with two different models for licensure evaluation. They may or may not be mutually exclusive.
 - 1. Utah model: briefly, in Utah there are a set-number of supervised practice hours that meet the requirements created by their bar. They include a preapproved supervisor; detailed timesheets; detailed scope of work rules. At the end of the apprentice time the supervisor signs off on the apprentice and they are licensed. Utah also an additional gatekeeping criteria, which is the applicant's law school has to meet a certain first time bar exam passage rate. The APAS committee has rejected the idea of tying the APM to bar exam passage rates. This model would need to be further evaluated to address concerns of malpractice claims against supervisors if their supervisees later commit malpractice (after the APM has ended).
 - 2. Portfolio model: another idea the APAS discussed was rather than (or in addition to) having a supervisor sign off on an applicant's work, the APM applicant could create a portfolio. Additional consideration would need to go into what would make up the portfolio, but it would be akin to a body of relevant writing samples that could be produced throughout the applicant's supervised practice period. The portfolio could be submitted along with the timesheets signed by the supervisor to the BBX for evaluation. Portfolio criteria would need to be thoughtfully planned out. Not all law practice is the same (litigation, transactional, subject matter, etc.). A one size fits all approach will not work. Another idea discussed was that OSB Sections could be asked to create extended nuts and bolts educational presentations to take some of the training onus off supervising attorneys.

b. Instructional and skill development in lieu of supervised practice for licensure

- i. Given equity concerns with the Canadian articling process (see section iv.1 above, some Canadian provinces are moving toward a skill development component that replicates the experience of legal practice. These models replace the supervised practice requirement. Participants in these programs do not need to have a supervisor/job but rather can go through this program and obtain licensure.
 - 1. The Canadian program is 17-weeks long. It is primarily virtual but includes 3 weeks of in person training and networking opportunities. At the end of the program there is an exam, but it is considered to be much less rigorous than the bar exam, and has not been seen as a barrier to admission.
 - 2. In Canada the program is coordinated by bar associations and paid for with fees paid to the bar.

- ii. This type of instructional / skill development curriculum could be an alternative to supervised practice, or could be created in addition to a supervised practice model.

3. Program logistics

With both the Supervised Practice model and the Instructional and Skill Development model for licensure, program logistics will need to be carefully developed and vetted. The APAS was not in a position to do this, but an implementation taskforce will be. The APAS did talk about some things that will need to be considered. They include:

- a. Who will run the program or programs? The OSB (via the BBX)? Another board or designated group?
- b. Who will create curriculum and criteria? How often will the curriculum and criteria be evaluated? What avenues will exist for feedback and input?
- c. Who will oversee applicants? What avenue for redress will there be if an applicant is rejected?
- d. Who will oversee supervisors? Who will recruit supervisors? What responsibility will the oversight group have if there are an insufficient number of supervisors?
- e. Who will evaluate program completion? What avenue will be available for redress if an applicant is denied licensure for failing to complete the program?
- f. Where will resources come from for creating and running APM's?