

RULES AND REGULATIONS OF

(Rev. 01/01/05)

THE LOUISIANA BOARD OF LEGAL SPECIALIZATION

1. PREFACE.

These rules and regulations are adopted pursuant to Section 1.2 and Section 3.1J of the Louisiana State Bar Association Plan of Legal Specialization ("the Plan") in furtherance of and in order to implement the Plan as established by the Louisiana Supreme Court. [effective August 6, 1993].

2. DEFINITIONS.

As used in these rules and regulations:

2.1 "Advisory Commission" means those committees established by the Board for each recognized specialty, the composition and duties of which are set forth in Section 7 of the Plan.

2.2 "Approved Certifying Agency" means a third party approved by the Board for administration of a program of certification which meets the minimum standards for certification under the Plan.

2.3 "Board" means the Louisiana Board of Legal Specialization established in Section 2 of the Louisiana State Bar Association Plan of Legal Specialization, which Board is the authority having jurisdiction over the subject of specialization of lawyers and is empowered to and performs the duties set forth in Section 3 of the Plan.

2.4 "Court" means the Louisiana Supreme Court.

2.5 "Disciplinary Board" means the committee of the Court created to enforce rules governing lawyer discipline.

2.6 "Notice" means a written communication sent by certified mail, return receipt requested, postage prepaid.

2.7 "Rules" means these rules and regulations and the rules and regulations of individual Advisory Commissions.

2.8 "Specialty" means any area of legal practice designated and recognized as such by the Louisiana Supreme Court.

2.9 "Specialty Standards" means the requirements recommended by an Advisory Commission and approved by the Board for certification in a specialty.

2.10 "the Plan" means the Louisiana State Bar Association Plan of Legal Specialization adopted by the Louisiana Supreme Court.

3. THE BOARD.

3.1 Meetings. Meetings of the Board should be held at such times and places as may be fixed by the chair or the Board, but in no event less than four times a year.

3.2 Notice of meetings. Reasonable notice of the time and place of a meeting shall be given to all members.

3.3 Quorum and voting. All Board members shall have one vote. A quorum of the Board consists of a majority of its members.

3.4 Meetings via electronic means. The Board may permit any and all members to participate in a meeting by or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting.

4. ADVISORY COMMISSIONS.

4.1 Members. Each Advisory Commission shall consist of no less than five people appointed by the board.

4.2 Term. Each member of each Advisory Commission shall serve for the term of appointment by the Board. The initial members shall be appointed to serve staggered terms as follows: Two members to serve for three years; two members for two years; one member for one year. All appointments thereafter will be for a term of three years. No member shall serve more than two consecutive terms.

4.3 Meetings. Meetings of each Advisory Commission shall be held at such times and places as may be fixed by the Chair, but in no event less than once a year.

4.4 Notice of Meetings. Reasonable notice of the time and place of a meeting shall be given to all members.

4.5 Quorum and Voting. All Advisory Commission members shall have one vote. A quorum of the Advisory Commission consists of a majority of its members.

4.6 Meetings via Electronic Means. An Advisory Commission may permit any and all members to participate in a meeting by or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting.

4.7 Duties of Advisory Commission. Each Advisory Commission shall recommend for Board approval criteria for:

- a. specialty practice requirements;
- b. qualification for certification as set forth in Section 8.3 of the Plan;
- c. certifying agencies;
- d. establishment and enforcement of rules for mandatory continuing legal education for that specialty;
- e. any and all other necessary procedures or criteria for implementation of the Plan for that specialty.

5. APPLICATIONS FOR INITIAL RECOGNITION AND RENEWAL.

5.1 Completion of requirements. Prior to filing an application for recognition as a specialist, an applicant shall complete all requirements set forth in the specialty standards adopted by the Advisory Commission and approved by the Board and shall together with the application submit all information required by the particular Advisory Commission.

5.2 Form and content. Applications shall be typewritten or printed on the application forms furnished by the Board. Application forms shall be designed to determine whether requirements set forth in the specialty standards have been met. The applicant shall declare under penalty of perjury that:

- a. Documents which are submitted and intended by the applicant to fulfill a requirement for recognition shall be the principal work product of the applicant; and,
- b. The information submitted in the application is true and correct.

5.3 Supplementary information. The Board or Advisory Commission may require an applicant to submit information relevant to the applicant's recognition as a specialist in addition to that called for on the application form.

5.4 Processing of application. The applicant shall be notified of an application incomplete or insufficient on its face. The provision of any supplemental information pursuant to sub-section 5.3 shall be considered part of the application process. Failure to properly complete the application form including submission of requested information or the failure to supply supplemental information after a request for such shall cause an application to be incomplete. No action may be taken by an Advisory Commission or the Board on an application unless the application is complete.

5.5 Withdrawal of an application. An applicant may withdraw an application at any time by written notice to the Board. If an application remains incomplete for a period of ninety (90) days after a request to complete the application has been made by or on behalf of the Advisory Commission or the Board, the application is automatically denied. An applicant may submit a new application.

5.6 Confidentiality. The filing of the application shall remain confidential until publication pursuant to Section 8.7 of these rules and regulations. The contents of the application form, and all documents, records, communications, other papers and statements of reference shall be the property of the Board and shall be held in confidence and not released to any party, including the applicant, except upon prior order of the Court.

5.7 Effective date of recognition and renewal.

- a. The effective date of recognition shall be the date the Board authorizes recognition.

- b. The effective date of renewal shall be five (5) years from the first of January following the effective date of recognition.
- c. A recognized or certified specialist whose recognition period is interrupted by judicial service and who complies with d. below during the term of judicial service may, on approval by the Board, be permitted to apply for renewal even though more than five (5) years have elapsed since the previous recognition.
- d. A recognized or certified specialist whose practice is interrupted, whether due to illness or otherwise may, on approval by the Board, remain certified if the specialist complies with the specialty continuing legal education requirements and pays annual dues and further notifies the Board through the Advisory Commission of the request for inactive status.

5.8 Applicant's consent to confidential inquiry. The applicant by his or her application consents to confidential inquiry by either the Board or appropriate Advisory Commission or the Disciplinary Board, to all persons who served as references and to other persons regarding the applicant's competence and qualification to be recognized as a specialist.

By filing the application the applicant waives the right to discover the replies to or the requests for information from the Board or Advisory Commission and such information and references shall remain confidential unless such references waive confidentiality expressly or by appearing at a hearing conducted under the provisions of Section 9 of these rules and regulations.

5.9 Applicant authorizes release of disciplinary action. By filing an application the applicant agrees to reveal as to all jurisdictions:

- a. Any pending disciplinary actions;
- b. All prior discipline;
- c. All malpractice claims; and
- d. All judgments or settlements arising from a malpractice claim or its counterpart in any other jurisdiction.

In addition, the applicant authorizes the Disciplinary Board to advise the Board of the imposition of any discipline, public or private, which has been imposed on the applicant.

6. FEES.

The Board from time to time shall set the amount and time for payment of all fees which it determines are appropriate to charge. Payment of application or renewal fees shall be required as a condition for processing any initial or renewal application. The Board may charge certifying agencies and course sponsors fees as a condition to filing an application for recognition as a certifying agency or for recognition credit for an educational course.

The initial fees to be charged for individuals seeking specialty recognition will be as follows:

- a. \$300 for initial application. This fee will be non-refundable.
- b. \$100 examination fee. This fee will be non-refundable.
- c. \$150 upon issuance of certification of specialization or upon completion of a program administered by an Approved Certifying Agency.
- d. \$175 annual dues for each calendar year after the first year of certification.
- e. \$100 upon application for renewal of certification.
- f. \$300 penalty assessment for CLE makeup.

The Board will have control of all funds generated through application, certification and annual fees, and penalty assessments.

7. TASK REQUIREMENTS AND SPECIAL EDUCATIONAL EXPERIENCE.

7.1 Task requirements. Minimum task requirements for specialists are set forth in the applicable specialty standards developed by the appropriate Advisory Commissions and approved by the Board, and may include written tests, oral examinations,

successful completion of all requirements of an approved certifying agency, or otherwise. Examinations shall be scheduled in sufficient time to permit Board action by the end of the calendar year in which an exam is given.

7.2 Course approval required. Continuing legal education programs must be approved by the Board as to quality and relevance in order to satisfy mandatory continuing legal education requirements for each specialty. All such approval reviews as to the overall quality of the educational program will be conducted by each Advisory Commission. All educational programs approved as to quality by the Advisory Commission will be deemed to be approved by the Board.

7.3 Relevancy. The content of an educational program shall be relevant to the specialty and its related fields.

7.4 Self study. No credit for continuing legal education will be given for self study, except in compliance with Louisiana Supreme Court rules.

7.5 Lecturing. Credit shall be given for lecturing or acting as a panelist in formal approved programs of study geared primarily for practicing lawyers, in or related to the specialty field for which the applicant seeks recognition pursuant to the applicable MCLE Rules.

7.6 Publication. Credit may be awarded for authorship and publication with respect to legal issues in the specialty field for which the applicant seeks recognition. Credit may not be awarded for authorship of articles in the specialty field until the article has been published.

7.7 Verification of educational credit. Credit will only be given for continuing legal education programs if such credit is verified by the Advisory Commission in accordance with its procedures for such.

7.8 Failure to satisfy continuing legal education requirements for a specialty.

- a. If an attorney fails to comply with these regulations, the Board shall send notice of non-compliance within sixty (60) days from the date on which MCLE compliance is available in final form to the Board from the MCLE Department to the attorney's address currently maintained on the Court's attorney registration records. The notice of non-compliance shall advise the attorney that within thirty (30) days after receipt of the notice, the attorney must either correct the non-compliance, submit a specific plan to the Advisory Commission to make up the deficiency, or must request a hearing before the Board. If a hearing is requested, the Board may hold a hearing or, in its discretion, may refer the matter to the appropriate Advisory Commission for a hearing.
- b. Any specific plan to make up the deficiency must be completed within one hundred and twenty (120) days after the date the specific plan is due. The one hundred and twenty (120) day period may be extended for an additional period not to exceed sixty (60) days by the Chair of the Board upon written request of the attorney for good cause. When filed, the plan shall be accompanied by a make-up plan filing fee determined by the Board. The plan shall be specific and include the names and locations of accredited activities, the number and types of credit that will be earned, the dates on which such credits will be earned, and the specialty to which the credits are to be applied. The number and types of credit to be earned must be sufficient to make up the deficiency.
- c. The makeup plan shall be deemed accepted by the Advisory Commission unless within thirty (30) days after receipt the Advisory Commission notifies the attorney to the contrary. When the attorney completes his or her makeup plan, he or she shall report to the Advisory Commission no later than fifteen (15) days following such one hundred and twenty (120) day period.
- d. If a hearing is requested, the Board or, if referred to an appropriate Advisory Commission, the Commission shall promptly set the matter for hearing. Notice of the time and place of the hearing shall be given to the attorney at least fifteen (15) days prior to the hearing by mailing a notice of hearing by certified mail to the attorney's address currently maintained by the Court's attorney registration records.
- e. At the conclusion of the hearing, members of the Board or the Advisory Commission, if the Board has referred the matter to an Advisory Commission, shall make findings of fact and shall make a determination of whether the attorney involved had complied with the requirements of these regulations and, if it determines that there was non-compliance, whether there was reasonable cause for non-compliance. A copy of such findings of fact and determination shall be sent to the attorney involved by certified mail at the address currently maintained by the Court's attorney registration records. If it is determined that compliance has occurred, the matter shall be dismissed, and the attorney shall be so advised in writing. The Board's and the Advisor Commission's records shall be made to reflect such compliance. If it is determined that the compliance has not occurred and the Board has heard the case, the Board may impose such sanctions as it deems appropriate, including but not limited to,

revocation of recognition. If it is determined that compliance has not occurred and an Advisory Commission has heard the case, the Advisory Commission shall make a recommendation to the Board as the Advisory Commission deems appropriate including, but not limited to, revocation of recognition. The Advisory Commission shall forward its recommendation in writing to the attorney and to the Board within 15 days of conclusion of the hearing. The Board shall then proceed pursuant to the rules for review of denial or revocation of specialty recognition prescribed in Rule 10.2.

- f. The Chair of the Board has the authority to act on behalf of the Board in providing notices considered consistent with Rule 7.8 or any other notification.
- g. CLE non-compliance makeup will be permitted only one time during the five year certification period, and will not be permitted for failure to comply with the year of application requirement.

7.9 Correspondence with MCLE rules. Except as explicitly modified herein or by the Advisory Commission for a particular speciality and approved by this Board, all provisions of the Rules for Continuing Legal Education in the State of Louisiana applicable to credits for continuing legal education shall be applicable to education credits for specialization. Should the Rules for Continuing Legal Education be amended as to applicable credit, the Board's rules for specialty education credit are deemed amended.

8. INDEPENDENT INQUIRY.

8.1 Timing. After the applicant has satisfied all other requirements established for recognition, but prior to recognition, the Advisory Commission shall conduct an independent inquiry and review of the applicant. An applicant for renewal must submit a completed and notarized Application for Renewal Certification in the form specified by the Board. The Advisory Commission may make an independent inquiry and review of a renewal applicant as it deems appropriate.”

8.2 Criteria. The independent inquiry and review shall consider information furnished by references and other information which the Advisory Commission deems relevant to demonstrate whether the applicant has achieved recognition as having a level of competence indicating proficient performance and handling the usual matters of the specialty field. Such information may include the applicant's work product, problem analysis, statement of issues and analysis or such other criteria which the Advisory Commission deems appropriate to take into account prior to making its recommendation.

8.3 References. An applicant shall submit to the Board the names and addresses of at least five persons who are lawyers who can attest to the applicant's competence in the specialty field in which recognition is sought.

- a. References must be fairly representative of various facets of the practice in the specialty field involved.
- b. The Board and the Advisory Commission reserve the right to request further references.

8.4 Limitations. An applicant shall not submit as a reference the name of any lawyer who fits in the following categories:

- a. A reference who is related by blood or marriage to the applicant;
- b. More than one reference who is, or, within the year immediately preceding the filing of the application for recognition was a partner, associate of, or co-worker with the applicant; or
- c. A reference who is serving or has served within the three (3) years immediately preceding the filing of the application for recognition, on the Board or the Advisory Commission for the specialty field in which recognition is sought.

8.5 Forms. All individuals listed as references by the applicant shall be furnished with forms for statements of reference by the applicant. All such forms shall be sent directly by the reference to the Executive Director of the Louisiana Board of Legal Specialization at the address provided by the applicant. Reference statements are not to be sent to the applicant and will not be accepted if sent to the Board by the applicant.

8.6 Reservation of further review. The Board and the Advisory Commission reserve the right to engage in an independent inquiry as to the applicant's overall competence and competence in the specialty field in which recognition or renewal is sought. In the event any information is received which indicates the applicant may not have achieved an acceptable standard of competence in the field in which recognition is sought, then in such event, the Board or the Advisory Commission shall engage in an independent inquiry as to the issues reflecting adversely on the applicant's competence.

8.7 Publication of applications. The names of those seeking to qualify shall be released for publication and shall be published in the Louisiana Bar Journal. Within thirty (30) days after such publication, any person may comment upon the applicant's

qualifications. Such comments shall be considered as part of the independent inquiry and review process. Publication shall take place only after all requirements, other than independent inquiry and review have been met.

8.8 Evaluation. An application shall not be acted upon until the minimum number of references required by the individual standards have been received and the comment period following publication has expired. In the event that two references indicate that the attorney has not demonstrated proficiency in the specialty field, or if a serious question in the exclusive discretion of the Board or Advisory Commission is raised concerning the applicant's demonstrated proficiency in the specialty field, the Board or Advisory Commission shall seek further information. Negative responses shall be investigated to assure they are related to competence and not to personality conflicts or other factors irrelevant to competence.

8.9 Oral interview. If the Board or Advisory Commission desires further information, it may request that applicant appear for an oral interview.

8.10 Review and recommendation. At the next meeting of the Advisory Commission after receipt of the minimum number of references or after the comment date following publication expires, whichever occurs later, the Advisory Commission shall review the application. In the event of a recommendation for denial of specialty recognition, the Advisory Commission's recommendations shall not be forwarded to the Board until the Advisory Commission has complied with the provisions of Section 10 of these rules and regulations. In the event that the review is delayed, each applicant so affected shall be notified of the delay.

9. BOARD ACTION ON FINAL RECOMMENDATION OF THE ADVISORY COMMISSION

9.1 Board action. At the next meeting of the Board after the final recommendation of the Advisory Commission has been forwarded to the Board, the Board or the Board Chair shall approve or deny the application. The applicant shall be notified of the action of the Board; and, if the application has been denied, the notice shall state the basis of the denial.

9.2 Finality of action. The decision of the Board shall become final unless a timely appeal therefrom is taken to the Court.

10. RULES FOR REVIEW OF DENIAL OR REVOCATION OF SPECIALTY RECOGNITION

10.1 Proceedings before the Advisory Commission.

- a. If the Advisory Commission determines an applicant has failed to meet the requirements for recognition or renewal, or if the Advisory Commission recommends revocation of recognition other than for CLE non-compliance which shall be governed solely by Rule 7, *supra*, it shall notify the applicant in writing without violation of the confidentiality provisions of sub-section 5.6 of Section 5 of these rules and regulations as to the specific reasons why the Advisory Commission recommends rejection of the application. All written notices shall be by certified mail.
- b. Within thirty (30) days of receiving notice from the Advisory Commission of a proposed recommendation of rejection or revocation, except for a revocation recommendation made to the Board for CLE non-compliance under Rule 7, the applicant may petition the Advisory Commission for reconsideration. The petition must adequately identify the basis for the determination for which reconsideration is requested, the date on which notice of the proposed recommendation was received and the reasons why the applicant believes the recommendation should be altered. If a recommendation of revocation is made by a Commission for CLE non-compliance under Rule 7, the attorney may request a Board hearing as provided in Rule 10.2 below.
- c. Within forty-five (45) days of receipt of a petition for reconsideration, the Advisory Commission shall review the petition and notify the applicant either that the petition has been granted or that the petition will be denied unless the applicant notifies the Advisory Commission in writing within twenty (20) days that a hearing is desired. In the absence of such request for a hearing, the recommendation of the Advisory Commission shall stand and shall be transmitted to the Board.
- d. Upon receipt of a request for hearing, the Advisory Commission chair shall refer the matter to a hearing panel composed of at least three members of the Advisory Commission designated by the chair, with one member designated as chair of the panel. The members of the panel shall be guided by the same rules regarding conflicts of interest and recusal as are applicable to Louisiana state court district judges. The applicant may

exercise the right to challenge a panel member within fifteen (15) days of receiving notice of the composition of the panel. The Advisory Commission chair may replace panel members as may be necessary. Two members of the panel shall constitute a quorum for the transaction of business.

- e. The panel shall serve upon the applicant, as soon as possible, a notice containing the names and addresses of the members of the panel, and the time and place of hearing. The notice shall be given to the applicant at least thirty (30) days prior to the time fixed for the hearing.
- f. The Advisory Commission may, but is not required to, appoint an examiner who is not a member of the Advisory Commission or Board to investigate, gather and prepare evidence and present the same to the panel to aid in conducting hearings.
- g. At the hearing, the applicant and the examiner may present sworn testimony and documentary evidence and shall have the right to cross-examine adverse witnesses. The panel shall not be bound by a strict application of the rules of evidence, other than those related to privileges, in considering information that it deems reliable and relevant. The parties shall give notice to each other of any evidence to be relied upon at the hearing. The applicant shall bear the burden of supplying information in support of his or her qualifications for specialty recognition. The hearing shall be recorded by means of a tape recording which shall be kept as the official record of the hearing.
- h. Within thirty (30) days after the completion of the panel hearing, the panel shall send to the Advisory Commission chair and the applicant its written report which shall separately state the panel's findings, conclusions and recommended decision.
- i. Within thirty (30) days of receipt of the panel's findings, conclusions and recommended decisions, the Advisory Commission shall adopt or reject the panel's determinations and serve written notice upon the applicant of its proposed recommendation to the Board.

10.2 Proceedings before the Board.

- a. Within thirty (30) days of receipt of the final notice from the Advisory Commission of recommended denial or revocation of specialty recognition, an applicant who seeks review of the Advisory Commission's recommendation shall file with the Board and serve upon the chair of the Advisory Commission a request for review.
- b. Within fifteen (15) days of receipt of the request for review, the Advisory Commission shall submit to the Board its entire record regarding the application.

11. HEARINGS BEFORE THE BOARD; APPEALS

- 11.1
 - a. Upon receipt of a request for hearing in any matter where the applicant is entitled to a hearing, the Board chair shall refer the matter to the Board en banc or to a hearing panel composed of at least three members of the Board with one member designated as chair of the panel. The member shall be guided by the same rules regarding conflicts of interest and recusal as are applicable to Louisiana state court district judges. The applicant may exercise the right to excuse a panel or Board member within fifteen (15) days of receiving notice of the composition of the panel. The Board chair may replace panel members as may be necessary. Two members of the panel shall constitute a quorum for the transaction of business.
 - b. In matters where an Advisory Commission has made a recommendation to the Board, within twenty (20) days after the filing of the request for review, the applicant may submit a memorandum brief setting forth his or her arguments why the Advisory Commission's recommendation should be rejected. A copy of the brief shall be served by the applicant upon the chair of the Advisory Commission. Within twenty (20) days of receipt of the applicant's brief, such representative as may be designated by the Advisory Commission chair may file a responsive brief. On written request of either the applicant or the representative of the Advisory Commission, the chair of the Board or hearing panel may set the matter for oral argument. Requests for oral argument shall be filed within fifteen (15) days after service of the last brief.
 - c. The Board shall consider only matters in the record of the Advisory Commission or proffered to the Advisory Commission by the applicant prior to decision by the Advisory Commission. No additional evidence will be admitted at the hearing before the Board.
 - d. The amount of time and procedure for oral argument may be determined by the Board or hearing panel.
 - e. The Board or panel shall render a written decision. A written copy of the decision shall be served forthwith by certified mail on the applicant and the representative of the Advisory Commission.

11.2 a. If the decision of the Board is adverse to the applicant, the applicant may appeal to the Board of Governors within thirty (30) days of the decision. The appeal must be based on one or more of the following issues:

1. The decision of the Board is in conflict with a decision of the Court;
2. A significant question of law is involved;
3. The decision was arbitrary or capricious;
4. The appeal involves an issue of substantial public interest that should be determined by the Court; or
5. The applicant was prejudiced by violation of these rules or other requirements of law.

Appeals from decisions of the Board of Governors shall be governed by the Rules of the Board. If an applicant fails to perfect or prevail in the appeal, the decision of the Board shall be final.

b. An applicant who has been previously recognized, but whose recognition is the subject of revocation proceedings, may represent himself as a specialist during the pendency of the proceedings. After an adverse decision of the Board or Court becomes final, the applicant must take all appropriate steps to ensure that he is not misrepresented as a specialist.