

EXPLANATION OF PROPOSED REVISIONS TO PROGRAM RULES

RULE	REASON FOR CHANGE
Global	Revise to use either numbers or text when referring to numbers, not both, i.e., "eighteen (18)" months will be revised to simply "18" months. Following editing conventions, numbers less than 10 are spelled out; numbers 10 or greater appear as numbers. Minor, non-substantive changes for the sake of clarity and to put language in the active voice.
3.2	Reword to remove reference to a two-part application process, which is often confusing to applicants, especially when it comes to the education and task and experience requirements. Those refer to a certain number of years prior to the "application" and the confusion arises out of whether that means prior to the exam or submission of the actual application. The revised language makes it clear that the application refers to the documentation that the applicant submits to show compliance with the requirements only <u>after</u> the applicant has passed a written exam. Add language providing for closure of a file if the applicant fails to comply with section 3.1, which sets forth the requirements for submission of an application.
4.1	Reword and add language to make it clear that the applicant must have been practicing continuously and <u>in the specialty field</u> during the five years prior to application.
4.2.4	Add language recommended by the Taxation Law Advisory Commission, which believes that it is important to the integrity of the program that all certified taxation law specialists be eligible to practice before the IRS.
7.1	Add language to explain that activities approved for legal specialist credit are automatically approved for MCLE credit.
7.2.2	Add language to emphasize that the four activities needed to qualify for approved provider status must be separate <u>and</u> different, not repeat presentations.
7.2.3	Same revision as 7.2.2.
7.3.1	Add language to clarify that MCLE special topics (legal ethics, substance abuse, elimination of bias) do not qualify for legal specialist credit unless specific to the specialty field. Also that activities that market products do not qualify.
7.3.2	Revise to focus on the content of promotional materials rather than the type.
7.5	Revise to reflect current practice.
7.6	Add denial of an application to this section, which is not addressed elsewhere. Strengthen language to make it clear that it takes a majority of the Advisory Commission to deny an application or withdraw approval of a provider.
8.4	Delete the words "and Guidelines" in title of section. There is no reference to guidelines in the language of the section. Remove specific reference to "the State Bar office in San Francisco," leaving it to the Board of Legal Specialization to designate how and where applicants may inspect their exam answers, which will give staff more flexibility in arranging such inspections. Shorten time within which applicants may inspect their answers.

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9.2	Add language to clarify that references must be not only favorable but also eligible under the criteria set forth in section 9.1. A favorable reference may not be eligible if it comes, for example, from a current partner or associate, client, relative, etc. Remove requirement that the applicant must make a motion to reduce the number of references required, instead leaving it to the discretion of the Advisory Commission.
9.4	Delete as unnecessary. The “informal” oral interview is no longer used. Its purpose was to gather additional information, but that happens anyway during the “formal” oral interview (section 9.6) that must take place when the Commission decides to recommend denial of an application for certification or recertification based on the result of independent inquiry and review. There is no reason to bring an applicant in twice for essentially the same thing, so the informal interview became redundant.
9.5	Re-number as 9.4. Revise to give the Commission the option of seeking further information if two negative references are received rather than requiring it. Sometimes it is clear from the references that the negative responses are related to personality conflicts or other irrelevant factors and no further investigation is necessary. Other non-substantive language changes for clarity and to put the text in active voice.
9.6	Re-number as 9.5. Drop word “formal” in title (see 9.4 and 9.6.1).
9.6.1	See 9.4. Re-number as 9.5.1. Drop word “formal” throughout section. Move purpose of interview to front of section. Rearrange sentences and make other non-substantive language changes for clarity and to put the text in active voice.
9.6.2 and 9.6.3	Re-number as 9.5.2 and 9.5.3
10.2	Add language to make it clear that additional information must be submitted in writing. Change time frame from within 30 days of receipt of notice to within 30 days of <u>date</u> of notice. Add language to clarify that the Commission will consider the applicant’s response before forwarding its recommendation to the BLS.
10.3	Change “minimum of five” to “majority” to conform to the majority vote required in section 11.1.1. Non-substantive language change.
11.1.2.1	Remove word “formal” (see 9.6).
11.1.3	Add language to make it clear that additional information must be submitted in writing. Change time frame from within 30 days of receipt of notice to within 30 days of <u>date</u> of notice.
11.2	Change name of certificate to “Certificate of Specialization” to reflect current practice. Add language to allow certified specialist to request termination of certification, i.e., resign from program.
12.1	Same change as 4.1
12.3.1	Delete requirement that at least one education hour be completed in each of at least three of the five years of the recertification period. This seems like an unnecessarily bureaucratic burden that accomplishes nothing. It hardly keeps the specialist’s education current when he or she is required to take only one hour of education a year for three years and then can take the remaining 57 hours in the last year of the certification term.

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12.7.2	Add language to include service as an administrative law judge. ALJ's used to have their certification tolled. At present, they do not, which puts them in the position of neither fish nor fowl. If they go on inactive status with the State Bar, which many ALJ's do, they must continue to pay their annual legal specialist fee and recertify every five years in order to maintain their certification. However, while they may use their judicial service to satisfy the task and experience requirement for recertification, when it comes time to recertify, the rules require that they be able to say that they have been engaged in the practice of law during the previous five-year certification term. Even if they have remained on active status, they have not been practicing law, so they find themselves in a Catch-22 situation and most of them opt to drop their certification. We would like to be able to toll ALJ's again and keep them in the program.
12.8	New section. Allows BLS, upon recommendation of the Advisory Commission, to toll for up to three years the certification of a specialist who is unable to practice law for compelling medical or other reasons.
14.7	New section. Adds as a reason to revoke certification the failure of an applicant to sit for and pass the written exam when the applicant has elected to do that in lieu of satisfying the education requirement for recertification.
15.1	Changed from within 45 days of receipt of notice to within 45 days of <u>date</u> of notice. Non-substantive language change for the sake of clarity.
16.1	Add language to make it clear that taking a written exam is part of the reapplication process except as otherwise provided in the section.
16.2	Add language to make it clear that taking a written exam is part of the reapplication process following file closure.
17.0	Remove quotes around State Bar of California Board of Legal Specialization and add language allowing certified specialist to use either text, the BLS logo, or both to state the name of the certifying body [as required in Rule of Professional Conduct 1-400(D)(6)].
18.0	Add word to clarify title of section.
20.1	Revise to define the application fee as including exam registration and certification (the fee is paid at the time of exam registration). Delete reference to taking the exam to recertify (if section 12.4 deleted). Delete reference to incapacity or duty as a member of the armed forces; add language to give Board greater discretion and the option of either refunding the fee or granting credit toward the next exam, which reflects current practice.
20.2	Rename section Recertification Fee (the certification fee is now covered by 20.1); rewrite section to provide that the recertification fee is due upon filing of the application for recertification.
20.3	Revise to make annual fee due within 75 days of billing instead of 60 to reflect the fact the the legal specialist annual fee now appears on the annual bar fee statement and is subject to the same billing cycle and deadlines.
20.5	Delete the reference to applicant. Applicants are not subject to the annual fee.
20.7	Remove conditional language, which would exempt in-house providers from paying an application fee (and does not reflect current practice).

RULE	REASON FOR CHANGE
22.1	Revise language to correct an error in the number of Board of Legal Specialization (BLS) members that was made during the last revision. At present, there are 12 BLS members and eight Advisory Commission chairs who serve as voting members, for a total of 20 members. The last revision was worded incorrectly to suggest that there are 20 members <u>plus</u> the Advisory Commission chairs. The revision removes the reference to a specific total number to allow for the addition of new specialties.
22.4.1	Remove reference to "a minimum of" one non-lawyer member, which suggests that there could be more. The actual practice is to have only one non-lawyer member. While non-lawyer members bring a useful and needed perspective to the Commissions, their participation in exam development and grading and the evaluation of applications is limited, so it would not be practical to have more than one non-lawyer on a Commission.
22.5	Remove limit on number of past chairs that may sit on the Council. We are finding that, because each past chair brings his or her own particular area of expertise (budget, development of new specialties, marketing, etc.) to the BLS, it would be more useful to be able to call on the past chair that would be the most helpful in a particular situation rather than be limited by an arbitrary number. We have also found that not all of the past chairs attend meetings at the same time, so it would not be necessary to increase the amount of funds budgeted for Council travel.
23.2	Add language to include the names of persons from whom information is sought, not just those from whom it is received.
24.1.5	Add "registered domestic partner" of Board or Commission member as someone who, if related to an applicant, may require the member to recuse him or herself from consideration of the applicant.