

**RULES GOVERNING THE STATE BAR OF CALIFORNIA  
PROGRAM FOR CERTIFYING LEGAL SPECIALISTS**  
(Amended by the Board of Governors May 16, 2008.)

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**1.0 Purpose**

The purpose of the Rules Governing the State Bar of California Program for Certifying Legal Specialists is to establish a program for certifying specialists in specified areas of law, to identify to the public attorneys who have demonstrated proficiency in the specialty fields and to encourage attorney competence.

**2.0 Definitions**

- 2.1 "Applicant" is an attorney applying for certification or recertification as a legal specialist.
- 2.2 "Board" is the California Board of Legal Specialization.
- 2.3 "Certified specialist" is an attorney who is currently certified as a legal specialist by the California Board of Legal Specialization.
- 2.4 "Commission" is an Advisory Commission in a specialty field of law.
- 2.5 "Individual standards" are the standards for certification and recertification for each area of law in which certification is available.
- 2.6 "Program" is the California Program for Certifying Legal Specialists.
- 2.7 "Rules" are these Rules Governing the California Program for Certifying Legal Specialists.

**3.0 Applications for Certification and Recertification**

**3.1 In General**

All applications for certification and recertification must be submitted:

- 3.1.1 On a form provided by the State Bar;
- 3.1.2 At the designated office of the State Bar;
- 3.1.3 In a timely manner;
- 3.1.4 With all the information requested on the form;
- 3.1.5 With any supplemental information requested in addition to that requested on the form; and
- 3.1.6 With the appropriate nonrefundable fee.

**3.2 Application for Certification in Two Parts**

~~The application for certification shall be in two parts. Part 1 shall relate to the written examination. Part 2~~ The application for certification shall relate to the applicant's demonstration of compliance with the ~~remaining~~ requirements. ~~Part 2~~ and shall be provided to the applicant only after the applicant has passed ~~the a~~ written examination. ~~The application~~ and must be submitted by the applicant no later than ~~eighteen (18) months~~ after the date of the administration of the written examination. ~~If Part 2~~ the application is not submitted within ~~eighteen (18) months~~ after the date of the administration of the written examination, the applicant's file will be closed. If the applicant fails to comply with any of the requirements set forth in section 3.1 within 60 days of notice of non-compliance, the applicant's file will be closed. Closing an applicant's file pursuant to this section shall not constitute a denial of the application for purposes of these Rules.

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### **3.3 Duty to Disclose**

An applicant or certified specialist shall disclose to the Board of Legal Specialization in writing, within 30 days of the occurrence, any of the events set forth in sections 9.3.2 - 9.3.7.

### **3.4 Withdrawal of Application**

All applications for certification and recertification may be withdrawn in writing by the applicant at any time prior to final Board action on the application.

## **4.0 Eligibility for Certification**

To be eligible to become a certified specialist, an applicant shall:

- 4.1** Have been engaged in the practice of law continuously during the five years immediately preceding the submission of his or her application for certification and, in each of those five years, have practiced law in the area in which certification is sought for a minimum of at least twenty-five percent (25%) of the applicant's time the applicant has spent in occupational endeavors during the previous five (5) years.
- 4.2** Be an active member of the State Bar of California.
  - 4.2.1** In the case of Workers' Compensation Law, the applicant also must be in good standing before the Workers' Compensation Appeals Board.
  - 4.2.2** In the case of Immigration and Nationality Law, the applicant also must meet the definition of "attorney" as set forth in 8 CFR 1.1(f) and shall not be under order of suspension or disbarment by the Board of Immigration Appeals.
  - 4.2.3** In the case of Bankruptcy Law, the applicant must also be admitted and in good standing before a minimum of one United States District Court within the State of California;
  - 4.2.4** In the case of Taxation Law, the applicant shall not currently be suspended or disbarred from practicing before the Internal Revenue Service.
- 4.3** Demonstrate performance of a minimum number of designated tasks in the particular field of law as specified in these Rules and the individual standards;
- 4.4** Demonstrate educational experience in the particular field of law, as specified in these Rules and the individual standards;
- 4.5** Pass a written examination as specified in these Rules;
- 4.6** Demonstrate proficiency in the specialty area through independent inquiry and review, as specified in these Rules and the individual standards; and
- 4.7** Pay the appropriate fees.

## **5.0 Task Requirement**

With the exception of Appellate Law, an applicant shall demonstrate that, within the five (5) years immediately preceding the application, the applicant performed the specific tasks set forth in the individual standards. In the case of Appellate Law, the applicant may demonstrate completion of some of the task requirements, as set forth in the Appellate Law standards, since his or her admission to practice law. The information required shall be shown initially by completing a form. The form may request information concerning the frequency and nature of the work.

Commissions may accept equivalent activities offered by the applicant to fulfill the requirements of this section.

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## **6.0 Educational Requirement**

### **6.1 Requirement**

An applicant shall demonstrate that within the three years immediately preceding the application, the applicant completed a minimum of ~~forty-five (45)~~ hours of approved educational activities relevant to the field of law in which certification is sought. The specific educational experience may be further defined in the individual standards.

Commissions may accept equivalent educational experience offered by the applicant to fulfill the requirements of this section.

### **6.2 Limitations on Alternative Methods to Satisfy the Educational Requirement for Certification and Recertification**

Not more than ~~one-half (1/2)~~ of the requirement may be satisfied by one or more of the following methods:

**6.2.1** The writing or editing of published articles or books relating to the field of law in which certification or recertification is sought. The hours of credit to be allowed shall be determined by the Commission after consideration of the amount and quality of the submitted materials;

**6.2.2** Teaching a course at an accredited institution of higher education in the field of law in which certification or recertification is sought. The hours of credit to be allowed for this endeavor shall be determined by the Commission based upon information submitted by the applicant as to the amount and quality of professional education involved;

**6.2.3** Completion of an advanced postgraduate course at an accredited law school that includes education in the field of law in which certification or recertification is sought. The hours of credit to be allowed for this endeavor shall be determined by the Commission based upon information submitted by the applicant as to the amount and quality of professional education involved; and

**6.2.4** Self-verified listening to and/or viewing of, a complete audio or audio/visual reproduction of an approved program or program segment and submission of an affidavit certifying thereto. Such tapes must be approved for educational credit and listened to or viewed within the time period for which they were approved.

**6.2.5** Self-verified participation in other approved audiovisual activities, including interactive video instruction and activities electronically transmitted from another location, such as online education.

### **6.3 Calculation of Credit**

A credit hour is defined as ~~sixty (60)~~ minutes of attendance, computed based on actual time spent in an activity (actual instruction or speaking time, running time of tapes, audio or video) in hours to the nearest one-quarter hour reported in decimals.

### **6.4 Credit for Teaching**

The instructor of an approved program shall receive credit at the rate of four ~~(4)~~ hours for every hour of teaching of a program in the specialty area in which certification is sought for the first time and one ~~(1)~~ hour for each subsequent hour of teaching the same program.

## **7.0 Approval of Educational Activities**

Educational activities may be granted approval in one of two ways; 1) the provider of the program has been granted ~~approved~~ **Multiple Activity Provider** status by the appropriate Commission and certifies that the program satisfies the requirements of section 7.3, or 2) the individual program is approved by the appropriate Commission.

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## **7.1 Individual Activity Approval**

Approval extends to all offerings of the same activity, including tapes, within two years of approval of the activity. Once approved for legal specialist credit, the activity is automatically approved for MCLE credit.

## **7.2 Approval of Multiple Activity Providers**

**7.2.1** Approval may be extended in advance to a continuing education provider for not more than three years for all educational activities presented by the provider which the provider certifies conform to the requirements of section 7.3.

**7.2.2** The provider shall demonstrate that, during the two ~~(2)~~ years immediately preceding its application, the provider has sponsored a minimum of four ~~(4)~~ separate and different activities, not including repeated presentations, that were approved for legal specialization credit.

**7.2.3** If certification in the field of law in which approval is sought has been available for less than six ~~(6)~~ years, the provider shall demonstrate that, during the two ~~(2)~~ years immediately preceding its application, the provider has sponsored a minimum of four ~~(4)~~ separate and different activities, not including repeated presentations, that would have complied with section 7.3.

## **7.3 Criteria for Approval of Educational Activities**

**7.3.1** The content of the activity must be relevant to the specialty or related fields. Special topics required for compliance with the State Bar's MCLE requirement are not eligible unless specific to the specialty field. Activities related to the marketing of products will not be approved.

**7.3.2** The curriculum must provide a level of education required to achieve or maintain proficient practice in the specialized area of law. In determining whether the activity is so designed, the type content of the advertising employed by the sponsor will be considered.

**7.3.3** The instructors must be qualified experts in the field in which they are teaching.

**7.3.4** Where the activity is more than one ~~(1)~~ hour in length, substantive written materials must be distributed to the participants at or before the activity.

## **7.4 Requirements for All Providers**

**7.4.1** Providers of approved educational activities shall agree to all of the requirements set out in section 7.2 rule 3.502 of Title 3, Division 5, Chapter 1, of the MCLE Rules and Regulations of the State Bar of California, including any amendments thereto, except that the provider of approved legal specialization educational activities shall maintain attendance records for a period of six ~~(6)~~ years, the certificate of attendance shall state the specialty area, including sub-areas, if applicable, for which credit is approved, and promotional materials shall include the area(s) of specialty and the number of hours in each specialty area, including sub-areas, if applicable, for which credit is being offered.

**7.4.2** Promotional materials, if any, must contain accurate information as to whether the educational activity is approved for legal specialization credit or whether approval is pending.

**7.4.3** In order to ensure quality, each activity shall be subject to audit by the Board and the Commission without cost.

**7.4.4** An educational activity shall not be advertised in a manner which is misleading or misrepresentative in any way.

### **7.5 Procedure for Approval of Providers and Individual Educational Activities and Approval/Renewal of Multiple Activity Providers**

Upon receipt of a completed application for ~~provider approval or for~~ of an individual educational activity, or approval or renewal of a Multiple Activity Provider, the application shall be distributed to ~~as many as three (3) members of the appropriate staff or subcommittee of the Commission~~. Within ~~ten (10)~~ days of distribution of the application, the ~~member or members of the Commission who received the application~~ subcommittee shall notify the staff of the recommended action. If the subcommittee recommends that the application be denied, it must refer the application to the full Commission, in which case the ~~The~~ application is approved if a majority of the members of the Commission ~~who received the application~~ recommend approval. In the case of educational activities, approval shall include agreement on the number of hours to be offered for credit. ~~If a majority is not reached, the application shall be forwarded to the full Commission for further consideration.~~

### **7.6 Withdrawal or Denial of Multiple Activity Provider or Educational Activity**

Approval may be withdrawn or denied for reasons including, but not limited to, a determination that the content of an activity does not comply with the requirements of section 7.3 or the provider does not comply with the requirements of section 7.4. Approval of an educational activity or Multiple Activity Provider ~~may~~ must be withdrawn or denied by a majority of the members of the appropriate Commission.

### **7.7 Renewal of Multiple Activity Provider Approval**

Subject to the requirements of section 7.4, the approval of ~~any~~ a Multiple Activity Provider may be renewed for a period of time specified by the appropriate Commission for all of the educational activities referred to in sections 6.1 and 6.2.4 presented by such provider which it certifies conform to section 7.3. The renewal of ~~an approved~~ a Multiple Activity Provider may be denied if the provider fails to comply with any of the requirements of these Rules.

## **8.0 Written Examinations**

### **8.1 Purpose**

The purpose of the examination is to verify that an applicant has a basic knowledge of the usual procedures and substantive law that should be common to specialists in the field of law.

### **8.2 Place and Time**

The written examination in each specialty field shall be conducted at least every other year in northern and southern California, and at such other times and places as shall be set by the Board.

### **8.3 Grading**

Written examination grades shall be final in all cases, except where the written examination is subject to reappraisal by a Committee of Reappraisers appointed by the appropriate Commission. In such cases, the decision of the Committee of Reappraisers as to whether the applicant has passed or failed shall be final.

### **8.4 Inspection of Examination Books and Guidelines**

An applicant who fails to pass the examination may, within ~~four (4)~~ two months after the results have been announced, inspect his or her examination books ~~at the State Bar office in San Francisco or in such manner~~ and at such place as the Board may designate. An applicant who passes the examination shall not be entitled to inspect his or her examination books.

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## **8.5 Passing Grade**

Except pursuant to sections 3.2 and 16.1, a passing grade shall be valid for ~~thirty-six (36)~~ months from the date of the administration of the examination.

## **8.6 Alternative to Written Examination**

Subject to the provision of the following, alternative requirements to the written examination shall be found in the individual standards.

- 8.6.1 At any time within the two years following the effective date of a new specialty, in lieu of passing a written examination, an applicant may verify basic knowledge of the usual procedures and substantive law common to specialists in the field of law by satisfying alternative requirements approved by the Board. This option is not available to an applicant who sits for the written examination.
- 8.6.2 If increased educational requirements are imposed as part of the alternative to the examination, they shall meet the criteria set forth in section 7.3 of these Rules.
- 8.6.3 The application fee for certification using the alternative to the examination shall be the same as the examination fee.

## **9.0 Independent Inquiry and Review**

The appropriate Commission shall conduct an independent inquiry and review of each applicant.

### **9.1 References**

Each applicant shall be required to submit the names of three ~~(3)~~ attorneys or judges to serve as references who are familiar with the tasks upon which the applicant has relied to satisfy the task requirement, except where the number and type of references are set forth in the individual specialty standards. Each reference shall be asked to submit the names of two ~~(2)~~ additional references familiar with the applicant's proficiency. The Commission may seek additional references from other persons familiar with the tasks described in the individual standards. The references shall be sent a questionnaire. The references shall not include any attorney who is associated with the applicant, including clients, relatives, current partners, associates, employers or employees of the applicant.

### **9.2 Minimum Number of Favorable References**

An application shall not be acted upon until a minimum of five ~~(5)~~ favorable references have been received, except Criminal Law, where a minimum of eight ~~(8)~~ favorable references are required for action; ~~provided, however, that. To be considered, the references must also be eligible pursuant to the criteria set forth in section 9.1 above.~~ The Commission may, in its discretion, act upon an application that has been pending for longer than one year even if the minimum number of favorable references ~~have~~ has not been received. In appropriate instances of limitations on the applicant's practice by reason of geographical location, limited nature of practice, or similar reasons, the Commission may, ~~upon motion by the applicant in its discretion,~~ reduce the number of references required to a minimum of two ~~(2)~~ persons. If, within ~~thirty (30)~~ days of the mailing of the initial reference forms, five ~~(5)~~ favorable responses have not been received, the applicant shall be so notified and may be requested to provide additional references.

### **9.3 Evaluation Criteria**

The Commission shall consider whether the applicant has achieved recognition as having a level of competence indicating proficient performance in handling the usual matters in the specialty field and conforms his or her conduct to the California Rules of Professional Conduct. Such consideration shall be based on

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relevant criteria which the Commission deems appropriate to take into account prior to making its recommendation to the Board, including:

- 9.3.1 the applicant's work product, problem analysis, and statement of issues and analysis;
- 9.3.2 felony convictions;
- 9.3.3 final disciplinary actions imposed for professional misconduct by any court or body before whom the applicant appears;
- 9.3.4 resignation from any bar, court or body before whom the applicant appears;
- 9.3.5 three or more judgments of professional negligence filed in a 12-month period;
- 9.3.6 sanctions, other than discovery sanctions, of \$1,000 or more entered against the applicant by any court or body before whom the applicant appears;
- 9.3.7 findings of contempt by any court or body before whom the applicant appears.

An applicant or certified specialist shall have a continuing duty to disclose the foregoing matters as provided by section 3.3 of these Rules.

In determining whether or not an attorney conforms his or her conduct to the Rules of Professional Conduct, the Commission will make an independent assessment concerning how such conduct bears on an attorney's qualification to obtain or maintain certification.

The Commission may only find an applicant to have not successfully completed independent inquiry and review on the basis of substantial and credible information received in the independent inquiry and review of the applicant.

#### **9.4 Informal Oral Interview**

~~If further information is desired, the applicant may be requested to appear for an informal oral interview. The interview is not a "hearing"; it is an application review in closed session for the purpose of gathering information. The applicant is not entitled to have counsel present during the interview.~~

#### **9.54 Negative or Adverse Responses**

In the event that two (2) references indicate that the applicant does not ~~reach~~ demonstrated proficiency in the specialty field, or if a serious question is raised concerning the applicant's demonstrated proficiency in the specialty field, further information ~~shall~~ may be sought. The chair will designate one member of the Commission to investigate Ssignificant negative responses shall be investigated to assure that they are related to proficiency and not to personality conflicts or other factors irrelevant to proficiency. The designated member will make Rreasonable efforts shall be made to contact the source or sources of negative or adverse comments and ~~reasonable efforts shall be made~~ to obtain independent verification of the negative and adverse comments. ~~One (1) member of the Commission shall be designated to investigate the negative comments and shall~~ The designated member will be the only person authorized to seek additional information on behalf of the Commission. Whenever possible, the Commission will not place continuing and exclusive reliance ~~shall not be placed~~ on the same sources of information in evaluating various applicants from any given geographic area.

#### **9.65 Formal Oral Interview**

- 9.65.1** ~~In the event that a recommendation of not qualified is being considered, a formal oral interview shall be requested.~~ The purpose of ~~the formal an~~ oral interview is to provide an applicant with a reasonable opportunity to respond to adverse information and to present any additional information which may support his or her qualifications. It is not a hearing and the applicant is not entitled to have counsel present during the interview.

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In the event that a recommendation of not qualified is being considered, a formal oral interview shall be requested. A formal oral interview should be held only after a substantial part of the relevant information has been received but leaving sufficient time prior to the reporting date for the applicant's rebuttal of any adverse comments. The subject matter of substantial and credible adverse allegations received as to whether the applicant is qualified which, unless rebutted, would be determinative of the applicant's being not qualified, should be disclosed to the applicant, as specifically as possible without any breach of confidentiality, as provided for in these rules. The formal oral interview is not a "hearing." The applicant is not entitled to have counsel present during the interview: the Advisory Commission or Board shall request an oral interview with the applicant at a time and place it designates. The oral interview should be held only after the Advisory Commission or Board receives a substantial part of the relevant information and should allow sufficient time prior to the interview for the applicant's rebuttal of any adverse comments. The applicant should be notified, as specifically as possible without any breach of confidentiality as provided for in these rules, of the subject matter of substantial and credible adverse allegations that the Advisory Commission or Board has received regarding the applicant's qualifications that would, unless rebutted, be determinative of the applicant's being not qualified.

**9.65.2** At the interview, all relevant factors, including both positive and negative information, should be discussed with the applicant. After the interview, an applicant may submit additional information in response to adverse allegations raised in the interview. This section shall not be construed as permitting the disclosure to the applicant of information from which the applicant may infer the source, and no information shall either be disclosed to the applicant or be obtained by any process which would jeopardize the confidentiality of communications for persons whose opinion has been sought on the candidate's qualifications.

**9.65.3** Upon request by an applicant and at the applicant's expense, the interview may be tape recorded or reported by a court reporter. The tape or transcript shall be the property of the State Bar.

## **10.0 Commission Action on Application**

### **10.1 Possible Actions**

The Commission may recommend to the Board that an applicant be granted or denied certification or recertification or may recommend abatement of the application during the pendency of disciplinary proceedings by the State Bar of California, by the state bar of any state, or any body authorized to impose professional discipline.

### **10.2 Notice to Applicant of Commission Recommendation to Deny**

If the recommendation of the Commission is to deny certification or recertification, prior to transmitting the recommendation to the Board, the Commission shall so notify the applicant in writing and state the basis for the denial. The applicant shall be permitted to withdraw the application or submit additional relevant information to the Commission in writing within ~~thirty (30)~~ thirty (30) days of ~~receipt~~ the date of the notice. If a written response is received, the Commission will forward its recommendation to the Board as soon as it has considered the response. If no written response is received within ~~thirty (30)~~ days, the recommendation shall be transmitted to the Board.

### **10.3 Recommending Certification or Recertification**

The Commission shall recommend to the Board certification or recertification if the applicant is found to have satisfied all the requirements for certification or recertification by a ~~minimum of five (5)~~ majority of members of the Commission. The Commission's recommendation to the Board shall be in writing. ~~As to any applicant for whom~~ If the Commission is recommending denial, the basis for the denial shall be specified.

## **11.0 Board Action on Commission Recommendation**

### **11.1 Board Action**

**11.1.1** Except as provided in section 11.1.2, within ~~ninety (90)~~ days of the receipt of the Commission's recommendation, the Board shall approve or tentatively deny the application by a vote of a majority of Board members. An application approved by mail ballot must be approved by affirmative and unanimous vote; if not unanimous, the application shall be placed on the agenda of the Board's next meeting. In the event that the review is delayed, each applicant so affected shall be notified of the delay.

**11.1.2** While the Board is considering an application for certification or recertification, and at the sole discretion of the Board, the Board may:

**11.1.2.1** Request the applicant to appear for an in format interview. The purpose of the interview is to provide the applicant with an opportunity to address the Board regarding whether certification or recertification should be granted. The applicant is not entitled to have counsel present during the interview.

**11.1.2.2** Send the application back to the Advisory Commission for further action as directed by the Board.

**11.1.3** If the vote of the Board is to tentatively deny the application, the Board shall so notify the applicant in writing and state the basis for the denial. The applicant shall be permitted to withdraw the application or submit additional relevant information to the Board in writing within ~~thirty (30)~~ days of receipt of the notice. If no written response is received within ~~thirty (30)~~ days, the tentative denial shall become final.

**11.1.4** The applicant shall be notified of the final action of the Board in writing. If the application has been denied, the notice shall specify the basis for the denial.

### **11.2 Duration of Certification**

Certification by the Board shall commence on the date indicated on the Certificate of ~~Registration as a Legal Specialist~~ Specialization and shall remain in effect for the period specified on the notice of certification unless sooner terminated by the Board pursuant to sections 14.0 and 15.0, or at the request of the certified specialist.

## **12.0 Eligibility for Recertification**

Recertification shall be required every five years from the date of certification or recertification.

### **12.1 Required Period of Law Practice**

An applicant shall, at the time of recertification, be an active member of the State Bar of California and shall have been engaged in the practice of law during the previous five years in the area in which recertification is sought for a ~~minimum of at least twenty-five percent (25%) of the applicant's time~~ the applicant has spent in occupational endeavors during the previous five (5) years.

### **12.2 Task Requirements**

**12.2.1** An applicant must show that during the current certification period he or she engaged in the practice of the law in the specialty field in which recertification is sought to the same extent as demonstrated in the application for original certification or as set forth in the individual standards. Such showing may be made by a sworn statement, in the discretion of the appropriate Commission.

**12.2.2** The Commissions shall accept quasi-judicial service and may accept other equivalent activities offered by the applicant to fulfill the requirements of this section.

**12.2.3** Tasks that satisfy the individual standards which occur within the last six ~~(6)~~ months of a certification period and are in excess of the number of tasks necessary for recertification may be applied to the next certification period.

### **12.3 Educational Requirements**

**12.3.1** An applicant for recertification shall complete a minimum of ~~sixty (60)~~ hours of educational activities relevant to the field of law in which recertification is sought that meet the criteria for educational activities set forth in section 7.3, or the alternative methods set forth in section 6.2.

~~A minimum of one education hour shall be completed in each of at least three (3) of the five (5) years of the recertification period. A maximum of one-half (1/2) of the requirement may be satisfied by the alternative methods set forth in section 6.2. The specific educational experience may be further defined in the individual standards.~~

Commissions may accept equivalent educational experience offered by the applicant to fulfill the requirements of this section.

**12.3.2** Each applicant for recertification shall maintain records sufficient to prove compliance with the educational requirements for recertification for at least one year from the date the Board acts to recertify the applicant. The applicant shall provide such records to the Board as the Board may require.

**12.3.3** Educational activities that satisfy the individual standards which are engaged in within the last six ~~(6)~~ months of a certification period and are in excess of the number of educational activities necessary for recertification may be applied to the next certification period.

### **12.4 Alternative to Educational Requirements**

In lieu of satisfying the educational requirements of section 12.3, an applicant may ~~successfully complete the written examination applied uniformly to all applicants prior to recertification. An applicant for recertification who chooses to take the written examination in lieu of satisfying the educational requirement must sit for and pass~~ the last written examination administered prior to expiration of the certification or the first examination administered after certification expires. If an applicant chooses to sit for the examination administered after his or her certification expires, certification will be extended for sufficient time to permit the applicant to take that examination.

### **12.5 Independent Inquiry and Review**

The applicant shall demonstrate proficiency in the specialty area through independent inquiry and review in the same mannerr as set forth in section 9.0 for certification.

### **12.6 Duration of Recertification**

Recertification by the Board shall commence on the date indicated on the Certificate of Specialization and shall remain in effect for the period specified on the notice of recertification unless sooner terminated by the Board pursuant to sections 14.0 and 15.0. If timely application for recertification is made, certification shall continue in effect until final action is taken on the application for recertification.

### **12.7 Judicial Service/Tolling**

**12.7.1** The Board may waive the five-year recertification requirement in the event of judicial service during the certification period. The certification period will be tolled for the time during the certification period that the certified specialist is actually engaged in judicial service. The certified specialist must provide confirmation of the fact that he or she continues to engage in judicial service when requested to do so by the State Bar and must notify the State Bar when he or she ceases to be engaged in judicial service.

**12.7.2** For purposes of this section, a certified specialist is engaged in judicial service if he or she is serving as a judge of a court of record and therefore is not a member of the State Bar on active status pursuant to Article VI, section 9 of the California Constitution, or has been granted a judicial service waiver of his or her annual State Bar membership fee, or is serving as an administrative law judge.

**12.8 Tolling for Reasons Other than Judicial Service**

At the discretion of the Board upon recommendation of the Advisory Commission, the Board may toll a specialist's certification for a period of up to three years when the specialist is unable to practice law for compelling medical or other reasons.

**13.0 Denial of Certification or Recertification**

Certification or recertification may be denied for any of the following reasons:

- 13.1** The applicant for certification fails to comply with the requirements of section 4.0 or the applicant for recertification fails to comply with the requirements of section 12.0;
- 13.2** The applicant made a material false representation or misstatement of material fact to the Board;
- 13.3** The applicant has been subject to final disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline; or
- 13.4** The program for certification in that field is terminated.

**14.0 Suspension and Revocation of Certification**

Certification or recertification may be suspended or revoked for any of the following reasons:

- 14.1** The certificate was issued contrary to these Rules or the Rules and Regulations of the State Bar of California;
- 14.2** The certified specialist made a material false representation or misstatement of material fact to the Board;
- 14.3** The certified specialist has been subject to final disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline;
- 14.4** The certified specialist has been subject to non-disciplinary regulatory action by the State Bar, or any body authorized to impose such action, that results in the certified specialist being prohibited from practicing law or from holding himself or herself out as a lawyer;
- 14.5** The certified specialist has failed to pay any fee set by the Board of Governors of the State Bar, including all fees assessed pursuant to these Rules; or
- 14.6** The program for certification in that field is terminated; or
- 14.7** Failure to sit for and pass the written examination when an applicant for recertification has elected under section 12.4 to sit for the examination in lieu of satisfying the educational requirements under section 12.3.

**15.0 Hearing on Denial of Application for Certification or Recertification and Suspension and Revocation of Certification or Recertification**

**15.1 Request for Hearing**

Within ~~forty-five (45)~~ days after receipt the date of notice from the Board that an application has been denied or that the Board has determined to ~~not grant, suspend, or revoke, or not grant~~ a certificate, the applicant may file a Request for a Confidential Hearing. The request for a hearing shall be filed with the Clerk of the State Bar Court and copies thereof shall be served upon the Board. All hearings on denials of applications for certification or recertification shall be confidential proceedings except that, if both parties waive confidentiality, the proceedings shall become public subject to sealing a portion or portions of the record subject to Rules of Procedure of State Bar Court Concerning Orders Sealing Portions of Record.

**15.2 Finality of Board Action**

If no request for a hearing is timely submitted, the decision of the Board shall become final. Notwithstanding section 15.1, a denial by the Board based on failure to pass the written examination or a denial, suspension, or revocation by the Board based on a final disciplinary action by the Supreme Court, the State Bar Court, or any body authorized to impose professional discipline, shall be final and shall not be subject to further review. In the case of denial of certification based upon failure of the applicant to pass the written examination, the grades given the applicant's examination by the readers or by the Committee of Reappraisers in cases where the examination is subject to reappraisal, shall be deemed final and shall not be subject to review.

**15.3 Hearing Panel**

If a timely request for a confidential hearing is made, a confidential hearing shall be conducted by the State Bar Court.

**15.4 Burden of Proof**

The burden of proof is on the applicant to prove by clear and convincing evidence that the applicant satisfies the requirements for certification or recertification.

**15.5 Notice, Time and Place of Hearing**

The Clerk of the State Bar Court shall fix the time and place of the hearing no later than ~~one hundred ten (110)~~ days from receipt of the request, and shall notify the applicant and examiner thereof. Such notice shall be written, and shall be given to the applicant and examiner a minimum of ~~thirty (30)~~ days prior to the time fixed for the hearing. Written notice may be given by personal service or by mail, postage prepaid, addressed to the applicant at the applicant's address of record, and, after deposit in the mails, shall be deemed to have been received by the addressee after the lapse of time required for normal course of post.

**15.6 Statement of Issues and Response**

At least ~~fifteen (15)~~ days prior to the hearing, the applicant shall file with the Clerk of the State Bar Court a statement of the issues to be considered and decided at the hearing. The statement shall: (1) describe the issues in sufficient detail to permit the examiner to marshal evidence in rebuttal; (2) list the names of prospective witnesses, if any, as to each issue; and (3) identify documentary and other evidence to be introduced in support of each issue at the hearing. A copy of the applicant's statement shall be served on the examiner by personal service or by mail as set forth above. At least five ~~(5)~~ days prior to the hearing, the examiner shall file with the Clerk of the State Bar Court and serve on the applicant, as set forth above, a response to the statement of issues. The response shall: (1) indicate as to each issue whether it is admitted or contested; (2) list the names of prospective witnesses, if any, as to each issue; and (3) identify documentary and other evidence to be introduced by the examiner at the hearing. For good cause shown, either the applicant or examiner may call additional witnesses and offer other evidence, either oral or documentary.

### **15.7 Appointment of Examiners**

The Board shall be represented by the Office of the Chief Trial Counsel or such other person as the Board may designate.

### **15.8 Conduct of Hearings**

Except where otherwise specifically provided in these Rules, the confidential hearing shall be conducted in accordance with the relevant Rules of Procedure of the State Bar of California.

### **15.9 Review of Hearing Panel Decision**

The applicant or the Board may request review of the State Bar Court's decision pursuant to rule 301 of the Rules of Procedure of the State Bar of California.

### **15.10 Supreme Court Review**

An applicant and the Board may request review by the California Supreme Court of any State Bar action pursuant to rule 952(d) of the California Rules of Court only after final action by the State Bar Court.

### **15.11 Failure to Pay Fees**

The procedure to suspend or revoke a certificate for failure to pay required fees shall be governed by sections 20.5 and 20.6 of these Rules.

"Applicant" as used in this section shall include the certified specialist appealing the suspension or revocation of certification.

## **16.0 Reapplication for Certification**

### **16.1 Following Denial of Application or Revocation of Certification**

If an application is denied or certification is revoked, an applicant may reapply at any time by passing a written examination and submitting a new application form. The applicant must disclose the previous denial or revocation. Upon reapplication, the applicant must demonstrate compliance with all requirements for certification, provided that the examination shall be waived if the applicant passed a written examination administered within ~~eighteen~~ (18) months prior to the date of reapplication.

### **16.2 Following Closure of File**

If an applicant's file is closed pursuant to section 3.2, an applicant may reapply at any time by passing a written examination and submitting a new application form. The applicant must disclose the previous closure. Upon reapplication, the applicant must demonstrate compliance with all requirements for certification.

## **17.0 Designation as Certified Specialist**

A certified specialist shall, when identifying himself or herself as such or when offering legal services pursuant to this program, refer to himself or herself as certified by the "State Bar of California Board of Legal Specialization," either by the use of text, the program logo, or both.

## **18.0 Rights and Benefits of Certification Are Individual**

All requirements for and all benefits to be derived from certification as a certified specialist are individual and may not be fulfilled by or attributed to the law firm of which the specialist may be a member.

## **19.0 No Limitation on Number of Specialty Areas in Which Members May be Certified**

There shall be no limitation placed on the number of specialty areas in which an attorney may participate (subject to the limitations in sections 4.1 and 12.1).

## **20.0 Specialization Fees**

### **20.1 Application Fee for Certification**

The application fee ~~for certification and recertification, which includes exam registration and certification, shall be set by the Board of Governors. If the applicant for recertification chooses to take the written examination, the application fee shall be the same as the fee for recertification.~~ If an applicant who applied to take the examination is unable to do so because of incapacity or duty as a member of the armed forces, and supplies proof thereof, the Board, at its discretion, may refund or credit as much of the fee as it deems appropriate. The applicant must provide the Board with written notice of withdrawal shall be required.

### **20.2 Recertification Fee**

The fee for recertification shall be set by the Board of Governors and is due and payable within thirty (30) days of billing. Payment of the fee shall be required before issuance of the Certificate of Specialization upon filing of the application for recertification.

### **20.3 Annual Fee**

The annual fee shall be set by the Board of Governors ~~and shall be billed at the end of each calendar year for the following year and shall be due and payable within sixty (60) days of billing. The fee will be billed and will be due and payable in keeping with the State Bar's billing cycle for the annual member fee.~~ If initial certification as a specialist is granted between December 1 and June 30, the certified specialist shall owe half of the annual fee for that year. If initial certification as a specialist is granted between July 1 and November 30, the annual fee shall be waived for that year. The annual fee shall be waived for certified specialists engaged in judicial service as defined in section 12.7.2.

### **20.4 Annual Fee Late Charges**

Annual fees not paid within ~~ninety (90)~~ days after billing shall be delinquent and shall be subject to late charges in an amount to be set by the Board of Governors.

### **20.5 Notice of Delinquency of Annual Fee**

If payment of the annual fee is not received within ~~ninety (90)~~ days of billing, a notice of delinquency shall be sent to the certified specialist by certified mail. The notice shall state: (1) the amount of the unpaid fee; (2) the amount of any late charges; (3) that failure to pay the fee and late charges may result in revocation of the certificate of specialization; and (4) that the specialist or applicant may resign from the specialization program in lieu of the revocation.

### **20.6 Request for Good Cause Waiver or Reduction of Annual Fee or Extension of Time for Payment**

Prior to revocation for non-payment of the annual fee, a certified specialist may request a good cause waiver or reduction of the fee or an extension of time for payment. The review shall be informal in nature, and shall be limited to a determination of the circumstances of nonpayment. Certification may be revoked, or upon good cause shown, the fee may be waived or reduced or the time for payment may be extended.

### **20.7 Educational Program Fee**

A fee set by the Board of Governors shall be charged to any education program provider ~~which itself charges applicants for attendance~~ as a condition to filing an application for certification credit. A fee set by the Board of

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Governors may be charged to any certified specialist, applicant, or course sponsor as a condition of accepting a late application of any type.

## **20.8 Program Financing**

The fees charged for this program shall be set in an amount necessary to defray the expenses of administering the program. Such other fees may be set and collected as necessary to defray the expenses of operating the program.

## **21.0 Annual Report**

The Board shall report, at least annually, to the Board of Governors of the State Bar. The report shall include, at least, any problems with the program and recommendations regarding those problems. The report shall be summarized and published. The entire report shall be made available at cost and the Board of Governors shall send copies to the Supreme Court of California to aid in that Court's continued review of the program.

As a part of, or prior to the annual reporting process, the Board shall evaluate the program to determine whether the goals of the program are being met and whether the program should be modified.

## **22.0 Board of Legal Specialization**

### **22.1 Composition**

The California Board of Legal Specialization shall be established and appointed by the Board of Governors. It ~~and~~ shall be composed of 12 ~~20~~ members, including the Chair, Vice-Chair, ~~and one advisor, and at least three non-lawyers.~~ The members shall be appointed by the Board of Governors and shall consist of a minimum of three (3) non-lawyers. In addition, the chairs of the Advisory Commissions shall be appointed as voting members.

All lawyer members of the Board must be certified specialists, except where certification in the field of law practiced by the lawyer has been available for less than six ~~(6)~~ years or certification is not available in the field of law or subfield of law in which the lawyer practices. If a member of the Board misses more than three ~~(3)~~ meetings of the Board, the member is subject to removal.

### **22.2 Election of Chair and Vice-Chair**

The Board shall recommend for appointment as Chair and Vice-Chair Board members receiving a majority of the votes of the Board members present.

### **22.3 Duties**

The Board, subject to these Rules, shall administer the program, including proposing additional fields of law to be added to the program. In addition, it may propose fees and changes to these Rules and prepare forms consistent with these Rules. All such additional fields of law, fees and proposed changes to these Rules shall be submitted to the Board of Governors for adoption.

### **22.4 Advisory Commissions**

**22.4.1** Advisory Commissions to the Board shall be established and appointed by the Board of Governors for each field of law in which specialists are to be certified. They ~~and~~ shall be composed of nine ~~(9)~~ members, including the Chair, and Vice-Chair. ~~The members will be appointed by the Board of Governors and shall include a minimum of~~ and one ~~(1)~~ non-lawyer member. All lawyer members of the Commission must be certified specialists in the Commission's field of law, except where certification is not available in the field of law in which the lawyer practices or certification in the Commission's field of law has been available for fewer than six ~~(6)~~ years. If a member of the Commission misses more than three ~~(3)~~ meetings of the Commission, the member is subject to removal.

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**22.4.2** The Chair of each Commission or his or her designee must attend all meetings of the Board. If the Chair misses more than three meetings of the Board, the Chair is subject to removal.

**22.4.3** The appropriate Commission shall assist the Board in administering the Program, including advising the Board regarding the standards for certification and recertification. The Commissions shall be responsible for constructing and administering the examinations, subject to the approval of the Board. Except by specific authorization of the Board, no Commission shall take an official public position on behalf of the program or the Commission.

## **22.5 Council of Past Chairs**

A Council of Past Chairs shall be established and appointed by the Board of Governors as a sub-entity of the Board to advise and consult with the Board ~~and shall be composed of no more than the past five chairs of the Board who are willing and able to serve. The members will be appointed by the Board of Governors.~~

## **23.0 Confidentiality**

### **23.1 Application**

All information relating to an application is confidential, including the contents of the application form, documents, records, communications, other papers, and statements of references related to an application, except to the Office of the Chief Trial Counsel or such other person designated by the Board to represent it at a hearing, as provided by section 15.7, or upon prior order of the Board of Governors. The information is the property of the State Bar of California and shall not be disclosed to anyone, including the applicant, except that an applicant may be informed as to the status of his or her application at any time. Nothing in this section shall be construed as prohibiting the disclosure of information of alleged professional misconduct to the Office of Investigation, Office of Trial Counsel, or other appropriate disciplinary body of the State Bar.

### **23.2 Independent Inquiry and Review**

Notwithstanding section 23.1, with respect to applications which are submitted to the Commission for independent inquiry and review, the fact that an application has been filed may be disclosed to persons from whom information about the applicant is sought. The applicant is not entitled to know the identity of or review the written statements of persons from whom information about the applicant is sought or received.

### **23.3 Breach of Confidentiality**

**23.3.1** Upon a claim of breach of confidentiality, a three-(3)-member special committee shall be appointed by the Board from among its members or the members of the Commissions to investigate and determine such claim. In the conduct of investigations, the special committee may, among other things, administer oaths and affirmations, compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the alleged breach of confidentiality. Any claim of breach of confidentiality shall be investigated fully, including but not limited to, the confronting of the member of the Board or Commission against whom the claim has been made; and if the claim is found to have merit, a report shall be made to the Board. The report shall include a recommendation as to whether the Board shall request the Board of Governors to remove the person(s) from the Board or Commission. The special committee shall also report the failure of any person to cooperate in the investigation of the claim. No person against whom a claim of breach of confidentiality is brought shall serve on a special committee investigating said claim.

**23.3.2** If a claim of breach of confidentiality is brought against a member of the Board of Governors or staff member of the State Bar, the claim shall be referred to the Board of Governors for its investigation and determination.

## **24.0 Conflict of Interest**

### **24.1 Circumstances Requiring Recusal**

A member of the Board or Commission shall recuse himself or herself from any and all participation in the consideration of an applicant or from attempting to influence others with respect to an applicant in the following circumstances:

**24.1.1** He or she is the current or former law partner or associate of the applicant;

**24.1.2** He or she, or the law firm or office with which he or she is affiliated, represents the applicant;

**24.1.3** He or she, or the law firm or office with which he or she is affiliated, is a party to pending litigation in which the applicant, or the law firm or office with which the applicant is affiliated, is also a party or represents a party to that litigation.

**24.1.4** He or she, or the law firm or office with which he or she is affiliated, represents a party in pending litigation in which the applicant, or the law firm or office with which the applicant is affiliated, is a party;

**24.1.5** He or she or his or her spouse or registered domestic partner is related to the applicant by consanguinity or affinity within the third degree according to the rules of civil law;

**24.1.6** He or she has any personal bias or prejudice concerning the applicant which would prevent him or her from fairly evaluating all of the evidence and information concerning the qualifications of that applicant;

**24.1.7** He or she would be disqualified were he or she is a member of the Board pursuant to section 6036, subdivision (a) of the Business and Professions Code;

**24.1.8** He or she and the applicant stand in the relation of guardian and ward, conservator and conservatee, employer and employee, or principal and agent; or

**24.1.9** He or she has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit for or against the applicant for malpractice.

### **24.2 Applicant as Opposing Counsel**

As a general rule, the fact that a member of the Board or Commission represents one party to a legal matter and the applicant represents the opposing party is not a fact that requires recusal. In such event, however, the member of the Board or Commission shall notify the applicant and give the applicant the opportunity to recuse the member of the Board or Commission based on a belief of personal bias or prejudice.

### **24.3 Recusal Procedure**

A member of the Board or Commission who is required to recuse himself or herself shall:

**24.3.1** Immediately disclose to the full Board or Commission that he or she has a disqualifying interest but need not state the reasons therefor;

**24.3.2** Withdraw from any participation in the matter of the application of that applicant;

**24.3.3** Refrain from attempting to influence another member of the Board or Commission; and

**24.3.4** Refrain from voting upon the application of that applicant.

#### **24.4 Disqualification**

In the event that a member of the Board or Commission does not voluntarily recuse himself or herself, the chair of the Board or Commission may, upon becoming aware of factors which may indicate a potential conflict of interest within the meaning of this section, initiate an inquiry as to whether or not such a member should be disqualified.

#### **24.5 Action on Application of Member of the Board or Commission**

An application for certification or recertification of a member of the Board or Commission may be considered by the Board or Commission, so long as such member of the Board or Commission withdraws from the room at the time that his or her application is considered, does not vote on his or her own application and does not attempt to influence another member of the Board or Commission with respect to his or her own application.

#### **25.0 Severability**

If any provision of these Rules or the application of any such provision to any person or circumstances shall be held invalid, the remainder of these Rules to the extent that they can be given effect, or the application of such provision to persons or circumstances other than those as to which they are held invalid, shall not be affected thereby, and to this extent the provisions of these Rules are severable.