

PROPOSED DRAFT: RULES OF THE SUPREME COURT
ON LEGAL CERTIFICATION

RULE 1: State Board of Legal Certification:

The State Board of Legal Certification shall be appointed by the Supreme Court and shall consist of ten (10) members, each to serve for a period of three (3) years or until his or her successor is appointed and qualifies. Two (2) persons so appointed shall be non-lawyers. Each of the following groups may nominate two (2) persons to be considered by the Supreme Court for appointment to the Board: The Minnesota State Bar Association; The Minnesota Trial Lawyers Association; The Minnesota Defense Lawyers Association; and The Academy of Certified Trial Lawyers of Minnesota. From among its members, the Board shall elect a president and the Court shall appoint a secretary. The Board shall be charged with the duty of administering these Rules and shall have authority to make its own rules not inconsistent herewith.

RULE 2: Duties of the Board

A. The Board shall determine, on its own motion or the motion of any interested party, the need for specialty certification in a particular area of law. Such a determination shall be based on the expressed public interest in and the perceived public need for certification in the area of law.

B. Once a need for a particular specialty has been identified, the Board shall accept applications from all interested parties for designation as a certifying body in a particular specialty.

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The Board may authorize more than one certifying body in a particular field of law, at its discretion. Authority shall be granted for a period of five years, at which time the Board shall again accept applications from all interested parties.

C. No entity shall be authorized to certify specialists in any area of law unless such certification is based on published standards and procedures that:

(1) do not discriminate against any lawyer otherwise qualified for such certification;

(2) provide a reasonable basis for the representation that lawyers certified possess special competence in the area for which certification is to be granted. Proof of special competence may be demonstrated in the following fashion, together with any additional standards the Board or certifying bodies may impose:

(a) a demonstration of substantial involvement in the specialty during the three year period immediately preceding application. Substantial involvement shall be defined in regard to each specialty by reference to its nature, complexity and differences from other fields and from a consideration of the nature and extent of effort and experience necessary to demonstrate competence in that area. Such requirements shall be measured objectively where possible. What constitutes substantial involvement may vary between specialties, but in no case shall the time spent in practice

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of the specialty be less than twenty-five percent (25%) of the total practice of a lawyer engaged in a normal full-time practice, as measured during each of the three years immediately preceding application.

(b) a system of peer review based on references obtained from attorneys and judges familiar with the competence and qualifications of the applicant, none of whom are related to the applicant or are associated with the applicant in the practice of law at the time of application; and,

(3) require re-certification after a period of not more than five years. In selecting an entity to act as a certifying body the Board may consider the effect of its selection on national uniformity.

D. Should the Board recognize a need or demand for certification in a particular area of law and receive no suitable applications from potential certifying bodies, it may develop a certification program under its own auspices, to be administered by the State Board of Law Examiners. Such bodies shall be granted authority to certify in a particular area for no more than five years, at which time the Board shall accept applications from all interested parties.

E. The State Board of Legal Certification shall report to the Supreme Court on an annual basis. It shall include in that report: (1) a statement of specialties currently recognized;

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(2) the organizations authorized to certify in those specialties;
(3) the total number of attorneys currently certified; and
(4) the number certified in each specialty since the Board's last report. If the Board has declined recognition of a specialty in the preceding year, it shall include a statement of its reasons for doing so. The Board shall also include in its report any other material it deems proper or which is requested by the Court.

RULE 3: Duties of Certifying Entities:

A. An entity authorized to certify Minnesota attorneys as specialists in a particular area of law or legal practice shall publish the standards and procedures required for certification.

The standards and procedures used:

- (1) shall not discriminate against any lawyer properly qualified for such recognition;
- (2) shall provide a reasonable basis for the representation that lawyers so certified possess special competence in the area for which certified, as required by Rule 2.C(2);
- (3) require re-certification after a period of not more than five years; and,
- (4) shall be subject to approval by the Board.

B. Any examinations required in order to obtain certification shall be offered at least twice a year, at dates and places determined by the certifying entity.

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C. Certifying entities shall maintain the confidentiality of information pertaining to individual applicants, as required by law.

D. Certifying entities shall, on an annual basis, submit to the Board all information required for its report to the Court under Rule 2(A), together with any information the certifying entity may deem relevant or which the Board may request.

RULE 4: Registration of Certified Specialties

A. Each attorney certified as a specialist by a recognized certifying entity shall, commencing with his or her initial registration, pay an annual registration fee equal to that required by Rule 2 of the Rules of the Supreme Court for Registration of Attorneys.

The fees so received shall be allocated as follows:

100% to the State Board of Legal Certification during the first year of its existence and, in subsequent years;

60% to the State Board of Legal Certification;

20% to the State Board of Law Examiners/Continuing Legal Education; and,

20% to the Lawyers Professional Responsibility Board.

B. Each law firm organized as a professional corporation and which practices a certified specialty as permitted under DR

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2-105(B), shall include a statement of the specialties practiced, and the attorneys certified in that specialty, in annual reports filed pursuant to Minn. Stat. §319A.21.

C. Each law firm practicing a certified specialty, including professional corporations, shall file an annual statement of the specialties practiced and the attorneys in its employ who are so certified with the State Board of Legal Certification. Statements shall be filed no later than July 1 of each year. For filing the first of such statements, the law firm shall pay a fee of \$100.00. For each successive statement the fee shall be \$25.00, which fees will be for the use of the Board.

D. Upon payment of the registration fee, the Clerk of the Appellate Court shall issue and deliver to the attorney or law firm paying the same a certificate in such form as may be provided by the Supreme Court, showing that such individual is authorized to practice as a certified specialist in a recognized area.

RULE 5: Continuing Legal Education.

Attorneys certified as specialists in recognized areas shall complete a minimum of twelve hours of course work, either as a student or as a lecturer, in Continuing Legal Education courses related to the individuals specialty and approved by the State Board of Law Examiners/Continuing Legal Education.

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These hours shall be accumulated in the same three-year cycle required under the rules of the Supreme Court for Continuing Legal Education of members of the Bar and shall be in addition to the forty-five hours required under those rules. Proof of completion of the required number of hours shall be submitted together with the attorneys' Continuing Legal Education report made at the end of each three-year cycle.

RULE 6: Post-Graduate Education.

The Board, in conjunction with accredited law schools in this jurisdiction and other interested parties, shall develop post-graduate programs intended to facilitate certification in recognized specialties. Such programs shall satisfy the requirements of obtaining certification in a recognized specialty to the extent that the Board shall deem proper.