

MINNESOTA STATE BOARD OF LEGAL CERTIFICATION

Rules for Legal Certification

CX-84-1651

OFFICE OF
APPELLATE COURTS
FILED

OCT 28 1986

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CLERK

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INTERNAL RULES FOR THE STATE BOARD OF LEGAL CERTIFICATION

JURISDICTION. The State Board of Legal Certification has exclusive authority to define specialty areas of law and to establish its own rules and regulations for the governance of certification in conformity with the Plan for the Minnesota State Board of Legal Certification.

101. DEFINITIONS.

- a. "Applicant Agency" means persons who submit a proposal for accreditation in a specialty area.
- b. "Applicant Attorney" means an attorney who seeks certification from a certifying agency.
- c. "Board" means the State Board of Legal Certification.
- d. "Certified Attorney" means an attorney who has received certification from a certifying agency.
- e. "Certifying Agency" means an applicant agency authorized by the Board to certify attorneys in a specialty area.
- f. "Plan" means the Plan for the Minnesota State Board of Legal Certification adopted by the Minnesota Supreme Court, October 10, 1985.
- g. "Rules" means the plan and other rules promulgated by the Supreme Court governing the Board and the internal rules established by the Board.
- h. "Specialty Area" means a field of legal practice that is approved by the Board.

102. COMPOSITION OF THE BOARD.

- a. The Supreme Court shall appoint twelve members of the Board, of whom nine shall have active licenses to practice law in the state and represent various field of legal practice, and of whom three shall be public members. The Minnesota State Bar Association shall nominate three of the attorney members. The Supreme Court shall designate an attorney member as Chairperson, and the Board may elect other officers.
- b. Four members shall be appointed for one year, four members for two years, and four members for three years, and thereafter appointments shall be for three-year terms. The terms of one public member and one State Bar nominee should expire each year. Any vacancy on the Board shall be filled by the Supreme Court by appointment for the unexpired term. No member may serve more than two three-year terms.
- c. Members shall serve without compensation, but shall be paid their regular and necessary expenses.

103. MEETINGS.

- a. Meetings of the Board will be at times and places set by the chairperson.
- b. The Board may make determinations by a majority vote of those present at a meeting, except that the determinations to approve or rescind an authorization to certify must be made by a majority of the members of the Board, and changes in internal rules of the Board must be made by a majority of the members of the Board after review of the proposed changes by the Supreme Court.
- c. The Board may meet by conference call or make determinations through mail votes, except that changes in the internal rules of the Board shall be made at a meeting, after written notice.

104. POWERS AND DUTIES OF THE BOARD.

- a. The Board is authorized:
 - 1. To designate those areas of legal practice that qualify as specialty areas, on its own motion or at the request of interested parties;
 - 2. To approve, deny, or rescind authority of agencies in specialty areas;
 - 3. To develop standards, testing procedures, and other criteria for reviewing, approving and evaluating certifying agencies;
 - 4. To establish procedures for review and challenge to actions of a certifying agency or the Board;
 - 5. To maintain appropriate records of certifying agencies and certified attorneys;
 - 6. To require reports and other information regarding the certification program;
 - 7. To coordinate with advisory committees, other boards and organizations engaged in related fields;
 - 8. To adopt rules and charge fees reasonably related to the implementation of the Plan and not inconsistent with rules of the Court;
 - 9. To set the number of Continuing Legal Education credits in the specialty area which must be reported at the attorney's immediately subsequent Continuing Legal Education deadline.
- b. The chairperson shall convene the Board as necessary, and between meetings shall act on behalf of the Board in working with agencies and other organizations working in attorney specialization. The chairperson may appoint subcommittees of the Board.
- c. In the absence of the chairperson, duties shall be handled by a vice-chairperson elected by the members of the Board.

- d. The Board may hire a director to perform duties as assigned by the Board, including, but not limited to:
1. Receiving, reviewing, and processing applications for certification and renewal of certification;
 2. Investigating applicant agencies and obtaining other information as required by the Board;
 3. Reporting to the Board on complaints, failures to cooperate, and failures to abide by the decisions of the Board relating to certifying agencies;
 4. Conducting ongoing research in the progress of the certification plan in Minnesota and those in other states;
 5. Analyzing reports of certifying agencies and preparing other reports for the Board.

105. ELIGIBILITY FOR AUTHORIZATION TO CERTIFY.

An applicant agency may apply to the Board for authorization to certify attorneys in a specialty area if:

- a. There are among its permanent staff, operating officers, or board of directors at least three legal practitioners from different law firms or businesses whose daily work involves a sophisticated legal knowledge of the specialty area, all of whom shall provide guidance in evaluating performance of attorneys;
- b. The certification program of the applicant agency is available to attorneys without discrimination as to membership in the applicant agency, or geographical location of the attorney;
- c. There is in place a mechanism to publicize the program of the applicant agency that reaches attorneys licensed to practice in Minnesota who may be interested in the specialty area;
- d. The applicant agency is an ongoing business expected to continue to provide an acceptable certification program for an indefinite period of time;
- e. The applicant agency agrees to be subject to Minnesota rules regulating attorneys and to Minnesota laws.

106. APPLICATION FOR AUTHORIZATION TO CERTIFY.

An applicant agency may apply for authority to certify lawyers as specialists by submitting and filing an application (Appendix A) at the staff office of the Board, in the manner prescribed by the Board.

107. REVIEW OF APPLICATION OF CERTIFYING AGENCY.

- a. Each application shall be reviewed by the director for completeness and clarity prior to submission to the Board. An incomplete application shall not be referred to the Board, and may be returned without action. The review shall include an interview with the applicant agency's contact person.
- b. When complete information has been received and the initial interview concluded, the chairperson shall schedule a meeting of the Board for a determination of certifying an applicant agency. The chairperson may delay consideration of an application to await material from another applicant agency in the same specialty area.
- c. The Board may investigate or hire persons to perform additional investigation of the applicant agency and matters contained in the application. The application shall be verified from confirming data, references and attestations from third parties, onsite inspections, or other means.
- d. The Board may authorize more than one applicant agency to certify attorneys in a specialty area.
- e. The Board may require specific courses or evaluations to be included in the program of an applicant agency, may impose standards for satisfaction of the applicant agency's requirements by certified attorneys, and may specify methods for recordkeeping and reporting to the Board.
- f. The Board may grant conditional authorization to an applicant agency, pending receipt of evidence showing satisfaction of requirements imposed by the Board.
- g. In addition to conditional authorization, the Board may grant authority for the applicant agency to certify, deny authority, request an investigation and verification of matters, or request additional information from the applicant agency. A denial shall specify those portions of the application which are incomplete or unacceptable, and state reasons for denial.
- h. An application may be denied for any of the following reasons:
 1. The agency is not eligible under Rule 105;
 2. The application is incomplete, investigation has revealed inaccuracies, or the applicant agency has been uncooperative in the initial review;
 3. The definition of the specialty area is unacceptable;
 4. Goals and methods of measuring attainment of those goals are not sufficiently clarified;
 5. Tests and other performance criteria for the applicant attorneys are inadequate;

6. Proper procedures are not in place for recertification of certified attorneys, due process for attorneys in case of denial of certification, evaluation of the program, or reporting to the Board;

7. Violation of a rule.

i. An applicant agency denied authority to certify after the Board hearing may not reapply for twelve months.

108. STANDARDS FOR CERTIFYING ATTORNEYS.

An attorney may be certified in a specialty area for consecutive periods not exceeding six years each by complying with the rules and certifying agency's procedures for certification and recertification.

A certifying agency may accept applications for certification if:

- a. The attorney is licensed and on active status in Minnesota.
- b. The attorney is able to show by independent evidence "substantial involvement" in the specialty area during the three-year period immediately preceding enrollment. "Substantial involvement" means at least 25% of the attorney's practice is spent in the specialty area of certification;
- c. The certifying agency verifies three written peer recommendations, or more if required by the Board, in addition to references submitted by the attorney from attorneys or judges unrelated to, and not in legal practice with, the attorney;
- d. The attorney successfully completes an objective evaluation of the attorney's knowledge of the substantive and procedural law in the specialty area, as determined by written and/or oral examination; grading standards for tests must be available prior to the test administration, and model answers must be available for inspection after test results are determined;
- e. The attorney successfully completes an examination which includes a part devoted to professional responsibility and ethics as it relates to the particular specialty;
- f. The attorney is current with CLE credits for any state of licensure throughout the period of application;
- g. The attorney signs a release to share information of the applicant agency with the Board.

109. INFORMATION DISCLOSURE.

Applications submitted by applicant agencies shall be available for inspection at reasonable times at the staff office of the Board. The chairperson should provide notice to Minnesota attorneys that an application has been received for a particular specialty area.

110. ANNOUNCEMENT OF AUTHORIZATION.

An accredited agency may announce "Authorized to certify attorneys in the specialty area of _____ by the Minnesota State Board of Legal Certification." Conditional authority shall be stipulated where appropriate.

111. AUTOMATIC DENIAL OR REVOCATION OF CERTIFICATION.

The certification of an attorney will automatically be denied or revoked if:

- a. The attorney fails to maintain 20 CLE credits in the specialty area each reporting period;
- b. The attorney is suspended or disbarred from the practice of law in any jurisdiction in which the attorney is licensed;
- c. The attorney is suspended for nonpayment of license fees or for failing to maintain mandatory continuing legal education credits for the attorney's license;
- d. The attorney fails to satisfactorily complete recertification;
- e. The attorney fails to pay the required fee established by the Board.

112. DISCRETIONARY DENIAL OR REVOCATION OF CERTIFICATION.

The certification of an attorney may be denied or revoked if:

- a. The authority of the certifying agency is rescinded by the Board. The Board has the authority to determine how the certification of attorneys certified by the agency shall be affected;
- b. The attorney falsely or improperly announces the specialty area of certification;
- c. The attorney falsifies credentials during the certification process, or submits references from persons not familiar with the attorney's skills;
- d. The attorney seeks decertification and advises the Board and the certifying agency in writing.

113. ANNOUNCEMENT OF CERTIFICATION.

An attorney who is certified as a specialist under this program may communicate the fact that the attorney is certified by the particular certifying agency as a specialist in the area of law involved. The attorney shall not represent, either expressly or impliedly, that the specialty status is recognized by the Minnesota Supreme Court or the Board or by any entity other than the certifying agency.

114. FEES.

The Board shall set and amend fees for the filing and initial processing of applications for

authorization, and may charge reasonable fees for investigations, onsite inspections, and authorization renewals of certifying agencies and for costs incidental to certifying attorneys.

115. RENEWAL OF AUTHORIZATION.

- a. The Board shall review the authorization of each certifying agency at least once every three years, and may begin review on its own motion or that of an individual attorney, or the Supreme Court.
- b. The certifying agency shall be given 60 days notice of an authorization renewal. During the 60 days the certifying agency shall cooperate with the Board in providing information including, but not limited to:
 1. An update of all application information;
 2. The certifying agency's critique of its certification program, including evaluations from students and faculty, and analysis of achievement of program goals;
 3. Copies of examinations and model answers;
 4. Names, addresses and performance information on each applicant or certified attorney;
 5. A report of the certifying agency's recertification of attorneys;
 6. Other information specified by the Board.
- c. The Board may require an onsite inspection, an audit of courses, references from applicant or certified attorneys, a hearing with the certifying agency's contact person, or other information.
- d. Actions of the Board and rights of the certifying agency shall be the same as for initial review of applications.
- e. If the Board rescinds the authority of a certifying agency, the certifying agency shall contact, by notice prescribed by the Board, each attorney enrolled in the certifying agency's certification program or then holding a certification from the certifying agency, and shall cease all advertising and announcements indicating Board authorization.

116. REPORTING.

- a. A certifying agency is responsible for reporting to the Board as follows:
 1. Proposed changes in a certifying agency's standards for certification shall be submitted to the Board at least 60 days before they are effective. The Board may require a review of the authorization to certify.

2. When advised by the Board of a certification review, a certifying agency shall submit an updated application and other information as the Board may require.
 3. Within 30 days of certifying an attorney, a certifying agency shall notify the Board of the attorney's name, Minnesota license number, home and work addresses, and other states where the attorney is licensed. The notice shall be in the form of an affidavit signed by the certifying agency and the attorney.
 4. Within 30 days of denying or revoking certification to an attorney, a certifying agency shall notify the Board of the attorney's name, Minnesota license number, work address, and reason for denial or revocation.
 5. By January 20 of each year, a certifying agency shall submit statistics and summaries showing the progress of its certification program.
- b. The Board is responsible for reporting as follows:
1. The Board shall report to the State Board of Continuing Legal Education all specialty areas of practice authorized and the definitions of each. The Board shall have final authority to determine whether a course is within a specialty definition.
 2. The Board shall be advised by the State Board of Continuing Legal Education of the compliance or noncompliance of each certified attorney.
 3. The Board shall publish and otherwise make available the list of specialty areas of certification and the applicant agencies authorized to certify.
 4. The Board shall report to the Lawyers' Professional Responsibility Board any attorney who may violate the provisions of the plan.
 5. The Board shall file an annual report with the Supreme Court.
- c. An attorney who is certified in a specialty area shall report:
1. The specialty area on the Continuing Legal Education Affidavit of Attendance.
 2. The number of Continuing Legal Education credits required pursuant to Rule 104.a.9.
- d. An attorney certified in more than one specialty area, who attends a Continuing Legal Education course that could apply to each of the two specialty areas, may count full attendance for each specialty area. One course may not be counted for more than two specialty areas.
- e.. An attorney failing to comply with the regulation of 20 specialty hours of Continuing Legal Education shall be reported to the Board. An attorney who fails to comply may lose certification and may be reported to the Lawyers' Professional Responsibility Board.