

STATE OF MINNESOTA

IN SUPREME COURT

CX-84-1651

**ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON  
PROPOSED AMENDMENTS TO THE PLAN OF THE SUPREME COURT AND  
RULES OF THE BOARD OF LEGAL CERTIFICATION**

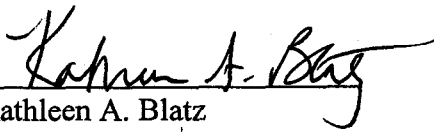
The Minnesota State Board of Legal Certification has filed a petition in which it asks this court to rescind the Plan of the Supreme Court and the Rules of the Board of Legal Certification and to adopt revised Rules for the Minnesota State Board of Legal Certification.

This court will consider the proposed changes without a hearing after soliciting and reviewing comments on the proposed changes.

IT IS HEREBY ORDERED that any individual wishing to provide a statement in support or opposition to the proposed amendments shall submit twelve copies in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Constitution Avenue, St. Paul, Minnesota 55155, no later than Friday, February 15, 2002. A copy of the Board's petition and proposed amendments is annexed to this order.

Dated: December 17, 2001

BY THE COURT:

  
Kathleen A. Blatz  
Chief Justice

OFFICE OF  
APPELLATE COURTS

DEC 17 2001

FILED

**STATE OF MINNESOTA**

**IN Supreme Court**

**FILE NO. CX-84-1651**

OFFICE OF  
APPELLATE COURTS

NOV 13 2001

**FILED**

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**Petition of the Minnesota State Board of Legal Certification  
For Amendment of the  
Plan of the Supreme Court and  
Rules of the Board of Legal Certification**

**PETITION**

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**TO: THE HONORABLE JUSTICES OF THE MINNESOTA Supreme Court:**

Petitioner, the Minnesota State Board of Legal Certification (Board), respectfully petitions the Court to rescind the Plan of the Supreme Court and the Rules of the Board of Legal Certification and to adopt the revised Rules for the Minnesota State Board of Legal Certification. The revised rules will eliminate the distinction which currently exists between "the Plan of the Supreme Court" and the "Rules of the Board of Legal Certification" and will clarify the obligations of the Board as well as those of the certifying agencies that are governed by these provisions. In support of its Petition, the Board asserts the following:

1. The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law.
2. The present Plan of the Supreme Court and Rules of the Board of Legal Certification that govern the duties of the Board is contained in two sets of provisions: the "Plan" for the Minnesota State Board of Legal Certification of the

Supreme Court (numbered Rules 1 through 9) and the "Rules" of the Board of Legal Certification (numbered Rules 101 through 116). The two sets of provisions are duplicative. The revised rules consolidate the relevant and necessary provisions of the Plan and Rules into one set of rules.

3. The proposed rules attached hereto include footnotes, which are designed to explicate the proposed changes, and are not intended to be published with the rules.

4. In the existing Plan and Rules, certain provisions address the obligations of certified attorneys while other provisions address the obligations of certifying agencies. Because the Board has little authority to regulate certified attorneys directly, but rather is limited to regulating the certifying agencies, the revised rule provisions focus primarily upon the obligations of the certifying agency.

5. The existing rules use the term "certification" to refer to the authority given to agencies that certify attorneys as specialists, as well as to describe the certified specialists themselves. The dual use of this term is confusing. In the proposed rules the term "accreditation" is used exclusively to refer to the authority conferred by the Board upon the agency that is empowered to certify attorneys. The proposed rules use the term "certification" exclusively to refer to the status conferred upon attorneys when they become specialists.

6. Proposed Rule 104 incorporates a conflict of interest policy that is not found in the existing rules. This provision will clarify Board members' responsibility to refrain from acting upon the application of an agency with whom a Board member has had a recent professional association.

7. Rule 112g is a new provision which requires certifying agencies to advise their certified attorneys that when advertising their certified specialist

status, they must do so in a manner consistent with the rules of this Board and with the Minnesota Rules of Professional Conduct.

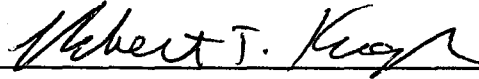
8. Proposed Rule 119 permits the attorney to state truthfully that he/she is a specialist certified by an agency that has been accredited by the Minnesota Board of Legal Certification. Existing Rule 113 prevents the certified attorney from stating or implying that the certifying agency is "recognized" either by the Board or by the Supreme Court. In proposing this change, the Board seeks to encourage certified attorneys to announce their certification as well as the fact that the certified agency has been accredited by the Board of Legal Certification. This new provision encourages the truthful statement of the relationship between the Board and the certifying agency. Such disclosure may increase the public's awareness and understanding of the certification process. The new rule provision will not, however, permit attorneys to represent to the public that their certification status comes from the Supreme Court itself.

9. Conducting open meetings is consistent with the public's interest in the certification process and consistent with the Certification Board's past practice. The existing rule provisions do not state that the Board's meetings are in fact open. Proposed Rule 103b states specifically that meetings are open to the public.


10. Proposed Rule 120 provides that the Board members and staff are immune from civil liability for "any acts conducted in the course of their official duties." This immunity provision is patterned after Rule 21 of the Minnesota Rules on Lawyers Professional Responsibility and Rule 12A of the Minnesota Rules for Admission to the Bar. The provision provides assurance to Board and staff members that they will not be subject to liability as they administer the certification program in Minnesota.

Based upon the foregoing, the Board respectfully requests that the Court rescind the Plan of the Supreme Court and Rules of the Board of Legal Certification and adopt the revised Rules of the Minnesota State Board of Legal Certification attached hereto.

Dated: November 9, 2001



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# PROPOSED RULES OF THE MINNESOTA STATE BOARD OF LEGAL CERTIFICATION

## PREAMBLE<sup>1</sup>:

The following rules establish procedures for continued operation of the Minnesota State Board of Legal Certification. As of the effective date of their adoption by the Minnesota Supreme Court, these rules will supersede and replace the original Plan of the Supreme Court (adopted October 10, 1985) and the Rules of the Board of Legal Certification (adopted December 15, 1986).<sup>2</sup>

## TABLE OF CONTENTS

- 100. PURPOSE OF THE BOARD OF LEGAL CERTIFICATION
- 101. DEFINITIONS
- 102. COMPOSITION OF THE BOARD
- 103. MEETINGS
- 104. CONFLICT OF INTEREST
- 105. POWERS OF THE BOARD
- 106. DUTIES OF THE BOARD
- 107. BOARD DISPOSITION OF AGENCY APPLICATIONS
- 108. APPLICATION AFTER DENIAL
- 109. BOARD HEARINGS
- 110. BOARD INFORMATION DISCLOSURE
- 111. BOARD SPECIFIED FEES
- 112. THRESHOLD CRITERIA FOR AGENCY AUTHORITY TO CERTIFY
- 113. AGENCY OBLIGATIONS
- 114. AGENCY STANDARDS FOR CERTIFYING LAWYERS
- 115. AGENCY STANDARDS FOR AUTOMATIC/DISCRETIONARY DENIAL OR  
REVOCAION OF LAWYER CERTIFICATION
- 116. RENEWAL OF AGENCY ACCREDITATION
- 117. AGENCY ANNOUNCEMENT OF ACCREDITATION
- 118. AGENCY ANNOUNCEMENT OF REVOCATION OF ACCREDITATION
- 119. LAWYER ANNOUNCEMENT OF CERTIFICATION
- 120. IMMUNITY

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<sup>1</sup> The Preamble is a new provision that provides historical context concerning the Plan of the Supreme Court as well as the Rules of the Board of Legal Certification.

<sup>2</sup> The footnotes shown with these rules are intended to explicate the proposed revisions and are not proposed to be adopted by the Court.

## **100. PURPOSE OF THE BOARD OF LEGAL CERTIFICATION**

The purpose of the Minnesota State Board of Legal Certification (Board) is to accredit<sup>3</sup> agencies that certify lawyers as specialists, so that public access to appropriate legal services may be enhanced. In carrying out its purpose, the Board shall provide information about certification of lawyers as specialists for the benefit of the profession and the public.

## **101. DEFINITIONS**

- a. "Applicant agency" means an entity that submits a proposal to become an accredited agency in a field of law.
- b. "Applicant lawyer" means a lawyer who seeks certification from an accredited agency.
- c. "Board" means the Minnesota State Board of Legal Certification.
- d. "Certified lawyer" means a lawyer who has received certification from an accredited agency.
- e. "Accredited agency" means an entity that has applied for and has been accredited by the Board to certify lawyers in a field of law.
- f. "Rules" means rules promulgated by the Supreme Court governing the Minnesota State Board of Legal Certification.
- g. "Field of law" means a field of legal practice that is identified, defined and approved by the Board as appropriate for specialist designation.

## **102. COMPOSITION OF THE BOARD**

- a. The Supreme Court shall appoint twelve (12) members of the Board, of whom nine (9) shall have active licenses to practice law in the state and represent various fields of legal practice. Three (3) attorney members shall be nominated by the Minnesota State Bar Association and three (3) shall be non-attorney public members. The Supreme Court shall designate a lawyer member as chairperson and the Board may elect other officers, including a vice-chair who will serve in the absence of the chairperson.

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<sup>3</sup> In the proposed rules, all references to agency "certification" are now changed to refer to agency "accreditation." The term "certification" is used exclusively to refer to the status granted to attorneys. This difference in terminology distinguishes the function of agency "certification" of lawyers from the Board's responsibility for "accreditation" of agencies. Previously, both functions were referred to as "certification."

- b. Members shall be appointed for three-year terms. The terms of one (1) public member and one (1) member nominated by the State Bar shall 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 (2) three-year terms with the exception of the sitting chairperson,<sup>4</sup> who may be appointed for a third three-year term or such additional period as the court may order.
- c. Members shall serve without compensation, but shall be paid their regular and necessary expenses.

### 103. MEETINGS

- a. Meetings of the Board shall be held at regular intervals and at times and places set by the chairperson.
- b. Meetings are open to the public except when the Board is considering:
  - (1) personnel matters;
  - (2) examination materials;
  - (3) legal advice from its counsel;
  - (4) any information which is confidential or private under Rule 106b(5).<sup>5</sup>
- c. The Board may make determinations by a majority vote of those present at a meeting, with the exception of the following which must be made by a majority of the members of the Board:
  - (1) recommendations for changes in rules of the Board;
  - (2) determinations to approve or rescind an agency's accreditation.
- d. The Board may meet by conference call or make determinations through mail vote.

### 104. CONFLICT OF INTEREST

A Board member who in the past twelve (12) months has served in a decision-making capacity for an agency that is, or seeks to become, a Minnesota accredited agency shall disclose such service to the Board and shall recuse him/herself from any vote relating to the agency's accreditation.<sup>6</sup>

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<sup>4</sup> This provision will permit the Board chair only to be re-appointed by the Court to serve more than two (2) three-year terms. This reflects the occasional need for the chair to provide continuity of leadership.

<sup>5</sup> This new provision specifies that all Board meetings are open, with stated exceptions. This provision is consistent with other rules of the Minnesota Supreme Court.

<sup>6</sup> This provision incorporates a conflict of interest policy similar to the one that was adopted by the Board several years ago.



## 105. POWERS OF THE BOARD<sup>7</sup>

The Board is authorized:

- a. To identify, define and approve a definition or definitions of a field of law, on its own motion, or in response to an application or applications from an applicant agency.
- b. To develop standards, application verification procedures, testing procedures, and other criteria for reviewing and evaluating applicant and accredited agencies.
- c. To take one of the following actions with regard to an applicant agency or accredited agency:
  - (1) grant accreditation or conditional accreditation;
  - (2) deny accreditation;
  - (3) rescind accreditation.
- d. To review and evaluate the programs and examinations of an applicant agency or accredited agency to assure compliance with these rules.
- e. To investigate an applicant agency or accredited agency concerning matters contained in the application and, if necessary, to conduct an on-site inspection.
- f. To require reports and other information from the applicant agency or accredited agency regarding the certification program.
- g. To monitor lawyer representations concerning certification status.
- h. To adopt policies and charge fees reasonably related to the certification program and not inconsistent with these rules.

## 106. DUTIES OF THE BOARD

- a. The chairperson shall convene the Board as necessary, and between meetings shall act on behalf of the Board. The chairperson may appoint subcommittees of the Board.
- b. The Board shall:<sup>8</sup>

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<sup>7</sup> Existing Rule 104 of the Rules of the Board of Legal Certification (RBLC) incorporates both powers and duties of the Board. Powers and duties are now divided between new Rules 105 and 106. New Rule 105 also incorporates some of the reporting requirements which had been contained in existing Rule 116.

<sup>8</sup> This proposed rule lists only the duties of the Board. Existing Rule 104 also listed the Director's duties. The Director's responsibility for these duties is now summarized in proposed Rule 106b(1) with a general statement addressing administration of the Board's programs.

- (1) Hire a Director to administer the Board's programs and to perform duties as assigned by the Board.
- (2) Provide information about lawyer certification programs for the benefit of the profession and the public.
- (3) Disseminate accurate information regarding lawyers' certification status.
- (4) File with the Supreme Court an annual report detailing the work of the Board.
- (5) Report to the Lawyers Professional Responsibility Board any lawyers who may violate the provisions of these rules or other rules concerning certification matters.
- (6) Maintain appropriate records of accredited agencies and certified lawyers.
- (7) Communicate with groups, agencies, and other boards and organizations regarding matters of common interest.
- (8) Make rulings on applications, conduct hearings, and take other actions as are necessary to carry out the Board's purpose.<sup>9</sup>

#### **107. BOARD DISPOSITION OF AGENCY APPLICATIONS**

The Board shall take the following action with respect to the agency application:<sup>10</sup>

- a. Grant the agency's application for accreditation.
- b. Grant conditional accreditation to an applicant agency subject to receipt of evidence showing satisfaction of specific conditions imposed by the Board.
- c. Deny the agency's application and issue a written decision stating the reasons for the denial. An application may be denied for any of the following reasons:<sup>11</sup>
  - (1) The agency fails to meet criteria set forth in these rules.
  - (2) The application is incomplete, investigation has revealed inaccuracies, or the applicant agency has been uncooperative in the initial review.
  - (3) The proposed definition of the field of law is rejected by the Board.
  - (4) The agency's goals and methods of measuring attainment of those goals are not appropriate or not well defined.
  - (5) The agency's tests and other performance criteria are inadequate.

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<sup>9</sup> This proposed provision authorizes the Board's ordinary administrative functions.

<sup>10</sup> This rule specifies that the Board must take one of four options with respect to a pending agency application: accept, conditionally accept, deny, or rescind.

<sup>11</sup> This provision restates the provisions of existing Rule 107h(1) through (7) which describe the circumstances under which an agency application is denied.

- d. Rescind the agency's previously granted accreditation if the agency is found to have violated these rules.

#### **108. APPLICATION AFTER DENIAL**

An applicant agency denied accreditation may not reapply for twelve (12) months following the Board's disposition.<sup>12</sup>

#### **109. BOARD HEARINGS<sup>13</sup>**

An agency whose application has been denied pursuant to Rule 107c or rescinded pursuant to Rule 107d has the right to a hearing if the agency makes a written request for hearing within twenty (20) days of its receipt of notice of denial.<sup>14</sup> The hearing shall be promptly scheduled before the full Board or a subcommittee thereof appointed by the chairperson. Representatives of the agency may appear personally or through counsel and may present evidence and testimony. The hearing shall be recorded. Following the hearing, the Board shall provide written notice of its decision setting forth reasons for the decision.

#### **110. BOARD INFORMATION DISCLOSURE<sup>15</sup>**

The Board has the following public disclosure obligations:

- a. To provide public notice when an accreditation application has been received for a particular field of law.
- b. To make available for inspection, at reasonable times, applications for accreditation submitted by applicant agencies.

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<sup>12</sup> This is a new provision that requires a denied applicant agency to hold off on re-applying for at least twelve (12) months following the denial of an application.

<sup>13</sup> This new rule describing Board hearings is patterned after Rule 14 of the Minnesota Rules for Admission to the Bar.

<sup>14</sup> This provision extends denied applicant agencies a twenty (20) day period in which to make a written request for hearing. This provision is consistent with the Minnesota Rules for Admission to the Bar and the Rules of the Minnesota Board of Continuing Legal Education.

<sup>15</sup> Existing Rule 109 contains an "information disclosure" provision. Proposed Rule 110 expands upon this provision and attempts to clarify the Board's obligations with respect to public notice.

- c. To publish the definitions of each field of law and the address and telephone number of each applicant agency or accredited agency, along with the name of the agency's contact person.

#### **111. BOARD SPECIFIED FEES**

The Board shall periodically set and publish a schedule of reasonable fees for the costs incidental to administering these rules.<sup>16</sup>

#### **112. THRESHOLD CRITERIA FOR AGENCY AUTHORITY TO CERTIFY<sup>17</sup>**

An agency applying to the Board for accreditation in a field of law must complete an agency application form and submit it along with necessary documentation and fees to the Board office. An applicant agency must meet the following criteria:

- a. Have among its permanent staff, operating officers, or Board of Directors at least three (3) legal practitioners not from the same law firm or business whose daily work fulfills the substantial involvement requirement in the field of law as defined in Rule 114b, and whose role in the agency includes evaluating the qualifications of specialist lawyers.
- b. Provide evidence that the certification program is available to lawyers without discrimination because of a lawyer's geographic location or non-membership in an organization.
- c. Provide evidence that the applicant agency is an ongoing entity capable of operating an acceptable certification program for an indefinite period of time.
- d. Agree to publicize the certification program in a manner designed to reach lawyers licensed to practice in Minnesota who may be interested in the field of law.
- e. Agree to be subject to Minnesota law and rules regulating lawyers.
- f. Agree to keep statistical records concerning certified lawyers and to report such numbers to the Board on an annual basis.
- g. Agree to provide written notice to each certified specialist stating that if he/she communicates the specialty status, he/she shall do so in a manner consistent with the requirements of Rule 119 of these rules, as well as

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<sup>16</sup> This provision is a restatement of the provisions of existing Rule 114.

<sup>17</sup> The new provision separates the agency's obligations from those of the Board. Proposed Rule 112 (a) through (h) sets out the threshold criteria that applicant agencies must be prepared to meet when making an agency application for accreditation.

with the requirements of Rule 7.4 of the Minnesota Rules of Professional Conduct.<sup>18</sup>

- h. Provide evidence that the following have been adopted and are in use in the agency:
  - (1) Procedures that will assure the periodic review and recertification of certified lawyers.
  - (2) Due process procedures for lawyers denied certification.
  - (3) Procedures that will assure the periodic evaluation of the certification program.
  - (4) Procedures that will assure accurate ongoing reporting to the Board concerning the certification program.

### 113. AGENCY OBLIGATIONS<sup>19</sup>

An accredited agency must provide the Board with the following:

- a. At least 60 days prior to the effective date, a written summary of proposed changes in an accredited agency's standards for certification.
- b. An updated lawyer application and such other information as the Board may require.
- c. Within 30 days of certifying lawyers, a roster listing the certified lawyers' names, Minnesota license numbers, home and work addresses, and other states where licensed; this document must be verified by the director of the accredited agency, and accompanied by the initial fee.
- d. Within 30 days of denying or revoking a lawyer's certification, the name, Minnesota license number, work address, and reason for denial or revocation.
- e. By January 20 of each year, an annual statistical and summary report showing the progress of its certification program.
- f. By January 20 of each year, or at such time as is mutually agreed, submit payment of annual attorneys' fees as defined in Rule 111.

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<sup>18</sup> Existing Rule 113 addresses the manner in which certified attorneys may advertise their certified status. This amended provision requires the agency to advise its certified lawyers concerning how to advertise their specialty status. Although it is the attorney's responsibility to advertise properly, the amended rule places the burden on the certifying agency of advising attorneys concerning advertising their certified status.

<sup>19</sup> The agency's reporting obligations are set out in existing Rule 116.

#### 114. AGENCY STANDARDS FOR CERTIFYING LAWYERS<sup>20</sup>

Accredited agencies shall certify lawyers for a period not exceeding six (6) years. The following are minimum standards for lawyers certified by an accredited agency:

- a. The lawyer is licensed and on active status in Minnesota.
- b. The lawyer shows by independent evidence "substantial involvement" in the field of law during the three-year period immediately preceding certification. "Substantial involvement" means at least 25% of the lawyer's practice is spent in the field of law of the certification.
- c. The accredited agency verifies at least three (3) written peer recommendations, in addition to references from lawyers or judges unrelated to and not in legal practice with the lawyer.
- d. The lawyer successfully completes a written examination of the lawyer's knowledge of the substantive, procedural and related ethical law in the field of law; grading standards for the examination must be made available prior to test administration; model answers must be made available for inspection after test results are determined.
- e. The lawyer provides evidence of having completed at least 20 hours every three (3) years of approved CLE activity that is directly related to the certified specialist's field of law, sufficiently rigorous and otherwise appropriate for a certified specialist.
- f. The lawyer provides evidence of being current with CLE credit requirements for every state of active licensure and having been current throughout the period of application or recertification.
- g. The lawyer signs a release to share information with the Board from the files of the accredited agency.

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<sup>20</sup> This proposed rule also incorporates existing Rule 108, Standards for Certifying Attorneys.

**115. AGENCY STANDARDS FOR AUTOMATIC/DISCRETIONARY DENIAL OR REVOCATION OF LAWYER CERTIFICATION.<sup>21</sup>**

- a. Automatic denial or revocation. An agency will automatically deny or revoke a lawyer's certification upon the occurrence of any of the following:
  - (1) A finding by the agency that the lawyer failed to complete 20 CLE credits in the field of law within his/her three-year reporting period or the equivalent CLE reporting period.
  - (2) Suspension or disbarment of the lawyer from the practice of law in any jurisdiction in which the lawyer is licensed.
  - (3) Suspension of the lawyer for nonpayment of license fees or for failing to maintain mandatory CLE credits in any jurisdiction in which the lawyer is licensed.
  - (4) Failure of the lawyer to complete satisfactorily the recertification process or failure to pay the required certification fees.
  - (5) Written notice from the lawyer that he/she seeks decertification.
- b. Discretionary denial or revocation of certification. An agency may deny or revoke a lawyer's certification if:
  - (1) The lawyer fails to cooperate with the certifying agency, or submits false or misleading information during the certification or recertification process.
  - (2) The lawyer's record contains evidence of personal or professional misconduct which is inconsistent with the standards of conduct adopted by the accredited agency.
  - (3) The lawyer falsely or improperly announces the field of law or certification.

**116. RENEWAL OF AGENCY ACCREDITATION<sup>22</sup>**

Agencies are required to apply to the Board for accreditation renewal at least once every three (3) years.

- a. The following must be submitted to the Board for renewal of accreditation:

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<sup>21</sup> This proposed rule was derived from existing Rule 111 and combines Rule 112 provisions as well. The proposed rule directs certifying agencies to have policies which result in the automatic denial or revocation of certifications under specified circumstances. Automatic denial/revocation occurs when, for example, the lawyer fails to complete his/her CLE requirements or is suspended from the practice of law. Discretionary denial occurs when a lawyer fails to cooperate or falsely announces a certification.

<sup>22</sup> This rule incorporates existing Rule 115.

- (1) A completed application form seeking renewal of accreditation and a fee in an amount specified by Rule 111.
  - (2) A written critique of the agency's own certification program, which includes written evaluations from certified lawyers and a written analysis of achievement of program goals.
  - (3) Copies of examinations and model answers for the most recent examinations administered since accreditation or last renewal of accreditation.
  - (4) Statistical information concerning the progress of the program since the original accreditation or last renewal of accreditation.
- b. The Board may require the agency to provide the following as part of the accreditation renewal process:
- (1) Opportunity for Board representatives to conduct an on-site inspection of the agency.
  - (2) An audit of agency records by Board representatives, including a review of certified lawyers' references.
  - (3) Opportunity for a personal meeting with representatives of the accredited agency.
  - (4) Such other information as is needed to evaluate the certification program.

#### **117. AGENCY ANNOUNCEMENT OF ACCREDITATION<sup>23</sup>**

An accredited agency may publish the following statement with respect to its certification status: "This agency is accredited by the Minnesota State Board of Legal Certification to certify lawyers as specialists in the field of [name of field of law]." If conditional accreditation has been granted publication of that fact must be made.

#### **118. AGENCY ANNOUNCEMENT OF REVOCATION OF ACCREDITATION<sup>24</sup>**

In the event that the Board revokes the accreditation of an agency, the agency shall contact each certified lawyer and shall advise him/her to cease all advertising, announcements and publications referencing Board authorization.

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<sup>23</sup> This rule incorporates the existing Rule 110.

<sup>24</sup> This is a new rule that puts an affirmative obligation on the accredited agency to contact all its certified lawyers and inform them in the event of revocation of authority.



**119. LAWYER ANNOUNCEMENT OF CERTIFICATION<sup>25</sup>**

The certified lawyer may announce that he/she is a certified specialist in a field of law and that the agency granting the certification is an agency accredited by the Minnesota State Board of Legal Certification to certify lawyers as specialists in a designated field of law. The lawyer shall not represent, either expressly or implicitly, that the specialist status is conferred by the Minnesota Supreme Court.

**120. IMMUNITY<sup>26</sup>**

The Board and its members, employees, and agents are immune from civil liability for any acts conducted in the course of their official duties.

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<sup>25</sup> Rule 119 is a modification of existing Rule 113. Attorneys may advertise their certification status, the name of the certifying agency and the fact that the Board accredits the agency; they may not state or imply that the certification status is granted by the Minnesota Supreme Court.

<sup>26</sup> This is a new provision which is patterned after similar immunity provisions in the Minnesota Rules of Lawyers Professional Responsibility and the Minnesota Rules for Admission to the Bar.