

FILED

September 14, 2023

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8045

**ORDER PROMULGATING AMENDMENTS TO THE RULES OF
THE MINNESOTA STATE BOARD OF LEGAL CERTIFICATION**

The Minnesota State Board of Legal Certification filed a petition proposing amendments to the Rules of the Minnesota State Board of Legal Certification. *See* Petition of the Minnesota State Board of Legal Certification for Amendment of the Rules of the Minnesota State Board of Legal Certification, No. ADM10-8045 (filed Feb. 14, 2023).

By order filed on March 16, 2023, we established a period for the public to file written comments in response to the petition filed by the Board. Order Establishing Public Comment Period for Proposed Amendments to the Rules of the Minnesota State Board of Legal Certification, ADM10-8045 (Minn. filed Mar. 16, 2023). No comments were filed.

Having carefully considered the Board's proposed amendments, we agree with the proposed amendments.

IT IS HEREBY ORDERED that the attached amendments to the Rules of the Minnesota State Board of Legal Certification are prescribed and promulgated as shown below. The amendments are effective as of the date of this order.

Dated: September 14, 2023

BY THE COURT:



Lorie S. Gildea
Chief Justice

AMENDMENTS TO RULES OF THE MINNESOTA STATE BOARD OF LEGAL CERTIFICATION

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

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101. DEFINITIONS

- a. “Accredited agency” means an entity that has applied for and has been accredited by the Board to certify lawyers in a field of law.
- ~~a.b. “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 lawyerspecialist” 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.~~
- ~~ge. “Field of law” means a field of legal practice that is identified, defined and approved by the Board as appropriate for specialist designation.~~
- f. “Substantial involvement” means at least 25% of the lawyer’s practice is spent in the field of law of the certification.

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 and three (3) shall be non-attorney public members. 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.
- 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, 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~~ concerning a lawyer that relates to the Board's duties under Rule 106b(5) or (6).
- 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~~ these Rules;
 - (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. A Board member who is currently certified as a specialist by or who in the past twelve (12) months has served in a decision-making capacity for an applicant agency that is, or seeks to become, a Minnesota accredited agency shall disclose such certification or service to the Board and shall recuse him/herself from any vote relating to the agency's accreditation.
- b. Such Board members shall recuse themselves from any vote whether to:
 - (1) Grant or deny an applicant agency's application in any field of law for which the Board member has served in such capacity or is certified; or
 - (2) Rescind an accredited agency's accreditation in any field of law for which the Board member has served in such capacity or is certified.

105. POWERS OF THE BOARD

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 or accredited agency, or in response to notice from an accredited agency of proposed changes to its approved definition.~~
- 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 used by~~ 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 an~~ applicant agency or accredited agency regarding its certification program.
- g. To monitor lawyer representations concerning specialization and certification status.
- h. To adopt policies and charge fees reasonably related to the certification program and not inconsistent with these ~~Rules.~~
- i. To educate the public about the value and benefits of lawyer certification.

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:
 - (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) Monitor lawyer advertisements and public representations concerning specialization and certification, determine whether advertisements and public representations appear to violate the Minnesota Rules of Professional Conduct or these Rules, and advise lawyers regarding the Board's duties under paragraph (6) of this section.
 - ~~(5)~~(6) Report to the Office of Lawyers Professional Responsibility Board any lawyers who ~~may~~, following notice under paragraph (5) of this section and an opportunity to cure any issues, continue to violate the provisions of the Minnesota Rules of Professional Conduct, these ~~Rules~~, or other rules concerning specialization and certification matters.
 - ~~(6)~~(7) Maintain appropriate records of accredited agencies and certified ~~lawyers~~ specialists.
 - ~~(7)~~(8) Communicate with groups, agencies, and other boards and organizations regarding matters of common interest.
 - ~~(8)~~(9) Make rulings on applications, conduct hearings, and take other actions as are necessary to carry out the Board's purpose.

107. BOARD DISPOSITION OF AGENCY APPLICATIONS~~ACCREDITATION~~

The Board shall take the following action with respect to ~~the~~ an agency's application or accreditation:

- 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:
 - (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/or~~ methods of measuring attainment of those goals are not appropriate or not well defined.
 - (5) The agency's tests ~~and/or~~ other performance criteria are inadequate.
- d. Rescind the agency's previously granted accreditation if the agency is found to have violated these ~~Rules~~.

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109. BOARD HEARINGS

An agency whose application has been denied pursuant to Rule 107c or whose accreditation has been 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. 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

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, with the exception of confidential information.
- c. To publish the definitions of each field of law and the website, address, and telephone number of each applicant agency ~~or~~ and 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~~.

112. THRESHOLD CRITERIA FOR AGENCY AUTHORITY TO CERTIFY

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~~ includes "substantial involvement" requirement in the field of law ~~as defined in Rule 114b,~~ and whose role in the agency includes evaluating the qualifications of certified specialists ~~lawyers.~~
- b. Have a written definition of the field of law and written standards for lawyer certification in that field of law that are consistent with the requirements of these Rules.
- ~~b.c.~~ 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.
- ~~e.d.~~ Provide evidence that the ~~applicant~~ agency is an ongoing entity capable of operating an acceptable certification program for an indefinite period of time.

- ~~d.e.~~ 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.f.~~ Agree to be subject to Minnesota law and rules regulating lawyers.
- ~~f.g.~~ Agree to keep statistical records concerning certified ~~lawyers~~specialists and to report such numbers to the Board on an annual basis.
- ~~g.h.~~ Agree to provide written notice to each certified specialist stating that if ~~he/she~~the specialist communicates ~~the specialty status~~regarding specialization or certification, ~~he/she~~the specialist shall do so in a manner consistent with the requirements of Rule 119 of these ~~Rules~~, as well as with the requirements of Rule ~~7.2(c)~~7.4 of the Minnesota Rules of Professional Conduct.
- ~~h.i.~~ 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~~specialists.
 - (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

- ~~a.~~ An accredited agency must provide the Board with the following:
 - ~~a.(1)~~ At least 60 days prior to their effective date, a written summary of any proposed changes ~~into~~ an accredited agency's definition of the field of law or standards for certification.
 - ~~b. An updated lawyer application and such other information as the Board may require.~~
 - ~~e.(2)~~ Within 30 days of certifying lawyers, a roster listing the certified ~~lawyers'~~specialists' names, Minnesota license numbers, ~~home and work~~mailing 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.(3)~~ Within 30 days of denying or revoking a lawyer's certification, the name, Minnesota license number, ~~work~~mailing address, and reason for denial or revocation.
 - ~~e.(4)~~ By January 20 of each year, an annual statistical and summary report showing the progress of its certification program.
 - ~~f.(5)~~ By January 20 of each year, or at such time as is mutually agreed, submit payment of annual ~~attorneys'~~certified specialists' fees as defined in Rule 111.
- ~~b.~~ The accredited agency shall publish or make available, prior to administration of its written examination, information about the examination which shall include the following:
 - (1) Examination format and question types;
 - (2) Grading standards;
 - (3) Test specifications addressing the substantive and procedural areas of law tested; and
 - (4) Sample examination questions or a selection of previously administered examination questions.
- ~~c.~~ The accredited agency must make examinations and model answers or grading criteria for each question available to the Board for inspection upon request.
- ~~d.~~ The accredited agency shall maintain compliance with the threshold criteria set forth in Rule 112 of these Rules and provide evidence to the Board upon request.

114. AGENCY STANDARDS FOR CERTIFYING LAWYERS

- a. 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.b.~~ The lawyer is accredited agency must verify that a certified specialist meets the following minimum standards:
- ~~(1) Is licensed in good standing and on active status in Minnesota.~~
 - ~~b. (2) The lawyer shows~~ 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.~~
 - ~~e. (3) The accredited agency verifies~~ Has 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, which the accredited agency has verified.
 - ~~d. (4) The lawyer Has successfully completed~~ 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. (5) The lawyer provides~~ Has provided 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. (6) The lawyer provides~~ Has provided evidence of being current with CLE credit requirements for every state of active licensure in Minnesota and having been current throughout the period of application or recertification.
 - (7) Has promptly self-disclosed any discipline imposed upon the lawyer and has provided evidence that the lawyer is not on a disciplinary suspension or disbarred from the practice of law in any jurisdiction in which the lawyer is or was licensed.
 - ~~g. (8) The lawyer signs~~ Has signed a release to share information with the Board from the files of the accredited agency.

115. AGENCY STANDARDS FOR AUTOMATIC/DISCRETIONARY DENIAL OR REVOCATION OF SPECIALIST ~~LAWYER~~-CERTIFICATION

- 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~~ the lawyer’s three-year reporting period or the equivalent CLE reporting period.
 - (2) ~~Suspension~~ Disciplinary suspension or disbarment of the lawyer from the practice of law in any jurisdiction in which the lawyer is or was 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~~ Minnesota.
 - (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~~ the lawyer 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

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

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

- (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 or survey data from certified lawyers~~specialists~~ and a written analysis of achievement of program goals.
- (3) Copies of examinations, grading standards, and model answers or grading criteria for each question from 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.
- (5) An updated copy of the agency's lawyer application and such other information as the Board may require regarding the application process.
- (6) A statement that all lawyers certified by the agency meet the agency's standards for certification or recertification.
- (7) Evidence that the agency continues to meet all threshold criteria set forth in Rule 112 of these Rules.

~~b-c.~~ The Board may require the accredited 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'~~specialists'~~ 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

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~~the conditions~~ must be ~~made~~included in all public statements regarding the agency's Minnesota accreditation.

118. AGENCY ANNOUNCEMENT OF REVOCATION OF ACCREDITATION

In the event that the Board revokes the accreditation of an agency, the agency shall contact each certified ~~lawyer~~specialist and shall advise ~~him/her~~the specialist to cease all advertising, announcements and publications referencing Board authorization. The Board may contact certified specialists directly to ensure their notice of the revocation and compliance with the requirements of the Minnesota Rules of Professional Conduct and these Rules concerning lawyer representations about certification and specialization.

119. LAWYER ANNOUNCEMENT OF CERTIFICATION

The certified ~~lawyer~~specialist may announce that ~~he/she is~~they are 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 ~~certified specialist~~lawyer shall not represent, either expressly or implicitly, that the specialist status is conferred by the Minnesota Supreme Court.

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