

STATE OF MINNESOTA  
In Supreme Court

FILE NO. ADM10-8045

**FILED**

February 14, 2023

OFFICE OF  
APPELLATE COURTS

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Petition of the Minnesota State Board  
of Legal Certification for Amendment of  
the Rules of the Minnesota State Board  
of Legal Certification

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**PETITION FOR  
RULE AMENDMENT**

**TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:**

Petitioner, the Minnesota State Board of Legal Certification (“Board”), respectfully petitions this Court to amend the Rules of the Minnesota State Board of Legal Certification (“Rules”) to adopt a series of proposed changes set forth below. The proposed amended Rules (“Proposed Rules”) are attached as **Exhibit A**. A redlined version showing the proposed changes from the existing Rules is attached as **Exhibit B**.

In support of its Petition, Petitioner offers the following:

1. The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in Minnesota. Minn. Stat. 481.01; *Sharood v. Hatfield*, 210 N.W.2d 275, 279 (Minn. 1973).
2. Under the supervision of the Court, the Board is responsible for accrediting agencies that certify lawyers as specialists, so that public access to appropriate legal services may be enhanced. Rule 100.
3. In 2001, the Board filed a petition to consolidate, edit, and reorganize the Plan of the Minnesota Supreme Court and the Rules of the Board of Legal Certification into a single rule set. The Court adopted the Board’s recommendation by Order dated March 14, 2002. The Rules have not been amended or updated since 2002.

4. The Board proposes the following amendments in order to assist the Board in accomplishing its purposes, to reflect practices of the Board that have developed over the course of the last 20 years, and to better communicate with agencies that are accredited or seeking to become accredited, lawyers who are certified or seeking information about becoming certified, and members of the public who may be seeking general information about certification. Explanations concerning the most substantive or significant proposed changes are set forth herein.

### **Administrative Changes**

5. The Board proposes multiple changes to the definitions section, Rule 101. The Board recommends alphabetizing the definitions, removing the unused defined term “applicant lawyer,” removing “rules” as a defined term and instead using “these Rules” as needed, using the term “certified specialist” instead of “certified lawyer” in order to better convey the nature and purpose of certification, and moving the definition of “substantial involvement” from Rule 114 to Rule 101 with the remainder of the Rules’ definitions. “Substantial involvement” is used in Rule 112 as well as Rule 114.
6. The Board proposes an amendment to Rule 102(a) to remove the requirement that the Court designate a lawyer member as the Chair of the Board. On occasion, a non-lawyer public member would have been an excellent choice to serve as Chair, based upon the member’s length of service on the Board, expertise in certification of lawyers, and related experience. Removing the requirement that the Chair be a lawyer member would allow the Court discretion to appoint a non-lawyer member of the Board to serve as Chair in appropriate circumstances.
7. The Board recommends modifying Rule 104 to make two changes. First, Proposed Rule 104(a) includes language stating that in addition to having recently served in a decision-making capacity at a certifying agency, it would also be a conflict of interest for a Board member to vote on whether his or her own certification becomes or remains an approved specialty field in Minnesota. Second, the provision regarding

recusal would be modified consistent with that scope, and require that Board members subject to the conflict rule only recuse themselves from votes that are dispositive of an agency's initial application for accreditation or potential revocation of accreditation in the relevant field(s) of law. This would not preclude a Board member from fully participating in and voting on such matters as the routine review and recertification of accreditation every three years, review of proposed changes to the standards by which an agency certifies new specialists, or issues related to any other specialty fields that may be administered by the same agency. The Board believes these changes will allow its members to avoid any matters in which they may have a significant personal interest, while still permitting those with valuable knowledge and expertise in a particular area to share that and join in the Board's more customary and administrative review processes.

8. The Board proposes to amend Rules 105(a) and 113(a)(1), and to add Proposed Rule 112(b), which together would more clearly require agencies to develop written standards and a definition of their field of law that are consistent with the Rules, submit them to the Board for approval, and provide notice of any proposed changes. Since the definition of a field of law establishes the scope of the specialty and influences the standards, examination, and other program aspects that are tailored to it, it is critical that the Board receive notice of and review any proposed changes to a defined field of law.
9. The Board recommends adding Proposed Rule 106(b)(5) and amending the existing rule (Proposed Rule 106(b)(6)) to clarify the Board's duties with respect to monitoring attorney advertisements. The purpose of the monitoring is to identify and provide notice to the lawyer or lawyers making improper specialization or certification representations that their representation may contain possible violations of the Minnesota Rules of Professional Conduct and provide an opportunity to correct it. The Board's practice, developed in coordination with the Office of Lawyers Professional Responsibility, has been to avoid reporting lawyers who promptly correct what is usually an inadvertent mistake. The Board's proposed changes would codify this notice and cure procedure.

10. The Board also recommends changes in Proposed Rules 105(g), 106(b)(5), 106(b)(6), and 112(g) that would clarify the scope of the Board's attorney advertisement monitoring to include representations regarding specialization—not just certification. The amended language is more consistent with the Board's practices derived from former Rule 7.4 and current Rule 7.2(c) of the Minnesota Rules of Professional Conduct, the latter of which states in part that a lawyer "shall not state or imply that a lawyer is a specialist or certified as a specialist in a particular field of law" except as specified and permitted by Rule 7.2(c) and its recognition of the Board's accreditation role.
11. The Board recommends amendments to Rules 107 and 109 to clarify the procedural distinction between denying an application for accreditation and rescinding an agency's accreditation, the latter of which may occur when no application is pending.
12. The Board has proposed a series of additions to Proposed Rules 107(c)(2), 113(d), and 116(b)(7) to clarify that various minimum standards, cooperation with the Board's review, and completeness of submissions are required of and applicable to accredited agencies and applications for re-accreditation. The use of the defined term "applicant agency" in existing Rules 107(c)(2) and 112 may suggest that certain requirements are applicable only in connection with the initial accreditation process, rather than standards to be maintained by an agency throughout its accreditation and at the time of each application for re-accreditation.
13. The Board proposes to amend Rule 110(b) to allow the Board to keep confidential certain information that may be submitted in or attached to an agency's application for accreditation. The Board has presently identified two categories of information as appropriate for confidential designation: examinations containing questions and answers that may be reused and private disciplinary matters concerning an individual. The proposed rule, unlike an exhaustive list of exceptions, would also avoid the compelled disclosure of any unforeseen confidential information that the Board may receive.

14. The Board recommends the adoption of Proposed Rules 113(b) and 113(c) to require agencies to publish certain information about the examination or otherwise make such information available to prospective examinees. The Board believes the requirements are both more detailed and more feasible for agencies than those it proposes to delete from Rule 114(d) (Proposed Rule 114(b)(4)). As an initial matter, these requirements appear more accurately classified as agency obligations rather than part of an agency's standards for lawyers, thus warranting the proposed move from Rule 114 to 113. Substantively, the Board's proposed rules attempt to strike a balance between requiring notice to examinees about examination topics and standards, and allowing agencies to keep confidential the answers to examination questions that they intend to review, refine, and add to their question banks for reuse. Currently, Rule 114(d) states that "model answers must be made available for inspection after test results are determined." Most agencies use a combination of multiple choice and essay questions.
15. Over the last 10-15 years, many agencies have accepted examination feedback from the Board, have begun working with psychometricians, and have otherwise implemented practices consistent with those recommended by high stakes testing entities. Since the product of those improvements is an increasingly valid and reliable bank of questions to be rotated and reused, the Board wishes to avoid an overbroad requirement to permit access to exam answers. The Board has increasingly waived strict compliance with the requirements of Rule 114(d), as long as an agency permits the Board to review the examination materials and has appropriate due process procedures in place for unsuccessful examinees. Proposed Rules 113(c) and 116(b)(3) authorize the Board to continue reviewing examination materials and Proposed Rule 112(i)(2) maintains the Rules' existing due process requirement. The Board believes a broader requirement that could provide examination content to prospective examinees, or prevent its reuse, is inadvisable.

16. The Board recommends amending Rules 113(c) and 113(d) (Proposed Rules 113(a)(2) and 113(a)(3)) to require only that agencies provide a mailing address, rather than specific home and/or work addresses, for lawyers that they certify, deny, or revoke certification. This is consistent with the Lawyer Registration Office's practice of recording a single mailing address for Minnesota lawyers, and it is not necessary for this Board to require two addresses or specific address types.
17. The Board recommends adopting amendments set forth in Proposed Rules 113(a)(2), 114(b)(1), 114(b)(5), 114(b)(6), 114(b)(7), 115(a)(2), and 115(a)(3) that are designed to ensure specialists' compliance with the administrative requirements of licensure in Minnesota, and professional responsibility obligations in every state, but would reduce the Board's regulation of lawyers' out-of-state administrative compliance. Rules 114 and 115 contain minimum standards below which an agency may not certify or continue certifying a lawyer as a specialist. While disciplinary matters, an administrative suspension in Minnesota, or failure to continue education in the specialty field are linked to this Board's role in enhancing the public's access to specialized legal services in this state, an administrative deficiency regarding a lawyer's out-of-state and possibly unused law license has less relevance to the Board's purposes. The Board believes this type of deficiency is one that can be left to the discretion of its agencies, who may choose to maintain denial and revocation standards exceeding the floor set forth in Proposed Rules 114(b)(6) and 115(a)(3), or may choose to review such matters on a case-by-case basis with the benefit of additional context. The Board's interest in specialists' non-disciplinary out-of-state license matters does not appear great enough to warrant a nondiscretionary rule containing no exceptions.
18. The Board also proposes several amendments related to the process of applying for re-accreditation. Proposed Rules 114(b) and 116(b)(6) expressly require an agency to verify that its certified specialists meet the certification standards and to provide affirmation of that fact when applying for re-accreditation. Proposed Rule 116(b)(7) would require an agency to submit with its re-accreditation application evidence that it still meets the minimum standards set forth in Rule 112, consistent with Section

10, *supra*. The Board also proposes moving existing Rule 113(b) to Proposed Rule 116(b)(5), with clarifying modifications, to allow agencies to provide updates about minor changes to their lawyer application or application process at the time of re-accreditation, provided the changes do not affect the definition or standards for the field of law. Proposed Rule 113(a)(1) would still require prompt notice to the Board of more substantive changes that impact certification standards.

19. The Board recommends incorporating language in Rule 117 that would require that an agency that is conditionally accredited include the conditions in any public statements regarding its Minnesota accreditation. This could be achieved through a disclaimer, footnote, or hyperlink in any written and/or electronic publication, and would provide any interested members of the public with valuable information concerning the nature of the conditional approval.
20. The Board proposes amending Rule 118, which requires agencies to notify their certified specialists in the event that the agency's Minnesota accreditation is revoked, to establish a secondary process by which the Board itself may choose to notify specialists directly. Once revocation has occurred, the Board has little ability to ensure the agency complies with this requirement, and the revocation may relate to the agency's lack of communication or diligence, which would raise doubt about whether notice would be properly communicated to affected individuals. This also provides an opportunity for the Board to inform lawyers how to properly advertise an unaccredited certification and avoid any professional responsibility issues.

### **Board's Role in Promoting Certification**

21. In addition to the foregoing administrative matters, the Board has also discussed what role, if any, it should have in promoting the benefits and growth of legal certification. Between 2015 and 2021, the number of certified specialists in Minnesota reported by accredited agencies has fallen by 24%, from 941 to 713.<sup>1</sup> Since 2020, the number of specialists reported has dropped to levels that have not

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<sup>1</sup> <https://www.blc.mn.gov/about/annual-reports/>

been observed since at least the mid-1990s. Several accredited agencies have reported that this trend is largely driven by demographics, as specialists retire at a rate that exceeds the rate at which younger lawyers apply to become newly certified as specialists.

22. Rule 100 states that the purpose of the Board's legal certification process is "so that public access to appropriate legal services may be enhanced." The Board believes that a reduction in the number of specialists available to consumers of legal services, or in the financial viability of certifying agencies, does not serve this purpose. At that same time, the Board recognizes that its primary role is as a regulator.
23. The Board has reviewed the 2006 report published by the Court-appointed Legal Certification Review Task Force that discusses this issue.<sup>2</sup> The Task Force concluded that while most advocacy roles promoting the growth of legal certification were better suited for the MSBA to perform, the Board's regulatory role overseeing certifying agencies would not be compromised if it assumed a more limited role where "the focus is on the larger questions of benefit to the public and the profession." This language is consistent with that used in Rule 100 regarding the Board's role and purpose in providing information about certification.
24. The Board recommends the adoption of Proposed Rule 105(i), a new provision that affords the Board the power to "educate the public about the value and benefits of lawyer certification." The Board believes that the scope of this provision is most consistent with the above considerations and that other steps beyond that scope, such as the encouragement or recruitment of qualified lawyers to become certified as specialists, are better left to certifying agencies and bar associations. The Board also believes this role is most appropriate as a permissive one under Rule 105, rather than a duty under Rule 106, both in principle and in recognition of the Board's limited resources with which to carry out that role.

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<sup>2</sup> [https://www.mncourts.gov/mncourtsgov/media/AdministrativeFileArchive/Bd%20of%20Legal%20Certification%20ADM10-8045%20\(formerly%20CX-84-1651\)/2006-12-05-Legal-Certification-Final-Rpt.pdf](https://www.mncourts.gov/mncourtsgov/media/AdministrativeFileArchive/Bd%20of%20Legal%20Certification%20ADM10-8045%20(formerly%20CX-84-1651)/2006-12-05-Legal-Certification-Final-Rpt.pdf)



25. While the Board has attempted to strike a balanced approach to this issue, it remains cognizant that multiple well-reasoned viewpoints on the topic have been discussed over the course of many years, and is perfectly content to defer to the Court's judgment on the matter. If the Court does not believe this change to be advisable, it is welcome to simply strike Rule 105(i) from the attached proposed Rules.

Dated: 2/14/23

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## **RULES OF THE MINNESOTA STATE BOARD OF LEGAL CERTIFICATION**

### **PREAMBLE:**

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).

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

The purpose of the Minnesota State Board of Legal Certification (Board) is to accredit 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. "Accredited agency" means an entity that has applied for and has been accredited by the Board to certify lawyers in a field of law.
- b. "Applicant agency" means an entity that submits a proposal to become an accredited agency in a field of law.
- c. "Board" means the Minnesota State Board of Legal Certification.
- d. "Certified specialist" means a lawyer who has received certification from an accredited agency.
- e. "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. The Supreme Court shall designate a 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 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 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 or accredited agency shall disclose such certification or service to the Board.
- 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, in response to an application 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 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 an applicant agency or accredited agency regarding its certification program.
- g. To monitor lawyer representations concerning specialization and certification.
- 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.
  - (6) Report to the Office of Lawyers Professional Responsibility any lawyers who, 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.
  - (7) Maintain appropriate records of accredited agencies and certified specialists.
  - (8) Communicate with groups, agencies, and other boards and organizations regarding matters of common interest.
  - (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 ACCREDITATION**

The Board shall take the following action with respect to 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 agency has been uncooperative in the review.
  - (3) The proposed definition of the field of law is rejected by the Board.
  - (4) The agency's goals or methods of measuring attainment of those goals are not appropriate or not well defined.
  - (5) The agency's tests or other performance criteria are inadequate.
- 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.

## **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 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 includes "substantial involvement" in the field of law, and whose role in the agency includes evaluating the qualifications of certified specialists.
- 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.
- 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.
- d. Provide evidence that the agency is an ongoing entity capable of operating an acceptable certification program for an indefinite period of time.
- 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.
- f. Agree to be subject to Minnesota law and rules regulating lawyers.
- g. Agree to keep statistical records concerning certified specialists and to report such numbers to the Board on an annual basis.
- h. Agree to provide written notice to each certified specialist stating that if the specialist communicates regarding specialization or certification, 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) of the Minnesota Rules of Professional Conduct.
- 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 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:
  - (1) At least 60 days prior to their effective date, a written summary of any proposed changes to an accredited agency's definition of the field of law or standards for certification.
  - (2) Within 30 days of certifying lawyers, a roster listing the certified specialists' names, Minnesota license numbers, and mailing addresses; this document must be verified by the director of the accredited agency, and accompanied by the initial fee.
  - (3) Within 30 days of denying or revoking a lawyer's certification, the name, Minnesota license number, mailing address, and reason for denial or revocation.
  - (4) By January 20 of each year, an annual statistical and summary report showing the progress of its certification program.
  - (5) By January 20 of each year, or at such time as is mutually agreed, submit payment of annual 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.

- b. The 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.
  - (2) Shows by independent evidence “substantial involvement” in the field of law during the three-year period immediately preceding certification.
  - (3) 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.
  - (4) Has successfully completed a written examination of the lawyer’s knowledge of the substantive, procedural and related ethical law in the field of law.
  - (5) 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.
  - (6) Has provided evidence of being current with CLE credit requirements 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.
  - (8) 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 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 the lawyer’s three-year reporting period or the equivalent CLE reporting period.
  - (2) 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 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 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.
- 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 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.
- 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 specialists' references.
  - (3) Opportunity for a personal meeting with representatives of the 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 the conditions must be 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 specialist and shall advise 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 specialist may announce that 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 shall not represent, either expressly or implicitly, that the specialist status is conferred by the Minnesota Supreme Court.

#### **120. IMMUNITY**

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

# **RULES OF THE MINNESOTA STATE BOARD OF LEGAL CERTIFICATION**

## **PREAMBLE:**

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).

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## 100. PURPOSE OF THE BOARD OF LEGAL CERTIFICATION

The purpose of the Minnesota State Board of Legal Certification (Board) is to accredit 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. "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 lawyer specialist" means a lawyer who has received certification from an accredited agency.
- ~~e-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.
- ~~f.~~ "Rules" means rules promulgated by the Supreme Court governing the Minnesota State Board of Legal Certification.
- ~~e.~~ "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.
- ~~g.~~

## 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 ~~R~~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 ~~the 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 ~~R~~Rules.
- ~~h.~~ 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 APPLICATIONSACCREDITATION**

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~~.

## **108. APPLICATION AFTER DENIAL**

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

## **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.
- ~~c-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.(1) An updated lawyer application and such other information as the Board may require.~~
  - c.(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:~~
- b. The ~~lawyer is~~ accredited agency must verify that a certified specialist meets the following minimum standards:
  - a. ~~(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.~~
  - c. ~~(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 d 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.
- 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.
- 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 ~~lawyers~~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 ~~lawyers~~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.

## **120. IMMUNITY**

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