

# Rules of Legal Specialization

## Article 1

### Board of Legal Specialization

#### 19-101. Board of Legal Specialization; title.

A.

Composition. The supreme court hereby establishes a Board of Legal Specialization ("board"), which board shall be the authority having jurisdiction under state law over the subject of specialization of lawyers. The board shall be composed of nine members appointed by the supreme court. All members of the board shall be lawyers who have passed the bar examination and are licensed and currently in good standing to practice law in this state. The members of the board shall be representative of the legal profession and shall include lawyers who are in general practice as well as those who specialize. One of the members shall be designated by the supreme court as chairperson of the board.

B.

Terms. The initial members of the board shall hold office for term of three (3) years. Those members appointed after the expiration of the initial terms shall be appointed by the supreme court to staggered terms of office as follows: three shall serve for one (1) full calendar year after appointment; three shall serve for two (2) full calendar years after appointment; and three shall serve for three (3) full calendar years after appointment. Appointment to a vacancy among the lawyer members shall be made by the supreme court for the remaining term of that lawyer member leaving the board. Any lawyer member shall be eligible for reappointment to not more than one additional three (3) year term after having served one full three (3) year term.

C.

Meetings. Meetings of the board shall be held at regular intervals, at such times and places and upon such notice as the board may from time to time prescribe.

D.

Title. These rules shall be known as "Rules of Legal Specialization".

[As amended, effective January 1, 1989.]

The 1989 amendment, effective January 1, 1989, in the first sentence in Paragraph B, inserted "initial" and "term of" and deleted "except those initially appointed who shall serve as hereinafter designated" from the end and, in the second sentence, inserted "Those members appointed after the expiration of the initial terms" at the beginning and deleted "and the initial appointees shall serve" following "staggered terms of office".

## **19-102. Powers and duties.**

The board shall have general jurisdiction of all matters pertaining to regulation of specialization and recognition of specialists in the practice of law and shall have the power and duty:

A. to administer the plan of specialization;

B. to designate specialties of law practice and define the scope and limits of such specialties and to provide procedures for the achievement of these purposes;

C. to appoint, supervise, act on the recommendations of and consult with specialty committees as hereinafter defined;

D. to make and publish standards for the recognition of specialists, upon the board's own initiative or upon consideration of recommendations made by the specialty committees, such standards to be designed to produce a uniform level of competence among the various specialties in accordance with the nature of the specialties;

E. to recognize specialists or deny, suspend or revoke the recognition of specialists upon the board's own initiative, upon recommendations made by the specialty committees or upon requests for review of recommendations made by the specialty committees;

F. to establish and publish procedures, rules, regulations and bylaws to implement this plan;

G. to propose, and request the supreme court to make, amendments to this plan whenever appropriate;

H. to cooperate with other boards or agencies in enforcing standards of professional conduct and to report apparent violations of the Rules of Professional Conduct of this state to the appropriate disciplinary authority;

I. to evaluate and approve, or disapprove, any and all continuing legal education courses, or educational alternatives, for the purpose of meeting the continuing legal education requirements established by the board for the recognition of specialists and, in connection therewith, to determine the specialties for which credit shall be given and the number of hours of credit to be given in cooperation with the authority having

jurisdiction over continuing legal education; to determine whether and what credit is to be allowed for educational alternatives, including other methods of legal education, teaching, writing and the like; to issue rules and regulations for obtaining approval of continuing legal education courses and educational alternatives; to publish or cooperate with others in publishing current lists of approved continuing legal education courses and educational alternatives; and to encourage and assist law schools, the authority having jurisdiction over continuing legal education, local bar associations and other groups engaged in continuing legal education to offer and maintain programs of continuing legal education designed to develop, enhance and maintain the skill and competence of legal specialists; and

J. to cooperate with other organizations, boards and agencies engaged in the recognition of legal specialists or concerned with the topic of legal specialization.

### **19-103. Specialty committees.**

The board shall establish a specialty committee for each specialty in which specialists are to be recognized.

A.

Composition. The specialty committee shall be composed of five members appointed by the board, one of whom shall be designated annually by the board as chairperson of the specialty committee. Members of the specialty committee shall be lawyers licensed after passing the bar examination and currently in good standing to practice law in this state who, in the judgment of the board, are competent in the field of law to be covered by the specialty.

B.

Terms. Members shall hold office for three (3) years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the board to staggered terms of office and the initial appointees shall serve as follows: one shall serve for one (1) year after appointment; two shall serve for two (2) years after appointment; and two shall serve for three (3) years after appointment. Appointment by the board to a vacancy shall be for the remaining term of the member leaving the specialty committee. All members shall be eligible for reappointment to not more than one additional three (3) year term after having served one full three (3) year term.

C.

Meetings. Meetings of the specialty committee shall be held at regular intervals, at such times and places and upon such notice as the specialty committee may from time to time prescribe or upon direction of the board.

## **19-104. Duties of specialty committees.**

Each specialty committee shall advise and assist the board in carrying out the board's objectives and in the implementation and regulation of this plan in that specialty. Each specialty committee shall advise and make recommendations to the board as to the standards for the specialty and the recognition of individual specialists in that specialty. Each specialty committee shall be charged with actively administering the plan in its specialty and, with respect to that specialty, shall:

- A. after public hearing on due notice, recommend to the board reasonable and nondiscriminatory standards applicable to that specialty;
- B. make recommendations to the board for recognition, continued recognition, denial, suspension or revocation or recognition of specialists and for procedures with respect thereto;
- C. administer procedures established by the board for applications for recognition and continued recognition as a specialist and for denial, suspension or revocation of such recognition;
- D. administer examinations and other testing procedures, if applicable, investigate references of applicants and, if deemed advisable, seek additional information regarding applicants for recognition or continued recognition as specialists;
- E. make recommendations to the board concerning the approval of and credit to be allowed for continuing legal education courses, or educational alternatives, in the specialty; and
- F. perform such other duties and make such other recommendations as may be requested of or delegated to the specialty committee by the board.

## **19-105. Establishment of additional standards.**

The specialty committee for each specialty may recommend, and the board may establish, additional or more stringent standards, including, but not limited to, oral or written examinations, or a combination of such examinations. If examination is required, it must be applied uniformly to all applicants; provided, however, that waiver of the requirement may be permitted if additional and substantially more stringent standards are required of those for whom waiver is permitted. The specialty committee may also recommend, and the board may establish, requirements which further define or quantify with at least equal stringency the minimum standards set forth herein for recognition or continued recognition as a specialist. Additional standards or requirements established under this section need not be the same for initial recognition and continued recognition as a specialist.

### **19-106. Financing the plan.**

The financing of the plan shall be derived from applicants and participants in the plan and such other sources as the supreme court may from time to time approve. If fees are not established by the supreme court, the board shall establish reasonable fees in each specialty field in such amounts as may be necessary to defray the expense of administering the plan, which fees may be adjusted from time to time. If established or adjusted by the board, however, the fees must be approved by the supreme court as provided in Paragraph C of Rule 19-107.

### **19-107. Retained jurisdiction of the supreme court.**

The supreme court retains jurisdiction with respect to the following matters:

- A. amending this plan;
- B. hearing appeals taken from actions of the board; and
- C. establishing or approving fees to be charged in connection with this plan.

### **19-108. Effective date.**

The effective date of the plan for administrative purposes only and not for participation by lawyers shall be the date of adoption of the plan by the supreme court.

Compiler's notes. - The plan of specialization was adopted by the court on June 26, 1986, effective July 1, 1987.

## **Article 2**

### **Specialization Plan**

#### **19-201. Plan of specialization; purpose.**

The purpose of this plan of specialization ("plan") is to assist in the delivery of legal services to the public by:

- A. providing greater access by the public to appropriate legal services;
- B. identifying and improving the quality and competence of legal services; and

C. providing appropriate legal services at reasonable cost.

### **19-202. Privileges conferred and limitations imposed.**

The board in the implementation of this plan shall not alter the following privileges and responsibilities of recognized specialists and other lawyers:

A.

Scope of practice. No standard shall be approved which shall in any way limit the right of a recognized specialist to practice in all fields of law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is recognized as a specialist in a particular field of law;

B.

Practice of nonspecialist. No lawyer shall be required to be recognized as a specialist in order to practice in the field of law covered by that specialty. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in any field of law, even though he is not recognized as a specialist in that field;

C.

Individual recognition. All requirements for and all benefits to be derived from recognition as a specialist are individual and may not be fulfilled by nor attributed to the law firm of which the specialist may be a member;

D.

Voluntary participation. Participation in the program shall be on a completely voluntary basis;

E.

Multiple specialties. A lawyer may be recognized as a specialist in more than one field of law. The limitation on the number of specialties in which a lawyer may be recognized as a specialist shall be determined only by such practical limits as are imposed by the requirement of substantial involvement and such other standards as may be established by the board as a prerequisite to recognition as a specialist;

F.

Limited representation. When a client is referred by another lawyer to a lawyer who is a recognized specialist under this plan on a matter within the specialist's field of law, such

specialist shall not take advantage of the referral to enlarge the scope of his representation and, consonant with any requirements of the Rules of Professional Conduct of this state, such specialist shall not enlarge the scope of representation of a referred client outside the area of the specialty field; and

G.

Advertisement. Any lawyer recognized as a specialist under this plan shall be entitled to advertise that he is a "board recognized specialist" in his specialty to the extent permitted by the Rules of Professional Conduct of this state.

[As amended, effective January 1, 1989.]

The 1989 amendment, effective January 1, 1989, substituted "board recognized specialist" for "board registered specialist" in Paragraph G.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7 Am. Jur. 2d Attorneys at Law § 66.  
7 C.J.S. Attorney and Client §§ 48, 86.

### **19-203. Minimum standards for recognition of specialists.**

To qualify for recognition as a specialist, a lawyer applicant must pay any required fee, must demonstrate to the board, with respect to the specialty, knowledge of the law of this state and competence and must comply with the following minimum standards:

A.

Licensed; good standing. The applicant must be licensed and currently in good standing to practice law in this state;

B.

Substantial involvement in specialty. The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of substantial involvement in the specialty during the three (3) years immediately preceding his application according to objective and verifiable standards. Such substantial involvement shall be defined as to each specialty from a consideration of its nature, complexity and differences from other fields and from consideration of the kind and extent of effort and experience necessary to demonstrate competence in that specialty. It is a measurement of actual experience within the particular specialty according to any of several standards. It may be measured by the time spent on legal work within the area of the specialty, the number or type of matters handled within a certain period of time, or any combination of these or other appropriate factors. However, within each specialty, experience requirements should be measured by objective standards. In no event should they be either so restrictive as to unduly limit

recognition of lawyers as specialists or so lax as to make the requirement of substantial involvement meaningless as a criterion of competence. Substantial involvement may vary from specialty to specialty, but, if measured on a time-spent basis, in no event shall the time spent in practice in the specialty be less than twenty-five percent (25%) of the total practice of a lawyer engaged in a normal full-time practice. Reasonable and uniform practice equivalents may be established, including, but not limited to, teaching, judicial, government or corporate legal experience;

C.

Continuing legal education. The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of continuing legal education accredited by the board for the specialty, the minimum being an average of ten (10) hours of credit for continuing legal education, or its equivalent, for each of the three (3) years immediately preceding application. Upon establishment of a new specialty, this standard may be satisfied in such manner as the board, upon advice from the appropriate specialty committee, may prescribe or may be waived if, and to the extent, suitable continuing legal education courses have not been available during the three (3) years immediately preceding establishment of the specialty; and

D.

Peer review. The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of qualification in the specialty through peer review by providing, as references, the names of at least five lawyers, all of whom are licensed and currently in good standing to practice law in this state, or judges, who are familiar with the competence and qualification of the applicant as a specialist. None of the references may be persons related to the applicant or, at the time of application, a partner of or otherwise associated with the applicant in the practice of law. The applicant by his application consents to confidential inquiry by the board, or appropriate specialty committee, of all such references, the appropriate disciplinary body and other persons regarding the applicant's competence and qualification to be recognized as a specialist.

### **19-204. Minimum standards for continued recognition of specialists.**

The period of recognition as a specialist shall be no less than three (3) years and no more than five (5) years as determined in the complete discretion of the board. During such period the board or appropriate specialty committee may require evidence from the specialist of his continued qualification for recognition as a specialist and the specialist must consent to inquiry by the board, or appropriate specialty committee, of lawyers and judges, the appropriate disciplinary body or others in the community regarding the specialist's continued competence and qualification to be recognized as a specialist. Application for and approval of continued recognition as a specialist shall be



required prior to the end of each three (3) to five (5) year period. To qualify for continued recognition as a specialist, a lawyer applicant must pay any required fee, must demonstrate to the board with respect to the specialty both continued knowledge of the law of this state and continued competence and must comply with the following minimum standards:

A.

Substantial involvement in specialty. The specialist must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of substantial involvement (which shall be determined in accordance with the principles set forth in Paragraph B of this rule) in the specialty during the entire period of recognition as a specialist;

B.

Continuing legal education. The specialist must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of continuing legal education accredited by the board for the specialty during the period of recognition as a specialist, the minimum being an average of ten (10) hours of credit for continuing legal education, or its equivalent, for each year during the entire period of recognition as a specialist; and

C.

License; good standing; peer review. The specialist must comply with the requirements set forth in Paragraphs A and D of Rule 19-203.

### **19-205. Suspension or revocation of recognition.**

A.

Grounds. The board may revoke its recognition of a lawyer as a specialist of the specialization program if the specialty is terminated or may suspend or revoke such recognition if it is determined, upon the board's own initiative or upon recommendation of the appropriate specialty committee and after hearing before the board on appropriate notice, that:

(1) the recognition of the lawyer as a specialist was made contrary to the rules and regulations of the board;

(2) the lawyer recognized as a specialist made a false representation, omission or misstatement of material fact to the board or appropriate specialty committee;

(3) the lawyer recognized as a specialist has failed to abide by all rules and regulations

promulgated by the board;

(4) the lawyer recognized as a specialist has failed to pay the fees required;

(5) the lawyer recognized as a specialist no longer meets the standards established by the board for the recognition of specialists; or

(6) the lawyer recognized as a specialist has been disciplined, disbarred or suspended from practice by the supreme court or any other state or federal court or agency.

B.

Duty to inform. The lawyer recognized as a specialist has a duty to inform the board promptly of any fact or circumstance described in Subparagraphs (1) through (6) of Paragraph A of this rule.

C.

Reinstatement. If the board revokes its recognition of a lawyer as a specialist, the lawyer cannot again be recognized as a specialist unless he so qualifies upon application made as if for initial recognition as a specialist and upon such other conditions as the board may prescribe. If the board suspends recognition of a lawyer as a specialist, such recognition cannot be reinstated except upon the lawyer's application therefor and compliance with such conditions and requirements as the board may prescribe.

### **19-206. Right of hearing and appeal to supreme court.**

A lawyer who is denied recognition or continued recognition as a specialist or whose recognition is suspended or revoked shall have the right to a hearing before the board and, thereafter, the right to appeal the ruling made thereon by the board to the supreme court under such rules and regulations as the board, with the approval of the supreme court, may prescribe.

### **19-207. Transitional rule.**

Any lawyer, whether a participant in the plan or not, who holds himself out as a specialist or otherwise designates the area of his practice in a manner which violates the plan, any rules and regulations of the specialization board or the Rules of Professional Conduct will not be subject to sanctions authorized by the plan, the rules and regulations of the specialization board or the Rules of Professional Conduct if:

A. such violation is the result of a contract with a third party entered into prior to November 1, 1989; and

B. the lawyer has taken remedial steps and has or will have cured the violation prior to July 1, 1990.

[As amended, effective January 1, 1989 and October 1, 1989.]

The first 1989 amendment, effective January 1, 1989, deleted former Paragraph A which read "such violation occurs within the first year after the effective date for participation by lawyers in the plan", redesignated former Paragraph B as present Paragraph A, substituting therein "November 1, 1988; and" for "the effective date for participation by the lawyers in the plan", and redesignated former Paragraph C as present Paragraph B, substituting therein "prior to July 1, 1989" for "within the first year after the effective date for participation by lawyers in the plan".

The second 1989 amendment, effective on and after October 1, 1989, substituted "November 1, 1989" for "November 1, 1988" in Paragraph A and "July 1, 1990" for "July 1, 1989" in Paragraph B.