400 APPEAL PROCEDURES

4.01 SCOPE

These policies establish the review procedures by the board of governors of a request by any person who disagrees with a ruling or determination of the BLSE.

4.02 APPEALS COMMITTEE OF THE BOARD OF GOVERNORS

The appeals committee (AC) will consist of 7 members appointed by the president of The Florida Bar, 1 of whom will be designated as chair. At least 3 members will be members of the board of governors. The 7 members will be appointed to staggered terms of office, and the appointees will serve as follows: 2 members will serve until June 30 next following their appointment; 2 members will serve until the second June 30 following their appointment; and 3 members will serve until the third June 30 following their appointment.

4.03 STANDARD OF REVIEW

(a) Scope of Review. Review by the AC will be limited to whether the applicant or individual (appellant or petitioner) was provided the procedural rights set forth in the BLSE’s policies and whether the BLSE applied the correct procedural standards for approval or denial as provided elsewhere in these policies and by pertinent Rules Regulating The Florida Bar.

(b) Standard of Review. The appellant will have the burden of making a clear and convincing showing of arbitrary, capricious, or fraudulent denial of procedural rights or misapplication of the BLSE’s policies or the Rules Regulating The Florida Bar.

4.04 COMMENCEMENT OF PROCEEDINGS

(a) Commencement of Appeal. An appeal will be commenced by filing a notice of appeal with the executive director of The Florida Bar, with a copy to the LSE director, within 45 days of receipt of the decision of the BLSE. A notice of appeal may be in the form of a letter, will be delivered by certified mail, and will be deemed filed upon receipt by the executive director of The Florida Bar. Failure to timely file will constitute a waiver of the right of appeal.

(b) Filing Fee. A fee will be paid when the notice of appeal is filed. The fee amount will be set by the budget committee of the board of governors.

(c) Contents of Notice of Appeal. The notice of appeal will identify the decision of the BLSE, by its date and nature that the appellant seeks to review. The notice of appeal will contain or be accompanied by a memorandum containing a statement of fact, argument limited to the standard described in policy 4.03, citations to authority, and a statement of relief sought.
4.05 RESPONSE

A response to the appeal on behalf of the BLSE will be served on the appellant within 45 days after the appeal has been filed with the executive director of The Florida Bar. Service by mail will be complete on mailing. The response will contain statements of fact, an argument limited to the standard described in policy 4.03, citations to authority, and supporting material.

4.06 RIGHT OF REPLY

(a) **Time.** The appellant may file a reply within 20 days of receipt of the response limited to rebuttal of matters argued in the response. Service by mail will be complete on mailing.

(b) **Other Pleadings.** No further pleadings will be permitted unless requested by the Appeals Committee on its own initiative.

(c) **Recusal.** A member of the Appeals Committee and the Board of Legal Specialization and Education must recuse himself or herself from any and all participation in the proceedings, consideration of an attorney, or from attempting to influence others with respect to a lawyer in the following circumstances:

1. **Reasons for Recusal**
   
   (A) The member is a current or former law partner or an associate of the applicant or board certified attorney.
   
   (B) The member of the member’s spouse or partner is related to the applicant or board certified lawyer by consanguinity or affinity within the third degree according to the rules of civil law.
   
   (C) The member has personal or professional bias or prejudice concerning the applicant or board certified lawyer which would prevent the member from fairly evaluating all of the evidence and information concerning the qualification of the applicant or board certified lawyer.
   
   (D) The member has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit for or against the applicant or board certified lawyer for malpractice.

2. **Recusal Process**

   A member with those recusals required for one of the reasons above must:

   (A) promptly disclose to the full Board of Legal Specialization and Education or Appeals Committee in writing that the member has a disqualifying interest but need not state the reasons;

   (B) withdraw from any participation in the matter of the applicant or board certified lawyer;
(C) refrain from attempting to influence another member of Appeals Committee or Board of Legal Specialization and Education;

(D) refrain from voting on the applicant or board certified lawyer.

(3) **Recusal Request.** Within the time frame of the right of reply, an applicant or board certified lawyer who is aware of circumstances requiring recusal or a member under these policies may request in writing that an Appeals Committee or Board of Legal Specialization and Education member be recused.

(4) **Disqualification.** A member of Appeals Committee or Board of Legal Specialization and Education should voluntarily recuse. If the member does not voluntarily recuse, the chair of Appeals Committee or Board of Legal Specialization and Education will, on becoming aware of factors which indicate a conflict of interest as described above, determine whether or not the member should be disqualified.

### 4.07 EVIDENCE

No evidence will be presented on appeal that was not presented to the BLSE.

### 4.08 COMPUTATION OF TIME

In computing or extending any period of time prescribed or allowed by these policies, the Florida Rules of Judicial Administration will be applied.

### 4.09 CONSIDERATION OF APPEAL

(a) **Meeting.** The AC will convene to consider the appeal at the next regularly scheduled meeting of the board of governors held no fewer than 20 days after the time for filing a reply by the appellant has expired or the filing of the reply, if a reply is filed. The chair of the AC will designate the time and place of the meeting and the LSE director will furnish notice of the meeting to the members of the AC, the appellant, and the BLSE. The notice will be provided at least 15 days before the date on which the AC is to convene. Members may participate telephonically and will be considered present.

(b) **Record.** The LSE director will furnish to the AC a copy of the decision of the BLSE; a copy of the notice of appeal and all supporting material filed by the appellant; a copy of the response; and a copy of the reply, if any. The record provided to the AC will not include any individual peer review references provided to or considered by the certification committee or the BLSE for performance of peer review evaluation.

(c) **Oral Argument.** The appellant will be entitled to present oral argument before the AC only if requested in the notice of appeal, memorandum in support, or reply. The BLSE will have
the right to present oral argument only if requested by the appellant. If a request for oral argument is not made, the AC will make its decision solely on the basis of the record.

(d) Decision of the Appeals Committee. The decision of the AC will be by a majority of those present and voting. Four members of the AC present will constitute a quorum. The decision will become the order of the board of governors, unless reviewed and overruled by the board of governors.

(e) Notice of Decision. The AC will give notice, by certified mail, to the appellant and the BLSE of its decision within 30 days of the AC meeting.

4.10 REVIEW BY THE BOARD OF GOVERNORS

(a) Petition for Review. A petition for board of governors' review of an Appeals Committee decision must be received by the executive director of The Florida Bar within 10 days of receipt of the Appeals Committee decision. The petition must demonstrate a clear and convincing showing of arbitrary, capricious, or fraudulent denial of procedural rights by the Appeals Committee. The petition must be briefly summarized and may not be accompanied by any materials already contained in the record before the Appeals Committee.

(b) Response. The respondent files a brief response within 10 days of the date the petition for review is filed with the executive director of The Florida Bar.

(c) Procedures. The board of governors considers the petition for review and response at its next regular meeting and a non-member of Appeals Committee, appointed by The Florida Bar President, will report to and make the presentation of the petition and response, if any, to the board of governors. Oral argument is not permitted. The decision of the board of governors is by a majority of members voting, excluding the Appeals Committee members who voted on the original decision.

(d) Denial of Petition for Review. If the petition for review is denied, the Appeals Committee decision stands as the decision of the board of governors.

(e) Grant of Petition for Review. If the petition for review is granted, the complete appellate record is transmitted to the board of governors for consideration at its next regular meeting. If requested, oral argument may be permitted. In determining whether to uphold or reverse the Appeals Committee decision, the standard of review is clear and convincing error on the part of the Appeals Committee. The decision of the board of governors is by a majority of members voting, including the Appeals Committee members who voted on the original decision.

(f) Notice of Board of Governors Action. The executive director of The Florida Bar gives notice of the board of governors' decision to the petitioner and respondent, by certified mail, or by return receipt electronic mail, within 20 days of the board of governors' meeting at which such decision was rendered.

(g) Ex Parte Communications. Because the appellate process is of a quasi-judicial nature, ex parte communications by anyone to members of the Appeals Committee or the board of governors are prohibited.
4.11 PETITION FOR REVIEW TO THE SUPREME COURT OF FLORIDA

A petition for review may be filed with the Supreme Court of Florida, under rule 6-3.10, Rules Regulating The Florida Bar.