

# STANDING POLICIES OF THE BOARD OF LEGAL SPECIALIZATION AND EDUCATION

## 100 ADMINISTRATION

### 1.01 BOARD OF LEGAL SPECIALIZATION AND EDUCATION

**(a) Jurisdiction.** The board of legal specialization and education (BLSE) has general jurisdiction over each certification committee and all matters pertaining to the administration of the Florida certification plan, the continuing legal education requirement (CLER), the basic skills course requirement (BSCR), and continuing legal education (CLE) accreditation as outlined in the Rules Regulating The Florida Bar, Chapter 6. Members are appointed by the bar president, for staggered terms and serve at the discretion of the board of governors.

**(b) Rules and Policies.** The BLSE has the authority to promulgate rules and policies, subject to approval by the Board of Governors of The Florida Bar (board of governors), to accomplish the responsibilities assigned to it as described in the previous section. These rules and policies will include, but not be limited to, the following:

- (1) administration of the certification program;
- (2) establishment of reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certification and recertification to lawyers in defined fields of law under the plan;
- (3) establishment of procedures for the investigation and consideration of applicant qualifications for certification and recertification and awarding certificates of special knowledge, skills, and proficiency, as well as character, ethics, and reputation for professionalism, based on recommendations by a certification committee; and
- (4) establishment of procedures and reasonable standards concerning the approval of continuing legal education, waivers, and other matters for determining compliance with the CLER and the BSCR.

**(c) Policy Waiver.** Subject to the continued direction and supervision by the board of governors, any provision of any policy may be waived by a two-thirds vote of those present at any meeting of the BLSE.

**(d) BLSE Chair.** The BLSE chair is designated by the president-elect to serve as the BLSE chair for a specified term. When the chair is absent, has requested recusal, or is otherwise unable or unavailable to serve, the vice chair or the chair's designee will perform the duties or exercise the discretion of the chair.

**(e) Staff Duties.** Staff will be responsible for all duties delegated by the BLSE as long as the BLSE retains responsibility for staff decisions. Such duties may include, but not be limited to:

- (1) accepting applications;
- (2) conducting preliminary review of applications;
- (3) contacting candidates for certification and recertification for additional information or clarification;
- (4) arranging meeting sites and preparing agenda(s) for the BLSE and certification committees;
- (5) administering examinations; and
- (6) processing and evaluating CLE credit requests in accordance with the BLSE's policies.

## **1.02 ADMINISTRATIVE PROCEDURE**

**(a) Meetings.** The BLSE chair designates meeting times and places and disseminates a calendar of meeting dates to the members at the beginning of each fiscal year.

**(b) Quorum.** Eight members constitute a quorum of the BLSE for the transaction of business.

**(c) Executive Session.** The BLSE will be in executive session concerning matters deemed confidential under the rules. During executive session, only members of the BLSE and staff as designated by the BLSE chair may be admitted, except under limited circumstances. Other individuals will be permitted to appear before the BLSE during executive session as permitted by BLSE policy or at the direction of the BLSE chair. The extent of that appearance will be determined solely in the discretion of the BLSE chair.

**(d) BLSE Subcommittees.** The BLSE may establish subcommittees to assist in the administration of its duties. Subcommittees may include, but are not limited to: executive, standards, rules and policies, national accreditation, strategic planning, and communications. The BLSE chair will appoint the members and leadership for each BLSE subcommittee.

**(e) Meetings of the Executive Subcommittee.** Minutes will be prepared for all executive subcommittee meetings. The minutes will be distributed to members of the BLSE along with other agenda materials prior to the next regularly scheduled meeting of the BLSE or as the executive subcommittee directs. The actions taken are not final until the minutes are approved at the next regular meeting of the BLSE, or by teleconference as the BLSE chair determines necessary.

**(f) Liaisons.** The BLSE chair may appoint a BLSE liaison to each certification committee.

**(g) Removal of Members.** The chair of each certification committee or the BLSE chair may petition the president of The Florida Bar to remove a certification committee member for good cause shown. The BLSE chair may petition the president of The Florida Bar to remove a BLSE member for good cause shown. Good cause includes, but is not limited to, absence from 3

meetings or conference calls or a lack of participation in committee or BLSE activities and assignments in any 12-month period. If a member is recommended for removal from the BLSE or a certification committee, the member will be notified in advance.

**(h) Ex Officio Members.** The chair of each certification committee is an ex officio member of the BLSE and entitled to attend the BLSE meetings and to participate in discussions, but is not entitled to vote or to be counted in determining the existence of a quorum. Ex officio members may not be present for executive session matters before the BLSE unless otherwise permitted under these policies or by a two-thirds vote of the BLSE.

**(i) Recusal.** A member of the Appeals Committee and the BLSE must recuse from any and all participation in the proceedings, consideration of a lawyer, or from attempting to influence others with respect to a lawyer in the following circumstances:

(1) *Reasons for Recusal.* A member must recuse from participation if:

(A) The member is the applicant or board certified lawyer's current law partner or associate, or has been the applicant or board certified lawyer's partner or associate within the preceding 5 years.

(B) The member or the member's spouse 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 malpractice for or against the applicant or board certified lawyer.

(2) *Recusal Process.* A member whose recusal is 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; and

(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 of a member under these policies may request in writing that an Appeals Committee or BLSE member be recused.

(4) *Disqualification.* A member of Appeals Committee or BLSE should voluntarily recuse. If the member does not voluntarily recuse, the chair of Appeals Committee or BLSE will determine whether or not the member should be disqualified on becoming aware of a conflict of interest as described above.

## 200 FLORIDA CERTIFICATION PLAN

### 2.01 ADMINISTRATION

(a) **The BLSE.** The BLSE bears ultimate responsibility in the certification of applicants. Its oversight of the certification committees will be in accordance with the Rules Regulating The Florida Bar and these policies to ensure minimum standards of the plan are met.

(b) **Certification Committees.** Each certification committee will operate under the Rules Regulating The Florida Bar and policies of the BLSE. The duties of each certification committee will include, but not be limited to:

- (1) recommending the issuance, renewal, or denial of certificates;
- (2) reviewing applications;
- (3) establishing testing procedures;
- (4) preparing, overseeing, administering, and grading the examination;
- (5) developing policies subject to approval by the BLSE; and
- (6) performing other duties deemed appropriate.

(c) **LSE Director.** The Legal Specialization and Education director (LSE director) will serve as the staff liaison to the BLSE.

(d) **Staff.** The BLSE and each certification committee will receive staff support to carry out the administrative responsibilities set forth in the Rules Regulating The Florida Bar. Staff support will be managed in accordance with the internal procedures of The Florida Bar. Among the responsibilities of the LSE director is to balance the effective administration of the program with practical fiscal considerations, including, but not limited to, whether in-person staff support at a meeting of a certification committee is necessary or may be accomplished by alternative conferencing methods.

### 2.02 AREAS OF CERTIFICATION

(a) **Supreme Court Approval.** Each area of certification must be approved by the Supreme Court of Florida.

(b) **Approved Areas.** The areas of certification and the dates of approval are: tax (7/1/82); civil trial (7/1/82); marital and family law (7/1/84); wills, trusts and estates (7/1/85); criminal law (trial and appellate) (7/1/86); real estate (7/1/86); workers' compensation (7/1/87); appellate practice (7/1/93); health law (9/1/94); immigration and nationality law (9/1/94); admiralty and maritime (7/20/95); aviation (7/20/95); business litigation (7/20/95); city, county and local government (7/20/95); elder law (7/17/97); international law (12/18/97); antitrust and trade regulation (3/23/00); labor and employment law (3/23/00); construction law (5/20/04);

intellectual property law (8/1/06); state and federal government and administrative practice (8/1/06); education law (6/11/09); adoption law (6/11/09); juvenile law (10/01/15); condominium and planned development law (03/21/16); and international litigation and arbitration (02/01/18).

**(c) Amendments to Area Standards.** Each certification committee, in accordance with the Rules Regulating The Florida Bar, has the responsibility to recommend to the Board of Legal Specialization and Education criteria for certification and recertification including, but not limited to, amendments to area standards. Before referral to the Board of Legal Specialization and Education, any amendment to area standards are first provided to The Florida Bar's relevant section(s), division(s), and substantive law committee(s) with an invitation to comment. A 45-day response time is suggested. Reasonable accommodations to extend this period are permitted to ensure a substantive review. Input received from The Florida Bar's section(s), division(s), and substantive law committee(s) are not a means to veto proposed changes, but allow all those who have knowledge in a given field to offer substantive comment to ensure the continued maintenance of reasonable and uniform standards concerning education, experience, proficiency, and professionalism.

**(d) Area Evaluation.** Any certification area that does not reach 75 members by the end of the third year after implementation and maintain this number will be evaluated by the Board of Legal Specialization and Education. Evaluation includes, but is not limited to, consideration of:

- (1) the benefit of the area's existence for both the public and the profession;
- (2) existing requirements to ensure they reflect practice standards common to the practice area and are attainable;
- (3) examination statistics and the relative difficulty of passage in comparison to overall program average;
- (4) the extent to which efforts have been made to stimulate participation;
- (5) costs associated with administration; and
- (6) the level of interest among those certified in certification committee service.

**(e) Evaluation Results.** The Board of Legal Specialization and Education monitors certification areas that include fewer than 75 members and completes an evaluation report if requested by the Program Evaluation Committee.

### **2.03 NEW CERTIFICATION AREA REQUEST**

**(a) Presentation.** Any request for a new certification area will be presented to the BLSE. As the BLSE directs, staff will:

- (1) poll the appropriate section(s), division(s), and substantive law committee(s) of The Florida Bar for input;

(2) contact other state bars or national certification organizations offering the same or similar specialization area; and

(3) notify the membership of the request by publication on The Florida Bar's web site for a minimum of 30 days to allow interested parties to respond.

**(b) Consideration.** New area proposals will be considered on a showing that the area is:

(1) an established and recognized area of legal practice in which certification would be of benefit to both the public and The Florida Bar; and

(2) projected to attain a 75 member threshold within the first 3 years of implementation.

**(c) Application.** An application for a new area must include, but is not limited to;

(1) letters of endorsement or petitions from a minimum of 100 members of The Florida Bar who would qualify under the proposed standards and who agree to seek certification on the area's establishment; and

(2) a letter of endorsement by a Florida Bar section, division, or substantive law committee.

**(d) Preparation and Approval of Standards.** The BLSE will review all information received. If there are sufficient facts to support establishment of the area, the BLSE will direct staff to assist the requestor in the preparation of proposed standards. On review and approval by the BLSE, the proposed standards must be approved by the board of governors. On approval by the board of governors, the standards must be approved by the Supreme Court of Florida before implementation.

## 2.04 FEES

**(a) Filing Fee.** A fee must accompany each application submitted for certification or recertification. The fee amount will be set by the budget committee of the board of governors. Rejection or withdrawal of an application will not entitle an applicant to a refund of all or part of the fee.

**(b) Examination/Certification Fee.** A fee will be due and payable after an applicant has been notified of examination eligibility or before an applicant who otherwise qualifies receives a certificate. The fee amount will be set by the budget committee of the board of governors. Payment of the fee is required before taking the examination. The examination fee may be refunded only if written notification of cancellation is received by the LSE office at least 48 hours in advance of the examination date.

**(c) Electronic Testing Fee.** Each examinee that chooses to electronically complete a certification examination will pay an administrative surcharge to offset the expenses associated with the purchase of software, licensing agreements, consultant assistance, and testing site accommodations. The fee amount applicable to each examinee will be determined each year by

the BLSE on the recommendation of the LSE director. Online registration must be complete at least 10 days in advance of the examination date. The electronic testing fee is non-refundable once the examinee has registered online.

**(d) Annual Fee.** An annual fee per area certified will be assessed against each board certified member, excluding those who are due to apply for recertification that year. Staff will bill each certified member, who must pay the annual fee, between February 1 and May 31. Payment must be postmarked no later than 45 days from the invoice date or the member must pay a late fee. The fee amounts will be set by the budget committee of the board of governors. If payment is not received within an additional 30 days, staff will send written notice by United States certified mail, return receipt requested or by return receipt email to the lawyer's Florida Bar official bar address to advise that a recommendation to revoke certification will be forwarded to the BLSE under rule 6-3.8, Rules Regulating The Florida Bar.

**(e) Reapplication Fee.** A non-refundable fee must accompany each reapplication submitted. The fee will be set by the budget committee of the board of governors.

**(f) Grade Review Petition Filing Fee.** A non-refundable fee must accompany the filing of a grade review petition. The fee will be set by the budget committee of the board of governors.

**(g) Lapse Reinstatement Fee.** A non-refundable fee must accompany a request to reinstate certification on notification of a lapsed status. The fee will be set by the budget committee of the board of governors.

**(h) Recertification File Extension Fee.** A non-refundable fee must accompany an application for recertification file extension. The fee will be set by the budget committee of the board of governors.

**(i) Fee Waiver or Modification.** Any person seeking a fee waiver must file a written request with the LSE director detailing reasons for the waiver's necessity and any other information helpful to the BLSE. The BLSE will determine whether the waiver should be granted or the fee modified.

**(j) Fee Increase.** If the total year-end revenue in the preceding fiscal year had a decrease of 15% or more, then the BLSE will consider fee increases for the next budget cycle to be implemented at the beginning of the following fiscal year. The BLSE will recommend the appropriate increased fee and incorporate the revised amount into the certification budget as part of the annual budget process, which will then be submitted for review and approval by the budget committee and then the board of governors.

## 2.05 APPLICATIONS

**(a) Form and Content.** Applications must be submitted on forms approved by the BLSE. Each question must be answered or shown as "not applicable." The applicant must swear that all information in the application(s) and any attachments are true and complete. Only complete applications will be substantively reviewed and the accuracy of the information verified.

**(b) Revisions or Corrections.** Applicants will be advised of their continuing obligation to notify the LSE department in writing of any change to any response in the application after filing.

**(c) Supplemental Information.** The BLSE or a certification committee may require an applicant to provide information in addition to that called for on the application form, including requiring an applicant to submit to a personal interview before the BLSE, the certification committee, any of its individual members, or any authorized representative. Failure to respond to a request for supplemental information will be considered a withdrawal of an application.

## 2.06 APPLICANT CLASSIFICATIONS

**(a) Initial Applicants.** An initial applicant must complete all requirements before filing an application; however:

(1) the examination will be completed after application filing;

(2) certain CLE requirements may be completed after application filing, if satisfactory proof of completion of the educational program is furnished to the BLSE before the application filing deadline; and

(3) the 5-year practice of law requirement may be completed after application filing, but no later than November 30 of the year in which application is made.

**(b) Reapplicants.** An applicant who is deemed eligible to sit for the examination by a certification committee, but who either declines to take or fails the examination, may apply as a reapplicant only during the next application filing period immediately following the year in which the applicant originally applied.

**(c) Recertification Applicants.** At the conclusion of the 5-year period of certification, a board certified member may apply as an applicant for recertification.

## 2.07 APPLICATION FILING PERIOD AND DATES OF CERTIFICATION AND RECERTIFICATION

**(a) Initial and Reapplications.** Unless an extension is granted by the Board of Legal Specialization and Education, all applications must be postmarked by midnight of the last day of the application filing period to be considered for that annual class. Filing periods are as follows:

(1) *Cycle 1 Application Filing Period: July 1 — August 31*

Aviation Law

Appellate Practice

Civil Trial Law

Marital and Family Law

Admiralty and Maritime Law

Tax Law

Immigration and Nationality Law

International Law

Elder Law

Labor and Employment Law

Adoption Law

Education Law

Condominium and Planned Development Law

(2) *Cycle 2 Application Filing Period: September 1 — October 31*

Criminal Trial Law/ Criminal Appellate Law

Workers' Compensation Law

Health Law

Wills, Trusts and Estates Law

Real Estate Law

Business Litigation

City, County and Local Government Law

Antitrust and Trade Regulation Law

Construction Law

Intellectual Property Law

State and Federal Government and Administrative Practice

Juvenile Law

International Litigation and Arbitration

**(b) Date of Initial Certification.** For applications filed for areas within the application filing period for cycle 1 above, (cycle 1 areas), the certification date is June 1 of the year following the application filing. For applications filed for areas within the application filing

period for cycle 2 above, (cycle 2 areas), the certification date is August 1 of the year following the filing of the application.

**(c) Recertification Application Filing Periods.** Unless an extension is granted as provided elsewhere in these policies, all applications for recertification must be postmarked by midnight of the last day of the filing deadline. For cycle 1 areas, the filing deadline is May 31 at the conclusion of the 5-year period of certification. For cycle 2 areas, the filing deadline is July 31 at the conclusion of the 5-year period of certification.

**(d) Recertification File Extension.** A single 3-month recertification file extension will be granted if accompanied by a properly executed application for extension and payment of the appropriate fee. The extension will commence on the applicant's current certification expiration date. In executing the application for extension, the applicant must agree to complete all outstanding requirements for recertification and file the recertification application before the end of the 3-month extension. The applicant must confirm understanding that if the requirements are not met, no further extensions will be permitted and the fee may not be refunded.

**(e) Date of Recertification.** June 1 after the fifth year of certification is the effective date of recertification for cycle 1 areas. August 1 after the fifth year of certification is the effective date of recertification for cycle 2 areas.

## 2.08 APPLICATION PROCESSING

**(a) Review of Applications.** Staff will conduct a preliminary review of each application before certification committee review.

(1) An applicant with a deficient application will be notified by staff in writing before certification committee review to correct or update any omissions.

(2) Only complete applications will be substantively reviewed by a certification committee.

(3) Omissions or inaccuracies in the completion and submission of application forms will be grounds for denial.

**(b) Certification Retention.** An applicant's certification status will remain intact throughout the period of recertification application review. If the application is denied by the BLSE, an applicant's certification status will continue only if the applicant seeks review under the appeal procedures set forth in the 400 series of these policies and, unless the BLSE's decision is reversed, certification status will automatically terminate on completion of the appeal procedures.

**(c) Pending Status.**

(1) *Initial Application.* The application of an applicant for certification will be held in abeyance if the applicant has an unresolved professional disciplinary, or ethics matter, as described elsewhere in these policies (collectively, an "ethics matter"). The abeyance will not extend beyond 10 months from the filing deadline, except if the applicant is first notified of an

ethics matter after the filing deadline but before the application is approved or denied (a "new ethics matter"), then the abeyance will not extend beyond 10 months from the date the applicant was first notified of the new ethics matter. If an ethics matter or new ethics matter remains unresolved at the end of the applicable 10-month period, the application will be considered withdrawn. The applicant will be advised and may reapply, without prejudice, during a future application filing cycle.

(2) *Recertification Application.* If an application for recertification has an unresolved ethics matter, as described elsewhere in these policies, the certification committee will consider the circumstances and recommend a course of action to the BLSE.

**(d) Voluntary Withdrawal.** An application for certification or recertification may be voluntarily withdrawn by an applicant. Notification of withdrawal must be in writing and must be received by the LSE director before an appeal under policy 4.04(a) is due.

## 2.09 PROFESSIONAL ETHICS AND COMPETENCE

**(a) Required Information.** Each applicant is required to submit information for the time period specified in the application concerning the applicant's record of professional ethics and competence including, but not limited to:

- (1) all instances of discipline;
- (2) all disciplinary complaints currently pending;
- (3) all instances in which a state or federal judge has found the applicant in contempt of court or otherwise adversely commented on the applicant's conduct;
- (4) all malpractice claims made against the applicant (or against the applicant's firm that relate to the applicant's negligence) that resulted in a lawsuit filed, settlement paid, or appointment of a lawyer by the malpractice carrier to defend the applicant or the applicant's firm;
- (5) all arrests, charges, convictions, or other dispositions of criminal matters; and
- (6) any other matter that could adversely affect the applicant's membership in good standing with The Florida Bar or eligibility for board certification.

**(b) Staff Review.** Staff will check each applicant's record of professional ethics and competence before certification committee review and immediately before certification or recertification is granted. For all matters subject to lawyer regulation jurisdiction, staff will consult Florida Bar counsel for an update or status report for the application file.

**(c) Certification Committee Review.** Certification committee members will review each applicant's record of professional ethics and competence including, but not limited to, all instances of discipline and any unresolved complaints, and investigate all details of each complaint or matter. Staff counsel will be consulted, available files reviewed, and a hearing before the certification committee scheduled if necessary. Applications with pending matters

related to professional ethics and competence will be held in a pending status or resolved as described elsewhere in these policies.

## 2.10 PEER REVIEW

(a) **Applicant Submissions.** Each applicant will submit names of lawyers and judges who can attest to the applicant's special competence and substantial involvement in the practice of law in which certification is sought, as well as the applicant's character, ethics, and reputation for professionalism, in accordance with the area standards and rule 6-3.5(c)(6).

(b) **The BLSE and Certification Committee Inquiries.** The BLSE or certification committee may solicit statements of reference from additional lawyers or judges at anytime during the application review process.

(c) **Peer Review Statements.** Statements of reference concerning applicants will be submitted on forms furnished by the BLSE.

(d) **Exclusions.** No applicant may submit the name of a board of governors member, a Florida Bar officer, an appeals committee member, BLSE member, certification committee member, or Justice of the Supreme Court of Florida to provide a statement of reference. The BLSE will not consider a statement of reference for an applicant from a board of governors member, Florida Bar officer, appeals committee member, BLSE member, certification committee member, or Justice of the Supreme Court of Florida.

## 2.11 APPROVED CONTINUING LEGAL EDUCATION (CLE)

(a) **Certification Credit.** Unless otherwise specified below, the evaluation and accreditation of CLE activities for board certification is the responsibility of the certification committees and will be set forth in certification committee policies.

(b) **Grade Review Panel Service.** Participation on a grade review panel will entitle a member to certification credit equal to the amount of time devoted to the review and panel discussion of the examination question(s), model answer(s), and petition(s), provided the maximum amount does not exceed 5 credit hours per petition.

(c) **Examination Question and Model Answer Drafting.** Preparation of certification examination questions and corresponding model answers will entitle a member to certification credit equal to the amount of time devoted to the activity provided the maximum amount does not exceed 15 credit hours per year. If the activity occurs in connection with service on a certification committee, the certification committee chair will determine appropriate credit for each member in an amount not to exceed 15 credit hours per year. A maximum of 5 credit hours in ethics may be allocated as part of the 15 credit hours if the content of the question and model answer complies with the standards for ethics credit approval set forth elsewhere in these policies.

(d) **Examination Pre-Tester.** Participation as a pre-tester for a certification examination will entitle a member to certification credit equal to the amount of time devoted to answering

examination questions and preparing the evaluation for committee review, provided the maximum amount does not exceed 10 credit hours.

**(e) Proof of Completion.** Applicants will certify attendance and completion of all programs they list toward meeting the educational requirements on the application.

**(f) Overlap of Certification Credit Hours.** Lawyers who are board certified in more than 1 area may apply certification credit hours to more than 1 area provided the hours are approved for the areas to which they are applied.

## **2.12 EXAMINATION PREPARATION AND ADMINISTRATION**

### **(a) Examination Preparation and Review Courses.**

(1) Certification committee members and members of the BLSE may attend or participate in any seminar intended as a preparatory or review course for a certification examination although they may not give instruction regarding, or otherwise comment on, any substantive legal matters relating to the examination. Certification committee members and members of the BLSE may participate in a preparatory review course to discuss in general terms, the following aspects of the certification process:

- (A) development of examination questions;
- (B) administration of examinations;
- (C) grading/grading process of examinations;
- (D) examinees' appeal rights and the procedures for appellate review; and

(E) available resources to study for examinations, such as available bibliographies. The certification committee must provide 10 sample multiple choice questions and answers (if multiple choice questions are included in the area exam), and one sample essay question with the model answer (if essay questions are included in the area exam). Sample questions and answers provided by the area committee may not be used in any subsequent examination. The area committee must review each sample question and answer annually and must modify or substitute each question or answer affected by a change in the law.

(2) The sponsor of any preparatory review course must:

(A) advise applicants and attendees in the course brochure and in any materials distributed to attendees that the course is developed and conducted without any endorsement by the BLSE or certification committees; and

(B) include a disclaimer in the course brochure and in any materials distributed to applicants and attendees consisting of substantially the following language:

This course is intended to provide a comprehensive review of the subject matter, and it may help candidates prepare for a certification examination. Those who have developed the program have

no information regarding the examination content other than the information contained in the examination specifications that are also provided to each examinee. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination or that the examination will cover all topics in the course material.

**(b) Examination Administration.**

(1) *Examination Dates.* Unless otherwise adjusted by the BLSE, eligible applicants will successfully complete the examination as follows:

(A) for a cycle 1 area, the examination will be taken the following March;

(B) for a cycle 2 area, the examination will be taken the following May;

(C) subsequent examination opportunities will be subject to the limitations described elsewhere in these policies.

(2) *Location.* Each area examination will be conducted annually at the location(s) and on the date(s) as staff recommends subject to site availability, cost considerations, and the BLSE's approval.

(3) *Examinee Identification.* Staff must verify the identity of each examinee by requiring photographic identification on receipt of the examination materials.

(4) *Eligibility.* Only applicants the certification committee deems to have satisfied the application requirements will be eligible for examination.

(A) An applicant who is eligible to take the examination will have 2 consecutive opportunities to pass the examination. The first opportunity will be during the cycle in which the application was filed. The second opportunity will be subject to approval by the certification committee of a reapplication accompanied by the reapplication fee. The full examination fee must be paid for each examination taken.

(B) An applicant who does not obtain a passing score on the examination after 2 consecutive attempts is ineligible to reapply during the cycle year immediately following the second failure.

(C) The BLSE chair or vice-chair may permit an ineligible applicant to sit for an examination in instances in which:

(i) the certification committee requires additional time to investigate the applicant's qualifications;

(ii) a disciplinary case against the applicant is pending; or

(iii) the BLSE has not had an opportunity to consider the certification committee's recommendation due to time constraints.

(D) If an ineligible applicant is granted permission to take an examination:

(i) the examination fee must be paid in advance and may not be refunded;

(ii) the examination results may be released to the applicant but a passing grade may not be used as a basis to justify application approval;

(iii) if the ineligible applicant is unsuccessful on the examination, the examination may not be reviewed, nor may a petition for grade review be filed, unless the applicant is deemed to be an eligible applicant having satisfied all other requirements for certification;

(iv) if the ineligible applicant is successful on the examination, but is denied on the basis of the application, in lieu of challenging the application denial, the applicant may re-file in the next application filing cycle and, if approved, will not be subject to re-examination; and

(v) the applicant must acknowledge, in written form, understanding of and agreement with the above conditions before taking the examination.

(5) *Applicant Misconduct.* Failure to follow staff or administrator instructions pertaining to the examination or its administration will disqualify an applicant's examination and application.

(6) *Confidentiality.* To ensure and preserve the confidentiality of the certification testing process, no certification examinations, past, current, or proposed or their model answers will be made available for inspection, copying, or use for any reason, except in those limited circumstances otherwise permitted by the Board of Legal Specialization and Education's policies consistent with rule 6-3.12, Rules Regulating The Florida Bar.

## 2.13 GRADING, REVIEW, AND PETITION PROCESS

**(a) Grading.** The certification committees are responsible for grading all examinations. Each certification committee will regrade failed examinations before announcing examination results.

**(b) Examination Results.**

(1) *Passed Examination.* An applicant who passed an exam may not review the exam or obtain written test results. Examination results will be valid for 2 consecutive examinations. The first will be in the cycle in which the application was filed, and the second will be during the cycle immediately following.

(2) *Failed Examination.* Applicants who receive a failing grade may obtain their scores on written request.

**(c) Examination Review.**

(1) *Time and Location for Review.* Unless otherwise prohibited under these policies, an applicant who failed an examination may request an examination review. The review must be completed within 30 days of receipt of the certification committee's notification of the examination results. Examination review will take place at the location(s) and on the date(s) as established by the BLSE. The applicant may schedule an examination review at The Florida Bar office in Tallahassee during regular business hours during the 30-day period. An applicant may review the examination more than once, but no more than 3 times during the 30-day period.

(2) *Representation of Counsel.* The applicant may be represented by counsel in the examination review and grade review petition proceedings. If counsel is not board certified in the area in which the applicant failed the examination, counsel must execute a written agreement that counsel will not apply for certification in the area for 1 year following the applicant's examination review. For purposes of this provision, criminal appellate and criminal trial will be deemed a single certification area.

(3) *Acknowledgement of Non-disclosure.* An acknowledgement of non-disclosure and confidentiality must be executed by an applicant who requests examination review and the applicant's counsel, if present. The acknowledgment will bind the applicant and counsel throughout the review proceedings to maintain confidentiality in all matters disclosed in the review proceedings.

(4) *Items for Review.* On execution of the acknowledgment, the applicant and counsel may review only the following items: (i) a copy of the examination; (ii) the model answers, if any; and, (iii) the examinee's answer/test papers. Neither the applicant nor counsel may retain or copy any items made available at the examination review.

**(d) Petition for Grade Review.**

(1) *Commencement of Petition.* Within 30 days of the examination review, the applicant may file a petition for grade review with the LSE director. The petition must be accompanied by the non-refundable grade review filing fee. A petition received by the LSE director more than 30 days after the examination review will not be considered. The petitioning applicant will be referred to as "petitioner" in the grade review proceedings.

(2) *Content of Petition.* The petition must specifically identify the answers that the petitioner wishes to challenge as graded incorrectly and must set forth the claimed grading error(s). The petition may include additional supporting authority to substantiate the claim of incorrect grading. The petition must neither disclose nor make any reference to the petitioner's identity except by use of the petitioner's assigned examination number. The petition must not include any reference to the petitioner's overall score or any reference to passing scores on other portions of the examination.

(3) *Certification Committee Consideration.* Within 10 days of a petition's filing, the LSE director will provide a copy of the petition to the relevant area certification committee chair and vice chair. If either officer determines that the certification committee erred in the examination grading or a model answer construction, the certification committee will reconsider

its grading of the examination challenged in the petition. The certification committee will also consider any other failed examinations that might be eligible to receive a passing score if the challenge in the petition is determined to be valid. The review will be completed within 30 days of the petition having been provided to the committee. Any comments on the petition, determined appropriate by the certification committee, must be in writing and submitted to the LSE director for dissemination to the petitioner and the grade review panel.

**(e) Grade Review Panel.**

(1) *Appointment of Members.* The BLSE chair must appoint a review panel (RP) consisting of 3 ad hoc appointees who are certified in the relevant area and appoint a BLSE member to serve as the RP's non-voting chair. No member of the RP may have had prior involvement with the examination for which a petition is filed either as a certification committee member, drafter, or grader.

(2) *Time for Review and Dissemination of Materials.* The petition and relevant materials will be forwarded to the RP within 60 days of receipt by the LSE director. Within 60 days of the RP's receipt of the petition, the RP must convene and issue a written recommendation on the petition. These time requirements will be tolled during any post-petition proceedings by the certification committee as provided elsewhere in these policies. The BLSE chair, for good cause shown, may extend the time for distribution of the petition and relevant materials to the RP or for issuance of the RP's written recommendation, but the RP's recommendation must be made before the registration deadline for the following year's examination. If an extension is granted, the petitioner will be notified by return receipt delivery to the petitioner's Florida Bar membership address.

(3) *Standard of Review.* The RP will review each question challenged to determine whether there is competent substantial evidence to support the certification committee's grading decisions. The RP's written recommendation will address each question challenged by indicating whether the points should remain as assigned or whether additional points should be awarded.

(4) *Procedure and Completion.*

(A) The LSE director will ensure that the grade review is accomplished anonymously and in accordance with these policies. All materials will be submitted to the RP without any identifying information and without any reference to the petitioner's overall score.

(B) The RP's written recommendation will be provided to the applicant by electronic mail return receipt and certified mail return receipt. The recommendation closes the grade review process.

**(f) Appeal.**

(1) On completion of the grade review, the petitioner may request that the BLSE review the RP's recommendation. The request must be filed within 10 days of the petitioner's receipt of the RP's recommendation by certified mail and will be considered by the BLSE at its next regularly scheduled meeting.

(2) The BLSE's jurisdiction is limited to claims of fraud, discrimination, and arbitrary or capricious action in the grade review process.

(3) The BLSE will not consider whether the RP's recommendation is supported by competent substantial evidence.

**(g) Ex Parte Contacts.** No ex parte contacts may be made to members of the RP, the certification committee, or the BLSE in connection with or related to any grade review proceeding.

## **2.14 APPLICANT REVIEW PROCESS FOR CERTIFICATION OR RECERTIFICATION**

### **(a) Certification Committee Review and Investigation.**

(1) The certification committee will review an applicant's complete application and conduct further investigation as the certification committee deems necessary to determine whether the applicant meets the requirements for certification or recertification. Investigation may include review of an application in an area other than that overseen by the committee.

(2) The area standards and policies for which certification or recertification is sought govern the assigned committee's investigation and consideration.

(3) Any materials obtained by the certification committee that report or reference comments by members of the bench, The Florida Bar, or from any other source with respect to an applicant are confidential.

(4) The BLSE chair will assign an application for recertification to another certification committee for consideration if the applicant is also a member of the certification committee to which the application is submitted.

(5) Certification committee members may not review applicants to whom they are related by consanguinity or affinity within the third degree. If a majority of the certification committee determines that a certification committee member cannot render a fair and impartial judgment on an applicant, that member may not review the applicant's file. The BLSE chair may direct that an applicant's file be reviewed by another certification committee.

**(b) Recommendation of Approval.** The certification committee will recommend approval of the applicant to the BLSE if the certification committee determines by a preponderance of the evidence that the applicant meets the requirements for certification or recertification.

### **(c) Notice that Recommendation of Denial is Under Consideration.**

(1) The certification committee will provide the applicant written notice that its recommendation of denial is under consideration and will extend to the applicant an opportunity to provide additional supporting documentation if the certification committee determines by a preponderance of the evidence that the applicant has failed to meet the requirements for certification or recertification.

(2) The written notice will identify at least 1 of the following bases for consideration of recommendation of denial:

- (A) insufficient CLE credits;
- (B) insufficient or unsatisfactory peer review;
- (C) insufficient trials or other task requirements;
- (D) insufficient substantial involvement in the practice area;
- (E) unsatisfactory disciplinary or malpractice record; or

(F) action or conduct determined by the certification committee to be inconsistent with the special knowledge, skills, proficiency, character, ethics, and reputation for professionalism that are required for board certification.

**(d) Response to Notice that Recommendation of Denial is Under Consideration.** If an applicant wishes to respond to the notice that a recommendation of denial is under consideration, the applicant may file additional supporting documentation to address the certification committee's concern(s) within 10 days of an applicant's receipt of the written notice. The submission may not exceed 25 pages in length, except that the certification committee chair may allow a submission of no more than 50 pages for good cause shown.

(1) An applicant may not submit additional peer review assessments of any kind, but may submit to the certification committee the names of persons the applicant believes would be appropriate for additional peer review without representing the views of those persons. An applicant may advise potential reviewers that their names have been submitted to the certification committee, but should not offer an opinion on the content of the reference statement or evaluation. Consistent with rule 6-3.12, Rules Regulating The Florida Bar, all peer review statements by members of the bench, The Florida Bar, or any other source are confidential.

(2) Failure to respond to a written notice that a recommendation of denial is under consideration will be construed as a withdrawal of the application without the right to further review.

**(e) Consideration of Response.** The certification committee will consider the additional supporting documentation provided by the applicant and conduct further investigation of the applicant's qualifications if the certification committee determines from that documentation that further investigation is warranted or appropriate. The investigation may include soliciting additional peer review.

**(f) Documentation.** The certification committee is responsible for assembling documentation that will consist of the following:

- (1) the application;

(2) all materials obtained or considered by the certification committee during its review, investigation, and consideration process; and

(3) additional supporting documentation provided by the applicant or obtained by the certification committee, as permitted elsewhere under these policies.

**(g) Notice of Recommendation.** On review of all documentation, the certification committee will forward to the BLSE the documentation and the certification committee's written recommendation. Notice of the certification committee's recommendation will also be provided to the applicant. The recommendation will state at least 1 of the grounds set forth in policy 2.14(c)(2) as the basis for the certification committee's recommendation. If an applicant holds certification, or is an applicant for certification in more than 1 area, the notice will specify that the BLSE will simultaneously determine whether to revoke or deny certification in the other area(s) if the applicant's conduct is inconsistent with the character, ethics, and reputation for professionalism required of a board certified member.

**(h) The BLSE's Review of the Certification Committee's Recommendation.**

(1) The BLSE will review the documentation and recommendation of the certification committee at the next regularly scheduled BLSE meeting if the BLSE receives the recommendation at least 20 days before that meeting; otherwise, it will be deferred to the next regularly scheduled BLSE meeting.

(2) The BLSE's review will be limited to a determination of whether:

(A) the certification committee's recommendation is supported by competent substantial evidence in the documentation;

(B) the certification committee followed the requirements set forth in these policies in making its determination; and

(C) the applicant was afforded a full and fair opportunity to provide supplemental information to address the certification committee's expressed concerns.

(3) The BLSE may delegate initial review of the documentation and the certification committee's recommendation to a BLSE subcommittee. The subcommittee will make a report to the BLSE for appropriate action at the scheduled meeting of the BLSE at which the certification committee's recommendation is considered.

(4) Based on its review, the BLSE will issue a decision. The BLSE's decision: (i) grants certification or recertification; (ii) denies certification or recertification; or, (iii) remands the application to the certification committee for such further investigation or documentation as the BLSE may direct.

(5) The BLSE will provide written notice of its decision to the applicant and the committee chair by certified mail within 20 days after the BLSE's decision was issued.

(i) **Remand.** If the application is remanded by the BLSE, the certification committee will have 60 days to conduct additional investigation or consideration as required by the BLSE and issue a new recommendation on certification or recertification. The 60-day time period for additional investigation or consideration may be extended by the BLSE chair for good cause shown.

(j) **Procedures for Appearance Before the BLSE.**

(1) *Request for Appearance.* Within 10 days of receipt of a decision by the BLSE denying certification or recertification, an applicant may submit a request for appearance before the BLSE to the LSE director. Within 10 days of receipt of a decision by the BLSE to grant certification or recertification, a certification committee chair, on behalf of the certification committee, may submit a request for appearance before the BLSE to the LSE director. If no request for appearance is timely filed, the applicant may proceed under policy 2.14(l).

(2) *Notice of Appearance.* On receipt of the request for appearance, the LSE director will issue a notice of appearance setting forth the date, time, and location of the next regularly scheduled BLSE meeting at which the applicant, a designated representative of the applicant, and the certification committee chair or the chair's committee designee may appear in person or by teleconference. The notice will be served at least 20 days before the scheduled BLSE meeting.

(3) *Appearance Before BLSE.* The BLSE chair will afford the applicant and certification committee representative an opportunity for oral presentations. A maximum of 20 minutes, to be divided equally between the applicant and the certification committee representative, will be allowed for the hearing. No additional information or supporting documentation may be submitted by the applicant or the certification committee representative, either before or during the BLSE meeting, and the BLSE will disregard references to any materials that are not part of the documentation transmitted by the certification committee. The applicant may have a court reporter present during the hearing at the applicant's expense.

(4) *BLSE Consideration.* Following the hearing, the BLSE will consider the certification committee's recommendation in executive session, applying the standards set forth in section 2.14, de novo, without deference to the BLSE's initial decision.

(5) *Notice of Decision.* The BLSE will give notice, by certified mail, to the applicant and certification committee chair of its decision within 20 days of the BLSE meeting at which the hearing occurs.

(k) **Finality of Decision.** The BLSE's decision will close the application and peer review evaluation process.

(l) **Appeal.**

(1) Further review of the BLSE's decision by the applicant will be in accordance with the procedures set forth in the 400 series of the BLSE's policies.

(2) The appeal will be limited to whether the BLSE:

(A) followed the requirements in these policies and the Rules Regulating The Florida Bar in making its determination; and

(B) afforded the applicant a full and fair opportunity to be heard.

(3) There will be no further review of whether the certification committee's recommendation was supported by competent substantial evidence or consideration of confidential peer review responses received by the certification committee or BLSE. The appeal will not include additional applications or peer review evaluations.

**(m) Ex Parte Contacts.** Ex parte contacts with members of the certification committee, the BLSE, the AC, or the board of governors in connection with the application review process are prohibited.

## 2.15 REVOCATION AND OTHER SANCTIONS

**(a) Authority.** The BLSE, under the authority of the Rules Regulating The Florida Bar, may revoke or suspend certification or impose other sanctions in connection with a member's certification.

**(b) Automatic Revocation.** The following will cause automatic revocation of a member's certification:

(1) an order imposing any discipline that terminates membership in The Florida Bar;  
or

(2) an order imposing a suspension of the practice of law.

On occurrence of either of the above, the member's certification is deemed immediately revoked without the necessity of any action by the BLSE, and the member's name is removed from any listings of board certified members. The BLSE will provide notice of revocation by mailing appropriate documents to the member's Florida Bar membership address, by United States certified mail return receipt requested or by return receipt electronic mail.

**(c) Interim Administrative Suspension.** The BLSE may, at its discretion, temporarily suspend certification of any member who has been disciplined (as defined by Rules Regulating The Florida Bar 3-5.1) by order of the Supreme Court of Florida, without prior notice to the member. An interim suspension is administrative in nature and is not a final determination by the BLSE of any deficiency or wrongdoing on behalf of the member. The BLSE will send notice of the interim suspension to the member's Florida Bar membership address by United States certified mail return receipt requested or by return receipt electronic mail after the BLSE imposes an interim administrative suspension. The BLSE may temporarily remove the member's name from any public listings of board certified members maintained by The Florida Bar for the period of the interim administrative suspension. The BLSE may cancel the interim administrative suspension, proceed to revoke certification, or impose any other sanction permitted by and in accordance with this policy at any other time during the interim administrative suspension. Recertification will be withheld during any interim administrative suspension. Any pending recertification application will be processed promptly if an interim administrative suspension is

cancelled. Any member whose certification is administratively suspended because probation is imposed by the Supreme Court of Florida as a disciplinary sanction must promptly notify the BLSE of any change in the member's probation status.

**(d) Discretionary Revocation and Other Sanctions.** Other than those matters cited elsewhere in these policies that cause automatic revocation, the BLSE may consider revocation or other sanctions defined as admonishment, probation, or suspension in connection with a member's certification on the occurrence of any of the events described in rule 6-3.8, Rules Regulating The Florida Bar. The BLSE's determination must be based on a preponderance of the evidence standard.

(1) *BLSE Discretion.* The BLSE may impose sanctions to protect the integrity of the certification program, prevent harm to the public, and ensure that a certified lawyer's misconduct or unprofessional behavior is corrected. The BLSE may consider all relevant circumstances in exercising the BLSE's discretion to determine whether a sanction is warranted and what type of sanction should be imposed.

(2) *Procedures for Imposing Sanctions.*

(A) *Notice.* The BLSE will provide notice to a member that the BLSE is considering imposing a sanction by mailing appropriate documents to the member's Florida Bar membership address by United States certified mail return receipt requested or by return receipt electronic mail. The notice must specify the date on which the BLSE's consideration will occur and provide at least 20 days advance written notice. If the member holds, or is applying for, certification in more than 1 area, the notice must also specify that if the BLSE imposes a sanction on the basis of peer review determining that the applicant's conduct is inconsistent with the character, ethics, and reputation for professionalism required of a board certified member, the BLSE will simultaneously consider and determine whether to impose the same or a similar sanction, including, without limitation, revoking or denying certification in the other area(s). The consideration may be rescheduled once, and re-noticed for good cause shown by the member as determined by the BLSE chair, before the date of the BLSE's consideration. Time for response or request for appearance will be calculated based on any re-notice.

(B) *Response.* A member must respond to the notice, in writing, within 10 days of receipt. The BLSE chair may extend the 10-day response time for good cause shown. Any written response is limited to 25 pages, exclusive of exhibits, unless extenuating circumstances are presented, in which case the BLSE's chair may authorize up to 50 pages, exclusive of exhibits. Any documents the member intends to offer into evidence at the appearance must be appended to the written response. Documents that are not appended to the written response will not be considered by the BLSE, absent good cause shown by the member as determined by the BLSE chair. Failure of a member to respond timely in writing constitutes a waiver of all rights to respond and consent to the final determination of the BLSE.

(C) *Request for Appearance.* A member has the right to appear before the BLSE to address the sanction under consideration if requested by the member. The appearance will occur on the BLSE meeting date provided in the notice of consideration. The LSE director will issue a notice of appearance to confirm the date, time, and location of the meeting. The

failure of a member to make a timely request for an appearance constitutes a waiver of all rights to appear and consent to the final determination of the BLSE absent a showing of good cause.

(D) **Appearance.** If a member requests an appearance, the appearance may be in person or by teleconference. The member may be accompanied by counsel and may have a court reporter present, at the member's expense. Additional evidence may only be presented at the appearance at the reasonable discretion of the BLSE chair, who will also determine the length of the appearance.

(E) **Notice of Decision.** The BLSE will give notice of its decision to the member's Florida Bar membership address by United States certified mail return receipt requested or by return receipt electronic mail within 10 days of the consideration. Subject to (F) below, the BLSE decision on the imposition of any sanction is final.

(F) **Appeal.** Any appeal of the BLSE's decision will be in accordance with the procedures set out in the 400 series of the BLSE policies. The appeal is limited to review of whether the BLSE afforded to the member the procedural rights provided in these policies and pertinent Rules Regulating The Florida Bar.

## **2.16 LAPSE OF CERTIFICATION**

**(a) Authority.** In accordance with rule 6-3.6(a), Rules Regulating The Florida Bar, no certificate will last for a period longer than 5 years. A lapse of certification may occur for reasons including, but not limited to, a member's failure to:

(1) file an application for recertification, or an extension request, by the application deadline;

(2) file an application for recertification by the extension deadline, if an extension has been granted by the BLSE; or

(3) respond as requested to supply additional information for application completion if confirmation of receipt of such request can be demonstrated by return receipt delivery to the member's Florida Bar membership address.

**(b) Lapse Notification.** If a member allows a certificate to lapse, staff will send notification to the member by United States certified mail, return receipt requested, or by return receipt electronic mail to the member's Florida Bar membership address. The notice will advise that certification has lapsed, that the member's name has been removed from the listing of board certified members, that failure to respond to the notification within 30 days receipt constitutes acceptance of the lapse status and that any misleading indication as to the member's certification status may result in professional discipline.

**(c) Lapse Removal Consideration.** If requested by the member, and on payment of the lapse reinstatement fee, the lapse status may be removed if the member makes the request and submits the completed application, an extension request, or supplemental documentation as requested within 30 days receipt of the lapse notification, or payment of the lapse reinstatement

fee. If the lapse status is removed, the application will be routinely processed as elsewhere provided in these policies.

## **300 CERTIFICATION PROGRAM ACCREDITATION**

### **3.01 ACCREDITATION OF LAWYER CERTIFYING ORGANIZATION**

#### **(a) Authority and Purpose.**

The Board of Legal Specialization and Education has the authority and responsibility to evaluate lawyer certifying organizations and programs and to define the conditions and procedures under which accreditation will be granted, maintained, or revoked. Review enables the Board of Legal Specialization and Education to evaluate the objectives, standards, and procedures of lawyer certifying organizations and programs. The purpose is to ensure the continued value of “certified,” “board certified,” “board certified specialist,” and “board certified expert” as a means to identify lawyers who have demonstrated special competence, skills, and proficiency, as well as character, ethics, and professionalism in the practice of law.

#### **(b) Definitions.**

The terms used in these policies are defined as follows:

(1) "Accredited Organization" means an entity that has at least 1 program accredited by the Board of Legal Specialization and Education to certify lawyers as specialists.

(2) "Applicant" means a certifying organization that applies to the Board of Legal Specialization and Education for accreditation or re-accreditation.

(3) "Florida component" is knowledge, skill, and understanding of Florida law.

(4) "Florida plan" refers to the Florida Certification Plan, including the standards for each specialty area under chapter 6, Rules Regulating The Florida Bar.

(5) "Program," unless otherwise specified, means the process by which lawyers are certified as specialists in a certain area of law practice.

(6) "Specialty area" is the field of law in which lawyers are or are proposed to be certified as specialists.

(7) "Evaluation subcommittee" refers to the subcommittee convened to advise the Board of Legal Specialization and Education in administering the accreditation of specialty certification programs for lawyers under these policies.

### 3.02 ACCREDITATION REQUIREMENTS AND STANDARDS

#### (a) General Requirements

To be eligible to become an accredited organization, an applicant must:

(1) demonstrate its dedication to the identification of lawyers who possess an enhanced level of skill, expertise, and professionalism, and to the continued development and improvement of the professional competence of lawyers;

(2) demonstrate sufficient resources and personnel who, by experience, education and professional background, have the ability to direct such program(s) in a manner consistent with these policies;

(3) include a governing body, or an advisory board, a majority of which are lawyers who have substantial involvement in the specialty area and are responsible for the review of lawyers for certification;

(4) define the specialty area(s) in which the applicant certifies or proposes to certify lawyers as specialists in understandable terms for users of legal services in a manner that will not lead to confusion with other specialty areas;

(5) demonstrate that the applicant's certification and recertification requirements are not arbitrary, can be clearly understood and easily applied, and that its programs operate in accordance with these policies;

(6) certify only lawyers who have satisfied each requirement and who continue to maintain requirements comparable to, but no less than, those required for certification under the Florida plan;

(7) certify only lawyers in practice areas under the Florida plan or in practice areas that are either all or substantially federal in nature (e.g., bankruptcy, social security, federal antitrust, federal securities);

(8) certify only lawyers in practice areas that are substantive areas of law, but are not recognized under the Florida plan (e.g., legal malpractice);

(9) certify only lawyers in practice areas that are non-substantive, but differentiate from substantive areas in scope, focus, education, training, and expertise (e.g., e-discovery) and otherwise meet the requirements of these policies;

(10) not require membership or completion of educational programs offered by any specific organization for certification; and

(11) not discriminate against any lawyer seeking certification on the basis of race, religion, gender, sexual orientation, disability, or age.

**(b) Minimum Standards for Lawyer Certification.**

Applicant must require lawyers to satisfy and maintain standards comparable to, but no less than, those required for certification under the Florida plan. Where the same or similar specialty area exists under the Florida plan, applicant must require no less than the standards for that specialty area, including passage of the Florida exam. If the area does not exist under the Florida plan, specific or additional requirements must include:

(1) *Substantial Involvement.* If determined appropriate by the BLSE, a Florida component must be required to evidence experience and involvement specific to Florida law.

(2) *Peer Review.* Applicant, not the lawyer seeking certification, must send and receive confidential statements of reference. References must be from persons who are not related to the lawyer or who are not engaged in legal practice with the lawyer. Applicant must require and consider at least 2 statements of reference from individuals apart from those submitted by the lawyer. Statements of reference must inquire at least into the reference's:

(A) specialty area, familiarity with the specialty area, the length of time the reference has been practicing law and has known the lawyer;

(B) knowledge of the lawyer's qualifications, both generally and in the specialty field; and

(C) knowledge of the lawyer's character, ethics, and professionalism in the practice of law.

(3) *Examination.* Applicant must submit a copy of the written examination, along with the model answers, and must demonstrate that a lawyer seeking certification must pass the examination. Applicant must also provide evidence of periodic review of the examination to ensure its relevance to the knowledge and skills needed in the specialty area as the law and practice methods develop over time, and evidence that appropriate measures are taken to protect the security of all examinations. The examination must:

(A) be of suitable length and complexity to evaluate the lawyer's knowledge of substantive and procedural law in the specialty area;

(B) include professional responsibility and ethics as relative to the specialty area; and

(C) include evidence of a Florida component as determined appropriate by the BLSE.

**(c) Minimum Standards for Lawyer Recertification**

Certification or recertification will be valid for no more than 5 years. Applicant must have a plan for recertification of all lawyers previously certified. While no examination will be required for recertification, each certified lawyer must show continued competence in the specialty field in accordance with standards comparable to, but no less

than, those required for recertification under the Florida plan and, where the same or similar specialty area exists under the Florida plan, applicant will require no less than the standards set forth for that specialty area.

**(d) Procedural Requirements.**

The applicant must:

(1) provide a written review process through which a lawyer has the opportunity to challenge a denial of eligibility, a denial of certification or recertification, or suspension or revocation of certification to an impartial decision maker;

(2) require lawyers seeking certification or recertification to report to applicant, within the application, criminal or professional misconduct, judgments of guilt and disciplinary sanctions;

(3) require the lawyer seeking certification or recertification to report to applicant, within the application, whether the lawyer has either withdrawn an application for certification or recertification by The Florida Bar or had certification denied or revoked by The Florida Bar;

(4) have procedures in place to revoke lawyer certification in instances of a disciplinary suspension, reprimand, disbarment, and/or criminal conviction;

(5) revoke lawyer certification in instances of denial or revocation of certification by The Florida Bar; and

(6) immediately report any instances of a lawyer's denial of recertification or revocation to the BLSE.

**(e) Application.**

To apply for accreditation, an application must be:

(1) made to the BLSE in a format prescribed by the BLSE with all information completed, including any supplemental documentation requested, along with the non-refundable processing fee;

(2) accompanied by a listing of the names, bar numbers, specialty areas, and certification periods (beginning and ending dates) of Florida bar members currently certified by applicant;

(3) signed by an authorized representative of applicant; and

(4) accompanied by proof of accreditation by the American Bar Association, if applicable.

### 3.03 EVALUATION SUBCOMMITTEE

**(a) Responsibility.**

The evaluation subcommittee must conduct an independent evaluation of the qualifications of an applicant, each specialty program submitted, and recommend action to the BLSE as to each application for accreditation. Unless otherwise extended by the BLSE chair, the evaluation subcommittee's responsibility will end after a final recommendation on the application has been made.

**(b) Member Appointment.**

The BLSE chair appoints the evaluation subcommittee consisting of no fewer than 3 members. If an applicant applies for accreditation in more than 1 specialty area, the chair will appoint an experienced practitioner in each area to the evaluation subcommittee. Persons deemed to have a conflict of interest are ineligible to serve on an evaluation subcommittee. The evaluation subcommittee must include:

- (1) a member of the BLSE to serve as chair;
- (2) a member of the relevant certification committee(s), if applicable;
- (3) person(s) knowledgeable in the specialty area(s); and
- (4) person(s) knowledgeable in the administration and the operation of a program that certifies lawyers as specialists.

**(c) Evaluation Subcommittee Action.**

Within 90 days after receipt of a complete application, the evaluation subcommittee will review the application and must:

- (1) recommend accreditation with or without conditions, if applicant has demonstrably satisfied all the requirements for accreditation under these policies; or request additional information; or
- (2) recommend denial if applicant fails to satisfy the requirements of these policies or has made material false representations or misstatements of material fact; and
- (3) provide written notice of its recommendation and its basis to applicant, with a copy to the BLSE.

**(d) Request for Reconsideration.**

An applicant may request reconsideration within 45 days of receipt of a notice of recommended denial. The request must be in writing and must state clearly and concisely any new or clarifying information addressing the basis for the denial and include all relevant evidence supporting the position of the applicant. The applicant's

failure to timely request reconsideration will constitute acceptance of the recommendation.

### **3.04 BLSE ACTION**

On completion of the evaluation subcommittee's review and any reconsideration, if requested, the BLSE will act on the recommendation of the evaluation subcommittee within 60 days and transmit its decision to the applicant within 20 days.

### **3.05 ACCREDITATION**

#### **(a) Duration.**

Accreditation by the BLSE will commence and remain in effect during the dates indicated on the notice of accreditation, unless:

- (1) termination of accreditation is requested in writing by the accredited organization and an acknowledgment letter is sent by the BLSE stating the effective termination date; or
- (2) accreditation is revoked by the BLSE.

#### **(b) Advertisement.**

In connection with advertisement of accreditation or certification under these policies:

- (1) an accredited organization must state in its Florida advertisement(s): "Accredited by The Florida Bar to certify lawyers in the specialty area(s) of [insert specialty fields]." If conditions are stated, the organization must also include: "under the following conditions [insert the conditions];"
- (2) a lawyer must state: "Certified Specialist in [insert specialty field] by (full name of the accredited organization);"
- (3) as to the accredited organization, a lawyer may, in addition, include "Accredited by The Florida Bar."
- (4) a member of The Florida Bar may not hold himself or herself out as being certified by The Florida Bar or an accredited organization unless certified by those entities; and
- (5) a member of The Florida Bar certified by an organization whose accreditation is denied or revoked under these policies may not advertise certification by that organization in Florida except as permitted under chapter 4, Rules Regulating The Florida Bar.

### **3.06 REVOCATION**

#### **(a) Basis of Revocation.**

An organization's accreditation may be revoked by the BLSE if:

- (1) accreditation was granted contrary to these policies or the accredited organization made material false misrepresentations or misstatements of material facts;
- (2) the accredited organization no longer meets the standards for accreditation;
- (3) the accredited organization's advertisements are contrary to these rules; or
- (4) the accredited organization fails to file any reports, fees, or respond to requests from the BLSE.

**(b) Revocation Procedures.**

(1) The BLSE must provide a notice of intended accreditation revocation by certified mail or electronic receipt delivery to the accredited organization stating the reasons for the action.

(2) If opposed, the accredited organization must contest the action by sending a written request to the BLSE, within 20 days of notification, stating the reasons review is sought and why accreditation should remain intact. The request must be accompanied by all relevant evidence supporting the objections of the accredited organization.

(3) The BLSE must consider the request within 60 days and may hold hearings or investigate further as it deems appropriate.

(4) The ruling by the BLSE is be final and must be transmitted to the accredited organization within 20 days of the BLSE's ruling.

(5) failure by the accredited organization to timely request review of the intended accreditation revocation constitutes acceptance.

### **3.07 RENEWAL OF ACCREDITATION**

**(a) Timing and Application.**

An accredited organization must file for renewal every 3<sup>rd</sup> year following accreditation. Failure to file will result in revocation of accreditation. The renewals application must be submitted in a format prescribed by the BLSE, signed and verified by an authorized representative of the accredited organization, and accompanied by the required processing fee.

**(b) Requirements.**

An accredited organization must provide the following for evaluation:

- (1) the certification examination that will be administered in the next testing session, along with the model answers;
- (2) sufficient documentation to show that the applicant continues to satisfy all requirements for accreditation in these policies;
- (3) an explanation of any changes to the applicant's standards or examination; and

(4) a list of the names, bar numbers, specialty areas, and certification periods (beginning and ending dates) of Florida bar members currently certified by the applicant.

**(c) Evaluation.**

An evaluation subcommittee will review and evaluate the renewal request following the procedures described elsewhere in these policies for an initial application.

**3.08 FEES**

**(a) Filing Fee.**

The non-refundable application fee for accreditation must accompany each application. The fee will be set by the budget committee of the board of governors.

**(b) Renewal Fee.**

The non-refundable renewal application fee must accompany each application. Renewals received late will be assessed an additional fee. The fees will be set by the budget committee of the board of governors.

**3.09 DISCLOSURE OF INFORMATION**

Materials submitted by applicant as part of the accreditation or renewal process are public information unless otherwise restricted by rule or policy. Examinations and model answers will be kept confidential.

## 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:

(G) 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;

(H) withdraw from any participation in the matter of the applicant or board certified lawyer;

(I) refrain from attempting to influence another member of Appeals Committee or Board of Legal Specialization and Education;

(J) 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.

## 500 CLE ACCREDITATION

### 5.01 ACCREDITATION STANDARDS

(a) **Standards.** To be eligible for CLE accreditation, the course or activity must:

(1) have significant intellectual or practical content designed to increase or maintain the attorney's professional competence and skills as a lawyer;

(2) constitute an organized program of learning dealing with matters directly related to legal subjects and the legal profession;

(3) be conducted by an individual or group qualified by practical or academic experience;

(4) include materials that are prepared by an individual or group qualified by practical or academic experience; and

(5) be held in a setting physically suitable to the educational activity of the program.

(b) **Materials.** High quality and carefully prepared materials should be available to all attendees at or before the time the CLE activity is conducted. Materials are not suitable or readily available for some types of subjects, but the absence of materials for distribution should be an exception.

(c) **Level of Activity**

(1) *Advanced.* An advanced CLE course is designed for the lawyer who practices primarily in the subject matter of the course.

(2) *Intermediate.* An intermediate CLE course is designed for the lawyer experienced in the subject matter of the course, but not necessarily at an advanced level. A survey course in which there have been recent, substantial changes will be deemed intermediate. In an intermediate course, some segments may be low, intermediate, or basic, and others high, intermediate, or advanced. In those instances, the course taken as a whole will be considered intermediate.

(3) *Basic.* A basic CLE course is designed for the lawyer with no experience or limited experience in the subject matter of the course. A survey course will be considered basic unless there are recent, significant changes in the law.

### 5.02 APPLICATION PROCESS

(a) **Course Accreditation.** To apply for course accreditation, the CLE provider must submit the application form with the course description, a detailed outline of the course content, a detailed time schedule, biographical information for each speaker, and the requisite accreditation

fee(s). Staff may request additional materials such as copies of any course materials, i.e. books, electronic media, or handouts included in the course presentation.

**(b) Incomplete Applications.** A course will not be evaluated if the CLE provider does not submit all of the information required in the application or meet the requirements set forth in these policies. If the application is incomplete or if supplemental information is needed, staff will contact the CLE provider to request the necessary materials. Failure to respond to a request for supplemental information within 60 days will cause the application to be returned.

**(c) Submission Deadline.** An application for course accreditation must be submitted at least 30 days in advance of the first scheduled presentation or it will be subject to a late fee. The fee amount will be set by the budget committee of the board of governors.

**(d) Rush Processing.** An application for course accreditation submitted with a rush fee will be processed within 5 days of receipt. The fee amount will be set by the budget committee of the board of governors. If staff refers the course to the BLSE for review and processing cannot be completed within 10 days, the applicant's rush fee will be returned.

**(e) Course Accreditation Fees.** An application for course accreditation must be accompanied by a nonrefundable fee. The budget committee of the board of governors will set the course accreditation fee for each of the following CLE providers:

- (1) state bar associations;
- (2) local bar associations;
- (3) federal, state, and local governmental agencies;
- (4) law firms that offer courses for employee attorneys;
- (5) CLE providers that offer courses at no cost to attendees; and,
- (6) all other CLE providers.

**(f) Co-sponsorship.** A course sponsored by 2 or more CLE providers will not be eligible for accreditation at no charge unless each provider meets the criteria for accreditation at no charge. If more than 1 provider is subject to a fee, the higher fee amount is charged.

### 5.03 EVALUATION

**(a) Authority of Staff.** Staff will evaluate all submissions for accreditation and grant or deny credit in accordance with the BLSE's policies or the certification committee's policies as approved by the BLSE. Staff will refer novel questions or matters of first impression to the BLSE or the relevant certification committee.

**(b) Credit Hour Calculation.** Fifty minutes of course time is equivalent to 1 credit hour. A course must be at least 25 minutes in length to qualify for a half hour of credit.

(c) **Non-qualifying Time.** Time devoted to breaks, meals, introductory, and welcoming remarks will not be included in the calculation of credit hours.

#### 5.04 NOTICE OF EVALUATION

(a) **Accreditation Granted.** If accreditation is granted, staff will advise the CLE provider of the assigned course number, the credit hour(s) awarded, the categories to which the credit hours may be applied, the accreditation period and expiration date.

(b) **Accreditation Period.** The accreditation period of a course will not exceed 18 months from the date of the first course offering.

(c) **Accreditation Denied.** Staff will notify the CLE provider if accreditation is denied and state the basis for denial. The CLE provider may request BLSE review if staff denied accreditation.

#### 5.05 REVENUE AND EXPENSE DISTRIBUTION

All accreditation fee revenue and related expenses will be allocated and charged to the course approval cost center. Two-thirds of the year-end net profits will be distributed to the CLER program and one-third to the certification program.

#### 5.06 MEMBER SUBMISSION FOR COURSE EVALUATION

A member may request credit for a course which has not been accredited. These requests apply only to credit hours toward the member's own CLER.

#### 5.07 OTHER CLE FORMAT

(a) **Electronic Media.**

(1) CLE credit for study involving electronic media may be given in the same manner as for live CLE courses.

(b) **Interactive CLE Activities.** A CLE activity that allows lawyers to participate or interact with one another, fostering the free exchange of information and ideas, is creditable. Interactive CLE activities include those in which lawyers participate through some type of electronic medium, such as:

(1) teleconferencing seminars; or

(2) other CLE activities developed through advanced technology.

(c) **Self-assessment Courses.** Self-assessment courses may be awarded CLE credit if they are directly related to the practice of law and include a graded examination from the CLE provider. Staff will determine the number of hours awarded on a case-by-case basis after verifying the applicant passed the exam.

**(d) Self-study Courses.** To be eligible for accreditation, a self-study course must comply with the format design described in these policies and consist of more than reading materials.

## 5.08 CREDIT APPROVAL GUIDELINES

**(a) Courses for Nonlawyers.** A course designed primarily for participants other than lawyers will not receive CLE credit.

**(b) Courses on Nonlaw Subjects.** A course devoted to a non-legal subject may be approved if the applicant can demonstrate that the course will enhance the proficiency of a lawyer in the performance of legal services.

**(c) Demonstrations and Moot Court.** Trial and appeal demonstrations and moot court participation may receive up to 3 credit hours for each 50 minutes of participation. A member cannot claim more than 9 credit hours for these activities during a 3-year CLER reporting cycle.

**(d) Law Office Management and Economics.** A law office management and economics seminar may be awarded up to 10 credit hours per course. The course must include management principles such as trust accounting rules, docket control, prevention of client conflict, or integrating high-tech equipment into a law practice. A member cannot claim more than 10 credit hours for this activity during a 3-year CLER reporting cycle.

A course is ineligible to receive credit if the content includes only:

(1) the marketing of legal services (except for the discussion of the ethical restrictions on marketing and advertising);

(2) increasing profitability;

(3) networking with a prospective client;

(4) training non-legal presentation skills, writing, financial management, or organization skills.

**(e) Computer Training.** Computer training courses designed to enhance a member's ability to practice law may be awarded up to 5 credit hours per course. Topics on how to use social media or networking sites will be not eligible for credit unless these topics deliver legal education, enhance a member's ability to practice law, or to communicate with clients or other lawyers.

**(f) Self-Improvement Courses.** Self-improvement courses designed to enhance human relations skills; offer practical assistance on how better to relate to clients, witnesses, and adversaries; or promote courtesy and thoughtfulness in the legal profession may be awarded up to 5 credit hours per course.

**(g) Laws of Other Jurisdictions.**

(1) Courses focused on laws or procedures of another state or territory of the United States or international law may be awarded credit. Bar staff will determine the number of hours awarded on a case-by-case basis.

(2) International legal tours may be awarded up to 10 credit hours if the applicant can demonstrate how the activity enhances the applicant's proficiency in the practice of law. The applicant must specify in the application how lawyer proficiency is enhanced. A member cannot claim more than 10 credit hours for this activity during a 3-year CLER reporting cycle.

**(h) Legal Drafting.** Courses on legal drafting may be awarded credit hours if the applicant can demonstrate that the course content reasonably relates to the preparation of legal documents. The number of hours awarded will be determined on a case-by-case basis. A member may not claim more than 15 hours for this activity during a 3-year CLER reporting cycle.

**(i) Accreditation by a State Bar.** The Florida Bar may accept CLE credits granted by another state bar provided the CLE activity meets accreditation criteria. Staff may adjust credit in accordance with these policies.

**(j) College and University Courses.** Approved law school and graduate law courses entitle a lawyer to receive 2 credit hours for each quarter hour assigned to the course or 3 credit hours for each semester hour assigned to the course.

Undergraduate courses are only eligible for credit if they qualify under another section of these policies.

## **5.09 CLER COMPONENTS APPROVAL GUIDELINES**

**(a) General Credit Hours.** General credit must include all approved CLE hours regardless of the category or topic to which the hours are assigned.

**(b) Ethics.** Credit may be awarded for courses that explore and address standards of conduct in the legal profession. Courses should also include aspirations that surpass ordinary expectations to further promote the ideals and goals of professionalism, such as the:

- (1) independence of the lawyer in the context of the lawyer-client relationship;
- (2) conflict between duty to client and duty to the system of justice;
- (3) conflict in the duty to the client versus the duty to the other lawyer;
- (4) responsibility of the lawyer to employ effective client communications and client relations skills in order to increase service to the client and foster understanding of expectations of the representation, including accessibility of the lawyer and agreement as to fees;
- (5) lawyer's responsibilities as an officer of the court;

- (6) misuse and abuse of discovery and litigation;
- (7) lawyer's responsibility to perceive and protect the image of the profession;
- (8) responsibility of the lawyer to the public generally and to public service; and
- (9) duty of the lawyer to be informed about all forms of dispute resolution and to counsel clients accordingly.

**(c) Professionalism.** Credit may be awarded for courses that explore and reflect on the meaning and application of professionalism in the daily practice of law.

- (1) Topics eligible for credit in this category include:
  - (A) critical and reflective judgment about one's intended conduct;
  - (B) reflective judgment about the practice of law; or
  - (C) learning to assess how well one's conduct is serving the lawyer, the legal profession, and the justice system.
- (2) A course may qualify for credit if it incorporates activities that:
  - (A) foster introspection and reflection;
  - (B) engage participants in discussions about issues that lawyers can internalize and apply the materials learned;
  - (C) provide opportunities to practice how one will confront or diffuse an unprofessional situation;
  - (D) participate in role playing to explore options and develop a personal strategy plan; or
  - (E) offer practice-oriented or experiential training that stimulates problem solving exercises.

**(d) Substance Abuse.** Credit may be awarded for courses designed to enhance awareness and understanding of substance abuse and dependence disorders.

- (1) Topics eligible for credit in this category include education regarding the mechanisms involved in substance abuse and dependence disorders as described in the Diagnostic and Statistical Manual of The American Psychiatric Association.
- (2) Instruction may address the correlation between substance abuse/dependence disorders and professional misconduct, malpractice, and disciplinary actions; identification of the signs and symptoms of substance abuse/dependence disorders; types of intervention and

treatment for substance abuse/dependence disorders among lawyers, including the lawyer assistance program available to Florida legal professionals.

**(e) Mental Illness.** Credit may be awarded for courses designed to enhance awareness and understanding of mental illness.

(1) Topics eligible for credit in this category include depression, manic-depression (bipolar disorder), schizophrenia, and anxiety disorders, including obsessive-compulsive disorders.

(2) Eligible courses must address relationships among mental illness, addiction, or substance abuse due to “self medication;” the prevention of suicide, aggressive behavior, criminal activities, and underachievement through prompt and faithful medical treatment; and the progressive deterioration of the brain and/or the increase in the severity of symptoms and accompanying problematic behaviors without proper medical treatment.

**(f) Bias Elimination.** Credit may be awarded for courses that address standards of conduct in the legal profession related to the recognition and elimination of bias, such as gender, ethnicity, religion, disabilities, age, or sexual orientation. Courses should educate lawyers as to the aspirations that surpass ordinary expectations to further promote the ideals and goals of professionalism.

**(g) Technology.** Credit may be awarded for courses that include information on technology tools, programs, or applications to assist lawyers in their law practice. Examples include legal research programs, office and document preparation applications, litigation software applications, file retention or storage applications, billing programs, web and internet security and encryption methods, and communication tools.

Technology topics must focus on or highlight their use in the practice of law.

The content of a course on technology is generally eligible for credit if it:

(1) includes legal content (e.g., law involving technology such as privacy or intellectual property);

(2) is tailored primarily for lawyers (e.g., adherence to the Rules of Professional Conduct when using the technology, the risks and/or benefits or using the technology as a lawyer, and/or teaching about or discussion of situations encountered when a lawyer uses the technology in conjunction with the lawyer’s practice); or,

(3) includes course content that conveys general information on the features and use of technology by a lawyer, or presents issues, situations, risks, benefits and ethical considerations of using the technology as a lawyer.

Courses also may qualify for credit if they address the “how to” of using any technology in the practice of law. This may include general technology programs tailored for a lawyer audience or application. For example, a course on a document preparation application might show how the application can facilitate the preparation of an appellate course brief and compliance with

limitations of length. Another example is a course which assists a lawyer to use electronic court filing programs. The key is that the course is relevant and has a demonstrable application to the practice of law.

Credit will not be awarded for course content consisting of marketing of a technology product or service.

### 5.10 INDIVIDUAL CREDIT APPROVAL GUIDELINES

**(a) Lecturing.** Satisfactory performance as a lecturer in an approved Continuing Legal Education (CLE) seminar may entitle a lawyer to credit. The maximum credit awarded is calculated based on presentation time.

(1) **Credit Approved.** Credit will be approved for lawyers who:

(A) lecture at basic seminars, up to 3 credit hours for each 50 minutes of lecture time;

(B) lecture at intermediate seminars, up to 5 credit hours for each 50 minutes of lecture time;

(C) lecture at advanced seminars, up to 7.5 credit hours for each 50 minutes of lecture time;

(D) participate as a panel member or group discussion leader in a workshop, up to 3 credit hours for each 50 minutes of participation in an intermediate or advanced seminar or 2 credit hours for each 50 minutes of participation in a basic seminar; or

(E) lecture at intermediate or advanced seminars, additional credit for extraordinary effort, determined by staff on a case-by-case basis.

(2) **Credit Not Approved.** Credit will not be approved for lawyers who:

(A) repeat a lecture or performance at 1 or more locations;

(B) serve as a CLE program steering committee chair, co-chair, course moderator, or present introductory and welcoming remarks; or

(C) prepare a lecture outline for a CLE presentation beyond that granted for delivery of the lecture.

**(b) College Teaching.** Lawyers who:

(1) teach in approved law school and graduate law courses may receive up to 4 credit hours for each quarter hour assigned to the course or up to 5 credit hours for each semester hour assigned to the course;

(2) teach an undergraduate course are eligible for credit if the course qualifies for credit under another section of these policies; or

(3) repeat teaching a course during the lawyer's CLER reporting cycle are not entitled to additional credit.

**(c) Writing.**

(1) Lawyers who write articles, books, and chapters in books may receive credit when the material is accepted for publication in a professional publication or journal.

(2) Credit is based on the time devoted to preparation, quality, originality, and scope of publication. No single publication approved for credit may exceed 50% of the total hours required for CLER compliance.

(3) When a publication has more than 1 author, credit may be awarded to each author or divided among them in a manner consistent with the facts presented by all the authors.

(4) CLE publications steering committee members receive up to 10 credit hours for their work. The staff editor's recommendation is considered when determining the number of credits awarded.

**(d) Standing Committee Service.** CLE credit will not be awarded for ethics, grievance, standing, rules, or general committee participation unless provided elsewhere in these policies.

**(e) Credit for Florida Bar Grievance Mediation Program.** A program mediator who participates in mediation or co-mediation under The Florida Bar's Grievance Mediation Program may request and receive 1 ethics credit hour for each 50 minutes devoted to the mediation. The amount of credit received must not exceed 5 credit hours in a 3-year CLER reporting cycle.

**(f) Legislative Service.** A state or federal legislator may receive up to 11 general credit hours, 1 technology credit hour, and 2 ethics credit hours for each full year of service during the applicable 3-year CLER reporting cycle.

**(g) Executive Branch Service.** A Florida governor, lieutenant governor, or a member of the Florida cabinet may receive up to 11 general credit hours, 1 technology credit hour, and 2 ethics credit hours for each full year of service during the applicable 3-year CLER reporting cycle. An executive branch officer of another state may receive continuing legal education credit on a case-by-case basis.

**(h) Justice Teaching Classroom Presentations.** Justice Teaching presentations are awarded CLE credit to support the Supreme Court of Florida's initiative to advance an understanding of Florida's justice system among elementary, middle school, and high school students. A member receives 1 general credit hour for each presentation. The amount of credit received must not exceed 5 credit hours during a 3-year CLER reporting cycle.

**(i) Adult Civics Teaching Presentations.** The "Benchmarks: Raising the Bar on Civics Education" program will receive CLE credit to support The Florida Bar's initiative to teach the

fundamentals of government and the courts to adult civic and community groups. A member receives 1 ethics credit hour for each presentation. The amount of credit received must not exceed 3 credit hours in a 3-year CLER reporting cycle.

**(j) The Florida Board of Bar Examiners and the Florida Bar Exam.** For each full year of service during the applicable 3-year CLE reporting cycle, a member of The Florida Board of Bar Examiners may receive up to 10 general credit hours for the preparation or grading of the Florida Bar examination questions, and 2 ethics credit hours for review of applications and attendance at investigation hearing panels related to a bar applicant's character and fitness. A lawyer who is not a member of the Florida Board of Bar Examiners but who prepares or grades the Florida Bar exam at the direction of the Florida Board of Bar Examiners may receive up to 10 general credit hours for the preparation or grading of the Florida Bar examination questions.

**(k) Lawyers Advising Lawyers Advisors.** An enrolled advisor in The Florida Bar Lawyers Advising Lawyers (LAL) Program may receive 1 general credit hour for each LAL referral they accept from the program where the advisor and advisee connect and the advisor provides advice to the advisee. The amount of credit received must not exceed 5 credit hours per year.

### **5.11 ACCREDITATION REVOCATION**

CLE credit may be rescinded by the BLSE if it is determined that the course content or speaker credentials do not reflect the accreditation standards in these policies. For example, credit awarded to courses sponsored or delivered by speakers with court-imposed disciplinary sanctions may be revoked.

### **5.12 COMPLIMENTARY CLE**

The Florida Bar will provide 10 hours of approved CLE material to each county law library or voluntary bar association in Florida each year, without charge or cost, to assist members in fulfilling the CLE requirement. Recipients must provide materials to all bar members without charge. An out-of-state bar association may request a copy of the CLE at no charge if the association provides the CLE at no cost to members of The Florida Bar.

## 600 FLORIDA CONTINUING LEGAL EDUCATION REQUIREMENTS

### 6.01 ADMINISTRATION

These policies establish the reporting and compliance procedures for the administration of the Continuing Legal Education Requirement (CLER).

### 6.02 REPORTING

**(a) Reporting Date.** Each newly admitted bar member will be assigned a date to report CLER completion. The report dates will be staggered to balance the number of members who report each month.

**(b) Reporting Cycle.** Each member must report compliance with the CLER, or eligibility for an exemption, by the last day of the member's assigned month. If a member is reinstated to practice law after retirement, disbarment, or an incapacitated membership status, the start date for the new reporting cycle will be the first day of reinstatement. A judge who returns to the practice of law may request a new reporting cycle.

**(c) Reporting Compliance.** Each member should use The Florida Bar's website to post and confirm CLE credit hours earned. If online posting is not used, the member must provide the following information regarding each CLE activity:

- (1) title and sponsor;
- (2) date and location;
- (3) the member's involvement;
- (4) number of earned CLE credit hours; and
- (5) other activity constituting CLE credit.

**(d) Reporting Affidavit.** The bar will provide a reporting affidavit to a member who has not completed the CLER within 90 days of the member's reporting date. The member must complete the necessary hours for the current reporting cycle, update the affidavit, and return it to The Florida Bar by the member's reporting date. In lieu of returning the reporting affidavit, the member may update the member's CLER record through The Florida Bar's website.

**(e) Supplemental Information.** To ascertain compliance, the BLSE or staff may require the member to provide additional information.

**(f) Exemptions.** A member who seeks an exemption from the CLER under sections 6.02(f)(1), (2) or (3) must file a CLER exemption request form. Staff will review and confirm eligibility within 10 days of receipt of the request. If granted, the exemption will remain in effect until the member is no longer eligible.

(1) *Active Military Service.* A member on extended active military service during the applicable reporting period, who files a report establishing that status, is exempt from complying with the CLER. A member who is exempt under this section must not engage in the delivery of legal services within Florida or give advice on matters of Florida law except as required by the member's military duties.

(2) *Undue Hardship.* A member who establishes to the satisfaction of staff special circumstances which constitute undue hardship, may be exempt from complying with the CLER. The member must report, in the form prescribed, the special circumstances constituting undue hardship. On receipt of a timely filed report staff will determine whether an undue hardship exists. The member will be required to comply within 60 days if staff determines no undue hardship exists.

(3) *Non-resident Members.* A member who has permanently resided outside Florida, who has not practiced law in Florida, or provided advice or services on Florida law during the preceding year, may be exempt from complying with the CLER.

(4) *Full-time Federal Judiciary.* A member of the full-time federal judiciary, who is prohibited from engaging in the private practice of law, is exempt from complying with the CLER.

(5) *Florida Judiciary.* Justices of the Supreme Court of Florida and judges of the district courts of appeal, circuit and county courts, and judicial officers and employees designated by the Supreme Court of Florida are exempt from complying with the CLER.

(6) *Inactive Members.* A member whose Florida Bar membership status is inactive is exempt from complying with the CLER.

(7) *Pro rata Credit Hours.* A member exempt under sections 6.02(f)(1), (3) or (6) whose right to an exemption terminates prior to the end of the reporting period will be required to fulfill the CLE requirements based on the pro rata portion of the non-exempt reporting period. A member exempt under sections 6.02(f)(4) and (5) is not subject to this provision. Pro rata hours will be calculated in 10-hour increments, and any part of a 12-month period will be considered a full year requiring 10 hours.

### **6.03 CARRY OVER PROHIBITED**

The member must complete the required CLE within the member's current reporting cycle to maintain active membership in the bar. CLE credit may not be counted for more than 1 reporting cycle and may not be carried forward to subsequent reporting cycles. Repeating a course during a member's CLER reporting cycle is not a basis for additional credit.

### **6.04 EVIDENCE OF COMPLIANCE**

Completion of the requirement may be demonstrated through a member's online posting through The Florida Bar's website or the timely return of an executed reporting affidavit.

### **6.05 NOTICE OF DELINQUENCY AND APPEAL**

A member who fails to comply with the CLER is delinquent the first day following the member's reporting date. The BLSE will notify members of their CLER delinquency by regular or electronic mail to the member's official bar address. A determination of noncompliance by the BLSE may be appealed under the 400 series of these policies.

### **6.06 REINSTATEMENT**

A delinquent member may petition for reinstatement under the Rules Regulating The Florida Bar.

## **700 BASIC SKILLS COURSE REQUIREMENT**

### **7.01 ADMINISTRATION**

These policies establish the reporting and compliance procedures for the administration of the Basic Skills Course Requirement (BSCR).

### **7.02 REPORTING AND COMPLIANCE.**

Each member should use The Florida Bar's website to post and confirm BSCR courses earned. Course attendance records of The Florida Bar may also be evidence of compliance.

### **7.03 DEFERMENT**

**(a) Establishment of Deferment.** A member who seeks to defer compliance with either component of the BSCR must file a BSCR deferment request form. Staff will review and confirm eligibility within 10 days of receipt of the request. If granted, the deferment will remain in effect until the member is no longer eligible.

(1) *Active Military Service.* If active military duty is cited as the basis for deferral, the member must not engage in the delivery of legal services within Florida or give advice on matters of Florida law except as required by the member's military duties.

(2) *Government Service.* If governmental service is cited as the basis for deferral, the member must not engage in the delivery of legal services within Florida or give advice on matters of Florida law except as required by the member's governmental duties.

(3) *Undue Hardship.* If undue hardship is cited as the basis for deferral, the member must establish and report special circumstances which constitute undue hardship. On receipt of a timely-filed report staff will review the special circumstances and determine whether an undue hardship exists. If granted, the member may defer compliance from the BSCR for the applicable period. If denied, the member may request a 6-month extension for compliance.

### **7.04 FOREIGN LAWYERS AND REPETITION OF BSCR.**

If any conflict exists within these policies and rule 2.510, Florida Rules of Judicial Administration, rule 2.510 will control and govern foreign lawyers. A lawyer is not required to complete the BSCR more than once.

### **7.05 EXEMPTION**

A member who seeks an exemption from the BSCR must file a BSCR exemption request form. Staff will review and confirm eligibility within 10 days of receipt of the request. The member may request BLSE review within 14 days if staff recommends denial of the exemption.

## 7.06 PROCEDURES ON NONCOMPLIANCE AND APPEAL

- (a) **Determination of noncompliance.** Noncompliance will include, but not be limited to, failure to complete the BSCR, failure to establish eligibility for deferral, failure to request an extension for compliance, or failure to establish an exemption.
- (b) **Notice of delinquency.** A member who fails to comply with the BSCR is delinquent the first day following the member's reporting date. The BLSE will notify members of their BSCR delinquency by regular or electronic mail to the member's official bar address.
- (c) **Appeals.** A member may appeal a determination of noncompliance under the 400 series of these policies.

## 7.07 REINSTATEMENT

A BSCR delinquent member may petition for reinstatement under the Rules Regulating The Florida Bar. A member may be conditionally reinstated and allowed an extension of 6 months to complete the BSCR if reasonable cause exists.