

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. The BLSE chair will assign an application for recertification to another certification committee for consideration if the certification committee is unable to process the application.

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 result in the application being treated as withdrawn by the applicant if not corrected within 30 days after the applicant is notified by staff of the omissions or inaccuracies, absent a showing of good cause as determined by the BLSE chair.

(b) Certification Retention. An applicant's certification status will remain intact throughout the period of recertification application review. If the BLSE denies a application, 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 certification status will automatically terminate on completion of the appeal procedures, unless the BLSE's decision is reversed.

(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 and 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 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 refer to the petitioner's overall score or 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 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 RP member 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 to distribute the petition and relevant materials to the RP or issue the RP's written recommendation. 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 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) *Written Request.* On completion of the grade review process, the petitioner may request that the BLSE review the RP's recommendation. The request must be in the form of a letter containing a statement of fact, argument limited to the BLSE's jurisdiction outlined in this policy, and a statement of relief sought. 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) *BLSE Review.* The BLSE will review the petitioner's request and the RP's recommendation at the next regularly scheduled BLSE meeting if the BLSE receives the request at least 20 days before that meeting; otherwise, it will be deferred to the next regularly scheduled BLSE meeting.

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

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

(3) *Request for Appearance.* A petitioner who submits a request for appearance before the BLSE to the LSE director within 10 days of receipt of the BLSE's decision will have the opportunity to make an oral presentation at the BLSE meeting when the request is considered.

(4) *Notice of Appearance.* The LSE director will issue a notice of appearance setting the date, time, and location of the BLSE meeting at which the petition will be considered and indicate that the petitioner or the petitioner's designated representative may appear in person or by teleconference at that meeting on receipt of a request for appearance. The notice will be served at least 20 days before the BLSE meeting.

(5) *Appearance Before BLSE.* When making an oral presentation, the petitioner may not submit any additional information or supporting documentation after the written request, and the BLSE will disregard references to any materials that are not part of the documentation transmitted by the RP or submitted by the petitioner as part of the written request for review. The petitioner may have a court reporter present during the hearing at the petitioner's expense.

(6) *BLSE Consideration.* The BLSE will consider the RP's recommendation in executive session after the hearing, applying the standards set forth in section 2.13.

(7) *Notice of Decision.* The BLSE will give notice of its decision by certified mail to the petitioner within 20 days of the BLSE meeting at which the hearing occurs.

(g) **Ex Parte Contacts.** No ex parte contacts may be made to RP members, 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(1).

(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 causes 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 official bar mailing 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 official bar mailing 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 Regulating The Florida Bar 6-3.8. 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 official bar mailing 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 BLSE's final determination.

(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 BLSE's final determination absent a showing of good cause as determined by the BLSE.

(D) Appearance. A requested 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 official bar mailing address by United States certified mail return receipt requested or

by return receipt electronic mail within 10 days of the consideration. Subject to subdivision (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.