

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 3rd 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.