COMMITTEE REPORT

TO: COMMITTEE ON SPECIAL PROJECTS

FROM: SPECIALIZATION AND CERTIFICATION COMMITTEE
James B. Steward, Chairperson

DATE: January 15, 2013

The Specialization & Certification Committee has further revised portions of the General Requirements of the Rules contained in Rule 3.1, and also some of the basic Application requirements covered in the Rule 3.2. These revisions deal with the concepts discussed at the Committee on Special Projects in December 2012.

For consideration by CSP, attached to this report (as Attachment A-1) is the entirety of proposed Rule 3.1 and 3.2, as revised, along with the Definitions Rule 1.5, which now includes a definition for “bonafide office” (which appears as sub-Rule 1.5.5, under the Definitions Section). Attached as Attachment A-2 are these same Rules, before the recent changes, along with a “redline” copy as Attachment A-3, for easier direct comparison.

We ask that CSP review the entirety of Rules 3.1 and 3.2, as revised, along with the definition of “bona fide office” and either adopt those rules as revised or indicate to the committee whether additional revisions may be needed.

Also attached to this Report (as Attachment B) is the Peer Review Section of the proposed Rules (Rule 3.3) for CSP to start its review and discussion of that Section.

1. **Bonafide Office**.

The Committee proposes a definition of “bonafide office” and which reads as follows:

1.5.5 **“Bona Fide Office”** is a place where clients can be met, mail can be received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during posted business hours to answer questions posed by courts, clients or adversaries and to ensure that competent advice
from the attorney can be obtained within a reasonable period of time.

This definition is similar to, but not identical to, that contained in the New Jersey rules. The
New Jersey definition reads as follows:

“... a bona fide office is a place where clients are met, files are kept, the telephone
is answered, mail is received and the attorney or a responsible person acting on the
attorney's behalf can be reached in person and by telephone during normal business
hours to answer questions posed by the courts, clients or adversaries and to ensure
that competent advice from the attorney can be obtained within a reasonable period
of time.”

The Committee believes that some minimum requirements should be stated for an actual physical
office. The Committee did not feel that a “virtual office” should qualify, and there was also concern
about “call center” offices that could be physically located in Michigan, but are not actually an office
where clients can go to meet with the attorney.

2. **Rule 3.1**

Rule 3.1 has been somewhat restructured. Rule 3.1.2 now deals with the basic requirements
for anyone seeking to become a certified specialist who is not already a certified specialist applying
for recertification. That Rule still requires that the attorney has practiced law for at least five years,
but now includes the minimum requirement of at least 1,200 hours per year for each of those five
years (rather than the prior “full time” requirement). The Committee felt that this was fairly liberal
and would allow for less than traditional “full-time” law practitioners to qualify. The Committee
declined to allow an attorney to accumulate practice over a longer time than five years and still
qualify, because we did not feel that a lower standard would provide adequate practice experience.
The Committee is aware that any stated standard can be viewed as somewhat arbitrary, but felt that
there must be some standard and that the 1,200-hours-per-year provided a lot of flexibility for
practitioners.

Rule 3.1.2B still requires the applicant to personally conduct the business of practicing law
from the Michigan office, and ties that requirement to the 1,200-hours-per-year requirement. Note
that the applicant need not have practiced in Michigan for a full five years.
The requirement to take a written examination is relocated, but otherwise unchanged.

Rule 3.1.3 applies to recertification applicants, only, and does not include a requirement of the practice of law for five years. This is because that requirement would already have been satisfied when the person became certified initially.

Rule 3.1.3A still includes the requirement of maintaining a bonafide office from which the recertification applicant personally conducts the business of practicing law, but the minimum requirement is now reduced to 750 hours per year. This is intended to allow a certified specialist to remain certified, but reduce his/her active practice hours. This could apply to older practitioners who wish to reduce their work load. It could also apply to younger attorneys who wish to move to a part-time practice on a temporary or perhaps permanent basis and still remain certified. The concept is that once the attorney has obtained at least the minimum requisite experience, as well as the expertise to obtain the certification status, that the attorney should be allowed some flexibility with regard to his/her practice schedule and intensity.

Rule 3.1.3D has been added to make it clear that the recertification applicants can, under some circumstances, be required to take the written examination. That concept existed in the prior versions of the Rules as well, and still remains noted in Rule 3.1.2C.

Rule 3.1.4 is reserved for the definition of the “practice of law” as used in the Specialization Rules. The Committee believes that the definition of the practice of law for purposes of the Specialization Rules should probably be different than the general definition of practice of law as it relates to unauthorized practice of law issues. Therefore, the Committee will be looking further at that concept.

3. Rule 3.2

As before, Rule 3.2 relates to satisfying requirements that relate to a particular speciality standard. Rule 3.2.2A now incorporates the concept of a minimum number of hours per year spent practicing in a speciality area before an applicant can become certified in the first instance. Rule 3.2.2B applies that concept to those seeking recertification. Note that the minimum of hours per year
is the same for each, even though the total amount of practice time required for recertification applicants is less (as specified at Rule 3.1.3A).

The rest of Rule 3.2 is unchanged.

4.  **Rule 3.3  Peer Review**

Rule 3.3, Peer Review, is attached in its entirety as that Rule presently appears in the draft Rules. If time allows, we would like to have CSP begin its review and discussion of that Rule.

JBS:jb
W:\JBS\Probate Council\Specialization\2013\memo re 1-14-13 meeting jbs v2.wpd
ATTACHMENT A-1

for 1-15-2013 Specialization Committee Report

Rule 1.5. Definitions
Rule 3.1. General Requirements
Rule 3.2. Application for Certification or Recertification
as revised, 1-15-2013
Rule 1.5. Definitions

As used in these rules:

1.5.1 “Attorney” or “Lawyer” is an individual who is licensed to practice law in the State of Michigan and is in good standing with the State Bar. The terms attorney and/or lawyer are used interchangeably in these Rules.

1.5.2. "Applicant" is an attorney who is applying for certification or recertification as a Board Certified Specialist in an area of specialization described in these Rules.

1.5.3. “Michigan Board of Legal Specialization” or "Board" means the Michigan Board of Legal Specialization created pursuant to these Rules, which Board has the authority and jurisdiction over the subject of certification of attorneys as specialists, and is empowered to and performs the duties as set forth in these Rules.

1.5.4. "Board Certified Specialist" or “Certified Specialist” is a licensed attorney who is in good standing with the Michigan Bar Association and who is currently certified in an area of specialization described in these Rules. A licensed attorney who previously held a Specialization Certificate, but which Certificate has expired, has been revoked, or is under suspension or revocation, is not currently a Board Certified Specialist or Certified Specialist.

1.5.5. "Bona Fide Office" is a place where clients can be met, mail can be received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during posted business hours to answer questions posed by courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time.

1.5.6. "Court" means the Michigan Supreme Court.

1.5.7. "Areas of Specialization” are the following areas which the Court has determined as appropriate for specialization:

   A. Trust, Estate and Probate Law
   B. [others to be determined]
1.5.8. **"Attorney Disciplinary Board"** means the Board created by the Court pursuant to MCR 9.110.

1.5.9. **"Notice to Applicant"** means a written communication sent by mail, postage prepaid, to the last address provided to the State Bar of Michigan by the Applicant.

1.5.10 **"Rules"** means rules promulgated by the Court governing the Board and Specialty Committees.

1.5.11. **"Specialty Committee"** means those committees established by the Board for each specialty listed in these Rules, the composition and duties of which are set forth herein.

* * * * * *

**RULE 3.**

**APPLICATIONS FOR CERTIFICATION AND RECERTIFICATION**

**Rule 3.1. General Requirements**

3.1.1 **Licensed; good standing; malpractice insurance.** All Applicants must be licensed and currently be in good standing to practice law in the State of Michigan. Applicants must carry a minimum of **one million dollars** ($1,000,000) malpractice insurance coverage, unless the Applicant is practicing exclusively as an employee of a governmental agency or exclusively as an employee of, or as in-house corporate counsel for, a single corporate entity.

3.1.2 **Eligibility for Certification:** To be eligible to become a Certified Specialist, an Applicant (other than a Certified Specialist applying for re-certification) must comply with the following:

A. **Required Period of Law Practice.** The Applicant shall have been engaged in the **practice of law** during the five years immediately preceding the submission of his or her application for certification and, in each of those five years, have practiced law **at least 1200 hours per year**.

B. **Michigan Office and Practice.** The Applicant must have maintained a **bona fide** office for the practice of law within the State of Michigan, or within 25 miles of a Michigan border, from which the Applicant personally conducts the business of practicing law an average of at least 1200 hours per year, and for at least the three years immediately preceding application has demonstrated substantial involvement in the specialty area within the State of Michigan, as defined by the applicable specialty standards. Failure to meet these requirements will result in denial of application.
C Examination. The Applicant must pass a written examination to demonstrate sufficient knowledge, proficiency and expertise in the specialty area to justify the representation of special competence to the legal profession and to the public. After an Applicant has taken and failed an examination three times in a specialty area, the Applicant is ineligible to apply for certification in that specialty area for the next three years. An Applicant for re-certification is also required to pass the written examination when ordered by the Board, or when otherwise required by these Rules.

3.1.3 Re-certification Applicants: To remain a Certified Specialist, a Certified Specialist applying for re-certification must comply with the following:

A. Michigan Office and Practice. All Certified Specialists applying for Re-certification must maintain a bona fide office for the practice of law within the State of Michigan, or within 25 miles of a Michigan border, from which that Applicant personally conducts the business of practicing law an average of at least 750 hours per year, and must continue to meet the applicable specialty area substantial involvement requirements (these are found in the Speciality Area Requirements).

B. Examination. The Re-certification Applicant is not required to pass a written examination except when ordered by the Board, or when otherwise required by these Rules.

3.1.4 Practice of Law. [this is subject to additional review]

A. For purposes of these Rules, the "Practice of law" means full-time legal work done primarily for the purpose of legal advice or representation on Michigan legal matters. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of legal advice to, or representation of, the corporation or government agency or individuals connected therewith. Years of practice need not be consecutive.

B. Except as otherwise specifically provided herein, legal work done primarily for any purpose other than legal advice or representation on Michigan legal matters (including, but not limited to, work related to the laws of other states or the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be considered to be the practice of law.

3.1.5 Forms. Documents, applications, questionnaires, and examinations involved in the certification, and recertification, or decertification process shall be approved by the Board.
3.1.6 **Fees.** Applicants and board certified attorneys shall timely pay the fees as prescribed by the Board.

**Rule 3.2. Application for Certification**

3.2.1 **Application requirements.** Prior to filing an application for certification or recertification as a specialist, an Applicant shall complete all requirements set forth in the specialty standards for the particular specialty practice area for which certification is sought. The Applicant shall submit the written application in the form approved by the Board, together with all information required by the applicable Specialty Committee. Peer review shall occur subsequent to filing the application, and after the Applicant has satisfied all other requirements established for certification or recertification.

3.2.2 **Substantial Involvement in Specialty Practice Area.**

A. **Substantial Involvement Before Certification.** Applicants (other than current Certified Specialists applying for recertification) must devote the minimum required time practicing law in a specialty area ("substantial involvement"), as specified in the applicable Specialty Area Requirements, during each year of the three years immediately preceding application. Such substantial involvement shall be defined as to each specialty area from a consideration of its nature, complexity and differences from other fields and from consideration of the kind and extent of effort and experience necessary to demonstrate competence in that specialty. Substantial involvement may vary from specialty to specialty, but, in no event shall the time spent practicing in the specialty area be less than three hundred (300) hours per year (that is, at least 25% of the 1200 hours per year minimum annual practice requirement). Failure to meet the applicable Specialty Area substantial involvement requirement will result in denial of the application for certification.

B. **Substantial Involvement After Certification.** Board Certified Specialists must devote the minimum required time practicing law in a specialty area, as specified in the applicable Specialty Area Requirements, during each year of certification, but, in no event shall the time spent practicing in the specialty area be less than three hundred (300) hours per year. Failure to meet the applicable Specialty Area substantial involvement requirement may be grounds for revocation of the certification at any time.

C. **Demonstration of Experience.** Applicants must provide information concerning specific tasks required by the Board, as specified in the applicable Specialty Area Requirements. The Board may take into consideration the nature, complexity and duration of matters handled by Applicants in the specialty area in evaluating experience.
D. Other Experience.

i. **Certification and Recertification Applicants.** The Board may permit a certification or recertification Applicant to substitute up to two (2) years of other experience appropriate to each specialty area. In making this determination, the Board may take into consideration the nature, complexity, and duration of the matters the Applicant has handled in the specialty area. Judicial experience shall at least be equivalent to the Speciality Area Requirements of the specialty area, and the determination of equivalency shall be at the discretion of the Board.

ii. **Certified Attorneys Continued Certification While Holding Judicial Office.** The Board may permit a Board Certified Specialist who is serving as a full-time county, state or federal trial, appellate, probate, family or bankruptcy judge (including a U.S. magistrate judge, or Michigan administrative law judge) to remain certified during his or her judicial service.

3.2.3 Application Form and Content. Applications shall be typewritten or printed on application forms furnished by the Board. Application forms shall be designed to determine whether the applicable Speciality Area Requirements have been met. The Applicant shall declare under the penalty of perjury that:

A. The documents which are submitted and intended by the Applicant to fulfill a requirement for certification are the principal work product of the Applicant; and

B. The information submitted in the application is true and correct.

3.2.4 Supplementary Information. The Board or Specialty Committee may require an Applicant to submit information relevant to the Applicant’s certification as a specialist in addition to that called for on the application form.

3.2.5 Processing of Application. The Applicant shall be notified when an application is incomplete or insufficient on its face. Supplemental information may be submitted as permitted or required by the Board or Specialization Committee and shall be considered part of the application process. The failure to properly complete the application form, including the submission of the requested additional or supplemental information after a request for such, shall cause an application to be incomplete, and shall result in a denial by the Specialty Committee or Board.

3.2.6 Withdrawal of an Application. At any time during the application process, an Applicant may withdraw an application by written notice to the Board. If an application remains incomplete for a period of sixty-three (63) days after a request to complete the application has been made by or on behalf of the Specialty Committee or the Board, (whether the request for completion arises as a result of lack of information on the application form, a request for supplemental
information or otherwise), then such incomplete application shall be deemed to have been withdrawn.

3.2.7 Effective Date of Certification and Duration

A. The effective date of Certification or Re-Certification shall be the date the Board authorizes certification.

B. Certification shall expire five (5) years from the effective date of certification, unless renewed as provided herein. If timely application for recertification is made, certification shall continue in effect until final action is taken on the application for recertification, unless earlier revoked or suspended.

C. A Board Certified Specialist whose practice is interrupted, may, on approval by the Board, remain certified if the Board Certified Specialist complies with the applicable specialty area continuing legal education requirements, pays all required fees, and complies with any other requirements imposed by the Board.

3.2.8 Applicant Authorizes Disclosure of Disciplinary Action. By filing an application, the Applicant agrees to reveal as to any court, state bar or other tribunal or regulatory body of any jurisdiction:

A. any pending disciplinary, regulatory or criminal action;
B. prior discipline by any regulatory body;
C. malpractice claims; and
D. judgment or settlement arising from a malpractice claim or its counterpart in any other jurisdiction

In addition, the Applicant authorizes the Attorney Disciplinary Board to advise the Board of the imposition of any discipline, public or private, which has been imposed on the Applicant.
ATTACHMENT A-2

for 1-15-2013 Specialization Committee Report

Rule 1.5. Definitions
Rule 3.1. General Requirements
Rule 3.2. Application for Certification or Recertification
before revised, 1-15-2013
RULES GOVERNING THE
STATE BAR OF MICHIGAN PROGRAM
FOR CERTIFYING LEGAL SPECIALISTS

* * * * *

Rule 1.5. Definitions

As used in these rules:

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1.5.2. “Applicant” is an attorney who is applying for certification or recertification as a Board Certified Specialist in an area of specialization described in these Rules.

1.5.3. “Michigan Board of Legal Specialization” or "Board" means the Michigan Board of Legal Specialization created pursuant to these Rules, which Board has the authority and jurisdiction over the subject of certification of attorneys as specialists, and is empowered to and performs the duties as set forth in these Rules.

1.5.4. "Board Certified Specialist" or “Certified Specialist” is a licensed attorney who is in good standing with the Michigan Bar Association and who is currently certified in an area of specialization described in these Rules. A licensed attorney who previously held a Specialization Certificate, but which Certificate has expired, has been revoked, or is under suspension or revocation, is not currently a Board Certified Specialist or Certified Specialist.

1.5.5. "Court" means the Michigan Supreme Court.

1.5.6. "Areas of Specialization” are the following areas which the Court has determined as appropriate for specialization:

   A. Trust, Estate and Probate Law
   B. [others to be determined]

1.5.7. "Attorney Disciplinary Board" means the Board created by the Court pursuant to MCR 9.110.

1.5.8. "Notice to Applicant" means a written communication sent by mail, postage prepaid, to the last address provided to the State Bar of Michigan by the Applicant.
1.5.9. "Rules" means rules promulgated by the Court governing the Board and Specialty Committees.

1.5.10. "Specialty Committee" means those committees established by the Board for each specialty listed in these Rules, the composition and duties of which are set forth herein.

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RULE 3.
APPLICATIONS FOR
CERTIFICATION AND RECERTIFICATION

Rule 3.1. General Requirements

3.1.1 Licensed; good standing; malpractice insurance. Applicants must be licensed and currently be in good standing to practice law in the State of Michigan. Applicants must carry a minimum of one million dollars ($1,000,000) malpractice insurance coverage, unless the Applicant is practicing exclusively as an employee of a governmental agency or exclusively as an employee of, or as in-house corporate counsel for, a single corporate entity.

3.1.2 Michigan Office and Practice.

A. Certification Applicants. Applicants must have maintained a physical office in Michigan, or within 25 miles of a Michigan border, from which the Applicant personally conducts business an average of at least three (3) days per week, for at least the three years immediately preceding application. Failure to meet this requirement will result in denial of application.

B. Board Certified Specialists and Recertification Applicants. All board Board Certified Specialists and Recertification Applicants must continue to meet the substantial involvement requirements pertinent to each applicable specialty area. These are found in the Speciality Area Requirements.

3.1.5 Required Period of Law Practice. Applicants for certification shall have been engaged in the practice of law for a period of at least five (5) years on a full-time basis.

3.1.6 Practice of Law.

A. For purposes of these Rules, the "Practice of law" means full-time legal work done primarily for the purpose of legal advice or representation on Michigan legal matters. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered practice of law.
if the work done was legal in nature and primarily for the purpose of legal advice to, or representation of, the corporation or government agency or individuals connected therewith. Years of practice need not be consecutive.

B. Except as otherwise specifically provided herein, legal work done primarily for any purpose other than legal advice or representation on Michigan legal matters (including, but not limited to, work related to the laws of other states or the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be considered to be the practice of law.

3.1.7 Examination. Applicants (other than current certificate holders applying for recertification in the same specialty area) must pass a written examination to demonstrate sufficient knowledge, proficiency and expertise in the specialty area to justify the representation of special competence to the legal profession and to the public. After an Applicant has taken and failed an examination three times in a specialty area, the Applicant is ineligible to apply for certification in that specialty area for the next three years. An Applicant for recertification is also required to pass the written examination when ordered by the Board, or when otherwise required by these Rules.

3.1.8 Forms. Documents, applications, questionnaires, and examinations involved in the certification, and recertification, or decertification process shall be approved by the Board.

3.1.9 Fees. Applicants and board certified attorneys shall timely pay the fees as prescribed by the Board.

Rule 3.2. Application for Certification

3.2.1 Application requirements. Prior to filing an application for certification or recertification as a specialist, an Applicant shall complete all requirements set forth in the specialty standards for the particular specialty practice area for which certification is sought. The Applicant shall submit the written application in the form approved by the Board, together with all information required by the applicable Specialty Committee. Peer review shall occur subsequent to filing the application.

3.2.2 Substantial Involvement in Specialty Practice Area.

A. Substantial Involvement Before Certification. Applicants (other than current Certified Specialists applying for recertification) must devote the minimum required time practicing in a specialty area, as specified in the applicable Specialty Area Requirements, during each year of the three years immediately preceding application. Failure to meet this requirement will result in denial of the application for certification.

B. Substantial Involvement After Certification. Board Certified Specialists must devote the minimum required time practicing in a specialty area, as specified
in the applicable Speciality Area Requirements, during each year of certification. Failure to maintain the required percentage of practice may be grounds for revocation of the certification at any time.

C. **Demonstration of Experience.** Applicants must provide information concerning specific tasks required by the Board, as specified in the applicable Speciality Area Requirements. The Board may take into consideration the nature, complexity and duration of matters handled by Applicants in the specialty area in evaluating experience.

D. **Other Experience.**

i. **Certification and Recertification Applicants.** The Board may permit a certification or recertification Applicant to substitute up to two (2) years of other experience appropriate to each specialty area. In making this determination, the Board may take into consideration the nature, complexity, and duration of the matters the Applicant has handled in the specialty area. Judicial experience shall at least be equivalent to the Speciality Area Requirements of the specialty area, and the determination of equivalency shall be at the discretion of the Board.

ii. **Certified Attorneys Continued Certification While Holding Judicial Office.** The Board may permit a Board Certified Specialist who is serving as a full-time county, state or federal trial, appellate, probate, family or bankruptcy judge (including a U.S. magistrate judge, or Michigan administrative law judge) to remain certified during his or her judicial service.

3.2.3 **Application Form and Content.** Applications shall be typewritten or printed on application forms furnished by the Board. Application forms shall be designed to determine whether the applicable Speciality Area Requirements have been met. The Applicant shall declare under the penalty of perjury that:

A. The documents which are submitted and intended by the Applicant to fulfill a requirement for certification are the principal work product of the Applicant; and

B. The information submitted in the application is true and correct.

3.2.4 **Supplementary Information.** The Board or Specialty Committee may require an Applicant to submit information relevant to the Applicant’s certification as a specialist in addition to that called for on the application form.

3.2.5 **Processing of Application.** The Applicant shall be notified when an application is incomplete or insufficient on its face. Supplemental information may be submitted as permitted or
required by the Board or Specialization Committee and shall be considered part of the application process. The failure to properly complete the application form, including the submission of the requested additional or supplemental information after a request for such, shall cause an application to be incomplete, and shall result in a denial by the Specialty Committee or Board.

3.2.6 Withdrawal of an Application. At any time during the application process, an Applicant may withdraw an application by written notice to the Board. If an application remains incomplete for a period of sixty-three (63) days after a request to complete the application has been made by or on behalf of the Specialty Committee or the Board, (whether the request for completion arises as a result of lack of information on the application form, a request for supplemental information or otherwise), then such incomplete application shall be deemed to have been withdrawn.

3.2.7 Effective Date of Certification and Duration.

A. The effective date of Certification or Re-Certification shall be the date the Board authorizes certification.

B. Certification shall expire five (5) years from the effective date of certification, unless renewed as provided herein. If timely application for recertification is made, certification shall continue in effect until final action is taken on the application for recertification, unless earlier revoked or suspended.

C. A Board Certified Specialist whose practice is interrupted, may, on approval by the Board, remain certified if the Board Certified Specialist complies with the applicable specialty area continuing legal education requirements, pays all required fees, and complies with any other requirements imposed by the Board.

3.2.8 Applicant Authorizes Disclosure of Disciplinary Action. By filing an application, the Applicant agrees to reveal as to any court, state bar or other tribunal or regulatory body of any jurisdiction:

A. any pending disciplinary, regulatory or criminal action;
B. prior discipline by any regulatory body;
C. malpractice claims; and
D. judgment or settlement arising from a malpractice claim or its counterpart in any other jurisdiction

In addition, the Applicant authorizes the Attorney Disciplinary Board to advise the Board of the imposition of any discipline, public or private, which has been imposed on the Applicant.
ATTACHMENT A-3

for 1-15-2013 Specialization Committee Report

Rule 1.5. Definitions
Rule 3.1. General Requirements
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comparison to prior version
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As used in these rules:

1.5.1 “Attorney” or “Lawyer” is an individual who is licensed to practice law in the State of Michigan and is in good standing with the State Bar. The terms attorney and/or lawyer are used interchangeably in these Rules.

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1.5.5 “Bona Fide Office” is a place where clients can be met, mail can be received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during posted business hours to answer questions posed by courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time.

1.5.6. "Court" means the Michigan Supreme Court.

1.5.67. "Areas of Specialization” are the following areas which the Court has determined as appropriate for specialization:

A. Trust, Estate and Probate Law
B. [others to be determined]
1.5.78. "Attorney Disciplinary Board" means the Board created by the Court pursuant to MCR 9.110.

1.5.89. "Notice to Applicant" means a written communication sent by mail, postage prepaid, to the last address provided to the State Bar of Michigan by the Applicant.

1.5.910. "Rules" means rules promulgated by the Court governing the Board and Specialty Committees.

1.5.101. "Specialty Committee" means those committees established by the Board for each specialty listed in these Rules, the composition and duties of which are set forth herein.

RULE 3.
APPLICATIONS FOR CERTIFICATION AND RECERTIFICATION

Rule 3.1. General Requirements

3.1.1 Licensed; good standing; malpractice insurance. All Applicants must be licensed and currently be in good standing to practice law in the State of Michigan. Applicants must carry a minimum of one million dollars ($1,000,000) malpractice insurance coverage, unless the Applicant is practicing exclusively as an employee of a governmental agency or exclusively as an employee of, or as in-house corporate counsel for, a single corporate entity.

3.1.2 Eligibility for Certification: To be eligible to become a Certified Specialist, an Applicant (other than a Certified Specialist applying for re-certification) must comply with the following:

A. Required Period of Law Practice. The Applicant shall have been engaged in the practice of law during the five years immediately preceding the submission of his or her application for certification and, in each of those five years, have practiced law at least 1200 hours per year.

B. Michigan Office and Practice.

A. Certification Applicants. Applicants must have maintained a physical, bona fide office in for the practice of law within the State of Michigan, or within 25 miles of a Michigan border, from which the Applicant personally conducts the business of practicing law an average of at least three (3) days.
hours per week, year, and for at least the three years immediately preceding application has demonstrated substantial involvement in the specialty area within the State of Michigan, as defined by the applicable specialty standards. Failure to meet these requirements will result in denial of application.

B. Board

3.1.7 C Examination. Applicants (other than current certificate holders applying for recertification in the same specialty area) The Applicant must pass a written examination to demonstrate sufficient knowledge, proficiency and expertise in the specialty area to justify the representation of special competence to the legal profession and to the public. After an Applicant has taken and failed an examination three times in a specialty area, the Applicant is ineligible to apply for certification in that specialty area for the next three years. An Applicant for re-certification is also required to pass the written examination when ordered by the Board, or when otherwise required by these Rules.

End Of Moved Text

3.1.3 Re-certification Applicants: To remain a Certified Specialist, a Certified Specialist applying for re-certification must comply with the following:

A. Michigan Office and Practice. All Certified Specialists and applying for Re-certification Applicants. All Board Certified Specialists and Recertification Applicants must maintain a bona fide office for the practice of law within the State of Michigan, or within 25 miles of a Michigan border, from which that Applicant personally conducts the business of practicing law an average of at least 750 hours per year, and must continue to meet the applicable specialty area substantial involvement requirements pertinent to each applicable specialty area. These (these are found in the Specialty Area Requirements).

3.1.5 Required Period of Law Practice. Applicants for certification shall have been engaged in the practice of law for a period of at least five (5) years on a full-time basis.

3.1.6 B. Examination. The Re-certification Applicant is not required to pass a written examination except when ordered by the Board, or when otherwise required by these Rules.

3.1.4 Practice of Law. [this is subject to additional review]

A. For purposes of these Rules, the "Practice of law" means full-time
legal work done primarily for the purpose of legal advice or representation on Michigan legal matters. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of legal advice to, or representation of, the corporation or government agency or individuals connected therewith. Years of practice need not be consecutive.

B. Except as otherwise specifically provided herein, legal work done primarily for any purpose other than legal advice or representation on Michigan legal matters (including, but not limited to, work related to the laws of other states or the sale of insurance or retirement plans or work in connection with the practice of a profession other than the law) shall not be considered to be the practice of law.

--3.1.8

3.1.5 Forms. Documents, applications, questionnaires, and examinations involved in the certification, and recertification, or decertification process shall be approved by the Board.

3.1.96 Fees. Applicants and board certified attorneys shall timely pay the fees as prescribed by the Board.

Rule 3.2. Application for Certification

3.2.1 Application requirements. Prior to filing an application for certification or recertification as a specialist, an Applicant shall complete all requirements set forth in the specialty standards for the particular specialty practice area for which certification is sought. The Applicant shall submit the written application in the form approved by the Board, together with all information required by the applicable Specialty Committee. Peer review shall occur subsequent to filing the application, and after the Applicant has satisfied all other requirements established for certification or recertification.

3.2.2 Substantial Involvement in Specialty Practice Area.

A. Substantial Involvement Before Certification. Applicants (other than current Certified Specialists applying for recertification) must devote the minimum required time practicing law in a specialty area (“substantial involvement”), as specified in the applicable Specialty Area Requirements, during each year of the three years immediately preceding application. Such substantial involvement shall
be defined as to each specialty area from a consideration of its nature, complexity and differences from other fields and from consideration of the kind and extent of effort and experience necessary to demonstrate competence in that specialty. Substantial involvement may vary from specialty to specialty, but, in no event shall the time spent practicing in the specialty area be less than three hundred (300) hours per year (that is, at least 25% of the 1200 hours per year minimum annual practice requirement). Failure to meet this substantial involvement requirement will result in denial of the application for certification.

B. Substantial Involvement After Certification. Board Certified Specialists must devote the minimum required time practicing law in a specialty area, as specified in the applicable Specialty Area Requirements, during each year of certification, but, in no event shall the time spent practicing in the specialty area be less than three hundred (300) hours per year. Failure to maintain the required percentage of practice applicable Specialty Area substantial involvement requirement may be grounds for revocation of the certification at any time.

C. Demonstration of Experience. Applicants must provide information concerning specific tasks required by the Board, as specified in the applicable Specialty Area Requirements. The Board may take into consideration the nature, complexity and duration of matters handled by Applicants in the specialty area in evaluating experience.

D. Other Experience.

i. Certification and Recertification Applicants. The Board may permit a certification or recertification Applicant to substitute up to two (2) years of other experience appropriate to each specialty area. In making this determination, the Board may take into consideration the nature, complexity, and duration of the matters the Applicant has handled in the specialty area. Judicial experience shall at least be equivalent to the Specialty Area Requirements of the specialty area, and the determination of equivalency shall be at the discretion of the Board.

ii. Certified Attorneys Continued Certification While Holding Judicial Office. The Board may permit a Board Certified Specialist who is serving as a full-time county, state or federal trial, appellate, probate, family or bankruptcy judge (including a U.S. magistrate judge, or Michigan administrative law judge) to remain certified during his or her judicial service.

3.2.3 Application Form and Content. Applications shall be typewritten or printed on application forms furnished by the Board. Application forms shall be designed to determine whether the applicable Specialty Area Requirements have been met. The Applicant shall declare under the
penalty of perjury that:

A. The documents which are submitted and intended by the Applicant to fulfill a requirement for certification are the principal work product of the Applicant; and

B. The information submitted in the application is true and correct.

3.2.4 Supplementary Information. The Board or Specialty Committee may require an Applicant to submit information relevant to the Applicant’s certification as a specialist in addition to that called for on the application form.

3.2.5 Processing of Application. The Applicant shall be notified when an application is incomplete or insufficient on its face. Supplemental information may be submitted as permitted or required by the Board or Specialization Committee and shall be considered part of the application process. The failure to properly complete the application form, including the submission of the requested additional or supplemental information after a request for such, shall cause an application to be incomplete, and shall result in a denial by the Specialty Committee or Board.

3.2.6 Withdrawal of an Application. At any time during the application process, an Applicant may withdraw an application by written notice to the Board. If an application remains incomplete for a period of sixty-three (63) days after a request to complete the application has been made by or on behalf of the Specialty Committee or the Board, (whether the request for completion arises as a result of lack of information on the application form, a request for supplemental information or otherwise), then such incomplete application shall be deemed to have been withdrawn.

3.2.7 Effective Date of Certification and Duration.

A. The effective date of Certification or Re-Certification shall be the date the Board authorizes certification.

B. Certification shall expire five (5) years from the effective date of certification, unless renewed as provided herein. If timely application for recertification is made, certification shall continue in effect until final action is made on the application for recertification, unless earlier revoked or suspended.

C. A Board Certified Specialist whose practice is interrupted, may, on approval by the Board, remain certified if the Board Certified Specialist complies with the applicable specialty area continuing legal education requirements, pays all required fees, and complies with any other requirements imposed by the Board.

3.2.8 Applicant Authorizes Disclosure of Disciplinary Action. By filing an application, the Applicant agrees to reveal as to any court, state bar or other tribunal or regulatory body of any
jurisdiction:

A. any pending disciplinary, regulatory or criminal action;
B. prior discipline by any regulatory body;
C. malpractice claims; and
D. judgment or settlement arising from a malpractice claim or its counterpart in any other jurisdiction

In addition, the Applicant authorizes the Attorney Disciplinary Board to advise the Board of the imposition of any discipline, public or private, which has been imposed on the Applicant.
ATTACHMENT B

for 1-15-2013 Specialization Committee Report

Rule 3.3 Peer Review (as of 1-15-2013)
Rule 3.3  Peer Review

3.3.1  Peer review. After the Applicant has satisfied all other requirements established for certification or recertification but prior to certification or recertification, the Board or Specialty Committee shall conduct an independent inquiry and review of the Applicant to determine whether the Applicant has the level of competence necessary for proficient performance in handling the usual matters in the specialty field. The independent inquiry and review shall consider information furnished by references and other information which the Specialty Committee deems relevant to demonstrate whether the Applicant is proficient in the specialty field, including, but not limited to, the Applicant’s work product, problem analysis, statement of issues and analysis, or such other criteria which the Specialty Committee deems appropriate to take into account prior to making its certification recommendation.

3.3.2  Number and qualification of references. An Applicant shall submit to the Board the names and addresses of at least five lawyers who are licensed and currently in good standing to practice law in this state and can attest to the Applicant’s competence in the specialty field in which certification is requested.

3.3.3  References. References must be fairly representative of various facets of the practice in the specialty field involved.

3.3.4  Additional References. The Board and the Specialty Committee reserve the right to request further references.

3.3.5  Limitations. An Applicant shall not submit as a reference the name of any lawyer or judge who fits in the following categories:

A. a reference who is related to the Applicant, or the Applicant’s spouse, within the third degree of relationship by blood or marriage to the Applicant;

B. more than one reference who is or, within the year immediately preceding the filing of the application for certification, was a partner, associate of, or co-worker with the Applicant; or
C. a reference who is serving or has served within the three (3) years immediately preceding the filing of the application for certification, on the Court, the Board or the Specialty Committee for the specialty field in which certification is sought.

3.3.6 Reference forms. The Board or Specialty Committee, or a delegate of the Board or Specialty Committee, shall contact each reference listed by the Applicant and request the reference to complete a statement of reference on a form provided by the Board.

3.3.7 Independent Inquiry by Board or Specialty Committee. The Board and the Specialty Committee reserve the right to engage in an independent inquiry as to the Applicant’s overall competence as well as competence in the specialty field in which certification is sought. If information is received by the Board or Specialty Committee which indicates the Applicant may not have achieved an acceptable standard of competence in the field in which certification is requested, the Board or Specialty Committee shall undertake in an independent inquiry as to the issues reflecting adversely on the Applicant's competence.

3.3.8 Publication of Applications. The names of Applicants applying for certification or recertification shall be posted or published in the Michigan Bar Association web page. Within thirty-five (35) days after publication, any person may comment upon the Applicant’s qualifications. Such comments shall be considered part of the independent inquiry and review process.

3.3.9 Evaluation. An application shall not be acted upon until the minimum number of references required by the individual standards have been received and the comment period following publication has expired. In the event that two references indicate that the Applicant has not demonstrated proficiency in the specialty field, or if a serious question, in the discretion of the Board or the Specialty Committee, is raised concerning the Applicant's demonstrated proficiency in the specialty field, the Board or Specialty Committee shall seek further information. Negative responses shall be investigated to assure that they are related to competence and not to personality conflicts or other factors irrelevant to competence.

3.3.10 Oral interview. If the Board or Specialty Committee desires further information, it may request the Applicant to participate in an oral interview.

3.3.11 Review and recommendation. Within sixty-three (63) days after the date of receipt of the minimum number of references or when the comment period following web page publication expires, whichever occurs later, the Specialty Committee shall review the application and prepare and submit a written recommendation to the Board. If the review is delayed, the Applicant shall be notified of the delay.