1. **Specialization and Certification:** Overview and general discussion of the proposed rules. -- Jim Steward & Committee (materials attached)
   - Attachment A - Committee Report for 4-14-2012
   - Attachment B - Committee Report from 12-16-2010
   - Attachment C - Michigan Specialization Rules Discussion Draft
   - Attachment D - State Comparison Chart (for AR, CA, TX, NJ, FL, NC)
   - Attachment E - Additional State Comparisons (for MN, OH, NM)

2. **Proposed Family Consent law:** Discussion. (materials to follow a few days prior to meeting)
   -- Connie Brigman & Committee
ATTACHMENT A

– Specialization Committee Report for 4-14-2012
Committee Report

- COMMITTEE ON SPECIALIZATION AND CERTIFICATION -
  April 14, 2012

The Committee has again reviewed numerous other States rules pertaining specialization and has attempted to make comparisons to the current discussion draft of the proposed rules for Michigan. This has proven to be a time-consuming task and as a result is still on-going.

We have prepared 2 types of comparison charts which accompany this report. The first is an outline chart which lists the types of provisions which appear in the current Michigan proposal, and provides a direct comparison to those similar provisions for AR, CA, TX, NJ, FL, and NC. The second type of comparison chart is the complete proposed Michigan rules with insertions throughout of the corresponding provisions from MN, OH, and NM. In each case we are trying to make it a bit easier for the meeting participants to quickly scan the differences and similarities between the Michigan proposal and these other states. There are a few additional states that are not included, but the committee feels that those which we have covered provide the best comparisons.

For purposes of this meeting, we would like to concentrate on the following topics

1. Board composition, number how appointed, terms;
2. Specialty committees composition, number how appointed, terms; and
3. The required qualification criteria for becoming certified.

We would also invite input from those present as to whether the comparison chart formats we have presented are useful in working through the discussion.

At the next meeting, we would continue the discussion with additional topics, moving through the rules as we go.

Jim Steward
ATTACHMENT B

– Specialization Committee Report from 12-16-2010
Committee Report

- COMMITTEE ON SPECIALIZATION AND CERTIFICATION -
  December 16, 2010

The following is an outline of some of the issues discussed and decided by the Committee in connection with its review and re-drafting of these proposed Rules.

Rule 1.

The Committee determined that the terms “Board” and “Specialization Committee” should be capitalized. We also determined that we will use the word “attorney” throughout in place of lawyer for consistency.

The sub-rule dealing with notice of meetings was rewritten to incorporate the concept of electronic notices.

Rule 2.

In Rule 2.5, we decided to use the term “Trust, Estate and Probate Law” as one of the specialty sub-divisions (rather than Estate and Probate Law).

For the sub-division under Paragraph 2.7 that deals with “Advertisement”, we decided to make that more generic, with blanks in the general Board rules, with the specific practice area designations to be filled in by the Specialty Committees (or the Board, as applicable). However, this results a somewhat odd appearance for the Rule, so we may want to consider a different approach.

We also believe that it will likely be necessary to modify the Rules of Professional Conduct to deal more specifically with advertising Board certification, etc.

Discussion regarding referral from other attorneys and the prohibition of the specialist from taking advantage of the referral. Decision to remove this section because it seems to cause more problems than it solves.

Section on Advertisement moved to 1.2.2. Suggestion that the title be changed to “Advertisement by Board Certified Specialist.” Discussion regarding what is proper advertising for specialist.

Contacted a couple members of the academic community who were very receptive to being Board Members. Consequently decided to have two law facility members on the Board. We also decided not to have any lay people be Board members.

Discussion regarding limit on malpractice coverage and the committee felt that at least coverage of $1,000,000 should be the minimum.
Discussion regarding attorneys who don’t reside in the State of Michigan regarding the requirement. Of the work some percentage has to be Michigan work. Requirements should be that they practice in Michigan. Specialization standards should cover where the person practices. Suggestion that the majority of the practice has to be spent on “Michigan Legal Matters”. Trying to avoid Trust Mills from other states and websites by adding the requirement of a physical office.

Discussion regarding a percentage requirement for practice in the specialization area. Decision not to put a percentage in because these are the general rules and the percentages may be different for other specialization areas

Rule 3.

For Rule 3, as with Rules 1 and 2, we will use the term “attorney” throughout. Rule 3.1.2 raises the question of do “virtual offices” qualify? Basically, the Committee felt that they would not qualify under the terms of 3.1.2, because that Rule contemplates a physical location where the applicant personally conducts business. We might want to consider slightly modifying 3.1.2 to make that more clear.

The Committee also discussed the requirements of Rule 3.2.2 as it relates to whether the “new” certification applicant should be required to meet the specialty area practice requirements for five years before applying, rather than just three. We believe that this was discussed at the Committee level previously, and three years was arrived at as a compromise to allow younger attorneys (or those changing practice areas) to qualify earlier.

The Committee selected a period of five years for the duration of the certification, which appears to comply with the time period used for most states. However, the certification continues after that five-year period when a timely application for recertification has been made until the Board has acted on the application for recertification, The Committee added the proviso that recognizes the fact that the Board can revoke or suspend the certification. However, a suspension does not actually change the expiration date of the certification. As a result, an attorney’s certification that has been suspended, can end up having to reapply while the suspension is still in effect if the attorney wanted to come under the Rules for recertification. We are not quite sure how this would actually be handled in practice, because if the attorney’s application does not fit the requirements for a recertification, then the applicant must retake the exam.

The requirements for certification and recertification are essentially the same with two primary exceptions. The first exception is that a new applicant can qualify by meeting the minimum applicable specialty area requirements during each year of the three years immediately preceding the application. The other exception is that the CLE requirements apply to those three years, rather than the full five years that a recertification applicant must meet.

The Committee also discussed the possibility of including separate definitions for the new certification applicant versus the re-certification applicant. Under this scenario, the new certification applicant could be defined as
“An attorney who is not currently certified within the specialty practice area for which the applicant is applying for certification”.

For the re-certification applicant, the definition would read something like:

“An attorney who is currently certified within the specialty practice area for which the attorney is applying for continued certification.”

The reason we might want to include a separate definition is because there are instances where these two types of applicants are treated differently. Perhaps, the most significant of which is that the new certification applicant must take the test. A secondary difference, as noted above, is that the new certification applicant only needs to meet the specialty area practice requirements for three years prior to the application. However, at present, the Committee has decided not to include such definitions, but instead to rely on adding appropriate limiting statements where applicable.

The “Other Experience” Section of Rule 3.2.6 is intended to allow the Board to take into account certain experience that might not qualify as strictly falling within the specialty area listings, without getting into a laundry list of what would or would not qualify. In this respect, we did add a reference to Administrative Law Judge experience because for some specialty areas, that could be useful experience.

Rule 3.1.7 is also slightly modified to make it clear that an applicant for recertification will be required to retake the written examination when the Certificate has lapsed or been revoked, or if the applicant has failed to meet the required standards for recertification. However, one question in this regard would be the CLE requirements. For example, if an applicant did not quite meet the 10-hours-per-year of CLE requirements, but did meet the total CLE requirements, could the Board allow the Applicant to “cure” that default without taking the written examination. Therefore, to provide a bit more flexibility in this regard, the concept of the Board’s discretion has been added to the renumbered Rule 7.4 as well as Rule 3.1.7.

One item that was discussed under Rule 3 is withdrawal of the application. We decided to allow an applicant to withdraw an application at any time, prior to denial, without elaborating any further on any particular time limits for resubmission. The basic idea is that if the applicant withdraws their application, they would have to resubmit it to the next round of applications.

Notice to the applicant is covered in the “Definitions” portion and we have decided to allow electronic notice to the applicant by consent.

For Rule 3.2.2 (D), the Committee added Administration Law Judge to the types of Judges covered by that sub-division. The Committee also decided to delete the currently-included Rule 3.2.7 that deals with confidentiality, because that would be covered entirely as a complete separate rule (probably Rule 7).

With respect to peer review and references, the Committee did not feel it was necessary or appropriate to specify the types of references other than being lawyers who are licensed and currently in good standing in this state. Some Rules mention including references from Judges if
Court appearances are part of the specialty standard, but the Committee felt that this detail should be included in the practice area requirements for each particular field of specialization, as determined appropriate for that area.

The Committee discussed to what extent references from relatives or business partners should be excluded and did review the Court Rule relating to Judges. The Committee felt that excluding anybody who is related by blood or marriage is a little bit too broad and so at this point, has decided to limit that to the “third degree of relationship”, similar to MCR 2.003(C).

Rule 3.3.8 originally called for publication in the Bar Journal, but due to the lead time necessary to place publication notices in the Bar Journal, the Committee felt that a posting on the Bar Association web page would be a better approach. Another option that could also be included would be publication in the Section Journal for the specialty area.

The oral interview need not be conducted in person.

**Rule 3.4 Continuing Legal Education.**

The Committee discussed these requirements at some length and decided that an average of 20 hours of CLE in a specialty area per year was appropriate, but would also recognize that attorneys sometimes have more opportunities for CLE in one year than in another year. Nevertheless, we felt it was important for applicants to keep current on a year-to-year basis, so a minimum of 10 hours per year was selected.

The Committee is willing to allow credit for an applicant to lecture at continuing legal education seminars. Originally this sub-rule included credit for serving on the Steering Committee, but that doesn’t necessarily include obtaining up-dates on actual legal knowledge and so was deleted.

The sub-rule dealing with writing articles, etc. was also rewritten to allow credit for writing, but recognizing that how much credit can vary substantially from one article to the next.

With regard to teaching courses, we also discussed the reference to “Professional Education Association” and decided to leave that reference in, although we don’t think it would have much application to our particular practice area.

**RULE 4**

Rule 4.1.3 “Notice of Meetings” currently includes a discussion of the manner of giving notice to Boar (and Specialty Committee) members. This Committee questions whether you really need to include that much specificity for the Board and Specialty Committee Meetings. Perhaps the manner of giving notice of the Board and Specialty Committee Meetings could be determined by the board itself separately from the enabling rules themselves. If this philosophy is to be followed, then the Rule 4.1.2 would be something like the following:
4.1.3 **Notice of Meetings.** All board members should receive reasonable notice of the time and place of a meeting with the timing and manner of such notice to be determined by Board Policy.

However, for the present, the Rule 4.1.3 will have the additional specifics included. The manner of giving notices to applicants is dealt with separately. At present, Rule 6.3 deals with notice to an attorney whose certification is to be revoked or suspended, and we could consider revising that wording in the same manner, although we tend to believe that more specificity in that regard is appropriate.

At present, the notice requirements stated under Rule 1 and Rule 4 are not the same, but they deal with different issues and are acceptable as drafted. Instead of referencing the Court rules for the manner of giving notice, sending notice to the Applicant to the last address supplied to the State Bar of Michigan is acceptable.

Sub Rule 4.1.6 states generally that meetings of the Board or a Specialty Committee are open to the public, however, for the most part when those meetings deal with the consideration of particular applications, those will not be open to the public, because they will be considering confidential information.

4.2.5 – Decided to remove 4.2.5 E since there could be situations where a hearing on the review of the denial should be open to the public. Also D regarding confidential information is broad enough to take care of any situation where a hearing should be private.

4.3.7 B – Eliminated the first of January as there is no need to put a specific date.

4.3.7 C – Eliminated this section.

4.3.8 – Deleted the sentence regarding sources of information may voluntarily disclose facts to the applicant. Deleted sentence regarding the applicability of the other rules regarding witnesses. Committee agrees.

4.3.9 – Approved changes from prior meetings.

**RULE 5**

For Rule 5.1, we decided not to include detailed specifics regarding how applications are approved. The original draft Rules allowed the Board to approve an applicant without an actual meeting, if the vote was unanimous. The Committee felt that it really be best to actually have a meeting to review applications rather than reviewing them outside of a meeting and simply voting “in lieu of a meeting”, that is the best way to handle any discussions regarding Applicants. Such meetings can be handled by conference call, and a vote taken accordingly. Basically, we felt that allowing Board action with regard to decisions (even unanimous approvals) on applications for certification without a meeting was not good policy.
The Committee discussed whether the notification to the applicant of a Board’s decision should be in writing or whether electronic notification should be permitted. The Committee decided that written notification in the manner currently specified in the “Definitions” section should be retained. The usual method of sending out notification of State Bar actions is in writing, and the Committee was concerned that it would be too easy for an applicant to claim that they never received proper notice if another means of notification were permitted for Board actions.

It was noted that Rule 5.3 provides for Notice to the applicant of a denial. At present, there is no procedure for an actual “appeal” of a denial of certification by the Board, although there is a procedure for requesting a “review” of a Board’s decision to suspend or revoke an existing certification. This appears in Rule 6.

5.2 C has been rephrased, but there is no “appeal” of a denial beyond the Board level (at present). Some states have a rather elaborate appeal procedure and some have a structure closer to that currently adopted by the Committee.

**RULE 6 - Suspension or Revocation**

6.1.1 & 6.1.2. The Committee decided to have all of the grounds apply to both suspension and revocation. The Board is given discretion to determine which is appropriate. Some of the provisions were re-worded from the original draft. The Committee decided to use 35 days rather than 28 days, and also feels that the Certified attorney should be required to notify the Board of the occurrence of any of the listed events within 35 days of occurrence.

We also discussed the use of a term “Certificate Holder” versus “Board Certified Specialist”. Both terms are used in various locations. At present, it was our feeling that the term Board Certified Specialist should usually be used. One question in this regard was the status of a “Board Certified Specialist” whose certificate has expired, or is in the process of being revoked or suspended. Basically, after the certification has expired, then he/she is no longer a “Board Certified Specialist”. In the case of a ‘Certificate Holder’ whose certificate was in the process of being revoked, that person would remain a Board Certified Specialist, until the certification was actually revoked. At present we do not have any procedure for appealing beyond the actual Board. Some States include an appeal process that extends past the Board level, which would raise the question of whether the person’s certificate remains in effect through all levels of the appeal process.

Rule 6.1.1(I). The Committee decided that the Board would have discretion to revoke or suspend an existing certification after initial termination of malpractice, even if additional appeals were possible. This is because such appeals could take years to conclude and the Committee felt that the Board should be able to act to suspend or revoke a certification while those appeals were on-going. The same grounds apply to a suspension under Rule 6.1.2.
One issue with regard a suspension under the Rule 6.1.2, is whether the person remains a “Board Certified Specialist” during this suspension period. Presumably they would no longer remain qualified as a “Board Certified Specialist”. We decided to add some clarification to the definition to of the Board Certified Specialist to make it clear that if the person is suspended, etc, that he/she no longer meets the definition of Board Certified Specialist.

At present, Rule 6.1.2 contemplates a maximum suspension of twelve (12) months, however, we may want to revise that to simply leave it within the discretion of the Board as to the length of time and not specify any maximum.

Also at present, we do not have any provision for “reprimand” of a certified attorney, but we may want to include the option of a reprimand, which presumably would be a lesser sanction than suspension.

6.4 – Rules for Appeal – Rule 6.4 provides for a “request for review” of the Board’s determination to revoke or suspect (or perhaps also to reprimand), but that review is done at the Board level and at present, there is no procedure included for an “appeal”, beyond the Board itself. Also discussed whether the applicant should go to the Specialty Committee for appeal or go to the Board directly. The conclusion was that the appeal should go to the Board. As with a denial of an initial application for certification, there is no appeal beyond the Board.

Rule 6.4 does not at present specify how the “written request” to the Board is to be made, and presumably that would have to be sent out as a paper request. In other words, the Committee contemplates that a “written” request means writing on paper as opposed to electronic communication. If this is considered to be an issue of concern, then an appropriate definition could be included in the “Definition” section.

RULE 7. - Recertification

Rule 7.1 will generally refer to Rule 3 for the requirements for recertification, since that Rule contains more specificity regarding those requirements. At present, a few of the references to those requirements are being retained in Rule 7.1.

One question that was raised regarding recertification is how long the applicant should be required to retain the CLE records after recertification. We contemplate that the applicants will be filling out a form that lists the CLEs they attended, how many credits were involved, etc. to satisfy the CLE requirements for recertification (as well as original certification). We also contemplate that the Board will do “spot audits” of those records. We expect that such spot audits would occur within a year (or so) of the filing of the application, so at a minimum, the applicant should be required to retain those CLE records for at least a year after becoming certified or recertified.

The Rules following Rule 7.1 are renumbered from their current numbering to better fit the sequence.
Rule 7.1.6 (as renumbered) are modified to allow the Board to determine how the applicant is to demonstrate continued knowledge of the law, including the possibility of ordering the applicant for recertification to take the written examination.

Rule 8. Confidentiality

There was considerable discussion regarding the confidentiality issue, and as a result, Rule 8 has been revised. The overall concept of Rule 8 remains that information collected during the certification process remains confidential. The certification process documents are only available for review under limited circumstances.

The Board is given the authority to investigate a claimed breach of confidentiality, but the Board’s ability to respond to such a breach is necessarily limited to either removal of the Board Member or Committee Member guilty of a breach, or reporting the matter as a violation of the Rules of Professional Conduct.

The Committee also felt that Rule 19 of the general rules concerning the State Bar should be modified to include reference to this rule, in order to bind all members of the Bar. Therefore we modified our proposed Rule to add a note to request the amendment to the State Bar Rules.

Rule 8.4 – Claim of Breach of Confidentiality

A question was raised about possible sanctions for breach of the requirement of confidentiality that will appear in Rule 8. After discussion, we determined that there should be some sanctions permitted by these Rules, which would have to relate to the activities of the Board or Specialization Committees.

Rule 8.5 - Cross Reference to the Immunity Rule

Discussion – no need to talk about holding the reporter harmless from reporting a violation of the law or Rules of Professional Conduct. All attorneys would still have a duty to report breaches of unethical conduct or violations of law. The heading may need to be changed.

Rule 9 - Recusal

The Committee also discussed the concept of proposed Rule 9 which deals with conflicts of interest. Included in this discussion, was a review of the Court Rules that relate to recusal of Judges, which provides some guidance, but, in some respects, is not strictly applicable to this situation. One question is how far do we go with the concept. We probably want to include members of the Board or Committee Member’s household, any
descendent of the Board etc. Member, and perhaps Members of the person’s firm. One problem with going “too far” with the concept is that we don’t necessarily want to eliminate everyone who has dealt with the applicant, and who knows what the applicant is really like. Part of the concept of the certification process is to require applicants to meet a higher level of competence and professionalism, and this often requires knowledge gained from dealing with the person in their actual law practice.

Another aspect to this Rule would be how the recusal is accomplished. Basically, this would be a voluntary recusal process where the Board or Committee Member would simply recuse themselves with regard to discussions concerning a particular applicant. There should not be any requirement as to a particular statement or disclosure as to why a recusal has been made.

The draft rules for Rule 9 are derived substantially from California rules.

James B. Steward
Chairperson
ATTACHMENT C

– Michigan Specialization Rules Discussion Draft
RULES GOVERNING THE
STATE BAR OF MICHIGAN PROGRAM
FOR CERTIFYING LEGAL SPECIALISTS

RULE 1.
PURPOSE

The Rules Governing the State Bar of Michigan (“State Bar”) Program for certifying Legal Specialists is to establish a program for certifying specialists in specified areas of law, to identify and enhance public access to appropriate legal services by regulating the certification of attorneys as specialists, who have proficiency in the specialty fields, to identify such attorneys to the public, and to encourage attorney competence and efficiency.

Rule 1.1. Short Title

These rules shall be known as the Michigan Rules for Certifying Legal Specialists.

Rule 1.2. Public Notice

The State Bar may cause a public notice to be promulgated where and when it deems necessary, including, for example, telephone directory yellow pages, in substantially the following form:

ATTORNEYS INDICATING “BOARD CERTIFIED” OR “SPECIALIST” HAVE BEEN CERTIFIED BY THE STATE BAR OF MICHIGAN AS HAVING SPECIAL KNOWLEDGE, SKILLS, AND PROFICIENCY IN THEIR AREAS OF PRACTICE.

ALL PERSONS ARE URGED TO MAKE THEIR OWN INDEPENDENT INVESTIGATION AND EVALUATION OF ANY ATTORNEY BEING CONSIDERED.

This notice published by the State Bar of Michigan Board Of Legal Specialization, Michael Franck Building, 306 Townsend Street, Lansing, Michigan 48933-2083, telephone number (517) 346-6300, (toll free) (800) 968-1442.

Rule 1.3. Liability

The State Bar shall assume no liability to any persons or entity whomever by reason of the adoption and implementation of this Certification program.

Rule 1.4. Amendment
These rules may be amended in accordance with the procedures for amending the Rules Regulating the State Bar.

**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. "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.

**RULE 2.**
Rule 2.1. **Board of Legal Specialization**;

2.1.1. **Composition.** The Court hereby establishes a Board of Legal Specialization (“Board”), which Board shall have authority and jurisdiction under state law over the subject of certification of attorneys as specialists. The Board shall be composed of thirteen (13) members appointed by the Court. The Board shall be composed of eight (8) attorneys, two (2) judges, two (2) law faculty members from accredited Michigan law schools engaged in full time education, and one (1) representative of the Institute of Continuing Legal Education. The Attorney members of the Board shall be representative of the legal profession and shall have practiced continuously for five (5) years prior to appointment. The Attorney members may include Attorneys who are in general practice as well as those who are Board certified specialists or otherwise deemed to be competent in the specialty area(s) in which they practice. If a member of the Board misses more than three (3) meetings of the Board in any twelve month period, the member is subject to removal.

2.1.2. **Terms.** The initial members of the Board shall hold office for terms of three (3) years. Appointment to a vacancy among the members shall be made by the Supreme Court for the remaining term of that member leaving the Board. Any member shall be eligible for reappointment to not more than one consecutive additional three (3) year term after having served one full three (3) year term. Initial appointments to the Board shall be as follows:

A. Four shall be for terms beginning on the date of appointment and ending on December 31, of the following year;

B. Four shall be for terms beginning on the date of appointment and ending on December 31, of the second year following the appointment;

C. Five shall be for terms beginning on the date of appointment and ending on December 31, of the third year following the appointment.

2.1.3. **Meetings.** Meetings of the Board shall be held at regular intervals, at such times and places and upon such notice as the Board may from time to time prescribe.

A. Meetings are open to the public except when the Board is considering:

1. personal matters;
2. examination materials;
3. legal advice from counsel;
4. any information which is confidential or private under these Rules.

B. The Board may make determinations by a majority vote of a quorum of the Board, with the exception of the following which must be made by a majority of the entire Board;
1. recommendations for changes in rules of the Board;
2. ... [not yet determined]

C. Unless otherwise restricted by rules adopted by the full Board, a member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone or other means of remote communication by which all persons participating in the meeting can communicate with each other.

D. The Board may make determinations through mail vote. However, a determination by mail vote requires a majority of the entire Board.

2.1.4. **Title.** These rules shall be known as “Michigan Rules of Legal Specialization.”

2.1.5. **Board Officers.** The Supreme Court shall designate an Attorney member as chairperson. The Board may elect other officers, including a vice-chair and secretary. The vice-chair shall serve in the absence of the chairperson. Either the chairperson or the vice-chair shall be present to hold a meeting.

2.1.6. **Annual Report.** The Board shall file with the Court an annual report detailing the work of the Board.

**Rule 2.2. Powers and Duties**

The Board shall have authority and jurisdiction under state law over the subject of certification and regulation of specialization and certification of specialists in the practice of law in Michigan, and shall have the power and duty:

2.2.1 to administer these Rules and the rules and regulations of the Board;

2.2.2 to designate specialties of law practice, define the scope and limits of such specialties and to provide procedures to achieve these purposes;

2.2.3 to appoint, supervise, receive and review the recommendations of and consult with Specialty Committees as herein defined;

2.2.4 to make and publish standards for the certification of specialists, upon the Board’s own initiative or upon consideration of recommendations made by the Specialty Committees, such standards to be designed to produce a uniform minimum level of competence among the various specialties in accordance with the nature of each specialty;

2.2.5 to certify specialists or deny, suspend or revoke certification of specialists upon the Board’s own initiative, upon recommendations made by the Specialty Committees or upon requests for review of recommendations made by the Specialty Committees;
2.2.6 to establish and publish procedures, rules, regulations and by-laws to implement these rules;

2.2.7 to propose, and request the Court to make, amendments to these rules when appropriate;

2.2.8 to cooperate with other boards and agencies in enforcing standards of professional conduct and to report apparent violations of the Rules of Professional Conduct of this state to the appropriate disciplinary authority;

2.2.9 to evaluate and approve, or disapprove, continuing legal education courses for the purpose of relevancy;

2.2.10 to cooperate with other organizations, boards and agencies engaged in the certification of legal specialists or concerning the topic of legal specialization; and

2.2.11 to monitor Attorney representation concerning certification status; and

2.2.12 to appoint special committees to investigate and make recommendations on particular issues that arise from time to time, including a suspected breach of confidentiality, and to act on such committees’ recommendations.

Rule 2.3. Administration of Plan

2.3.1 The State Bar may appoint or contract for such services, equipment, facilities and staff as may be needed for the efficient administration of the Board's work.

2.3.2 The applicable assigned staff shall conduct a preliminary review of each application and complete a worksheet to show the file content for each Applicant prior to initial review by the applicable specialty committee.

2.3.3 Those Applicants who have questionable substantial involvement may be given the opportunity to respond to the Specialty Committee’s concerns in writing before the Applicant is denied to sit for the examination.

2.3.4 A minimum of two (2) Specialty Committee members shall review each application prior to making their recommendation to the full Specialty Committee.

2.3.5 The Board may allow Applicants found eligible, but who either fail to take the exam or who take the exam and fail it, to file an abbreviated application form if they reapply the following year.

2.3.6 Applicants will be notified in writing concerning the disposition of their applications.

Rule 2.4. Specialty Committees
The Board shall establish a Specialty Committee for each specialty in which specialists are to be certified.

2.4.1. **Composition.** The Specialty Committee shall be composed of five (5) members appointed by the Board, one of whom shall be designated by the Board as chairperson of the Specialty Committee. Members of the Specialty Committee shall be Attorneys licensed and currently in good standing to practice law in this state who are Board certified specialists in the specialty field, or, in the judgment of the Board, are otherwise deemed competent in the field of law covered by that specialty committee.

2.4.2 **Term of Office.** Specialty Committee members shall hold office for three (3) years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the Board to staggered terms of office and the initial appointees shall serve as follows: one shall serve for one (1) year after appointment; two shall serve for two (2) years after appointment; and two shall serve for three (3) years after appointment. Appointment by the Board to a vacancy shall be for the remaining term of the member leaving the Specialty Committee. All members shall be eligible for reappointment to not more than one additional three (3) year term after having served one full three (3) year term.

2.4.3 **Meetings.** Meetings of the Specialty Committees shall be held at regular intervals, at such times and places and upon such notice as each Specialty Committee may from time to time prescribe or upon direction of the Board.

**Rule 2.5. Jurisdiction of Specialty Committees**

Each Specialty Committee shall advise and assist the Board in carrying out the Board’s objectives and in the implementation and regulation of the procedures for the receipt, processing and evaluation of applications for certification in that specialty. Each Specialty Committee shall advise and make recommendations to the Board as to the standards for specialty and the certification of individual specialists in that specialty. Committees for specialties shall include:

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

**Rule 2.6. Duties of Specialty Committees**

Each Specialty Committee shall be charged with actively administering the plan in its specialty and, with respect to that specialty, shall:

2.6.1 after public hearing and due notice, recommend to the Board reasonable and pertinent standards applicable to that specialty;

2.6.2 make recommendations to the Board for certification, continued certification, denial, suspension or revocation of certification of specialists and for procedures with respect thereto;
2.6.3 administer procedures established by the Board for review of applications for certification and continued certification as a specialist and for denial, suspension or revocation of such certifications;

2.6.4 administer examinations and other testing procedures, if applicable, investigate references of Applicants and, if deemed advisable, seek additional information regarding Applicants for certification or continued certification as specialists;

2.6.5 make recommendations to the Board concerning the approval of and credit to be allowed for continuing legal education courses, or educational alternatives, in the specialty; and

2.6.6. perform such other duties and make such other recommendations as may be requested of or delegated to the Specialty Committee by the Board.

Rule 2.7. Limitation on Board Authority

The Board in the implementation of these rules shall not alter the following privileges and responsibilities of Certified Specialists and other Attorneys.

2.7.1 Scope of practice. No standard shall be approved which shall in any way limit the right of a Certified Specialist to practice in all fields of law. An Attorney, alone or in association with any other Attorney, shall have the right to practice in all fields of law, even though the Attorney is certified as a specialist in a particular field of law.

2.7.2 Practice of non-specialists. No Attorney shall be required to be certified as a specialist in order to practice in the field of law covered by that specialty. An Attorney, alone or in association with any other Attorney, shall have the right to practice in any field of law, even though the Attorney is not certified as a specialist in that field.

2.7.3 Individual certification. All requirements for and all benefit to be derived from certification as a specialist are individual and may not be fulfilled by nor attributed to the law firm of which the Certified Specialist may be a member.

2.7.4 Voluntary participation. Participation in the program shall be on a completely voluntary basis.

2.7.5 Multiple specialties. An Attorney may be certified as a specialist in more than one field of law. The limitation on the number of specialties in which an Attorney may be certified as a specialist shall be determined only by such practical limits as are imposed by the requirement of substantial involvement and such other standards as may be established by the Board as a prerequisite to certification as a specialist.

2.7.6 Advertisement. Subject to the requirements of the Rules of Professional Conduct, any Board Certified Specialist may include the following or similar statement in a legal advertisement or solicitation:

A. Board Certified ________________ Attorney*
Rule 2.8.  Financing the Plan

The financing of the plan shall be derived from fees collected from Applicants and participants in the plan and such other sources as the Court may from time to time approve. If fees are not established by the Supreme Court, the Board shall establish reasonable fees for each specialty field in such amounts as may be necessary to defray the expense of administering the plan, which fees may be adjusted from time to time. If established or adjusted by the Board, however, they must be approved by the Court as provided herein.

Rule 2.9.  Retained Jurisdiction of the Supreme Court

The Supreme Court retains jurisdiction with respect to the following;

A. amending these Rules;

B. hearing appeals taken from actions of the Board: and

C. establishing or approving fees to be charged in connection with administering these Rules.

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 Speciality 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.

**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.

Rule 3.4 Continuing Legal Education

3.4.1 New Certification Applicants - Required Hours / Time Period. Applicants (other than current Certified Specialists applying for recertification in the same specialty area) must complete a total of 60 hours of CLE in the specialty area within the three years
immediately preceding application, including at least ten (10) hours in each of those years, through December 31 of the year of application. Applicants may not receive credit for more than 30 hours of CLE in a calendar year.

3.4.2 Recertification Applicants - Required Hours / Time Period. Recertification Applicants must complete a total of 100 hours of CLE in the specialty area within 5 years after their last certification or recertification, including at least ten (10) hours in each of those years. Recertification Applicants may not receive credit for more than 30 hours of CLE in a calendar year.

3.4.3 Demonstration of CLE: Subject to standards established by the Board, the continuing legal education requirement may be satisfied by one or more of the following:

A. Attendance at continuing legal education seminars approved by the Board for the applicable specialty practice area;

B. Lecturing at such continuing legal education seminars; three hours of CLE credit may be awarded for each hour of actual teaching or presentation time under this subparagraph. Additional credit shall not be awarded for subsequent presentations of substantially the same material in the same year.

C. Authoring or writing articles, materials or books in the applicable specialty practice area published in professional periodicals or other professional publications; credit shall be awarded for the year in which the book or article actually appears in print. Number of hours of credit shall be determined by the applicable Specialty Committee.

D. Teaching courses in the applicable specialty practice area at an approved law school or other graduate level program presented by an accredited college or university or a recognized professional education association; up to eight hours of credit per course credit hour per year may be awarded for the teaching of such courses.

E. Completing such home study programs not listed above as may be approved by the Board in the applicable specialty practice area; and

F. Such other methods as may be approved by the Board.

3.4.4 CLE Standards. The Board shall, by rule or regulation, establish standards applicable to this rule, including, but not limited to, the method for establishing the number of hours allocable to any of the above-listed subdivisions. Such rules or regulations shall provide that hours may be allocated to each separate but substantially different lecture, article, or other activity described above.
3.4.5 **Course Approval Required:** Continuing legal education programs which will be accepted for purposes of these Rules must be approved by the applicable Specialty Committee in accordance with Board procedures.

3.4.6 **Verification of Continuing Legal Educational Credit:** Credit will only be given for continuing legal education programs if such credit is verified by the applicable Specialty Committee in accordance with Board procedures.

**RULE 4.**

**ACTIONS ON APPLICATIONS**

**Rule 4.1** **Board and Specialty Committee(s) Meetings**

4.1.1. **Meetings.** Meetings of the Board shall be held at such times and places as may be fixed by the chair or the Board.

4.1.2 **Attendance at Meetings.** Upon good cause shown, the Board may recommend to the Court that a member of the Board be removed from office. Unexcused absence from three meetings in any twelve-month period shall constitute good cause.

4.1.3 **Notice of Meetings.** All Board members shall receive reasonable notice of the time and place of a meeting. Reasonable notice includes first class mail or personal delivery. Alternatively, reasonable notice would include electronic transmission provided prior consent is obtained by the recipient. A member may waive a meeting notice in writing before or after the meeting. A member’s attendance at a meeting waives that member’s objections to that meeting’s notice unless that member objects to the transaction of any business for the reason that the meeting is not lawfully called or convened.

4.1.4 **Quorum and Voting.** All Board members shall have one vote. A quorum of the Board consists of a majority of its members.

4.1.5 **Meetings Via Electronic Means.** The Board may permit any or all members to participate in a meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting.

4.1.6 **Open to Public.** Meetings are open to the public, except when the Board is considering:

A. personal matters;
B. examination materials;
C. legal advice from its counsel;
D. any information which is confidential or private.

4.1.7 **Specialty Committee** – Except as otherwise provided by a Specialty Committee, each Speciality Committee shall operate under the same rules provided above for meetings of the Board.
Rule 4.2 Applications for Initial Certification and Renewal

4.2.1. Completion of Requirements. Prior to filing an application for certification as a Board Certified Specialist, an Applicant shall complete all requirements set forth in the applicable specialty standards as approved by the Board. Peer review shall occur subsequent to filing the application.

4.2.2. Form and Content. Applications shall be completed on application forms approved by the Board, and shall include all information required by the particular specialty standards for which certification is sought. Application forms shall be designed to determine whether the requirements set forth in the specialty standards have been met. The Applicant shall declare under penalty of perjury that:

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

B. The information submitted on the application is true, correct and up to date.

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

4.2.4. Processing of Application. The Applicant shall be notified if the Board or Specialty Committee considers an application to be incomplete or insufficient on its face. The provision of any supplemental information shall be considered part of the application process. The failure to properly complete the application form, including the submission of the requested information or the failure to supply supplemental information after a request for such, shall cause an application to be incomplete. If an application remains incomplete for a period of ninety-one (91) 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 in the application form, a request for supplemental information or otherwise, then in such case the incomplete application is automatically denied.

4.2.5. Withdrawal of an Application. An Applicant may withdraw by written notice to the Board an application at any time during the application process prior to denial of the application.

4.2.6. Confidentiality. The contents of the application form, including all documents, records, communications, statements of reference, and other papers and filings received in connection therewith, and shall be the property of the Board and shall be held in confidence and not released, except as provided under these rules, other rules of the State Bar, or upon prior order of the Court.

4.2.7. Effective Date of Certification and Re-Certification.
A. **Original Certification.** The effective date of certification shall be the date the Board authorizes certification.

B. **Re-Certification.** The effective date of re-certification shall be five (5) years from the effective date of such re-certification.

4.2.8 **Interruption of Law Practice.** A Board Certified Specialist whose practice is interrupted, may, on approval by the Board, remain certified if the Board Certified Specialist complies with the specialty continuing legal education requirements, pays annual dues and complies with any other requirements imposed by the Board.

4.2.9. **Applicant Consents to Confidential Inquiry.** The Board and Specialty Committees may contact any person regarding the Applicant’s competence and qualifications without disclosing this fact to the Applicant. The Applicant waives any right to discover who was contacted, what they may have been asked, and what information if any was provided.

4.2.10. **Applicant Authorizes Release of Disciplinary Action.** By filing an application, the Applicant agrees to reveal as to all jurisdictions:

   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.

**RULE 5.**

**BOARD ACTION ON SPECIALTY COMMITTEE RECOMMENDATION**

**Rule 5.1. Action Regarding Certification or Recertification**

Except as provided in Rule 5.2, within ninety one (91) days of the receipt of the Specialty Committee Recommendation, the Board shall approve the application, deny the application, or take discretionary action as permitted by Rule 5.2. Such actions by the Board shall be by a vote of a majority of Board members at a meeting of the Board. The Applicant shall be notified of the action of the Board in writing. If the application has been denied, the notice shall specify the basis for the denial. All notices shall be sent by regular mail and addressed to the Applicant at the address last furnished to the State Bar of Michigan.

**Rule 5.2. Discretionary Action By Board**

While the Board is considering an application for certification or recertification, and at the discretion of the Board, the Board may:
A. Request the Applicant to participate in a formal interview. The purpose of the interview is to provide the Applicant with an opportunity to address the Board regarding whether certification or recertification should be granted. The Applicant is not entitled to have counsel present at the interview.

B. Send the application back to the Specialty Committee for further action as directed by the Board. In such case the Board shall notify the Applicant of such action in writing by regular mail.

Rule 5.3 Actions after Denial

5.3.1 If the vote of the Board is tentatively to deny the application, the Board shall so notify the Applicant pursuant to Rule 1.5.8 and state the basis for the denial. The Applicant shall be permitted to withdraw the application or submit additional relevant information to the Board regarding the application, by sending such notice of withdrawal, or such additional information, to the Board within 35 days of the date of the Board’s notice of tentative denial. As provided above, the Board may, but is not required to, request the Applicant to participate in a formal interview. The Applicant is not entitled to have counsel present at the interview. If the Applicant does not respond timely in writing to the notice from the Board, the tentative denial shall become final. An Applicant whose application is denied, may not reapply until one year after the denial becomes final.

Rule 5.3.2 Duration of Certification

Certification by the Board shall commence on the date indicated in the Certification as a Board Certified Attorney, and shall remain in effect for the period specified on the notice of certification unless earlier revoked or suspended by the Board.

RULE 6
SUSPENSION OR REVOCATION OF CERTIFICATION


Rule 6.1.1. Revocation. The certification of a any Certificate holder may be revoked, if the Board determines that:

A. The certification was granted contrary to the Rules of the Board or the requirements of the Speciality Committee.

B. The certification was granted to a person who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the Board or the Speciality Committee in applying for a certificate.
C. The Certificate holder has failed to abide by the rules required by a Certificate holder and the requirements of the Speciality Committee necessary to maintain certified status.

D. The Certificate holder has failed to pay all/any fees required of certificate holders by the Board.

E. The Certificate holder no longer meets the requirements established by the Board for certificate holders.

F. The Certificate holder has been subject to final disciplinary action by the Supreme Court or by the highest court in another state or federal court resulting in reprimand, suspension, disbarment, or other discipline.

G. The Certificate holder has been convicted of a felony.

H. The Certificate holder has been previously suspended and at the end of the period of suspension, is not in full compliance with the requirements of these Rules.

I. The Certificate holder has been determined to be guilty of malpractice or other attorney misconduct as the result of a civil matter.

J. The Certificate holder has failed to inform the Board in writing within 35 days after the occurrence of any fact, circumstance, act or event described in Rule 6.1.1.

K. The program for certification in that field is terminated.

Rule 6.1.2. Suspension. If the Board finds a violation of one or more of the elements outlined under Rule 6.1.1, the Board may, lieu of revoking a certification pursuant to Rule 6.1.1, suspend the certification for a period of up to twelve (12) months.

Rule 6.2. Duty to Inform

The Certificate holder shall inform the Board in writing by regular mail within 35 days after the occurrence of any of the acts or events described under Rule 6.1.1.

Rule 6.3. Notice.

The Board shall give to any Certificate holder whose certificate is subject to revocation or suspension, written notice of its intent to revoke or suspend the certificate and the reason, sent by regular mail, postage prepaid, at least 35 days prior to the effective date of the revocation or suspension. Such notice will be addressed to the Certificate holder at the address last furnished
to the State Bar of Michigan.

Rule 6.4 Request for Review

6.4.1 After receiving notice of the Board’s intent to revoke or suspend the certification and before its effective date, a Certificate holder may make a written request to the Board for a review of the Board’s decision. To be effective, this request for review must be sent to the Board in time for the Board to receive it before the effective date of the revocation or suspension; state the reasons why the Board’s determination is alleged to be in error; and specify whether the Certificate holder is requesting a hearing.

6.4.2 If no hearing is requested, the Board shall make a decision within 63 days following receipt of the request for review. If a hearing is timely requested, the Board must set a hearing within 63 days after receiving the request for a hearing.

6.4.3 During the time following a request for Review and prior to the Board’s decision, any revocation or suspension is deferred until the request is withdrawn or the Board has entered its decision. The Board may, but is not required to, request a written response from the applicable Specialty Committee, if the dispute involves requirements of that committee. The Certificate holder may not have counsel present at the hearing.

Rule 6.5 Board Decision

Within 35 days after the hearing, or 63 days after receipt of a request for review without a request for a hearing, the Board will determine whether the Certificate holder’s certificate will be revoked, suspended or remain in effect and the effective date of any revocation or suspension. The Board will notify the Certificate holder in writing about the decision and its basis in the manner required by Rule 6.3. The decision of the Board will be final. If a Certificate holder’s certification is revoked or suspended, the former Certificate holder may not reapply until at least one year has elapsed after the effective date of the revocation or suspension.

Rule 6.6 Effect of Revocation or Suspension

As of the effective date of a revocation or suspension, the former Certificate holder shall not hold himself or herself out to the public or to any attorney in any manner whatsoever as being certified by the Board in the legal specialty which is subject to the revocation or suspension. The Board shall publish in the Michigan State Bar Journal notification of any revocation or suspension of a former Certificate holder.

RULE 7.
ELIGIBILITY FOR RECERTIFICATION

7.0 Recertification Period

Recertification shall be required every five years from the effective date of certification or recertification.
An Applicant must show that during the current certification period he or she has complied with all requirements set forth in the specialty standards approved by the Board engaged in the practice of the law in for the specialty field in which recertification is sought, including all of the requirements of Rule 3 which apply to Applicants for re-certification to the same extent as demonstrated in the application for original certification or as set forth in the individual standards. Such showing may be made by a sworn statement, in the discretion of the appropriate Specialty Committee Commission. Each area of certification established under this chapter shall contain requirements and safeguards for the continued proficiency of any Board Certified Specialist certificate holder. The following minimum standards shall apply:

7.1.1 Continued Substantial Involvement

A satisfactory showing of substantial involvement during the period of certification in the particular area for which certification was granted.

7.1.2 Educational Requirements

A satisfactory showing of such continuing legal education as required by these Rule in the area for which certification was granted but in no event less than 10 hours per year. Each Applicant for recertification shall maintain records sufficient to prove compliance with the educational requirements for recertification for at least one year from the date the Board acts to decertify the Applicant. The Applicant shall provide such records to the Board as the Board may require.

Educational activities which take place within the last six (6) months of a certification period that satisfy the individual standards, and which are in excess of the number of educational activities necessary for re-certification, may be applied to the next certification period.

7.1.3 Peer Review. Satisfactory peer review and professional ethics record in accordance with these Rules.

7.1.4 Standing with the State Bar of Michigan. Any Applicant for recertification who is not, at the time of application for recertification, a member in good standing of the State Bar of Michigan, or any other bar or jurisdiction in which the Applicant is admitted, as a result of discipline, disbarment, suspension, or resignation, or other disciplinary action in lieu thereof, shall be denied re-certification. The fact of a pending disciplinary complaint or malpractice action against an Applicant for re-certification shall not be the sole basis to deny re-certification.

7.1.5 Payment of Fees. The payment of any fees prescribed by the plan and prior to the end of the five (5) year certificate period required by the Board.

7.1.6 Independent Inquiry and Review; Reexamination. The Applicant must demonstrate to the Board both continued knowledge of the law of this state and continued competence with respect to the specialty in such manner as the Board requires. The Board may
order an Applicant for re-certification to take (and pass) the written examination to satisfy the requirements of this Rule.

7.2 **Duration of Recertification.** Each re-certification is for a period of five years, unless revoked or suspended as provided herein, and shall expire at the end of said five (5) years unless renewed as provided by these Rules. If timely application for re-certification is made, certification shall continue in effect until final action is taken on the application for re-certification, unless earlier revoked or suspended.

7.3 **Judicial Service/Tolling.** The Board, in the exercise of its discretion, may waive the five-year re-certification requirement in the event of judicial service during the certification period. The certification period may be tolled for the time during the certification period that the certified specialist is actually engaged in judicial service and otherwise is complying with the other requirements for continued certification (including the required number of CLE credits, paying the required fees, etc.). The certified specialist must provide confirmation of the fact that he or she continues to engage in judicial service when requested to do so by the Board and must notify the Board when he or she ceases to be engaged in judicial service.

**Rule 7.4 Failure to Meet Standards; Lapse of Certificate; Revocation of Certificate.**

Any Applicant for re-certification who has either failed to meet the standards for re-certification, or has allowed the certificate to lapse, or whose certificate has been revoked must meet all the requirements for initial certification as stated in these Rules and set out in the applicable specialty area's standards, including taking the written examination, unless otherwise ordered by the Board.

**RULE 8. CONFIDENTIALITY**

**Rule 8.1. General Rule**

8.1.1 **Applications and Related Documents Confidential.** The contents of the application form, and all documents, records, communications, other papers and statements of reference submitted to or received by the Board in connection with any application for certification or re-certification under these rules shall be the property of the Board and shall be held in confidence, and shall not be released or disclosed, even to the Applicant, except to appropriate parties based on legitimate need to know, and except as otherwise provided by these rules, or upon prior order of a Court of competent jurisdiction. Provided, however, an Applicant may be informed as to the status of his/her application.

8.1.2 **Revocation of a Certificate.** All information regarding revocation shall be strictly limited to those persons who need to know and kept strictly confidential.

8.1.3 **Applicability.** These confidentiality rules apply to all Applicants, Specialty Committee members, the Board members and any State Bar staff, subject to the requirements of Rule 19 of the Bar Association of the State Bar of Michigan.

[Note: Rule 19 Section 2 may need to be amended to include this information as confidential as stated above.]
Rule 8.2.  Exceptions to General Rule

8.2.1 General Exceptions. General exceptions to the above general rule of confidentiality include are the following:

A. Previously published information or any other information in the public domain;
B. Specialty area definitions;
C. Names and biographical information about the Boards, Specialty Committees, Applicants and entities associated with the process;
D. The filing of an application.

8.2.2 Request for Review Appeals. In the event of a Request for Review of any decision:

A. In the event of an appeal of any decision, the Applicant and the Board will have access to relevant information to prepare the appeal for Review.
B. In the event of an appeal, the counsel for the Board will have access to the same information provided to the Applicant;

Rule 8.3. Examinations

8.3.1 Actual or proposed. All actual examinations taken by Applicants as well as all proposed examination questions will remain strictly confidential but will be available to appropriate staff and Specialty Committee members based on a need to have access. Provided, however, the Board may authorize release of prior years’ examination questions from time to time.

8.3.2 [Cross references to procedures in accreditation, reaccreditation, and other sections which may have confidentiality rules]

Rule 8.4. Claim of Breach of Confidentiality

8.4.1 Who may claim. Any Applicant, Specialty Committee member, Board member, staff member, or outside source who provide information to this board or committee, may make a claim for a breach of confidentiality.

8.4.2 Where referred. Any claim of breach of confidentiality must be made to the chairperson of the Board, unless the chairperson is the subject of the claim; then to any member of the Board.

8.4.3 Procedure. Upon a claim of breach of confidentiality, a three (3) member special committee shall be appointed by the Board from among its members to investigation and determine such claim. No person against whom a claim of breach of confidentiality is
brought shall serve on the special committee investigating said claim. In the conduct of investigations, the special committee may, among other things, administer oaths and affirmations, compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the alleged breach of confidentiality. Any claim of breach of confidentiality shall be investigated fully, including but not limited to, confronting the the Board member, Specialty Committee member, or other person(s) against whom the claim has been made; and if the claim is found to have merit. Upon completion of the investigation, the special committee shall submit a report to the Board. The report shall include the findings and recommendations of the special committee as to whether the offending person should be removed from their position. The special committee shall also report the failure of any person to cooperate in the investigation of the claim. The Board may remove a Board or Speciality Committee member found to have violated these Rules. No person against whom a claim of breach of confidentiality is brought shall serve on a special committee investigating said claim.


If during the investigation of an Applicant’s information, there is discovered evidence of what could reasonably lead one to conclude may be a violation of law or the Rules of Professional Conduct, such evidence shall be reported as required by law or the Rules of Professional Conduct to the appropriate authorities. The report and subsequent disclosure, when made in good faith, shall be deemed to hold harmless and indemnify that reporter from any sanctions under these Rules or the Rules of Professional Conduct. Nothing in these Rules supercedes the duty to report a violation of law or the Rules of Professional Conduct.

RULE 9. CONFLICT OF INTEREST

Rule 9.1 Circumstances Requiring Recusal.

A member of the Board or Specialty Committee shall recuse himself or herself from any and all participation in the consideration of an Applicant or from attempting to influence others with respect to an Applicant in the following circumstances:

9.1.1 He or she is a member of the same law firm as the Applicant, or was such within the preceding two years;

9.1.2 He or she, or the law firm or office with which he or she is affiliated, represents the Applicant;

9.1.3 He or she, or the law firm or office with which he or she is affiliated, is a party to pending litigation in which the Applicant, or the law firm or office with which the Applicant is affiliated, is also a party or represents a party to that litigation.

9.1.4 He or she, or the law firm or office with which he or she is affiliated, represents a party in pending litigation in which the Applicant, or the law firm or office with which the Applicant is affiliated, is a party;
9.1.5 He or she or his or her spouse is related to the Applicant by consanguinity or affinity within the third degree according to the rules of civil law; or

9.1.6 He or she has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit for or against the Applicant for malpractice.

Rule 9.2 Applicant as Opposing Counsel.

As a general rule, the fact that a member of the Board or Specialty Committee represents one party to a legal matter and the Applicant represents the opposing party is not a fact that requires recusal. In such event, however, the member of the Board or Specialty Committee shall notify the Applicant and give the Applicant the opportunity to recuse the member of the Board or Specialty Committee based on a belief of personal bias or prejudice.

Rule 9.3 Recusal Procedure.

A member of the Board or Specialty Committee who is required to recuse himself or herself shall:

9.3.1 Immediately disclose to the full Board or Specialty Committee that he or she has a disqualifying interest but need not state the reasons therefor;

9.3.2 Withdraw from any participation in the matter of the application of that Applicant;

9.3.3 Refrain from attempting to influence another member of the Board or Specialty Committee and

9.3.4 Refrain from voting upon the application of that Applicant.

Rule 9.4 Recusal Request.

Any Applicant who is aware of factors applicable to a Board or Specialty Committee member which indicate a potential conflict of interest within the meaning of these Rules may submit a request in writing that a Board or Specialty Committee member be recused. Recusal of a Board or Specialty Committee member is waived if the Applicant does not request recusal within 21 days after the Applicant discovers, or should have discovered, the factors which indicate a potential conflict of interest within the meaning of these Rules.

Rule 9.5 Disqualification.

In the event that a member of the Board or Specialty Committee does not voluntarily recuse himself or herself, the chair of the Board or Commission may, upon becoming aware of factors which may indicate a potential conflict of interest within the meaning of these Rules, initiate an inquiry as to whether or not such a member should be recuse pursuant to the requirements of these Rules.
Rule 9.6  Action on Application of Member of the Board or Specialty Committee.

An application for certification or recertification of a member of the Board or Specialty Committee may be considered by the Board or Specialty Committee, so long as such member of the Board or Specialty Committee withdraws from the room at the time that his or her application is considered, does not vote on his or her own application and does not attempt to influence another member of the Board or Specialty Committee with respect to his or her own application.

RULE 10.
SEVERABILITY

Rule 10.1  Invalidity of a Rule Does Not Invalidate the Rest.

If any provision of these Rules or the application of any such provision to any person or circumstances shall be held invalid, the remainder of these Rules to the extent that they can be given effect, or the application of such provision to persons or circumstances other than those as to which they are held invalid, shall not be affected thereby, and to this extent the provisions of these Rules are severable.
ATTACHMENT D

- State Comparison Chart (for AR, CA, TX, NJ, FL, NC)
<table>
<thead>
<tr>
<th>Topic</th>
<th>MICHIGAN</th>
<th>ARIZONA</th>
<th>CALIFORNIA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Board</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Michigan Board of Legal Specialization</td>
<td>Board of Legal Specialization</td>
<td></td>
</tr>
<tr>
<td>Appointed</td>
<td>Supreme Court</td>
<td>President State Bar w/ approval Board of Governors</td>
<td>CA Bd of Governors</td>
</tr>
<tr>
<td>Number</td>
<td>13</td>
<td>16</td>
<td>12</td>
</tr>
<tr>
<td>Composition</td>
<td>8 attys, 2 judges, 2 law faculty &amp; 1 ICLE representative</td>
<td>10 practicing atty, specialists, general practitioners, one representative from each law school, two public members</td>
<td>Certified Specialists</td>
</tr>
<tr>
<td>Terms</td>
<td>Staggered 3 year</td>
<td>4 year terms</td>
<td>Not Stated</td>
</tr>
<tr>
<td><strong>Specialty Committee</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointed</td>
<td>Appointed by Mi Board of Legal Specialization</td>
<td>President of the Board of Governors</td>
<td>Appointed by the Board of Governors</td>
</tr>
<tr>
<td>Number</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Terms</td>
<td>3 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Composition</td>
<td>Attys licensed &amp; in good standing; Board certified specialists in the field or otherwise competent</td>
<td>Not stated</td>
<td>8 lawyers and one non-lawyer</td>
</tr>
<tr>
<td><strong>Qualifications</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>Licensed attorney in good standing</td>
<td>Licensed attorney in good standing</td>
<td>Actie member of the CA bar in good standing and not suspended from Board of Immigration Appeals, IRS, US District Court</td>
</tr>
<tr>
<td>Malpractice</td>
<td>$1,000,000 in malpractice insurance</td>
<td>Not stated</td>
<td>Not Stated</td>
</tr>
<tr>
<td><strong>Topic</strong></td>
<td><strong>Michigan</strong></td>
<td><strong>Arizona</strong></td>
<td><strong>California</strong></td>
</tr>
<tr>
<td>----------</td>
<td>--------------</td>
<td>-------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Presence</td>
<td>Office in Michigan or 25 miles from a border, conducts business three days per week - 3 years prior to application</td>
<td>Physical presence in the State</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Substantial Involvement</td>
<td>Substantial Involvement for each specialty area</td>
<td>At least 50% of time in full-time practice</td>
<td>At least 25% in the specialty area.</td>
</tr>
<tr>
<td>Practice Requirement</td>
<td>At least 5 years full time</td>
<td>Licensed in Arizona for at least 2 years</td>
<td>At least 5 years, perform minimum of designated tasks in the field, educational experience in the field.</td>
</tr>
</tbody>
</table>

**Approval of Applications**

<table>
<thead>
<tr>
<th><strong>Exam</strong></th>
<th>Pass Exam</th>
<th>Pass Exam</th>
<th>Pass Exam</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CLE</strong></td>
<td>Not stated</td>
<td>Not stated</td>
<td>45 hours of CLE within the past three years, in the practice area, not more than half of the CLE requirements by writing, editing, teaching, advanced postgraduate course, self-verified viewing approved program; self-verified participation in approved audiovisual activities</td>
</tr>
<tr>
<td><strong>Peer Review</strong></td>
<td>The Board or Specialty committee shall conduct and independent inquiry and review of the Applicant which shall consider information furnished by references and other information</td>
<td>at least 5 attorneys or judges</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Topic</td>
<td>MICHIGAN</td>
<td>ARIZONA</td>
<td>CALIFORNIA</td>
</tr>
<tr>
<td>-------</td>
<td>----------</td>
<td>---------</td>
<td>------------</td>
</tr>
<tr>
<td>References</td>
<td>Minimum of 5 references to attest to the competence in the specialty area pursuant to the Specific Area requirements. The references must be: Substantially involved in the specialty area, can't be partners or associates of the applicant, must have had dealings in the immediately preceding 3 years, TBLS may request references from other attorneys or judges.</td>
<td>approved by not less than five members of the Estates and Trust Law Advisory Commission</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Application Fee</td>
<td>Not stated</td>
<td>Not stated</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Appeals</td>
<td>Not stated</td>
<td>appealed to Board of Legal Specialization then to Board of Governors.</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Topic</td>
<td>MICHIGAN</td>
<td>ARIZONA</td>
<td>CALIFORNIA</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Maintain the Certificate</td>
<td>100 hours of CLE in the specialty area within 5 years after their last certification or recertification</td>
<td>12 hours per yr in field + 3 hours in professional responsibility</td>
<td>45 hours of CLE within the past three years, in the practice area, not more than half of the CLE requirements by writing, editing, teaching, advanced postgraduate course, self-verified viewing approved program; self-verified participation in approved audiovisual activities.</td>
</tr>
<tr>
<td>CLE</td>
<td></td>
<td></td>
<td>Same criteria except that quasijudicial service or other equivalent activities may be accepted also tasks in the last 6 months in excess of requirements can be applied to next reporting period. 60 hours of CLE within the past 5 years.</td>
</tr>
<tr>
<td>Recertification</td>
<td>Must maintain the same requirements for becoming certified.</td>
<td>Must maintain substantial involvement in the area.</td>
<td></td>
</tr>
<tr>
<td>Testing</td>
<td>None required</td>
<td>None required</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Good Standing</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Revocation</td>
<td>Certification may be revoked or suspended by the Board for failure to abide by the rules, non-payment of fees; convicted; of a felony; previously been suspended; guilty of malpractice etc.</td>
<td>The BLS may revoke the certificate of a lawyer specializing in estate and trust law for any reason specified in the Rules &amp; Regulations</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Topic</td>
<td>MICHIGAN</td>
<td>TEXAS</td>
<td>NEW JERSEY</td>
</tr>
<tr>
<td>-------</td>
<td>----------</td>
<td>-------</td>
<td>-----------</td>
</tr>
<tr>
<td><strong>Board</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Michigan Board of Legal Specialization</td>
<td>Texas Board of Legal Specialization</td>
<td></td>
</tr>
<tr>
<td>Appointed</td>
<td>Supreme Court</td>
<td>President of the State Bar of Texas with approval of the Board of Directors</td>
<td>Supreme Court</td>
</tr>
<tr>
<td>Number</td>
<td>13</td>
<td>12</td>
<td>No more than 12</td>
</tr>
<tr>
<td>Composition</td>
<td>8 attys, 2 judges, 2 law faculty &amp; 1 ICLE representative</td>
<td>Licensed attorneys some of which specialize and some who are in general practice.</td>
<td>Not stated</td>
</tr>
<tr>
<td>Terms</td>
<td>Staggered 3 year</td>
<td>3 year terms limited to 2 terms</td>
<td>3 year term - limited to 2 terms</td>
</tr>
</tbody>
</table>

| Specialty Committee | | | |
| Appointed | Appointed by MI Board of Legal Specialization | Appointed by the TBLS in such manner and terms as directed by the TBLS | Created & appointed by the Supreme Court |
| Number | 5 | Not Stated | Specified per committee |
| Terms | 3 years | Not Stated | 3 year term - 3 successive terms |
| Composition | Board certified specialists in the field or otherwise competent | Not Stated | Practicing attorneys or retired judges. |

<p>| Qualifications | | | |
| License | Licensed attorney in good standing | Atty in good standing of the Texas State Bar. | Atty in good standing |
| Malpractice | $1,000,000 in malpractice insurance | Not stated | |</p>
<table>
<thead>
<tr>
<th>Topic</th>
<th>MICHIGAN</th>
<th>TEXAS</th>
<th>NEW JERSEY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presence</td>
<td>Office in Michigan or 25 miles from a border, conducts business three days per week - 3 years prior to application</td>
<td>Must have maintained a Texas office for the three years immediately preceding the application, conducts business on an average of three days per week. This requirement may be waived on the showing of good cause.</td>
<td>Maintain an office in New Jersey and New Jersey bank accounts or employed by local, county or State government giving legal advice to clients</td>
</tr>
<tr>
<td>Substantial Involvement</td>
<td>Substantial Involvement for each specialty area</td>
<td>Defined by specialty</td>
<td>Defined by specialty</td>
</tr>
<tr>
<td>Practice Requirement</td>
<td>At least 5 years full time</td>
<td>At least 5 years on a full-time basis</td>
<td>At least 5 years</td>
</tr>
</tbody>
</table>

**Approval of Applications**

<table>
<thead>
<tr>
<th>Exam</th>
<th>Pass Exam</th>
<th>Not stated</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLE</td>
<td>Not stated</td>
<td>60 hours of CLE in the specialty area within 3 years immediately preceding application. Maximum of 5 hours of self-study.</td>
<td>CLE requirements per specialty for prior 3 years</td>
</tr>
<tr>
<td>Peer Review</td>
<td>The Board or Specialty committee shall conduct an independent inquiry and review of the Applicant which shall consider information furnished by references and other information</td>
<td>Not stated</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Topic</td>
<td>MICHIGAN</td>
<td>TEXAS</td>
<td>NEW JERSEY</td>
</tr>
<tr>
<td>-------</td>
<td>----------</td>
<td>-------</td>
<td>------------</td>
</tr>
<tr>
<td>References</td>
<td>Minimum of 5 references to attest to the competence in the specialty area pursuant to the Specific Area requirements. The references must be: Substantially involved in the specialty area, can’t be partners or associates of the applicant, must have had dealings in the immediately preceding 3 years, TBLS may request references from other attorneys or judges.</td>
<td>Minimum of 5 individuals to be contacted as references to attest to the applicants competence in the specialty area. Each are will have specific requirements. The references are individuals who have substantial involvement in the specialty area, are not partners or associates of the applicant, are peers with whom the applicant has had dealings in the immediately preceding three years. TBLS may request references from other attorneys or judges.</td>
<td>2 judges who have presided over their case; 2 opposing attorneys, one from a contested case; Cannot be Supreme Court justices, members of the certification board, attorneys who practice with applicant (or who have practiced in the past).</td>
</tr>
<tr>
<td>Application Fee</td>
<td>Not stated</td>
<td>Not stated</td>
<td>$200 application fee</td>
</tr>
<tr>
<td>Appeals</td>
<td>Not stated</td>
<td>Not stated</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Topic</td>
<td>MICHIGAN</td>
<td>TEXAS</td>
<td>NEW JERSEY</td>
</tr>
<tr>
<td>------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Maintain the Certificate</td>
<td>100 hours of CLE in the specialty area within 5 years after their last certification or recertification</td>
<td>Recertification applicant must complete 100 hours of CLE in the Specialty area by December 31 of each 5th year of certifications</td>
<td>Not stated</td>
</tr>
<tr>
<td>CLE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recertification</td>
<td>Must maintain the same requirements for becoming certified.</td>
<td>Recertification applicant must complete 100 hours of CLE in the Specialty area by December 31 of each 5th year of certifications</td>
<td>Not stated</td>
</tr>
<tr>
<td>Testing</td>
<td>None required</td>
<td>Not stated</td>
<td>Not stated</td>
</tr>
<tr>
<td>Good Standing</td>
<td>Yes</td>
<td>Presumed</td>
<td>Presumed</td>
</tr>
<tr>
<td>Revocation</td>
<td>Certification may be revoked or suspended by the Board for failure to abide by the rules, non-payment of fees; convicted; of a felony; previously been suspended; guilty of malpractice etc.</td>
<td>Not stated</td>
<td>Not stated</td>
</tr>
</tbody>
</table>
### PROBATE COUNCIL
#### SPECIALIZATION COMMITTEE

<table>
<thead>
<tr>
<th>Topic</th>
<th>MICHIGAN</th>
<th>FLORIDA</th>
<th>NORTH CAROLINA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Board</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Michigan Board of Legal Specialization</td>
<td>Board of Legal Specialization &amp; Education</td>
<td></td>
</tr>
<tr>
<td>Appointed</td>
<td>Supreme Court</td>
<td>Bar President</td>
<td>Board of commissioners</td>
</tr>
<tr>
<td>Number</td>
<td>13</td>
<td>Not Stated</td>
<td>9</td>
</tr>
<tr>
<td>Composition</td>
<td>8 attys, 2 judges, 2 law faculty &amp; 1 ICLE representative</td>
<td>Not Stated</td>
<td>6 lawyers some who are not specialists and 3 non-lawyers.</td>
</tr>
<tr>
<td>Terms</td>
<td>Staggered 3 year</td>
<td>3 year Staggered Terms</td>
<td>3 year Staggered Terms</td>
</tr>
<tr>
<td><strong>Specialty Committee</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointed</td>
<td>Appointed by MI Board of Legal Specialization</td>
<td>Supreme Court</td>
<td>Appointed by the Board</td>
</tr>
<tr>
<td>Number</td>
<td>5</td>
<td>Not Stated - Currently 17</td>
<td>7 lawyers</td>
</tr>
<tr>
<td>Terms</td>
<td>3 years</td>
<td>Not Stated - Currently 3 years</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Composition</td>
<td>Board certified specialists in the field or otherwise competent</td>
<td>Board Certified in the Area Knowledgeable in the field.</td>
<td></td>
</tr>
<tr>
<td><strong>Qualifications</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>Licensed attorney in good standing</td>
<td>Atty in good standing</td>
<td>Attorney in good standing</td>
</tr>
<tr>
<td>Malpractice</td>
<td>$1,000,000 in malpractice insurance</td>
<td>Disclosure of malpractice claims &amp; disciplinary hearings</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Topic</td>
<td>MICHIGAN</td>
<td>FLORIDA</td>
<td>NORTH CAROLINA</td>
</tr>
<tr>
<td>------------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>----------------------------------------------</td>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td>Presence</td>
<td>Office in Michigan or 25 miles from a border, conducts business three days per week - 3 years prior to application</td>
<td>Not stated</td>
<td>Physical presence in the state.</td>
</tr>
<tr>
<td>Substantial Involvement</td>
<td>Substantial Involvement for each specialty area</td>
<td>Defined by specialty</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Practice Requirement</td>
<td>At least 5 years full time</td>
<td>At least 5 years</td>
<td>At least 5 years and licensed in North Carolina for at least 3</td>
</tr>
<tr>
<td>Approval of Applications</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exam</td>
<td>Pass Exam</td>
<td>Pass Exam; appeal to the AC</td>
<td>Pass Exam</td>
</tr>
<tr>
<td>CLE</td>
<td>Not stated</td>
<td>CLE requirements per specialty</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Peer Review</td>
<td>The Board or Specialty committee shall conduct an independent inquiry and review of the Applicant which shall consider information furnished by references and other information</td>
<td>Required - names of lawyers &amp; judges yes</td>
<td></td>
</tr>
<tr>
<td>Topic</td>
<td>MICHIGAN</td>
<td>FLORIDA</td>
<td>NORTH CAROLINA</td>
</tr>
<tr>
<td>-------</td>
<td>----------</td>
<td>---------</td>
<td>----------------</td>
</tr>
<tr>
<td>References</td>
<td>Minimum of 5 references to attest to the competence in the specialty area pursuant to the Specific Area requirements. The references must be: Substantially involved in the specialty area, can’t be partners or associates of the applicant, must have had dealings in the immediately preceding 3 years, TBLS may request references from other attorneys or judges.</td>
<td>Each applicant shall submit names of lawyers and judges who can attest to the applicant’s special competence and substantial involvement in the specialty area, as well as the applicant’s character, ethics, and reputation.</td>
<td>Applicant gives names of 10 lawyers of which five are selected to give an opinion.</td>
</tr>
<tr>
<td>Application Fee</td>
<td>Not stated</td>
<td>$250 initial; $150 exam; $150 annual fee.</td>
<td>Not Stated</td>
</tr>
<tr>
<td>Appeals</td>
<td>Not stated</td>
<td>Complex appeals procedures with standards, scope of review, including oral argument. $500 fee. Can then appeal to the Board of Governors and then appeal to the Supreme Court.</td>
<td>Compex process, 1st to specialty board, then to Board of commissioners and then to courts.</td>
</tr>
<tr>
<td>Topic</td>
<td>MICHIGAN</td>
<td>FLORIDA</td>
<td>NORTH CAROLINA</td>
</tr>
<tr>
<td>---------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Maintain the Certificate</td>
<td>100 hours of CLE in the specialty area within 5 years after their last certification or recertification</td>
<td>Very detailed criteria on CLE. Advanced CLE counts 100%; Intermediate counts as 75% and Basic does not count.</td>
<td>120 hours within five year period</td>
</tr>
<tr>
<td>CLE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recertification</td>
<td>Must maintain the same requirements for becoming certified.</td>
<td>The certification only lasts for 5 years. No exam required for recertification but must show continued competence in the specialty field in accordance with standards comparable to those reqcertification under the Florida Plan.</td>
<td>Yes if maintain CLE, involvement and no disciplinary actions</td>
</tr>
<tr>
<td>Testing</td>
<td>None required</td>
<td>NONE</td>
<td>None</td>
</tr>
<tr>
<td>Good Standing</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Revocation</td>
<td>Certification may be revoked or suspended by the Board for failure to abide by the rules, non-payment of fees; convicted; of a felony; previously been suspended; guilty of malpractice etc.</td>
<td>BLSE may revoke the certification for termination in the bar, suspension, revocation of another specialty. BLSE may revoke for any reason set forth in rule 6-3.8 (d).</td>
<td>For various reasons, e.g. disbarred, disciplined, failed to follow rules for specialization.</td>
</tr>
</tbody>
</table>
ATTACHMENT E

– Additional State Comparisons (for MN, OH, NM)
RULE 1.
PURPOSE

The Rules Governing the State Bar of Michigan (“State Bar”) Program For Certifying Legal Specialists is to establish a program for certifying specialists in specified areas of law, to identify and enhance public access to appropriate legal services by regulating the certification of attorneys as specialists, who have proficiency in the specialty fields, to identify such attorneys to the public, and to encourage attorney competence and efficiency.

MINNESOTA

The purpose of the Minnesota State Board of Legal Certification (Board) is to accredit agencies that certify always as specialists, so that public access to appropriate legal services may be enhanced. In carrying out its purpose, the Board shall provide information about certification of lawyers as specialists for the benefit of the profession and the public.

OHIO

1.01 This document establishes standards by which the Supreme Court of Ohio Commission on Certification of Attorneys as Specialists will accredit specialty certification programs for lawyers in particular fields of law. The Standards require that an accredited organization demonstrate that lawyers certified by it possess an enhanced level of skill and expertise as well as substantial involvement in the specialty area of certification and that accredited organizations foster professional development. The Standards are designed to enable the Commission to evaluate thoroughly the objectives standards and procedures of Applicants and to facilitate public access to appropriate legal services.

Rule 1.1. Short Title

These rules shall be known as the Michigan Rules For Certifying Legal Specialists.

New Mexico

D. Title. These rules shall be known as “Rules of Legal Specialization”.
Rule 1.2. Public Notice

The State Bar may cause a public notice to be promulgated where and when it deems necessary, including, for example, telephone directory yellow pages, in substantially the following form:

ATTORNEYS INDICATING “BOARD CERTIFIED” OR “SPECIALIST” HAVE BEEN CERTIFIED BY THE STATE BAR OF MICHIGAN AS HAVING SPECIAL KNOWLEDGE, SKILLS, AND PROFICIENCY IN THEIR AREAS OF PRACTICE.

ALL PERSONS ARE URGED TO MAKE THEIR OWN INDEPENDENT INVESTIGATION AND EVALUATION OF ANY ATTORNEY BEING CONSIDERED.

This notice published by the State Bar of Michigan Board Of Legal Specialization, Michael Franck Building, 306 Townsend Street, Lansing, Michigan 48933-2083, telephone number (517) 346-6300, (toll free) (800) 968-1442.

Rule 1.3. Liability

The State Bar shall assume no liability to any persons or entity whomever by reason of the adoption and implementation of this Certification program.

MINNESOTA

120. IMMUNITY

The Board and its members, employees and agents are immune from civil liability for any acts conducted in the course of their official duties.

OHIO

SECTION 12: INDEMNIFICATION AND HOLD HARMLESS

12.01 Applicants shall agree to hold and save the Commission and the Supreme Court of Ohio, its member volunteers, officers, agents, and employees harmless from liability of any kind, including costs, expenses and attorney fees, for any suit or damages sustained by any person or property arising out of an Applicant’s application for accreditation by the Commission or arising out of any actions of the Accredited Organization or lawyers to whom specialization is granted or denied.
Rule 1.4. Amendment

These rules may be amended in accordance with the procedures for amending the Rules Regulating the State Bar.

Rule 1.5. Definitions

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. “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.

MINNESOTA

a. “Applicant agency” means an entity that submits a proposal to become an accredited agency in a field of law.

b. “Applicant lawyer” means a lawyer who seeks certification from an accredited agency.

c. “Board” means the Minnesota Board of Legal Certification.

d. “Certified lawyer” means a lawyer who has received certification from an accredited agency.

e. “Accredited agency” means an entity that has applied for and has been accredited by the Board to certify lawyers in a field of law.

f. “Rules” means rules promulgated by the Supreme Court governing the Minnesota State Board of Legal Certification.

g. “Field of law” means a field of legal practice that is identified, defined and approved by the Board as appropriate for specialist designation.

NEW MEXICO

Definitions similar to Michigan proposed language.

RULE 2.
BOARD OF LEGAL SPECIALIZATION

Rule 2.1. Board of Legal Specialization

2.1.1. Composition. The Court hereby establishes a Board of Legal Specialization (“Board”), which Board shall have authority and jurisdiction under state law over the subject of certification of attorneys and specialists. The Board shall be composed of thirteen (13) members appointed by the Court; eight (8) attorneys, two (2) judges, two (2) law faculty members from accredited Michigan law schools engaged in
full time education, and one (1) representative of the Institute of Continuing Legal Education. The Attorney members of the Board shall be representative of the legal profession; shall have practiced continuously for (5) years prior to appointment; and who are in general practice as well as those who are Board certified specialists or otherwise deemed to be competent in the specialty area(s) in which they practice. [If a member of the Board misses more than three (3) meetings of the Board in any twelve month period, the member is subject to removal.]

**MINNESOTA**

The Supreme Court shall appoint twelve (12) members of the Board, of whom nine (9) shall have active licenses to practice law in the state and represent various fields of legal practice. Three (3) attorney members shall be nominated by the Minnesota State Bar Association and three (3) shall be non-attorney public members. The Supreme Court shall designate a lawyer member as chairperson, and the Board may elect other officers, including a vice-chair who will serve in the absence of the chairperson.

**NEW MEXICO**

**RULE 19-101. BOARD OF LEGAL SPECIALIZATION; TITLE**

**A. Composition.** The Supreme Court hereby establishes a Board of Legal Specialization ("board"), which board shall be the authority having jurisdiction under state law over the subject of specialization of lawyers. The board shall be composed of nine members appointed by the Supreme Court. All members of the board shall be lawyers who have passed the bar examination and are licensed and currently in good standing to practice law in this state. The members of the board shall be representative of the legal profession and shall include lawyers who are in general practice as well as those who are board certified specialists. One of the members shall be designated by the Supreme Court as chairperson of the board.

**2.1.2. Terms.** The initial members of the Board shall hold office for terms of three (3) years. Appointment to a vacancy among the members shall be made by the Supreme Court for the remaining term of that member leaving the Board. Any member shall be eligible for reappointment to not more than one consecutive additional three (3) year term after having served one full three (3) year term. Initial appointments to the Board shall be as follows:

**A.** Four shall be for terms beginning on the date of appointment and ending on December 31, of the following year;
B. Four shall be for terms beginning on the date of appointment and ending on December 31, of the second year following the appointment;  

C. Five shall be for terms beginning on the date of appointment and ending on December 31, of the third year following the appointment.  

**MINNESOTA**

Members shall be appointed for three-year terms. The terms of one (1) public member and one (1) member nominated by the State Bar shall expire each year. Any vacancy on the Board shall be filled by the Supreme Court by appointment for the unexpired term. No member may serve more than two (2) three-year terms with the exception of the sitting chairperson, who may be appointed for a third three-year term or such additional period as the court may order.

**NEW MEXICO**

B. **Terms.** The initial members of the board shall hold office for terms of three (3) years. Appointment to a vacancy among the lawyer members shall be made by the Supreme Court for the remaining term of that lawyer member leaving the board. Any lawyer member shall be eligible for the reappointment to not more than one additional three (3) year term after having served one full three (3) year term.

2.1.3. Meetings. Meetings of the Board shall be held at regular intervals, at such times and places and upon such notice as the Board may from time to time prescribe.

A. Meetings are open to the public except when the Board is considering:

1. personal matters;
2. examination materials;
3. legal advice from counsel;
4. any information which is confidential or private under these Rules.

B. The Board may make determinations by a majority vote of a quorum of the Board, with the exception of the following which must be made by a majority of the entire Board:

1. recommendations for changes in rules of the Board;
2. [not yet determined]
(2) determinations to approve or rescind an agency’s accreditation.

d. The Board may meet by conference call or make determinations through mail vote.

NOTE: Minnesota similar to Michigan proposed language.

C. Unless otherwise restricted by rules adopted by the full Board, a member of the Board or of a committee designated by the Board may participate in a meeting by means of conference telephone or other means of remove communication by which all persons participating in the meeting can communicate with each other.

D. The Board may make determinations through mail vote; however, a determination by mail vote requires a majority of the entire Board.

E. If a member of the Board misses more than three (3) meetings of the Board in any twelve month period, the member is subject to removal.

2.1.4. Title. These rules shall be known as “Michigan Rules of Legal Specialization.”

2.1.5. Board Officers. The Supreme Court shall designate an Attorney member as chairperson. The Board may elect other officers, including a vice-chair and secretary. The vice-chair shall serve in the absence of the chairperson. Either the chairperson or the vice-chair shall be present to hold a meeting.

2.1.6. Annual Report. The Board shall file with the Court an annual report detailing the work of the Board.

Rule 2.2. Powers and Duties

The Board shall have authority and jurisdiction under state law over the subject of certification and regulation of specialization and certification of specialists in the practice of law in Michigan, and shall have the power and duty:

2.2.1. to administer these Rules of the Board;

2.2.2. to designate specialties of law practice, define the scope and limits of such specialties and to provide procedures to achieve these purposes;
2.2.3. to appoint, supervise, receive and review the recommendations of and consult with Specialty Committees as herein defined;

2.2.4. to make and publish standards for certification of specialists, upon the Board’s own initiative or upon consideration of recommendations made by the Specialty Committees, such standards to be designed to produce a uniform minimum level of competence among the various specialties in accordance with the nature of each specialty;

2.2.5. to certify specialists or deny, suspend or revoke the certification of specialists upon the Board’s own initiative, upon recommendations made by the Specialty Committees or upon request for review of recommendations made by the Specialty Committees;

2.2.6. to establish and publish procedures, rules, regulations and by-laws to implement these rules;

2.2.7. to propose, and request the Court to make, amendments to these rules when appropriate;

2.2.8. to cooperate with other boards and agencies in enforcing standards of professional conduct and to report apparent violations of the Rules of Professional Conduct of this state to the appropriate disciplinary authority;

2.2.9. to evaluate and approve, or disapprove, continuing legal education courses for the purpose of relevancy;

2.2.10. to cooperate with other organizations, boards and agencies engaged in the certification of legal specialists or concerning the topic of legal specialization;

2.2.11. to monitor Attorney representation concerning certification status; and

2.2.12. to appoint special committees to investigate and make recommendations on particular issues that arise from time to time, including a suspected breach of confidentiality, and to act on such committees’ recommendations.
The Board is authorized:

a. To identify, define and approve a definition or definitions of a field of law, on its own motion, or in response to an application or applications from an applicant agency.

b. To develop standards, application verification procedures, testing procedures, and other criteria for reviewing and evaluating applicant and accredited agencies.

c. To take one of the following actions with regard to an applicant agency or accredited agency:

   (1) grant accreditation or conditional accreditation;
   
   (2) deny accreditation;
   
   (3) rescind accreditation.

d. To review and evaluate the programs and examinations of an applicant agency or accredited agency to assure compliance with these rules.

e. To investigate an applicant agency or accredited agency concerning matters contained in the application and, if necessary, to conduct an on-site inspection.

f. To require reports and other information from the applicant agency or accredited agency regarding the certification program.

g. To monitor lawyer representations concerning certification status.

h. To adopt policies and charge fees reasonably related to the certification program and not inconsistent with these rules.
106. DUTIES OF THE BOARD

a. The chairperson shall convene the Board as necessary, and between meetings shall act on behalf of the board. The chairperson may appoint subcommittees of the Board.

b. The Board shall:

(1) Hire a Director to administer the Board’s programs and to perform duties as assigned by the Board.

(2) Provide information about lawyer certification programs for the benefit of the profession and the public.

(3) Disseminate accurate information regarding lawyers’ certification status.

(4) File with the Supreme Court an annual report detailing the work of the Board.

(5) Report to the Lawyers Professional Responsibility Board any lawyers who may violate the provisions of these rules or other rules concerning certification matters.

(6) Maintain appropriate records of accredited agencies and certified lawyers.

(7) Communicate with groups, agencies and other boards and organizations regarding matters of common interest.

(8) Make rulings on applications, conduct hearings, and take other actions as are necessary to carry out the Board’s purpose.

NEW MEXICO

NOTE: POWERS AND DUTIES OF THE BOARD are similar to Michigan proposed language.

Rule 2.3. Administration of Plan

2.3.1. The State Bar may appoint or contract for such services, equipment, facilities and staff as may be needed for the efficient administration of the Board’s work.
2.3.2. The applicable assigned staff shall conduct a preliminary review of each application and complete a worksheet to show the file content for each Applicant prior to initial review by the applicable specialty committee.

2.3.3. Those Applicants who have questionable substantial involvement may be given the opportunity to respond to the Specialty Committee’s concerns in writing before the Applicant is denied to sit for the examination.

2.3.4. A minimum of two (2) Specialty Committee members shall review each application prior to making their recommendation to the full Specialty Committee.

2.3.5. The Board may allow Applicants found eligible, but who either fail to take the exam or who take the exam and fail it, to file an abbreviated application form if they reapply the following year.

2.3.6. Applicants will be notified in writing concerning the disposition of their applications.

Rule 2.4. Specialty Committees

The Board shall establish a Specialty Committee for each specialty in which specialists are to be certified.

2.4.1. Composition. The Specialty Committee shall be composed of five (5) members appointed by the Board, one of whom shall be designated by the Board as chairperson of the Specialty Committee. Members of the Specialty Committee shall be Attorneys licensed and currently in good standing to practice law in this state who are Board certified specialists in the specialty field, or, in the judgment of the Board, are otherwise deemed competent in the field of law covered by that specialty committee.

2.4.2. Term of Office. Specialty Committee members shall hold office for three (3) years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the Board to staggered terms of office, and the initial appointees shall serve as follows: one shall serve for one (1) year after appointment; two shall serve for two (2) years after appointment; and two shall serve for three (3) years after appointment. Appointment by the Board to a vacancy shall be for the remaining term of the member leaving the Specialty Committee. All members shall be eligible for reappointment to not more than one additional three (3) year term after having served one full three (3) year term.
2.4.3. **Meetings.** Meetings of the Specialty Committees shall be held at regular intervals, at such times and places and upon such notice as each Specialty Committee may from time to time prescribe or upon direction of the Board.

**NEW MEXICO**

C. **Quorum and Voting.** All Specialty Committee members shall have one vote. A quorum of the members consists of a majority of its members.

D. **Meetings Via Electronic Means.** The Specialty Committee members may permit any or all members to participate in a meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting.

**Rule 2.5. Jurisdiction of Specialty Committees**

Each Specialty Committee shall advise and assist the Board in carrying out the Board’s objectives and in the implementation and regulation of the procedures for the receipt, processing and evaluation of applications for certification in that specialty. Each Specialty Committee shall advise and make recommendations to the Board as to the standards for specialty and the certification of individual specialists in that specialty. Committees for specialties shall include:

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

**MINNESOTA**

State Programs  
Civil Trial Practice, Real Property

Private Programs: Business Bankruptcy, Civil Law Trial Advocacy, Consumer Bankruptcy, Creditors’ Rights, Criminal Law Trial Advocacy, Elder Law, Family Law, Trial Advocacy

**OHIO**

(E) **Definition and Number of Specialty Areas:** An Applicant specifically shall define the specialty area or areas in which it proposes to certify lawyers as specialist.

1. Each specialty area in which certification is offered shall be an area in which significant numbers of lawyers regularly practice.
Specialty areas shall be named and described in terms that are understandable to the potential users of legal services and in terms that will not lead to confusion with other specialty areas.

2. An Applicant may seek accreditation to certify lawyers in more than one specialty area. The organization shall be evaluated separately with respect to each specialty program.

3. An Applicant shall propose to the Commission a specific definition of each specialty area in which it seeks accreditation to certify lawyers as specialist. The Commission shall approve, modify, or reject any proposed definition and promptly shall notify the Applicant of its actions.

4. The Commission shall recommend to and secure the approval of the Supreme Court of Ohio for the fields of law subject to specialization designation.

**Rule 2.6. Duties of Specialty Committees**

Each Specialty Committee shall be charged with actively administering the plan in its specialty, and, with respect to that specialty shall:

2.6.1. after public hearing and due notice, recommend to the Board reasonable and pertinent standards applicable to that specialty.

2.6.2. make recommendations to the Board for certification, continued certification, denial, suspension or revocation of certification of specialists and for procedures with respect thereto;

2.6.3. administer procedures established by the Board for review of applications for certification and continued certification as a specialist and for denial, suspension or revocation of such certifications;

2.6.4. administer examinations and other testing procedures, investigate references of Applicants and, if deemed advisable, seek additional information regarding Applicants for certification or continued certification as specialists;

2.6.5. make recommendations to the Board concerning the approval of and credit to be allowed for continuing legal education courses, or educational alternatives, in the specialty; and
2.6.6. perform such other duties and make such other recommendations as may be requested of or delegated to the Specialty Committee by the Board.

NEW MEXICO

NOTE: Duties of the Specialty Committees similar to Michigan proposed language.

NEW MEXICO

RULE 19-105. ESTABLISHMENT OF ADDITIONAL STANDARDS

The specialty committee for each specialty may recommend, and the board may establish, additional or more stringent standards, including, but not limited to, oral or written examinations, or a combination of such examinations. If examination is required, it must be applied uniformly to all applicants; provided, however, that waiver of the requirement may be permitted if additional and substantially more stringent standards are required of those for whom waiver is permitted. The specialty committee may also recommend, and the board may establish, requirements which further define or quantify with at least equal stringency the minimum standards set forth in these rules for certification or continued certification as a specialist. Additional standards or requirements established under this rule need not be the same for initial certification and continued certification as a specialist.

Rule 2.7. Limitation on Board Authority

The Board in the implementation of these rules shall not alter the following privileges and responsibilities of Certified Specialists and other Attorneys.

2.7.1. Scope of practice. No standard shall be approved which shall in any way limit the right of a Certified Specialist to practice in all fields of law. An Attorney, alone or in association with any other Attorney, shall have the right to practice in all fields of law, even though the Attorney is certified as a specialist in a particular field of law.

2.7.2. Practice of non-specialists. No Attorney shall be required to be certified as a specialist in order to practice in the field of law covered by that specialty. An Attorney, alone or in association with any other Attorney, shall have the right to practice in any field of law, even though the Attorney is not certified as a specialist in that field.

2.7.3. Individual certification. All requirements for and all benefit to be derived from certification as a specialist are individual and may not be fulfilled by nor attributed to the law firm of which the Certified Specialist may be a member.
2.7.4. Voluntary participation. Participation in the program shall be on a completely voluntary basis.

2.7.5. Multiple specialties. An Attorney may be certified as a specialist in more than one field of law. The limitation on the number of specialties in which an Attorney may be certified as a specialist shall be determined only by such practical limits as are imposed by the requirement of substantial involvement and such other standards as may be established by the Board as a prerequisite to certification as a specialist.

2.7.6. Advertisement. Subject to the requirements of the Rules of Professional Conduct, any Board Certified Specialist may include the following or similar statement in a legal advertisement or solicitation:

A. “Board Certified ___________ Attorney*

*As certified by the Michigan Board of Legal Specialization.”

B. “Michigan Board of Legal Specialization – Certified Specialist in the _______________ Area.”

MINNESOTA

119. LAWYER ANNOUNCEMENT OF CERTIFICATION

The certified lawyer may announce that he/she is a certified specialist in a field of law and that the agency granting the certification is an agency accredited by the Minnesota State Board of Legal Certification to certify lawyers as specialists in a designated field of law. The lawyer shall not represent, either expressly or implicitly, that the specialist status is conferred by the Minnesota Supreme Court.

NEW MEXICO

NOTE: Limitations are similar to the Michigan proposed language.

Rule 2.8. Financing the Program

The financing of the program shall be derived from fees collected from Applicants and participants in the plan and such other sources as the Court may from time to time approve. If fees are not established by the Court, the Board shall establish reasonable fees for each specialty field in such amounts as may be necessary to defray the expense of administering the program, which fees may be adjusted from time to time. If established
or adjusted by the Board; however, they must be approved by the Court as provided herein.

NORTH CAROLINA

NOTE: Financing the program is similar to the Michigan proposed language.

Rule 2.9. Retained Jurisdiction of the Supreme Court

The Court retains jurisdiction with respect to the following:

A. amending these Rules;
B. hearing appeals taken from actions of the Board; and
C. establishing or approving fees to be charged in connection with administering the program.

NEW MEXICO

NOTE: Retained jurisdiction of the Supreme Court is similar to the Michigan proposed language.

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.

NEW MEXICO

NOTE: Minimum of $250,000 malpractice insurance coverage.
OHIO

(J) **Good Standing:** the applicant shall require that a lawyer seeking certification furnish satisfactory evidence of:

1. The lawyer is active and in good standing pursuant to Gov. Bar R. VI of the Supreme Court of Ohio, and the lawyer’s fitness to practice is not in question by virtue of disciplinary action in another state;

2. Coverage by professional liability insurance continually maintained through a reputable company in an amount not less that Five Hundred Thousand Dollars per loss;

3. the lawyer has demonstrated the ability to pay all claims that fall within the deductible amount selected by the attorney under the insurance policy;

4. Professional liability insurance will not be required of those lawyers who can demonstrate to the applicant’s satisfaction that the lawyer’s practice relationship with the lawyer’s clients will fully cover any professional liability claim made against the lawyer in an amount not less than five hundred thousand dollars;

5. The lawyer shall notify the Applicant immediately of any cancellation or change in the coverage.

6. The Applicant and Certifying Organization shall require each attorney who is or makes application to become certified by the organization to sign and submit an Attorney Certification and Acknowledgment, on a form promulgated by the Commission. This form and all documents required to be submitted by the attorney therewith (a) shall be collected by the organization from each attorney not less frequently than annually, and (b) shall be stored and maintained by the organization for not less than seven years. Any Applicant or Certifying Organization which complies with this Standard, shall be presumed by the Commission to be in compliance with Sec. 4.02(J)(1) through (5).

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 Specialty Area Requirements.

SECTION 7: **ACCREDITATION PROGRAM COMPONENTS**

7.01 **Commission**: The Commission grants, denies and revokes accreditation and reaccreditation.

7.02 **Review Panel** The Review Panel appointed by the Chair of the Commission for each Applicant shall submit its recommendation to the Commission to grant or deny accreditation or reaccreditation to the Certifying or Accredited Organization. Upon a finding that an Accredited Organization has ceased to exist or has failed to operate its certification program in compliance with the Standards; the Review Panel may recommend to the Commission that the accreditation of the Accredited Organization be revoked. The Review Panel also is responsible for conducting an independent evaluation of the qualifications of Applicants for accreditation and reaccreditation in accordance with Gov. Bar R. XIV and these Standards and recommending any action to be taken by the Commission on applications for accreditation.

7.03 **Pre-Application Advisory Services**: An entity considering filing an application for accreditation of a program to certify lawyers as specialists may obtain information [and advice] from the Commission prior to filing a formal application. Inquiries shall be addressed to the Secretary of the Commission, who shall supply a copy of these Standards, fee schedules and other pertinent data, and may respond to questions regarding the establishment of a lawyer specialty certification program and accreditation by the Commission.

7.04 **Notice of Intent to Apply for Accreditation**: Prior to making a formal application for accreditation, an Applicant shall file with the Commission a notice of intent to apply for accreditation form and, pay a non-refundable pre-application fee. The notice shall specify each definition of specialty for which accreditation is sought. Upon receipt of the form and fee by the Commission, and upon preliminary approval of the definition of the specialty, the Secretary shall send the Applicant an official application packet containing the forms and instructions to be used in filing the application. This requirement serves the purpose of providing basic information about the Applicant to the Commission in advance to expedite processing of the formal application when it is submitted.
7.05 **Application for Accreditation:** Subject to the notice of intent to file requirement described above, an Applicant may file a formal application for accreditation with the Commission at any time on forms provided by the Commission, together with payment of a basic application fee and a certificate fee for each specialty certificate issued by the Applicant.

(A) **Time Guidelines:** The Commission is not bound to any specific schedule in processing, evaluating or deciding on the application of an Applicant for accreditation. Applications and the evaluation process will be handled as expeditiously as possible.

(B) **Supporting Documents:** The application for accreditation shall be accompanied by all of the following supporting documents:

1. The Applicant’s governing documents, including articles of incorporation, bylaws and resolutions of the governing bodies of the Applicant or any parent organization that relate to the standards, procedures, guidelines or practices of the Applicant’s certification program;

2. Financial information about the Applicant and any supporting parent organization as specified on forms provided by the Commission;

3. Biographical summaries of members of the governing board, senior staff and members of advisory panels, including specific information concerning the degree of involvement in the specialty area of persons who review and pass upon applications for certification;

4. Materials furnished to lawyers seeking certification, application forms, booklets or pamphlets described the certification program peer reference forms, rules and procedures and evaluation guides;

5. Copies of examinations given in the past two years, or in the case of a new organization, copies of proposed examinations, or in those cases in which an agency accepts examination by another entity, copies of such examinations, with evidence of their validity and reliability, such as written examination procedures, including a description of how examinations are developed, conducted and reviewed; a description of the grading standards used; and the names of persons responsible for determining pass/fail standards. Actual or proposed written examinations shall be made available on a confidential basis for review by a person designated by the Commission, with the understanding that the Applicant may rule the
person who reviews the examination ineligible for certification by the Applicant for a period of three years from the time of the designation;

6. The definition of the specialty or specialties in which the Applicant certifies specialists;

7. Other materials or information considered necessary by the Review Panel or the Commission.

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 (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 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.
(H) **Written Examination.** The Applicant shall require that a lawyer seeking certification pass a written examination of suitable length and complexity. The examination shall test the knowledge and skills of the substantive and procedural law in the specialty area, substantially consist of questions not previously used on other examinations used by the Applicant for certification of lawyers, and include professional responsibility and ethics as it relates to the particular specialty. The following factors shall be used to judge the suitability of the examination used by the Applicant:

1. Evidence that the method by which pass/fail levels are established is reasonable;

2. Evidence of both reliability and validity for each form of the examination. Reliability is the consistency or replicability of test results. Validity requires that the content and emphasis of the examination proportionately reflect the knowledge and skills needed for an enhanced level of skill and expertise in the specialty area;

3. Evidence of periodic review of the examination to ensure relevance to knowledge and skills needed in the specialty area as the law and practice methods develop over time;

4. Evidence that the law of Ohio, when different from the general law, is a part of the examination;

5. Evidence that effective measures are taken to protect the security of all examinations.

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 pay timely the fees as prescribed by the Board.
111. BOARD SPECIFIED FEES

The Board shall periodically set and publish a schedule of reasonable fees for the costs incidental to administering these rules.

NEW MEXICO

The board from time to time shall set the amount and time for payment of all fees, which it determines are appropriate to charge. Payment of application or renewal fees shall be required as a condition for processing any initial or renewal application. The board may charge sponsors fees as a condition to filing an application for recognition credit for an educational course.

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 set 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.

OHIO

(D) Uniform Applicability of Certification Requirements and Non-Discrimination: The Applicant’s documents and records submitted in conjunction with its application for accreditation will be examined to ensure that the requirements for granting certification are clearly stated and that any applying lawyer who meets the requirements is granted certification.

1. The materials published by the Applicant shall not state or imply that membership in, or the completion of education programs offered by, any specific organization are required for certification. This paragraph does not apply to requirements relating to the practice of law that are set out in statutes, rules, and regulations promulgated by the government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

2. The description of the program shall indicate that the Applicant does not discriminate against lawyers seeking certification on the basis of
race, color, national origin, religion, gender, sexual orientation, disability, or age. Experience requirements for lawyers seeking certification or recertification that may indirectly have an effect on a particular age group shall be reasonable.

3. The Board shall develop and administer a full certification program that includes its measurement of extensive practice or involvement, its own peer review, its own written examination, and it requirements regarding education experience, as those criteria are described in the Standards.

3.2.2. Substantial Involvement in Specialty Practice Area.

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C. Substantial Involvement in Specialty. The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of substantial involvement in the specialty during the three (3) years immediately preceding the application according to objective and verifiable standards. Such substantial involvement shall be defined as to each specialty 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. It is a measurement of actual experience within the particular specialty according to any of several standards. It may be measured by the time spent on legal work within the area of the specialty, the number or type of matters handled within a certain period of time, or any combination of these or other appropriate factors. However, within each specialty, experience requirements should be measured by objective standards. In no event should they be either so restrictive as to unduly limit certification of lawyers as specialists or so lax as to make the requirement of substantial involvement meaningless as a criterion of competence. Substantial involvement may vary from specialty to specialty, but, if measured on a time-spent basis, in no event shall the time spent in practice in the specialty be less than twenty-five percent (25%) of the total practice of a lawyer engaged in normal full-time practice. Reasonable and uniform practice equivalents may be established, including, but not limited to, teaching, judicial, government or corporate legal experience.
(F) Substantial Involvement: The Applicant shall require that a lawyer seeking certification make a satisfactory showing of experience through substantial involvement in the specialty area during the three-year period immediately preceding application to the Certifying Organization. Substantial involvement includes, but is not limited to, the type and number of cases or matters handled and the amount of time spent practicing in the specialty area. In order to meet this Standard, the Applicant’s certification criteria shall require that the time spent practicing the specialty be at least twenty-five percent of the total practice of a lawyer engaged in a normal full-time practice throughout the three-year period immediately preceding the lawyer’s application.

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 Specialty 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.

(I) Educational Experience: The Applicant shall require that a lawyer seeking certification has completed a minimum of thirty-six hours of participation in continuing legal education in the specialty area in the three-year period preceding the lawyer’s application for certification. The Applicant shall impose requirements that are satisfactory to the Commission and permit the continuing legal education requirement to be met through the following means:

1. Attending programs of continuing legal education, which are approved by the Certifying Organization as appropriate for credit toward the continuing legal education requirement in the specialty area. The Certifying Organization shall not refuse to approve a program solely because it is offered by an organization other than the Certifying Organization.

2. Teaching or participating as a panelist, speaker, or workshop leader in a continuing legal education course approved by the Certifying Organization. In cases considered appropriate by the Certifying
Organization, three hours credit may be awarded for each hour of actual teaching or presentation time under this subparagraph. Additional credit shall not be awarded for subsequent presentation of substantially the same material.

3. Teaching at a law school that is approved by the American Bar Association. Up to eight hours of credit per year may be awarded for the teaching of a course or seminar in the specialty area as a faculty or adjunct faculty member in a law school approved by the American Bar Association.

4. Writing a book or [substantial] law review article. Up to eight hours credit may be awarded for writing a book or a [substantial] law review article in the specialty area. Credit shall be awarded for the year in which the book or article actually appears in print.

5. Taking courses at a law school that is approved by the American Bar Association. Credit hours may be awarded for courses taken at a law school approved by the American Bar Association consistent with Gov. Bar R. X and Regulation 402 adopted by the Supreme Court Commission on Continuing Legal Education.

The Applicant shall require a lawyer seeking certification to provide evidence that the programs, courses, seminars, conferences, and publications listed above contain sufficient intellectual and practical content so to increase a lawyer’s knowledge and ability in the specialty area.

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 Specialty Area Requirements have been met. The Application 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, accurate and correct to the best of Applicant’s information, knowledge and belief.

### 3.2.4. Supplemental 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 required 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 Renewal Duration.

A. The effective date of Certification or Recertification 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 disclose the following:

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.

NEW MEXICO

NOTE: Application for Certification is similar to Michigan language.

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, 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.
G) Peer Review: The Applicant shall require that a lawyer seeking certification submit the names of at least five references from attorneys or judges who are knowledgeable regarding the practice area and are familiar with the competence of the lawyer.

1. The Applicant’s procedures shall provide that the Applicant, not the lawyer seeking certification, sends the reference forms to potential references.

2. The reference forms shall inquire into the respondent’s areas of practice, the respondent’s familiarity with both the specialty area and with the lawyer seeking certification, and the length of time that the respondent has been practicing law and has known the lawyer seeking certification. The form also shall inquire about the qualifications of the lawyer seeking certification in various aspects of the practice and, as appropriate, that lawyer’s dealings with judges and opposing counsel.

3. The materials provided to a lawyer seeking certification shall specify that the lawyer may not submit as a reference the name of any lawyer or judge who is related to the lawyer seeking certification or currently engaged in legal practice with that lawyer.

3.3.2. Number and qualification of references. An Applicant shall submit to the Board the names and addresses of at least five (5) lawyers who are licensed and currently in good standing to practice law in the state who can attest to the Applicant’s competence and 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. In a specialty field in which court appearance or administrative proceedings are important aspects, the specialty standards may require that at least two of the five references be judges, administrative law judges, referees or other judicial officers before whom the Applicant has appeared within the one (1) year period immediately preceding the filing of the application for certification. Upon a showing of hardship or special circumstances, the Board may modify this requirement to allow submission of references from judges before whom the Applicant has appeared with the last five (5) years or may limit the judicial references to one or none.

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 of 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 form.** 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 State Bar web site. 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 and shall remain confidential.

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 site 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.

**NEW MEXICO**

**NOTE:** Peer Review similar to the Michigan proposed language.

**Rule 3.4. Continuing Legal Education**

3.4.1. **New Certification Applicants – Required Hours/Time Period.** Applicants (other than current Certified Specialists applying for recertification in the same specialty area) must complete a total of sixty (60) hours of Continuing Legal Education (“CLE”) in the specialty area within the three (3) years immediately preceding application, including at least (10) hours in each of those years, through December 31 of the year of application. Applicants may not receive credit for more than 30 hours of CLE in a calendar year.

3.4.2. **Recertification Applicants – Required Hours/Time Period.** Recertification Applicants must complete a total of one hundred (100) hours of CLE in the specialty area within five (5) years after their last certification or recertification, including at least ten (10) hours in each of those years. Recertification Applicants may not receive credit for more than thirty (30) hours of CLE in a calendar year.

**NEW MEXICO**

**NOTE:** Continuing Legal Education is similar to the Michigan proposed language.

3.4.3. **Demonstration of CLE:** Subject to standards established by the Board, the continuing legal education requirement may be satisfied by one or more of the following:

A. Attendance at continuing legal education seminars approved by the Board for the applicable specialty practice area;
B. Lecturing at such continuing legal education seminars; three hours of CLE credit may be awarded for each hour of actual teaching or presentation time under this subparagraph. Additional credit shall not be awarded for subsequent presentations of substantially the same material in the same year;

C. Authoring or writing articles, materials or books in the applicable specialty practice area published in professional periodicals or other professional publications; credit shall be awarded for the year in which the book or article actually appears in print. Number of hours of credit shall be determined by the applicable Specialty Committee;

D. Teaching courses in the applicable specialty practice area at an approved law school or other graduate level program presented by an accredited college or university or a recognized professional education association; up to eight hours of credit per course credit hour per year may be awarded for the teaching of such courses;

E. Completing such home study programs not listed above as may be approved by the Board in the applicable specialty practice area, subject to the limitation that no more than fifty (50) percent of the required number of hours of education may be satisfied through home study programs; and

F. such other methods as may be approved by the Board.

3.4.4. CLE Standards. The Board shall, by rule or regulation, establish standards applicable to this Rule, including, but not limited to, the method for establishing the number of hours allocable to any of the above-listed subdivisions. Such rules or regulations shall provide that hours may be allocated to each separate, but substantially different lecture, article, or other activity described above.

3.4.5. Course Approval Required. Continuing legal education programs which shall be accepted for purposes of these Rules must be approved by the applicable Specialty Committee in accordance with Board procedures.

3.4.6. Verification of Continuing Legal Educational Credit. Credit will only be given for continuing legal education programs if such credit is verified by the applicable Specialty Committee in accordance with Board procedures.

NEW MEXICO

NOTE: Minimum Standards similar to the Michigan proposed language.
RULE 4.  
ACTIONS ON APPLICATIONS

Rule 4.1.  Board and Specialty Committee(s) Meetings

4.1.1.  Meetings.  Meetings of the Board shall be held at such times and places as may be fixed by the chair of the Board.

4.1.2.  Attendance at Meetings.  Upon good cause shown, the Board may recommend to the Court that a member of the board be removed from office.  Unexcused absence from three meetings in any twelve-month period shall constitute good cause.

4.1.3.  Notice of Meetings.  All Board members shall receive reasonable notice of the time and place of a meeting.  Reasonable notice includes first class mail or personal delivery.  Alternatively, reasonable notice would include electronic transmission provided prior consent is obtained by recipient.  A member may waive a meeting notice in writing before or after the meeting.  A member’s attendance at a meeting waives that member’s objections to that meeting’s notice unless that member objects to the transaction of any business for the reason that the meeting is not lawfully called or convened.

4.1.4.  Quorum and Voting.  All Board members shall have one vote.  A quorum of the Board consists of a majority of its members.

4.1.5.  Meetings Via Electronic Means.  The Board may permit any or all members to participate in a meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting.

4.1.6.  Open to Public.  Meetings are open to the public, except when the Board is considering:

   A. personal matters;
   B. examination materials;
   C. legal advice from its counsel; and
   D. any information which is confidential or private.

4.1.7.  Specialty Committee.  Except as otherwise provided by a Specialty Committee, each Specialty Committee shall operate under the same rules provided above for meeting.

Rule 4.2.  Applications for Initial Certification and Renewal Recertification
4.2.1. **Completion of Requirements.** Prior to filing an application for certification as a Board Certified Specialist, an Applicant shall complete all requirements set forth in the applicable specialty standards as approved by the Board. Peer review shall occur subsequent to filing the application.

4.2.2. **Form and Content.** Applications shall be completed on application forms approved by the Board, and shall include all information required by the particular specialty standards for which certification is sought. Application forms shall be designed to determine whether requirements set forth in the specialty standards have been met. The applicant shall declare under the penalty of perjury that:

- **A. Documents which are submitted and intended by the Applicant to fulfill a requirement for certification shall be the principal work product of the Applicant; and**

- **B. The information submitted in the application is true, correct and up to date.**

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

4.2.4. **Processing of Application.** The Applicant shall be notified if the Board or Specialty Committee considers an application to be incomplete or insufficient on its face. The provision of any supplemental information shall be considered part of the application process. The failure to properly complete the application form, including the submission of the requested information or the failure to supply supplemental information after a request for such, shall cause an application to be incomplete. If an application remains incomplete for a period of ninety-one (91) 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 in the application form, a request for supplemental information or otherwise, then in such case the incomplete application is automatically denied.

**MINNESOTA**

107. **BOARD DISPOSITION OF AGENCY APPLICATIONS**

The Board shall take the following action with respect to the agency application:

- **a. Grant the agency’s application for accreditation.**
b. Grant conditional accreditation to an applicant agency subject to receipt of evidence showing satisfaction of specific conditions imposed by the Board.

c. Deny the agency’s application and issue a written decision stating the reasons for the denial. An application may be denied for any of the following reasons:

   (1) The agency fails to meet criteria set forth in these rules.

   (2) The application is incomplete, investigation has revealed inaccuracies, or the applicant agency has been uncooperative in the initial review.

   (3) The proposed definition of the field of law is rejected by the Board.

   (4) The agency’s goals and methods of measuring attainment of those goals are not appropriate or not well defined.

   (5) The agency’s tests and other performance criteria are inadequate.

d. Rescind the agency’s previously granted accreditation if the agency is found to have violated these rules.

4.2.5. Withdrawal of an Application. An Applicant may withdraw by written notice to the Board an application at any time during the application process prior to denial of the application.

4.2.6. Confidentiality. The contents of the application form, including all documents, records, communications, statements of reference, and other papers and filings received in connection therewith, and shall be the property of the Board and shall be held in confidence and not released, except as provided under these rules, other rules by the State Bar, or upon prior order of the Court.

4.2.7. Effective Date of Certification and Recertification

   A. Original Certification. The effective date of certification shall be the date the Board authorizes certification.

   B. Recertification. The effective date of recertification shall be five (5) years from the effective date of such recertification.
4.2.8. **Interruption of Law Practice.** A Board Certified Specialist whose practice is interrupted, may, on approval by the Board, remain certified if the Board Certified Specialist complies with the specialty continuing legal education requirements, pays annual dues and complies with any other requirements imposed by the Board.

4.2.9. **Applicant Consents to Confidential Inquiry.** The Board and Specialty Committees may contact any person regarding the Applicant’s competence and qualifications without disclosing this fact to the Applicant. The Applicant waives any right to discover who was contacted, what they have been asked, and what information if any was provided.

4.2.10. **Applicant Authorizes Release of Disciplinary Action.** By filing an application, the Applicant agrees to reveal as to all jurisdictions:

A. Any pending disciplinary action, 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.

**RULE 5.**

**BOARD ACTION ON SPECIALTY COMMITTEE RECOMMENDATIONS**

Rule 5.1. **Action Regarding Certification or Recertification**

Except as provided in Rule 5.2, within ninety-one (91) days of the receipt of the Specialty Committee Recommendation, the Board shall approve the application, deny the application, or take discretionary action as permitted by Rule 5.2. Such actions by the Board shall be by a vote of a majority of Board members at a meeting of the Board. The Applicant shall be notified of the action of the Board in writing. If the application has been denied, the notice shall specify the basis for the denial. All notices shall be sent by regular mail and addressed to the Applicant at the address last furnished to the State Bar of Michigan.

**OHIO**

(K) **Impartial Review:** The Applicant shall provide evidence that it maintains and publishes a policy providing an appeal procedure for a lawyer seeking
certification to challenge the decision of the persons who review and pass upon the application of lawyers seeking certification. The policy shall provide a lawyer seeking certification with the opportunity to present his or her case to an impartial decision-maker in the event of denial of eligibility or denial of certification. Impartial decision-makers may include person associated with the Applicant.

(L) Requirements for Recertification. The period of certification shall be set by the Applicant but shall be not less than three or more than seven years, after which time lawyers who have been certified must apply for recertification. Recertification shall satisfy the minimum standards set forth in Gov. Bar R. XIV Section 6 and shall require similar evidence of competence as that required for initial certification in the areas of substantial involvement, peer review, education experience, and evidence of good standing. The Applicant shall have in existence or be in the process of developing a plan for periodic recertification at the time of application for accreditation.

1. The plan for periodic recertification shall be designed to measure continued competence and enhance the continued competence of certified lawyers.

2. Application for and approval of continued certification as specialists shall be required prior to the end of each certification period. To qualify for continued certification as a specialist, an attorney seeking recertification shall pay the required fee and satisfy the requirements for certification renewal established by the Commission and the Certifying Organization.

3. In addition to the requirements of Gov. R. X, a specialist shall complete twelve (12) hours of continuing legal education every two years in each specialty area for which he or she is certified. Proof of completion shall be submitted in the manner required by Gov. Bar R. X.

Rule 5.2. Discretionary Action By Board

While the Board is considering an application for certification or recertification, and at the discretion of the Board, the Board may:

A. Request the Applicant to appear for a formal interview. The purpose of the interview is to provide the Applicant with an opportunity to address the
Board regarding whether certification or recertification should be granted. The Applicant is not entitled to have counsel present at the interview.

B. Send the application back to the Specialty Committee for further action as directed by the Board. In such case, the Board shall notify the Applicant of such action in writing by regular mail.

**Rule 5.3. Actions After Denial**

5.3.1. If the vote of the Board is tentatively to deny the application, the Board shall so notify the Applicant pursuant to 1.5.8 and state the basis for the denial. The Applicant shall be permitted to withdraw the application or submit additional relevant information to the Board regarding the application by sending such notice of withdrawal, or such additional information, to the Board within thirty (30) days of the date of the Board’s notice of tentative denial. As provided above, the Board may, but is not required to, request the Applicant to participate in a formal interview. The Applicant is not entitled to have counsel present at the interview. If the Applicant does not respond timely in writing to the notice from the Board, the tentative denial shall become final. An Applicant whose application is denied, may not reapply until one year after the denial becomes final.

**MINNESOTA**

108. APPLICATION AFTER DENIAL

An applicant agency denied accreditation may not reapply for twelve (12) months following the Board’s disposition.

109. BOARD HEARINGS

An agency whose application has been denied pursuant to Rule 107c or rescinded pursuant to Rule 107d has the right to a hearing if the agency makes a written request for hearing within twenty (20) days of its receipt of notice of denial. The hearing shall be promptly scheduled before the full Board or subcommittee thereof appointed by the chairperson. Representatives of the agency may appear personally or through counsel and may present evidence and testimony. The hearing shall be recorded. Following the hearing, the Board shall provide written notice of its decision setting forth reasons for the decision.

110. BOARD INFORMATION AND DISCLOSURE

The Board has the following public disclosure obligations:
a. To provide public notice when an accreditation application has been received for a particular field of law.

b. To make available for inspection, at reasonable times, applications for accreditation submitted by applicant agencies.

c. To publish the definitions of each field of law and the address and telephone number of each applicant agency or accredited agency, along with the name of the agency’s contact person.

**NEW MEXICO**

**RULE 19-308. SPECIALTY COMMITTEE REVIEW OF DENIAL OR REVOCATION OF SPECIALTY CERTIFICATION**

A. **Denial of Certification or Renewal.** If the specialty committee determines an applicant has failed to meet the requirements for certification or renewal or has failed to comply with specialty certification requirements, it shall notify the applicant in writing without violation of the confidentially provisions of Rule 19-303 NMRA of these rules as to the specific reasons why the specialty committee recommends rejection of the application.

B. **Revocation of Certification.** If the specialty committee proposes recommending revocation of certification, it shall notify the applicant in writing of the reasons for the proposed recommendation.

C. **Petition for Reconsideration.** Within fifteen (15) days of receiving notice from the specialty committee of a proposed recommendation of rejection or revocation, the applicant may petition the specialty committee for reconsideration. The petition must adequately identify the basis for the determination for which reconsideration is requested, the date on which notice of the proposed recommendation was received and the reasons why the applicant believes the recommendation should be altered.

D. **Time Limits for Reconsideration.** Within forty-five (45) days after receipt of a petition for reconsideration, the specialty committee shall review the petition and notify the applicant either that the petition has been granted or that the petition will be denied unless the applicant notifies the specialty committee in writing within fifteen (15) days that a hearing is desired. In the absence of a request for hearing, the recommendation of the specialty committee shall stand and shall be transmitted to the board.

E. **Request for Hearing.** Upon receipt of a request for hearing, the specialty committee chair shall refer the matter to a hearing panel composed of at least three
members of the specialty committee designated by the chair, with one member designated as chair of the panel.

F. **Excusal of Members.** The members of the panel shall be guided by the Rules of Civil Procedure for the District Courts governing conflicts of interest, recusals and peremptory challenges of district judges. The applicant may exercise the right to excuse a panel member under peremptory challenge procedures within ten (10) days of receiving notice of the composition of the panel. The specialty committee chair may replace panel members as may be necessary. Two members of the panel shall constitute a quorum for the transaction of business.

G. **Notice of Panel Members.** The panel shall serve upon the applicant, as soon as practicable, a notice containing the names and addresses of the members of the panel and the time and place of hearing. The notice shall be given to the applicant at least thirty (30) days prior to the time fixed for the hearing.

H. **Appointment of Examiner.** The specialty committee may, but is not required to appoint an examiner who is not a member of the specialty committee or board to investigate, gather and prepare evidence and present the same to the panel to aid in conducting hearings.

I. **Evidence.** At the hearing, the applicant and the examiner may present sworn testimony and documentary evidence and shall have the right to cross examine adverse witnesses. The panel will not be bound by a strict application of the Rules of Evidence, other than those related to privileges, in considering information that it deems reliable and relevant. The parties shall give notice to each other of any evidence to be relied upon at the hearing. The applicant shall bear the burden of supplying information in support of the applicant’s qualifications for specialty certification. The hearing shall be recorded by means of a tape recording or recorded by any other manner permitted for the recording of depositions pursuant to Rule 1-030 NMRA of the Rules of Civil Procedure for the District Courts, which shall be kept as the official record of the hearing.

J. **Panel Findings.** Within thirty (30) days after completion of the panel hearing, the panel shall send to the specialty committee chair and the applicant its written report, which shall separately state the panel’s findings, conclusions and recommended decision.

K. **Specialty Committee Recommendation.** Within thirty (30) days of receipt of the panel’s findings, conclusions and recommended decisions, the specialty committee shall adopt or reject the panel’s determinations and serve written notice upon the applicant of its proposed recommendation of the board.

**OHIO**
(M) **Revocation of Certification:** The Applicant shall maintain a procedure for revocation of certification, including a requirement that a certified lawyer report his or her disbarment or suspension from the practice of law in any jurisdiction to the Applicant.

5.3.2 **Duration of Certification.** Certification by the Board shall commence on the date indicated in the Certification as a Board Certified Attorney, and shall remain in effect for the period specified on the notice of certification unless earlier revoked or suspended by the Board.
RULE 6
SUSPENSION OR REVOCATION OF CERTIFICATION

Rule 6.1. Grounds:

6.1.1. Suspension or Revocation. The certification of any Certificate holder may be suspended or revoked, if the board determines that:

A. The certification was granted contrary to the Rules of the Board or the requirements of the Specialty Committee;

B. The certification was granted to a person who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the Board or the Specialty Committee in applying for a certificate;

C. The Certificate holder has failed to abide by the rules required by a Certificate holder and the requirements of the Specialty Committee necessary to maintain certified status;

D. The Certificate holder has failed to pay any and all fees required of certificate holders by the Board;

E. The Certificate holder no longer meets the requirements established by the Board for certificate holders;

F. The Certificate holder has been subject to final disciplinary action by the Court or by the highest court in another state or federal court resulting in reprimand, suspension, disbarment or other discipline;

G. The Certificate holder has been convicted of a felony;

H. The Certificate holder has been previously suspended and, at the end of the period of suspension, is not in full compliance with the requirements of these Rules;

I. The Certificate holder has been determined to be guilty of malpractice or other attorney misconduct as the result of a civil matter;

J. The Certificate holder has failed to inform the Board in writing within thirty (30) days after the occurrence of any fact, circumstance, act or event described in Rule 6.1.1; and
K. The program for certification in that field is terminated.

NEW MEXICO

NOTE: Suspension and Revocation is similar to the Michigan proposed language.

OHIO

6.01. **Grounds for Revocation of Accreditation:** The Commission may revoke an Accredited Organization’s accreditation upon a determination that the organization has ceased to exist, has failed to operate its certification program in compliance with these Standards, or has materially changed its structure, operating standards, guidelines, or criteria for certification or recertification without giving prior notice to the Commission as required by these Standards.

6.02. **Hearing:** The Commission, on its own or acting upon a complaint from a third party, may determine that reasonable grounds exist for considering the revocation of accreditation of an Accredited Organization. The Commission shall schedule the matter for deliberation at one of the Commission’s regularly scheduled meetings and promptly shall provide the Accredited Organization with written notice of the meeting and an opportunity to be heard at that meeting.

6.03. **New Application for Accreditation:** A Certifying Organization whose accreditation has been revoked may reapply for accreditation.

6.04. **Voluntary Withdrawal from Accredited Status:** An Accredited Organization may request that its accreditation by the Commission be withdrawn by providing written notice to the Secretary of the Commission.

6.1.2. **Suspension.** If the Board finds a violation of one or more of the grounds described under Rule 6.1.1, the Board may, in lieu of revoking a certification pursuant to Rule 6.1.1, suspend the Certificate holder for a period of up to twelve (12) months.

**Rule 6.2. Duty to Inform**

The Certificate holder shall inform the Board in writing by regular mail within thirty-five (35) days after the occurrence of any of the acts or events described under Rule 6.1.1.

**Rule 6.3. Notice**
The Board shall give to any Certificate holder whose certificate is subject to revocation or suspension, written notice of its intent to revoke or suspend the certificate and the reason, sent by regular mail, postage prepaid, at least thirty-five (35) days prior to the effective date of the revocation or suspension. Such notice will be addressed to the Certificate holder at the address last furnished to the State Bar.

Rule 6.4. Request for Review

6.4.1. After receiving notice of the Board’s intent to revoke or suspend the certification and before its effective date, a Certificate holder may make a written request to the Board for a review of the Board’s decision. To be effective, this request for review must be sent to the Board in time for the Board to receive it before the effective date of the revocation or suspension; state the reasons why the Board’s determination is alleged to be in error; and specify whether the Certificate holder is requesting a hearing.

6.4.2. If no hearing is requested, the Board shall make a decision within sixty-three (63) days following receipt of the request for review. If a hearing is timely requested, the Board must set a hearing within sixty-three (63) days after receiving the request for a hearing.

6.4.3. During the time following a request for Review and prior to the Board’s decision, any revocation or suspension is deferred until the request is withdrawn or the Board has entered its decision. The Board may, but is not required to, request a written response from the applicable Specialty Committee, if the dispute involves requirements of that committee. The Certificate holder may not have counsel at the hearing.

Rule 6.5. Board Decision

Within thirty-five (35) days after the hearing, or sixty-three (63) days after receipt of a request for review without a request for a hearing, the Board shall determine whether the Certificate holder’s certificate shall be revoked, suspended or remain in effect and the effective date of any revocation or suspension. The Board will notify the Certificate holder in writing about the decisions and its basis in the manner required by Rule 6.3. The decision of the Board will be final; however, the Certificate holder shall have a right to appeal the ruling of the Board to the Supreme Court as provided in these Rules. If a Certificate holder’s certification is revoked or suspended, the former Certificate holder may not reapply until at least one year has elapsed after the effective date of the revocation or suspension.
NEW MEXICO

RULE 19-309. BOARD REVIEW OF DENIAL OR REVOCATION OF SPECIALTY CERTIFICATION

A. Request For Review of Committee Recommendation. Within thirty (30) days of receipt of final notice from the specialty committee of recommended denial or revocation of specialty certification, an applicant who seeks review of the specialty committee’s recommendation shall file with the board and serve upon the chair of the specialty committee a request for review.

B. Record. Within thirty (30) days of receipt of the request for review, the specialty committee shall submit to the board its entire record regarding the application.

C. Referral by Board. Upon receipt of a request for hearing, the board chair shall refer the matter to the board en banc or to a hearing panel composed of at least three members of the board, with one member designated as chair of the panel. The members shall be guided by the Rules of Civil Procedure for the District Courts governing conflicts of interest, recusals and peremptory challenges of district judges. The applicant may exercise the right to excuse a panel or board member under peremptory challenge procedures within ten (10) days of receiving notice of the composition of the panel. The board chair may replace panel members as may be necessary. Two members of the panel shall constitute a quorum for the transaction of business.

D. Briefs. Within twenty (20) days after filing of the request for review, the applicant may submit a memorandum brief setting forth arguments why the specialty committee’s recommendation should be rejected. A copy of the brief shall be served by the applicant upon the chair of the specialty committee. Within twenty (20) days of receipt of the applicant’s brief, such representative as may be designated by the specialty committee chair may file a responsive brief. On written request of either the applicant or the representative of the specialty committee, the chair of the board or hearing panel may set the matter for oral argument. Requests for oral arguments shall be filed within seven (7) days after service of the last brief.

E. Review on the Record. The board shall consider only matters in the record of the specialty committee or proffered to the specialty committee by the applicant prior to decision by the specialty committee. No additional evidence will be admitted at the hearing before the board.

F. Oral Argument. The amount of time and procedure for oral argument may be determined by the board or hearing panel.
G. **Board Decision.** The board or panel shall render a written decision. A written copy of the decision shall be served forthwith by registered mail on the applicant and the representative of the specialty committee.

**RULE 19-310. SUPREME COURT REVIEW**

A. **Appeal to Supreme Court.** If the decision of the board is adverse to the applicant, the applicant may appeal to the Court.

B. **Scope of Review.** The appeal must be based on one or more of the following issues that:

1. the decision of the board is in conflict with a decision of the Court;
2. a significant question of law is involved;
3. the decision was arbitrary and capricious;
4. the appeal involves an issue of substantial public interest that should be determined by the Court or
5. the applicant was prejudiced by violation of these rules or other requirements of law.

C. **Rules of Appellate Procedure.** Appeals from decisions of the board shall be governed by the Rules of Appellate Procedure. If an applicant fails to perfect or prevail in the appeal, the decision of the board shall be final.

**RULE 19-311. APPEARANCE**

A lawyer may be represented by counsel or may appear pro se during proceedings conducted pursuant to these rules relating to the certification or denial of certification of the lawyer.

**Rule 6.6. Effect of Revocation or Suspension**

As of the effective date of a revocation or suspension, the former Certificate holder shall not hold himself or herself out to the public or to any attorney in any manner whatsoever as being certified by the Board in the legal specialty which is subject to the revocation or suspension. The Board shall publish in the Michigan State Bar Journal notification of any revocation or suspension of a former Certificate holder.
115. AGENCY STANDARDS FOR AUTOMATIC/DISCRETIONARY DENIAL OR REVOCATION OF LAWYER CERTIFICATION

a. Automatic denial or revocation. An agency will automatically deny or revoke a lawyer’s certification upon the occurrence of any of the following:

   (1) A finding by the agency that the lawyer failed to complete 20 CLE credits in the field of law within his/her three-year reporting period or the equivalent CLE reporting period.

   (2) Suspension or disbarment of the lawyer from the practice of law in any jurisdiction in which the lawyer is licensed.

   (3) Suspension of the lawyer for nonpayment of license fees or for failing to maintain mandatory CLE credits in any jurisdiction in which the lawyer is licensed.

   (4) Failure of the lawyer to complete satisfactorily the recertification process or failure to pay the required certification fees.

   (5) Written notice from the lawyer that he/she seeks decertification.

b. Discretionary denial or revocation of certification. An agency may deny or revoke a lawyer’s certification if:

c. The lawyer fails to cooperate with the certifying agency, or submits false or misleading information during the certification or recertification process.

   (1) The lawyer’s record contains evidence of personal or professional misconduct which is inconsistent with the standards of conduct adopted by the accredited agency.

   (2) The lawyer falsely or improperly announces the field of law or certification.
NEW MEXICO

C. Reinstatement. If the board revokes its certification of a lawyer as a specialist, the lawyer cannot again be certified as a specialist unless the lawyer qualifies upon application made as if for initial certification as a specialist and upon such other conditions as the board may prescribe. If the board suspends certification of a lawyer as a specialist, such certification cannot be reinstated except upon the lawyer’s application therefore and compliance with such conditions and requirements as the board may prescribe.

D. Inactive Specialists. Certification of a lawyer as a specialist shall be automatically suspended upon the filing of a petition for inactive status with the state bar. A board-certified specialist who files a petition for inactive status with the state bar shall file a copy of the petition with the board of legal specialization. If the attorney is granted reinstatement from inactive status by the board of bar examiners, the board of legal specialization may reinstate the lawyer’s specialty certification upon recommendation by the applicable specialty committee.

RULE 7.

ELIGIBILITY FOR RECERTIFICATION

Rule 7.0. Recertification Period

Recertification shall be required every five (5) years from the effective date of certification or recertification.

Rule 7.1. Standards for Recertification

An Applicant must show that during the current certification period he or she has complied with all requirements set forth in the specialty standards approved by the Board engaged in the practice of law in the specialty field in which recertification is sought, including all of the requirements of Rule 3 which apply to Applicants for recertification to the same extent as demonstrated in the application for original certification or as set forth in the individual standards. Such showing may be made by a sworn statement, in the discretion of the appropriate Specialty Committee Commission. Each area of certification established under this chapter shall contain requirements and safeguards for the continued proficiency of any Board Certified Specialist certificate holder. The following minimum standards shall apply:
7.1.1. **Continued Substantial Involvement**

A satisfactory showing of substantial involvement during the period of certification in the particular area for which certification is granted.

7.1.2. **Educational Requirements**

A satisfactory showing of such continuing legal education as required by these Rules in the area for which certification was granted but in no event less than ten (10) hours per year. Each Applicant for recertification shall maintain records sufficient to prove compliance with the educational requirements for recertification for at least one year from the date the Board acts to decertify the Applicant. The Applicant shall provide such records to the Board as the Board may require.

Educational activities which take place within the last six (6) months of a certification period that satisfy the individual standards, and which are in excess of the number of educational activities necessary for recertification, may be applied to the next certification period.

7.1.3. **Peer Review.** Satisfactory peer review and professional ethics record in accordance with these Rules.

7.1.4. **Standing with the State Bar of Michigan.** Any Applicant for recertification who is not, at the time of application for recertification, a member in good standing of State Bar or any other bar or jurisdiction in which the Applicant is admitted, as a result of discipline, disbarment, suspension or resignation, or other disciplinary action in lieu thereof, shall be denied recertification. The fact of a pending disciplinary complaint or malpractice action against an Applicant for recertification shall not be the sole basis to deny recertification.

7.1.5. **Payment of Fees.** The payment of any fees prescribed by the plan and prior to the end of the five (5) year certificate period required by the Board.

7.1.6. **Independent Inquiry and Review; Reexamination.** The Applicant must demonstrate to the Board both continued knowledge of the law of this state and continued competence with respect to the specialty in such manner as the Board requires. The Board may order an Applicant for recertification to take (and pass) the written examination to satisfy the requirements of this Rule.

**Rule 7.2 Duration of Recertification.** Each recertification is for a period of five (5) years, unless revoked or suspended as provided herein, and shall expire at the end of said five (5) years unless renewed as provided by these Rules. If timely application for recertification is made, certification will continue in effect until final action is taken on the application for recertification, unless earlier revoked or suspended.
Rule 7.3 Judicial Service/Tolling. The Board, in the exercise of its discretion, may waive the five (5) year recertification requirement in the event of judicial service during the certification period. The certification period may be tolled for the time during the certification period that the certified specialist is actually engaged in judicial service and otherwise is complying with the other requirements for continued certification. The certified specialist must provide confirmation of the fact that the certified specialist continues to engage in judicial service when requested to do so by the Board and must notify the Board when he or she ceases to be engaged in judicial service.

Rule 7.4. Failure to Meet Standards; Lapse of Certificate; Revocation of Certificate.

Any Applicant for recertification who either failed to meet the standards for recertification, or has allowed the certificate to lapse, or whose certificate has been revoked must meet all the requirements for initial certification as stated in these Rules and set out in the applicable specialty area’s standards, including taking the written examination, unless otherwise ordered by the Board.

RULE 8.
CONFIDENTIALITY

Rule 8.1. General Rule

8.1.1. Applications and Related Documents Confidential. The contents of the application form, and all documents, records, communications, other papers and statements of reference submitted to or received by the Board in connection with any application for certification or recertification under these Rules shall be the property of the Board and shall be held in confidence, and shall not be released or disclosed, even to the Applicant, except to appropriate parties based on legitimate need to know, and except as otherwise provided by these Rules, or upon prior order of the Court of competent jurisdiction. Provided, however, an Applicant may be informed as to the status of his/her application.

8.1.2. Revocation of a Certificate. All information regarding revocation shall be strictly limited to those persons who need to know and kept strictly confidential.

8.1.3. Applicability. These confidentiality rules apply to all Applicants, Specialty Committee members, the Board members and any State Bar staff, subject to the requirements of Rule 19 of the Bar Association of the State Bar.

[Note: Rule 19 Section 2 may need to be amended to include this information as confidential as stated above.]

Rule 8.2. Exceptions to General Rule
8.2.1. **General Exceptions.** General exceptions to the above general rule of confidentiality include the following:

A. Previously published information or any other information in the public domain;  
B. Specialty area definitions;  
C. Names and biographical information about the Boards, Specialty Committees, Applicants and entities associated with the process; and  
D. The filing of an application.

8.2.2. **Request for Review Appeals.** In the event of a Request for Review of any decision:

A. In the event of an appeal of any decision, the Applicant and the Board will have access to relevant information to prepare the appearance for Review; and  
B. In the event of an appeal, the counsel for the Board will have access to the same information provided to the Applicant.

**Rule 8.3. Examinations**

8.3.1. **Actual or proposed.** All actual examinations taken by Applicants as well as all proposed examination questions will remain strictly confidential, but will be available to appropriate staff and Specialty Committee members on a need to have access, however, the Board may authorize release of prior years’ examination questions from time to time.

8.3.2. [Cross references to procedures in accreditation, reaccreditation and other sections which may have confidentiality rules.]

**Rule 8.4. Claim of Breach of Confidentiality**

8.4.1. **Who may claim.** Any Applicant, Specialty Committee member, Board member, staff member or outside source who provide information to this Board or committee, may make a claim for a breach of confidentiality.

8.4.2. **Where referred.** Any claim of breach of confidentiality must be made to the chairperson of the board, unless the chairperson is the subject of the claim; then to any member of the Board.

8.4.3. **Procedure.** Upon a claim of breach of confidentiality, a three (3) member special committee shall be appointed by the Board from among its members to
investigate and determine such claim. No person against whom a claim of breach of confidentiality is brought shall serve on the special committee investigating said claim. In the conduct of investigations, the special committee may, among other things, administer oaths and affirmations, compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the alleged breach of confidentiality. Any claim of breach of confidentiality shall be investigated fully, including, but not limited to, confronting the Board member, Specialty Committee member or other person(s) against whom the claim has been made; and if the claim is found to have merit. Upon completion of the investigation, the special committee shall submit a report to the Board. The report shall include the findings and recommendations of the special committee as to whether the offending person should be removed from their position. The special committee shall also report the failure of any person to cooperate in the investigation of the claim. The Board may remove a Board or Specialty Committee member found to have violated these Rules. No person against whom a claim of breach of confidentiality is brought shall serve on a special committee investigating said claim.


If during the investigation of an Applicant’s information, there is discovered evidence of what could reasonably lead one to conclude may be a violation of law or the Rules of Professional Conduct, such evidence shall be reported as required by law or the Rules of Professional Conduct to the appropriate authorities. The report and subsequent disclosure, when made in good faith, shall be deemed to hold harmless and indemnify that reporter from any sanctions under these Rules or the Rules of Professional Conduct. Nothing in these Rules supersedes the duty to report a violation of law or the Rules of Professional Conduct.

RULE 9.
CONFLICT OF INTEREST


A member of the Board or Special Committee shall recuse himself or herself from any and all participation in the consideration of an Applicant or from attempting to influence others with respect to an applicant in the following circumstances:

9.1.1. He or she is a member of the same law firm as the Applicant, or was such within the preceding two (2) years;

9.1.2. He or she, or the law firm or office with which he or she is affiliated, represents the Applicant;
9.1.3. He or she, or the law firm or office with which he or she is affiliated, is a party to pending litigation in which the applicant, or the law firm or office with which the Applicant is affiliated, is also a party or represents a party to that litigation.

9.1.4. He or she, or the law firm or office with which he or she is affiliated, represents a party in pending litigation in which the Applicant, or the law firm or office with which the Applicant is affiliated, is a party;

9.1.5. He or she or his or her spouse is related to the Applicant by consanguinity or affinity within the third degree according to the rules of civil law; or

9.1.6. He or she has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit for or against the Applicant for malpractice.

Rule 9.2. **Applicant as Opposing Counsel.**

As a general rule, the fact that a member of the Board or Specialty Committee represents one party to a legal matter and the Applicant represents the opposing party is not a fact that requires recusal. In such event, however, the member of the Board or Specialty Committee shall notify the Applicant and give the applicant the opportunity to recuse the member of the Board or Specialty Committee based on a belief of personal bias or prejudice.

Rule 9.3. **Recusal Procedure.**

A member of the Board or Specialty Committee who is required to recuse himself or herself shall:

9.3.1. Immediately disclose to the full Board or Specialty Committee that he or she has a disqualifying interest but need not state the reasons therefore;

9.3.2. Withdraw from any participation in the matter of the application of that Applicant;

9.3.3. Refrain from attempting to influence another member of the Board or Specialty Committee; and

9.3.4. Refrain from voting upon the application of that Applicant.

Rule 9.4. **Recusal Request.**
Any Applicant who is aware of factors applicable to a Board or Specialty Committee member which indicate a potential conflict of interest within the meaning of these Rules may submit a request in writing that a Board or Specialty Committee member be recused. Recusal of a Board or Specialty Committee member is waived if the Applicant does not request recusal within 21 days after the Applicant discovers, or should have discovered, the factors which indicate a potential conflict of interest within the meaning of these Rules.

Rule 9.5. Disqualification.

In the event that a member of the Board or Specialty Committee does not voluntarily recuse himself or herself, the chair of the Board or Commission may, upon becoming aware of factors which may indicate a potential conflict of interest within the meaning of these Rules, initiate an inquiry as to whether or not such a member should be recused pursuant to the requirements of these Rules.

Rule 9.6. Action on Application of Member of the Board or Specialty Committee.

An application for certification or recertification of a member of the Board or Specialty Committee may be considered by the Board or Specialty Committee, so long as such member of the Board or Specialty Committee withdraws from the room at the time that his or her application is considered, does not vote on his or her own application and does not attempt to influence another member of the Board or Specialty Committee with respect to his or her own application.

RULE 10.
SEVERABILITY

Rule 10.1. Invalidation of a Rule Does Not Invalidate the Rest

If any provision of these Rules or the application of any such provision to any person or circumstances shall be held invalid, the remainder of these Rules to the extent that they can be given effect, or the application of such provision to persons or circumstances other than those as to which they are held invalid, shall not be affected thereby, and to this extent the provisions of these Rules are severable.