

**EMPLOYMENT AND LABOR LAW
SPECIALIZATION ADVISORY BOARD
STANDARDS AND PROCEDURES
FOR
CERTIFICATION, RECERTIFICATION, AND DECERTIFICATION**

By virtue of the authority vested in the Employment and Labor Law Specialization Advisory Board (Board) and the Commission on Continuing Legal Education and Specialization (Commission) by the South Carolina Supreme Court (Court), the Board prescribes the following standards and procedures for certification, recertification, and decertification as a specialist in employment and labor law (see Rule 408 SCACR, and Commission Regulations).

I. GENERAL REQUIREMENTS AND DEFINITIONS

- A. Nothing herein shall in any manner limit the right of an attorney certified in employment and labor law to practice in all fields of law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though certified in employment and labor law.
- B. No lawyer shall be required to obtain a certificate in employment and labor law before practicing in that field. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in the field of employment and labor law, even though not certified therein.
- C. All applicants for certification or recertification in employment and labor law must be active members in good standing with the South Carolina Bar and shall meet the requirements for certification or recertification prescribed by the Board.
- D. Certification in employment and labor law is individual and voluntary. Requirements for and benefits derived from certification may not be fulfilled by or attributed to a law firm, corporation, company, or other entity of which the certified lawyer is a member or employee.
- E. Forms, documents, applications, questionnaires, and examinations involved in the certification, recertification, or decertification process, as well as fees required of applicants and certified lawyers shall be as prescribed by the Board and/or Commission.
- F. Certification shall be for a period of five years at the end of which time recertification shall be permitted as indicated in § IV below.
- G. Employment and Labor Law is the practice of law dealing with all aspects of employment relations (public and private) including, but not limited to, unfair labor practices, collective bargaining, contract administration, the rights of individual employees and union members,

employment discrimination; all matters arising under the National Labor Relations Act (Wagner Act), Labor Management Relations Act (Taft-Hartley Act), Labor Management Reporting and Disclosure Act (Landrum-Griffin Act), Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, other federal statutes and analogous state statutes; practice before the National Labor Relations Boards, analogous state boards, federal and state courts, and arbitrators.

- H. Applicants for certification or recertification shall furnish satisfactory evidence of their good character and reputation. Unless otherwise prohibited by the Rules for Lawyer Disciplinary Enforcement, they shall also provide information in whatever form required by the Board as to whether they are now subject to an investigation, complaint, inquiry or other disciplinary proceedings by any segment of the Bar, including but not limited to any local, state, or other grievance board, committee, or commission; and if so, the details of such investigation, complaint, inquiry, or proceedings including whether they have ever been reprimanded, suspended, disbarred, or otherwise disciplined by any court or grievance committee.

The Board may deny certification or recertification on a finding of a grievance committee, a court, or administrative agency or other governmental agency that an applicant has been guilty of professional misconduct, or defer certification or recertification based upon the pendency of such proceedings. However, the Board will consider the seriousness of the underlying facts of the grievance, the passage of time since such discipline, the applicant's experience since that time, and any history of other disciplinary actions or pending actions. Failure to disclose such information is a material misrepresentation and may be cause for rejection.

- I. Applicants for certification or recertification will provide information in whatever form required by the Board as to whether they have ever been convicted, given probation, fined, or otherwise punished for any crime punishable by confinement for one (1) year or more, regardless of whether the conviction and/or punishment resulted from a plea of guilty, nolo contendere, or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The Board may deny certification or recertification if an applicant has been convicted, given probation, fined, or otherwise punished for any crime punishable by confinement for one (1) year or more.
- J. An applicant shall apply for certification or recertification as a specialist by completing and filing with the Board an application form furnished by the Board calling for information indicative of and relevant to the applicant's involvement, experience, competency, and practice in the field of employment and labor law. By completing and filing such application, the applicant shall be deemed to have authorized the Board to take all appropriate action to resolve any questions with respect to the applicant's involvement, experience, competency, and practice in the field of employment and labor law and to verify the information furnished by the applicant in making the application. In the appraisal of each applicant, the Board will

of each applicant, the Board will take such steps as it deems advisable or necessary under the circumstances to assure that the applicant presented to the Court for certification as a specialist is a lawyer who is technically competent in the field and of whom the Board has no notice of any personal or ethical deficiencies that might impair his/her professional performance as a specialist. Accordingly, the Board shall require each applicant to disclose any information needed to determine whether to present his/her application to the Court for certification. The Board not only may verify information submitted by the applicant, but may, in its discretion, conduct its own investigation into the applicant's competency, experience, involvement, and reputation. Should the Board determine that an applicant's competency, character, experience, involvement, or reputation does not support his/her application for certification, the Board shall reject the application subject to such rights of hearing and appeal as may be promulgated by the Commission and the Court.

- K. Applicants shall submit the names and addresses of two (2) or more federal judges or federal administrative law judges, hearing officers, arbitrators, or mediators before whom they have appeared or practiced. At least one (1) reference from a federal judge or U.S. District Court magistrate judge is preferred; however, the other references listed will be acceptable. Additionally, applicants must submit the names and addresses of five (5) lawyers engaged in the "practice of law," as defined in § II A, who are familiar with the applicant's practice and who are not partners, associates, or members of this Board or the Commission, to be contacted as references to attest to the applicant's experience, involvement and competency in the practice of employment and labor law. At least one (1) of the five (5) lawyers must be an employment and labor law specialist currently certified by the Supreme Court of South Carolina. The Board may, in its discretion and without notice to an applicant, secure information concerning an applicant's practice, involvement, experience, and competency in the specialty area from lawyers and judges other than those whose names are submitted by an applicant.
- L. In addition to other requirements herein, the Board may, in its sole discretion, require additional information from a particular applicant when in its judgment such additional information is necessary to a decision with respect to certification, recertification, or decertification.

II. MINIMUM STANDARDS FOR CERTIFICATION

A. REQUIRED PERIOD OF LAW PRACTICE

Applicants shall have been engaged in the practice of law for a period of five (5) years on a full-time basis. "Practice of law" means full-time legal work done primarily for the purpose of providing legal advice or representation. Service, after admission to the Board of any state or District of Columbia, as a judge of any court of record, as an administrative law judge, arbitrator, law teacher or judicial clerk (at state and federal courts and administrative agencies) shall be considered the practice of law. Corporate or government service,

including military service, as an attorney, after admission to the Board 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 giving legal advice to, or representation of, the corporation or government agency or individuals primarily connected with the corporation or government agency.

B. SUBSTANTIAL INVOLVEMENT

Applicants must show substantial involvement and special competency in employment and labor law practice during the five (5) years immediately preceding application by providing such information as may be required by the Board. During each of the five (5) years immediately preceding application, applicants must show:

1. that their time devoted to the practice of employment and labor law as defined herein (see § I G) was not less than 40% of a normal full-time practice of law, and
2. that their practice of employment and labor law has included substantial experience in at least two (2) of the five (5) employment and labor law areas indicated below:
 - a. Labor-Management Relations Act (union elections; unfair labor practices)
 - b. Collective Bargaining Agreements (negotiation, arbitration, and §301 actions)
 - c. Employment Discrimination (Title VII, Age Discrimination in Employment Act, Equal Pay Act, Americans with Disability Act, South Carolina Human Affairs Law, and Compliance with E.O. 11,246)
 - d. Individual Employment Rights (wrongful discharge--handbook cases, public policy cases, breach of duty of "good faith," and intentional infliction of emotional distress; workers' compensation retaliation claims, whistle blower claims; covenants not to compete; drug/alcohol testing; and miscellaneous privacy issues)
 - e. Miscellaneous (Landrum-Griffin Act, public employee issues--both statutory and constitutional, Occupational Safety and Health Act, Employee Retirement Income Security Act, Fair Labor Standards Act, Davis-Bacon Act, state-law wage payment claims, Railway Labor Act, Immigration Reform & Control Act, WARN -- plant closings, veterans' employment rights, and negligent hiring/supervision).

C. CONTINUING LEGAL EDUCATION - MINIMUM REQUIREMENTS

During the five (5) years preceding application for initial certification (or appropriate lesser period if any of the practice or substantial involvement requirements of § II A & B are waived), applicants must have earned credit for not less than sixty (60) hours of continuing legal education (CLE) in approved courses or programs dealing with employment and labor law. Not more than twenty (20) hours of the required sixty (60) hours of CLE may be in trial advocacy type courses. For the purpose of this requirement, "approved courses or programs" shall mean courses/programs accredited by the Board for the employment and labor law specialty or courses/programs that would qualify for such accreditation.

D. ORAL INTERVIEW/EXAMINATION

Applicants for initial certification must appear personally before the Board for an oral interview/examination. Applicants must demonstrate sufficient knowledge, proficiency, competency, and experience in employment and labor law to justify the representation of special competency to the legal profession and to the public.

E. FEES

Applicants shall timely pay the fees established from time to time by the Board and/or Commission, including but not limited to application fees, filing fees, examination fees, and certification fees.

F. FAILURE TO FURNISH INFORMATION; MISREPRESENTATION

Certification or recertification may be denied because of applicant's failure to furnish requested information or because of misrepresentation of any material fact requested by the Board.

III. REQUIREMENTS FOLLOWING CERTIFICATION

- A. During each annual reporting period, all certified specialists in employment and labor law shall complete not less than twelve (12) hours of approved specialty continuing legal education. "Approved specialty continuing legal education" means educational activities accredited by the Board for the specialty (see § IV C which requires seventy-five (75) hours of approved CLE for recertification). Provided, however, that for reporting period 2008-2009, a minimum of fifteen (15) hours of approved specialty credit shall be required and at least nine (9) hours of specialty credit must be completed without regard to carry forward credit from the prior reporting period.
- B. Each certified specialist must report annually to the Commission his/her compliance with § III A and pay such filing fees, including late fees, as the Commission may from time to time

prescribe. Failure to file and/or pay required fees may result in suspension from the practice of law in accordance with Commission Regulations in addition to revocation of certification.

- C. During the period of certification, all certified specialists must continue to practice law and to be substantially involved in the practice of employment and labor law (see § II A & B, regarding the meaning of "practice of law" and "substantially involved in the practice of employment and labor law"). Should any certified specialist cease to practice law or to be substantially involved in the practice of employment and labor law, he/she shall promptly notify the Board for such action with respect to decertification as the Board shall deem to be appropriate. The failure of a certified specialist to notify the Board that he/she is no longer engaged in the practice of law or substantially involved in the practice of employment and labor law may constitute grounds for decertification of the individual concerned.
- D. During any period of initial or subsequent certification, each certified specialist shall report to the Commission any administrative action or malpractice claim in which settlement is made or suit is filed and unless otherwise prohibited by the Rules for Lawyer Disciplinary Enforcement, shall likewise report to the Commission any case in which he/she learns that he/she is the subject of an investigation, inquiry or other disciplinary proceedings by any segment of the Bar, including, but not limited to, any local, state or other grievance board, committee or commission.

IV. RECERTIFICATION

- A. Renewal of certification under the program shall be required every five (5) years.
- B. Applicants must demonstrate their continuing substantial involvement and special competency in the practice of employment and labor law as may be required by the Board. However, except as provided in § IV C below, requirements for recertification shall not exceed the requirements for original certification.
- C. To qualify for recertification, applicants must demonstrate the completion of a minimum of seventy-five (75) hours of approved specialty continuing legal education (CLE) in the five (5) years since their original or latest certification. Of the seventy-five (75) hours CLE required for recertification, not more than thirty (30) hours may be in trial advocacy type courses.

V. REVOCATION OF CERTIFICATION

The Board may revoke the certification of any lawyer if the certification program for this field is terminated, if a lawyer wishes to withdraw from the specialty and submits a letter resigning his/her certification or if it is determined after hearing, on appropriate notice, that:

- A. Certification was granted contrary to the Board's Standards and Procedures, Commission Regulations, or South Carolina Appellate Court Rules; or
- B. Certification was granted to a lawyer who was not eligible for certification or who made any false representation; or
- C. A certified lawyer has failed to abide by all Board Standards and Procedures, Commission Regulations, and South Carolina Appellate Court Rules, as amended from time to time; or
- D. A certified lawyer has failed to meet the continuing legal education requirements of § III A or to file the annual report and/or pay the fees prescribed by § II E and § III B; or
- E. A certified lawyer no longer meets the minimum standards for certification established by the Board's Standards and Procedures, including practice of law and substantial involvement requirements (see § II A & B).

VI. WAIVERS

In cases of rare and unusual circumstances, the Board may waive compliance with any of the standards herein for the purpose of certifying or recertifying an individual as a specialist in employment and labor law except that a waiver may not be granted to certify an individual who has not practiced law for at least three (3) years and who has not been substantially involved in the practice of employment and labor law for at least three (3) years. In any case in which a waiver is granted pursuant to this section, notification to the Court recommending certification or recertification shall indicate that a waiver has been granted and will specify the reason(s) therefor.

VII. EFFECTIVE DATE

These Standards and Procedures shall be effective November 1, 1992, or whenever approved by the South Carolina Supreme Court, whichever date is later, and supersede all prior Employment and Labor Law Specialization Advisory Board Standards and Procedures for Certification, Recertification, and Decertification.