

REGULATIONS FOR LEGAL SPECIALIZATION IN SOUTH CAROLINA

I. PURPOSE

These Regulations implement the specialization plan promulgated by the Supreme Court of South Carolina in Rule 408, SCACR.

II. DEFINITIONS

As used in these Regulations:

- A. "Court" means the Supreme Court of South Carolina.
- B. "Commission" means the Supreme Court Commission on Continuing Legal Education and Specialization.
- C. "Advisory Board" means a board appointed by the Commission to administer a field of law designated a specialty area.
- D. "ABA" means the American Bar Association.
- E. "CLE" means continuing legal education.
- F. "Independent certifying organization" means an organization, bar association, group or entity other than the Supreme Court of South Carolina which certifies or intends to certify lawyers as specialists.
- G. "Specialty field" and "specialty area" mean a field of the law in which lawyers are certified as specialists by the Court or an independent certifying organization.

III. JURISDICTION

Pursuant to Rule 408, SCACR, the Commission has jurisdiction over all matters pertaining to specialization in the practice of law in South Carolina. The Commission's responsibilities include, but are not limited to:

- A. Administration of a program to recognize and regulate specialization in the law.
- B. Designation and definition of fields of law in which certificates of certification may be issued by the Court.

- C. Publication of reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certification to lawyers in designated and defined fields of law.
- D. Approval and accreditation of independent organizations to certify lawyers as specialists in specialty fields in which certification is not offered by the Court.
- E. Establishment of Advisory Boards in each field of law designated by the Commission in which certification shall be offered and appointment of members of such Boards.
- F. Designation of filing and other fees to defray the expense of administering the specialization program.

IV. EXECUTIVE DIRECTOR

The Commission's Executive Director is responsible for the execution of the policies and directives of the Commission with respect to all specialization activities. The Executive Director, or a staff member designated by the Executive Director for that purpose, shall be ex officio a member of each Advisory Board and in that capacity, shall serve as Secretary to the Advisory Board, performing all duties that may be required of Secretary by these Regulations to include keeping and transcribing Minutes of all Advisory Board meetings.

V. ADVISORY BOARDS

- A. **General.** Advisory Boards to the Commission shall be established for each field of law in which certification is to be offered by the Court.
- B. **Composition and Terms.** Each Advisory Board shall consist of not less than five (5) members who are certified in the specialty field and who are appointed by the Commission to serve for three (3) years and until their successors are appointed. With respect to members initially appointed to an Advisory Board, such members must be lawyers who practice substantially in the specialty field and their terms shall be staggered so that not more than two (2) members' terms shall expire at the same time. No person shall be appointed for more than two (2) consecutive terms. One (1) member of each Advisory Board shall be designated as chairperson by the Commission.
- C. **Responsibilities.** See Rule 408(d) SCACR. Advisory Boards shall advise and assist the Commission in carrying out its objectives and in the conduct

and development of the program of specialization in the law. Standards and procedures for certification and recertification shall be prepared by each Advisory Board for approval by the Commission and the Court. The Advisory Board for each field of law shall be charged with actively administering the program in its particular field in cooperation with and under the general guidance of the Commission.

VI. INDEPENDENT CERTIFYING ORGANIZATIONS

- A. ***Application for Approval.*** An independent certifying organization seeking approval from this Commission to issue certificates of specialization to South Carolina lawyers shall file an application requesting such approval. Application may be by letter and shall be accompanied by evidence of accreditation by the ABA and a complete copy of its application for accreditation which it submitted to the ABA (including any amendments or supplements thereto). An applicant shall specify each field of law for which it is seeking approval to issue certificates of specialization in South Carolina.
- B. ***Designation of Specialty Fields - Limitations.*** Each field of law in which certification is to be offered by an independent certifying organization in South Carolina must be susceptible of meaningful definition and be an area in which a significant number of South Carolina Lawyers regularly practice.
- C. ***Standards for Approval.*** An independent certifying organization, whose standards and procedures equal or exceed the minimum standards for certification specified in Rule 408, SCACR, and these Regulations, which has been accredited by the ABA, may be approved to issue certificates of specialization to South Carolina lawyers. However, such certificates of specialization may be offered only in those fields of the law in which specialization is not available from the Court. For this purpose, if specialization is available from the Court in any sub-area of a field of law in which an independent certifying organization offers or proposes to offer certification, that field of law shall be considered one in which specialization is available from the Court. Applications from independent certifying organizations that have not been accredited by the ABA will be rejected.
- D. ***Fees.*** See Regulation IX, *infra*.
- E. ***Term of Authorization to Issue Certificates.*** Approval of an independent certifying organization to issue certificates of specialization in South Carolina shall be for a term of three (3) years. To retain approval to issue certificates of specialization, a certifying organization shall be required to reapply at or near the end of the third (3rd) year of its initial approval period and every

three (3) years thereafter.

F. ***Revocation/Termination of Authority to Issue Certificates.***

1. **Revocation.** In any case in which an approved independent certifying organization ceases to exist, has its ABA accreditation withdrawn or suspended, fails to pay the annual administrative fee specified in Regulation IX E, *infra*, or fails to comply with the provisions of these Regulations, its approved status shall be revoked automatically.
2. **Termination.** In the event the Commission ceases to exist, its jurisdiction over South Carolina's specialization program is revoked, or its authority to approve the issuing of certificates of specialization by independent certifying organizations is withdrawn, the authority for independent certifying organizations to issue certificates of specialization to South Carolina lawyers shall terminate automatically.

G. ***Publication of Certified Status.*** After an independent certifying organization is authorized to issue certificates of specialization in South Carolina, any South Carolina lawyer certified as a specialist by that organization may publicize his or her certification, provided the communication states the name of the certifying organization and is not false or misleading. (For example, a lawyer certified by the ABC Board of Trial Advocacy as a civil trial specialist could publicize that fact in this manner: "Certified Civil Trial Specialist - ABC Board of Trial Advocacy.") In the event the authority of an independent certifying organization to issue certificates of specialization is revoked or terminated for any reason, South Carolina lawyers may not publicize a certification from that organization.

H. ***Required Reports.*** An independent certifying organization approved to issue certificates of specialization to South Carolina lawyers shall report to the Commission:

1. The name, South Carolina Bar number, mailing address, field of law in which certified, and period of certification (beginning and ending dates) of any South Carolina lawyer certified by it.
2. The name, South Carolina Bar number, and mailing address of any South Carolina lawyer certified by it whose certificate of specialization is revoked, suspended, modified, or whose certificate expires and is not renewed.

3. The name, South Carolina Bar number, and mailing address of any South Carolina lawyer certified by it who fails to comply with its CLE requirements.
4. Notice of renewal, revocation, modification, or suspension of its ABA accreditation.
5. Notice of any change in its constitution, bylaws, articles of incorporation, or other governing document or of any change to its standards and procedures for certification and recertification of specialists.
6. Any other information that may be required.

VII. APPLICATIONS FOR CERTIFICATION AND RECERTIFICATION

- A. **General.** Applications shall be typewritten on forms provided by the Commission. Each question shall be answered responsively or shown as "not applicable." Applications and the information included therein shall be sworn to by the applicant as being true and complete.
- B. **Completion of Requirements for Certification.** An applicant shall complete all requirements prior to application; provided, however, that:
 1. Oral interview/examination and written examination will be completed after an application is filed.
 2. The period of law practice and substantial involvement in the specialty field required by the standards and procedures of that specialty field may be completed after an application is filed, but must be completed not more than three (3) months after the application is received in the Commission's offices.
 3. CLE requirements may be completed after an application is submitted provided the applicant furnishes proof of satisfaction of the requirements within three (3) months of the date his or her application is received in the Commission's offices.
- C. **Requirement for Additional Information.** To assist in determining an applicant's entitlement to certification, the Commission, its Executive Director, or the Advisory Board may require an applicant to submit information in addition to that called for on the application form.

- D. ***Payment of Application Fees.*** An application shall not be deemed complete until the application fee in the amount specified by the Commission has been paid.
- E. ***References.*** Advisory Boards shall require applicants to provide names and addresses of at least five (5) lawyers or judges, or both, who can attest to the applicant's competence in the specialty field. Such references should be certified or should practice substantially in the specialty field and may not be related to or in practice with the applicant. Members of the Advisory Board and the Commission are not eligible to serve as references. In addition to references provided by an applicant, the Commission, its Executive Director, or the Advisory Board may solicit at random additional lawyers and/or judges to submit statements concerning the applicant's competence. Statements of references concerning an applicant shall be submitted on forms approved and furnished by the Commission.
- F. ***Minimum CLE Requirements.*** CLE requirements to enter a specialty field, annual CLE requirements to maintain certification, and CLE requirements to qualify for recertification shall be specified by each specialty field's Advisory Board. However, the minimum CLE requirements to enter a specialty field shall not be less than thirty-six (36) hours of participation in CLE in the specialty area during the three (3) year period preceding a lawyer's application for certification, the annual CLE requirement for certified lawyers shall not be less than twelve (12) hours, and the CLE requirement to qualify for recertification shall not be less than seventy-five (75) hours of CLE in the specialty area.
- G. ***Substantial Involvement in the Specialty Field.*** Substantial involvement is measured by the type and number of cases or matters handled and the amount of time spent practicing the specialty area. To qualify for certification in a specialty area, time spent practicing the specialty shall be no less than twenty-five percent (25%) of the total practice of a lawyer engaged in a normal full-time practice.
- H. ***Processing of Applications.***
1. The Executive Director and/or a member of the Executive Director's staff shall check each application upon receipt to assure that all portions of the application have been completed and that the applicant has complied with all requirements of the specialty field.
 2. An application incomplete on its face or one in which it appears that

the applicant does not meet the minimum practice (including substantial involvement in the specialty area) or CLE requirements for certification shall be returned to the applicant with a letter specifying the deficiencies in his or her application.

- I. ***Burden of Proof.*** An applicant has the burden of establishing that he or she has met the requirements for certification in the specialty field. That burden is satisfied only if the Advisory Board is convinced, by clear and convincing evidence, that the applicant's involvement, experience, competency, practice, and education in the specialty field concerned meets or exceeds the minimum standards specified for certification in the specialty field and that he or she is a person of good character and reputation.
- J. ***Failure of Written Examination.*** An applicant who fails a specialty field's written examination may not be certified unless he or she reappplies for certification and thereafter makes a passing score on the specialty's written examination. The application for certification of any applicant who has failed a specialty field's written examination three (3) times shall be rejected.
- K. ***Requirements for Recertification.*** Recertification shall require similar evidence of competence as that required for initial certification in substantial involvement, peer review, and evidence of good standing. Minimum CLE requirements for recertification are indicated in Regulation VII F, *supra*.
- L. ***Certification When Malpractice Claims or Ethical Complaints are Pending.*** An Advisory Board should not decline to recommend certification or recertification of an applicant it finds otherwise qualified simply because of a malpractice claim or ethical complaint filed or threatened. In cases involving such claims or complaints, the Advisory Board should undertake a due diligence review of the facts and circumstances of the claim or complaint and then determine its action with respect to the application for certification or recertification.

VIII. WRITTEN EXAMINATION

- A. ***Requirement.*** Advisory Boards will require applicants to pass a written examination as a prerequisite to initial certification. An applicant who has not taken a specialty field's written examination within two (2) years of the date his or her application was received in the Commission's offices shall be required to reapply for certification.
- B. ***Time and Place.*** Written examination for applicants shall be conducted in

such place and on such date as fixed by the applicable Advisory Board in coordination with the Executive Director.

- C. **Grading.** The grade given an applicant's written examination by the grader or graders shall be final in all cases except where the written examination is subject to review as indicated hereafter (see Regulation VIII F, *infra*).
- D. **Destruction of Examination Booklets and Answer Sheets.** Examination booklets and answer sheets of applicants who pass a specialty field's written examination will be destroyed after grading. Examination booklets and answer sheets of an applicant who fails a specialty field's written examination will be destroyed fifteen (15) days after the applicant was mailed notice (by certified mail) by the Executive Director that he or she failed the written examination unless, within that fifteen (15) day period, the applicant has filed with the Executive Director a written request to review his or her examination.
- E. **Review of Written Examination.** Within fifteen (15) days of the mailing of notice by the Executive Director that an applicant has failed the written examination, the applicant may request in writing to review his or her examination. If a written request to review the examination is timely submitted, the applicant will be permitted to review the examination in the Commission's offices at a time designated by the Executive Director. To prevent compromise of the written examination, the applicant shall not be permitted to remove the examination from the Commission's offices or to copy the examination.
- F. **Petition for Grade Review.** After reviewing his or her examination, any applicant who feels errors were made in grading may file with the Commission a *Petition for Grade Review*. That petition must be filed within fifteen (15) days of the date he or she reviewed his or her written examination in the Commission's offices. The petition should set out in detail the errors the applicant believes were made in the grading of his or her examination. An applicant may file supporting information to substantiate his or her petition. A petition not timely filed shall not be considered.
- G. **Review Procedure.** The Executive Director will submit an applicant's *Petition for Grade Review*, examination, and answer sheet to the specialty's Advisory Board. All information will be submitted to the Advisory Board in blind form with no identifying information on any document furnished the Advisory Board. The Advisory Board shall review the entire examination of any applicant requesting a review of his or her grade and shall recommend to the Commission that the applicant's grade remain the same or be changed. The Advisory Board's recommendation to the Commission shall

be in writing, shall specify the reasons why the Advisory Board reached its recommendation, and shall be submitted within sixty (60) days from the receipt of the *Petition for Grade Review* unless that period is extended by the Executive Director for good cause.

- H. ***Decision of the Commission.*** The Commission shall consider a *Petition for Grade Review* and the recommendation of the Advisory Board pertaining thereto at its first meeting following receipt of the Advisory Board's recommendation. The Commission's decision on whether the applicant passed or failed the examination shall be final.

IX. SPECIALIZATION FEES

The following fees, which may be adjusted as necessary, have been established for the specialization program:

- A. ***Application Fee.*** A fee as specified by the Commission shall be assessed for each application for certification that is submitted. The applicant is not entitled to a refund of the application fee or any portion thereof if his or her application is returned, rejected or withdrawn.
- B. ***Examination Fee.*** An examination fee may be instituted if deemed necessary by the Commission to help defray the expense of administering the specialization program.
- C. ***Certification Fee.*** A fee as specified by the Commission is due and payable by an applicant who has been notified that he or she has been approved for certification by the Court. Payment of the certification fee is a prerequisite to issuance of a certificate of specialization.
- D. ***Application Fee for Approval as an Independent Certifying Organization.*** Independent certifying organizations filing applications for approval to issue certificates of specialization to South Carolina lawyers shall pay a nonrefundable application fee as specified by the Commission for each field of the law in which an applicant proposes to offer specialization.
- E. ***Annual Administrative Fee.*** Each independent certifying organization approved to issue certificates of specialization to South Carolina lawyers shall pay an annual administrative fee as specified by the Commission for each field of the law in which it is approved to issue certificates of specialization.
- F. ***Filing Fees.*** When reporting compliance with a specialty field's annual CLE

requirements, each certified specialist shall pay an annual filing fee in an amount specified by the Commission for each such report he or she files with the Commission. Reports filed after the reporting deadline of March 1 (as determined by USPS postmark) shall be assessed a late filing fee in an amount equal to the late filing fee charged active South Carolina Bar members who do not file reports of compliance by March 1.

X. REPORTING COMPLIANCE WITH CLE REQUIREMENTS

A. *Specialists Certified by the Court.*

1. **Reports of Compliance.** On forms prepared by the Commission and available through its offices, each certified specialist shall, not later than March 1 of each year, file a report of compliance with the CLE requirements of the relevant specialty field. In addition to CLE requirements imposed by the specialty field, the specialist shall annual report at least two (2) hours of LEPR. Any specialist who reports more than two (2) hours of LEPR credit in any annual reporting period year may carry forward up to two (2) hours of excess LEPR credit to the next annual reporting period.
2. **Annual Certified Specialist Statement.** On forms prepared by the Commission and available through its offices, each certified specialist shall, not later than March 31 of each year, file a statement pertaining to the nature of the specialist's practice and disclosing whether, during the preceding year, the specialist has been the subject of disciplinary actions, malpractice claims (including claims settled by payments), and/or any criminal convictions, excluding minor traffic offenses. Failure or refusal to file this report may result in revocation of certification.

- B. *Specialists Certified by Independent Certifying Organizations.*** Lawyers who are certified by approved independent certifying organizations shall comply with the annual CLE requirements of such organizations and shall, not later than March 1 of each year, file an annual CLE report with the Commission on forms prepared by and available through the Commission's offices. Requirements of an independent certifying organization notwithstanding, each such specialist shall complete and report annually to the Commission a minimum of fourteen (14) hours of approved CLE of which at least two (2) hours must be directed to LEPR. Specialists reporting more than two (2) hours of LEPR credit in any annual reporting period may carry forward to the next annual reporting period up to two (2) hours of his or her excess LEPR credit.

XI. HEARING AND APPEAL

- A. ***Denial of Certification or Recertification.*** An applicant denied certification or recertification by an Advisory Board may request a hearing by petitioning the pertinent Advisory Board (through the Commission's Executive Director) within thirty (30) days after notice is mailed by the Commission that his or her certification or recertification has been denied. However, an applicant who is denied certification because of his or her failure to receive a passing score on a specialty field's written examination may not petition for a hearing pursuant to this paragraph, but may review his or her examination and petition for a review of his or her grade as provided in Regulation VIII, *supra*. No particular form is prescribed for a petition requesting a hearing pursuant to this paragraph, but such a petition shall be in writing and shall set forth in detail the basis upon which the appeal is predicated. Any petition for a hearing not timely filed shall be rejected.
- B. ***Hearing Procedures.***
1. **Notice: Time and Place of Hearing.** The pertinent Advisory Board shall fix a time and place for the hearing as soon as practical after a petition requesting a hearing is received and shall notify the applicant thereof. Such notice shall be given to the applicant at least fifteen (15) days prior to the time fixed for the hearing. Hearings shall normally be held in the South Carolina Bar Building located at 950 Taylor Street in Columbia, South Carolina; however consideration shall be given to any special circumstances affecting the applicant's ability to travel to Columbia.
 2. **Quorum.** A majority of the Advisory Board shall constitute a quorum. All decisions by the Advisory Board shall be by majority vote of those members present and voting.

3. Conduct of Hearings: Rights of Parties.

- (a) Hearings shall be reported by a certified court reporter. The applicant shall pay the reporter's fees and shall not be provided a transcript until those fees are paid. In its sole discretion, the Commission may pay or refund to the applicant the reporting and transcript costs. The applicant shall be entitled to counsel at all stages of the investigation and at all hearings and shall have the right to attend all hearings with his or her counsel. The Advisory Board may seek the services of the Office of the Attorney General. Oral evidence shall be taken on oath or affirmation. The applicant shall have the right to testify in his or her behalf unless that right is waived or the applicant fails to appear at the hearing. An applicant who does not testify on his or her behalf may be called and examined, as if under cross examination, by the Board, the Executive Director, or any attorney appointed by the Advisory Board to represent it. Failure to appear at a hearing ordered by an Advisory Board, after receiving written notice, shall constitute a waiver by the applicant of his or her right to appeal to the Commission and the Court. The applicant is responsible for all costs associated with his or her appearance including, in addition to the reporter's fees indicated above, travel and lodging costs, counsel fees, witness fees, and fees for document reproduction.
- (b) At any hearing, the applicant, the Advisory Board, Executive Director, and any attorney appointed by the Advisory Board to represent it, shall have the right to call and examine witnesses; to introduce exhibits; to cross examine witnesses pertaining to any matter relevant to the issues; to impeach witnesses; and to rebut evidence.
- (c) The Chairperson of the Advisory Board or a member appointed by the Chairperson shall preside at the hearing. Strict rules of evidence shall not apply, but the presiding officer is authorized to make evidentiary rulings.
- (d) Any hearing may be recessed or adjourned from time to time at the discretion of the Advisory Board to allow for the development of additional evidence if such is deemed necessary to a full, fair, and just determination of the issues before the Advisory Board.
- (e) The hearing shall be completed within ninety (90) days after receiving applicant's request for hearing.

(f) Within thirty (30) days after completing the hearing, the Advisory Board shall notify the applicant and the Commission of its action on applicant's appeal.

4. **Oaths.** The presiding member of an Advisory Board shall have the authority to administer oaths to witnesses appearing before the Advisory Board.

5. **Notices.** Notices required by this Regulation and by Regulations VIII and XII may be served by delivering a copy of the notice or the document to be served to the party to be served, or his or her attorney of record, either in person or by registered or certified mail at his or her last known address.

C. **Appeals.**

1. **Appeal to the Commission.** An appeal may be taken to the Commission from a decision of an Advisory Board which denies certification or recertification to an applicant or which revokes a specialist's certification. Any such appeal must be received by the Commission not later than thirty (30) days after notice of the Advisory Board's decision was delivered or mailed to the applicant. No particular form is prescribed for such appeals, but the basis for the appeal should be set forth in detail.

2. **Supreme Court.**

(a) Except as provided otherwise in Regulation VIII, *supra*, with respect to issues pertaining to a failure to achieve a passing grade on a specialty field's written examination, an applicant may appeal to the Court an adverse decision of the Commission concerning his or her certification, recertification, or revocation of certified status. An appeal is accomplished by filing written notice of intention to appeal within ten (10) days after receipt of the Commission's adverse decision. Notice of appeal shall be filed with the Clerk of the Court and with the Commission's Executive Director.

(b) Procedures for the appeal shall be prescribed by the Court after an applicant files notice of intention to appeal.

XII. REVOCATION OF CERTIFICATION

- A. **General.** See Rule 408(g), SCACR. An Advisory Board may revoke certification of any attorney if the certification program for that specialty field is terminated or if it is determined, after hearing on appropriate notice, that:
1. Certification was granted contrary to the Advisory Board's Standards and Procedures, the Commission's Regulations, or the Court's Rules; or
 2. Certification was granted to an attorney who was not eligible for certification in the specialty or who made any false representations or misstatements of material facts; or
 3. A certified lawyer has failed to abide by all Advisory Board Standards and Procedures, Commission Regulations, and Court Rules, as amended from time to time; or
 4. A certified lawyer has failed to meet the continuing legal education requirements of the specialty field or to file the annual CLE report or to pay the fees prescribed by the Commission; or
 5. A certified lawyer no longer meets the minimum standards for certification established by the Advisory Board's Standards and Procedures, including practice of law and substantial involvement requirements.
- B. **Hearing Procedures.** The rules specified in Regulation XI B, *supra*, shall govern hearings held by Advisory Boards for the purpose of revoking an attorney's certification. However, provisions of Regulation XI B to the contrary notwithstanding, a certified attorney shall be entitled to thirty (30) days notice of the time and place of the hearing to determine if his or her certification should be revoked and he or she shall not be required to pay the court reporter's fees.
- C. **Report to Certified Attorney and the Commission.** Within thirty (30) days after completing its hearing, unless that period is extended by the Executive Director for good cause, the Advisory Board shall notify the certified lawyer and the Commission of its decision with respect to revocation of the attorney's certification.
- D. **Appeals.** See Regulation XI C, *supra*.
- E. **Disbarment.** Disbarment or suspension of a certified attorney shall automatically revoke his or her certification.

XIII. EFFECTIVE DATE

These Regulations shall be effective May 1, 1994 or whenever approved by the Supreme Court of South Carolina, whichever date is later.