

# Rules of Legal Specialization

## ARTICLE 1

### Board of Legal Specialization

#### 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 seven 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.

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 reappointment to not more than one additional three (3) year term after having served one full three (3) year term.

C. **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.

D. **Title.** These rules shall be known as "Rules of Legal Specialization".

[As amended, effective January 1, 1989; February 16, 2004; as amended by Supreme Court Order No. 12-8300-003, effective January 1, 2012.]

#### ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, substituted "are board certified specialists" for "specialize" at the end of the next to last sentence of Paragraph A and "terms" for "term" in the first sentence of Paragraph B, and deleted the former second sentence of that paragraph which had provided for the appointment of members after the expiration of the initial terms.

**The 2012 amendment**, approved by Supreme Court Order No. 12-8300-003, effective January 1, 2012, reduced the number of board members from nine to seven members; and in Paragraph A, in the second sentence, after "board shall be composed of", deleted "nine" and added "seven".

## **19-102. Powers and duties.**

The board shall have general jurisdiction of all matters pertaining to regulation of specialization and certification of specialists in the practice of law and shall have the power and duty:

- A. to administer these rules and regulations of the board;
- B. to designate specialties of law practice and define by regulations of specialty committees the scope and limits of such specialties and to provide procedures for the achievement of these purposes;
- C. to appoint, supervise, act on the recommendations of and consult with specialty committees as hereinafter defined;
- D. 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 level of competence among the various specialties in accordance with the nature of the specialties;
- E. 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 requests for review of recommendations made by the specialty committees;
- F. to establish and publish procedures, rules, regulations and bylaws to implement these rules;
- G. to propose, and request the Supreme Court to make, amendments to these rules whenever appropriate;
- H. to cooperate with other boards or 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;
- I. to evaluate and approve, or disapprove, any and all continuing legal education courses for the purpose of relevancy; and
- J. to cooperate with other organizations, boards and agencies engaged in the certification of legal specialists or concerned with the topic of legal specialization.

[As amended, effective March 15, 1995; February 16, 2004.]

### **ANNOTATIONS**

**The 1995 amendment**, effective March 15, 1995, substituted "these rules and rules and regulations of the board" for "the plan of specialization" in Paragraph A, inserted "by regulation of specialty committees" in Paragraph B, and substituted "these rules" for "this plan" in Paragraphs F and G.

**The 2003 amendment**, effective February 16, 2004, substituted "certification" for "recognition" and "certify" for "recognize" throughout the rule and rewrote Paragraph I, which had provided details regarding the purposes of the board's evaluation of continuing legal education courses or educational alternatives.

### **19-103. Specialty committees.**

The board shall establish a specialty committee for each specialty in which specialists are to be certified.

A. **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 lawyers 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 to be covered by the specialty.

B. **Terms.** 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.

C. **Meetings.** Meetings of the specialty committee shall be held at regular intervals, at such times and places and upon such notice as the specialty committee may from time to time prescribe or upon direction of the board.

[As amended, effective February 14, 1997; February 16, 2004.]

### **ANNOTATIONS**

**The 1997 amendment**, effective February 14, 1997, deleted "annually" following "designated" in the first sentence of Paragraph A.

**The 2003 amendment**, effective February 16, 2004, substituted "certified" for "recognized" in the introductory language, and deleted "after passing the bar

examination” following “licensed” and inserted “are board-certified specialists in the specialty field, or” and “otherwise deemed” in the last sentence of Paragraph A.

### **19-104. Duties 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 this plan in that specialty. Each specialty committee shall advise and make recommendations to the board as to the standards for the specialty and the certification of individual specialists in that specialty. Each specialty committee shall be charged with actively administering the plan in its specialty and, with respect to that specialty, shall:

- A. after public hearing on due notice, recommend to the board reasonable and nondiscriminatory standards applicable to that specialty;
- B. make recommendations to the board for certification, continued certification, denial, suspension or revocation of certification of specialists and for procedures with respect thereto;
- C. administer procedures established by the board for applications for certification and continued certification as a specialist and for denial, suspension or revocation of such certification;
- D. 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;
- E. 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
- F. perform such other duties and make such other recommendations as may be requested of or delegated to the specialty committee by the board.

[As amended, effective February 16, 2004.]

### **ANNOTATIONS**

**The 2003 amendment**, effective February 16, 2004, substituted “certification” for “recognition” throughout the rule and “of” for “or” following “revocation” in Paragraph B.

### **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.

[As amended, effective February 16, 2004.]

### **ANNOTATIONS**

**The 2003 amendment**, effective February 16, 2004, substituted “certification” for “recognition” throughout the rule, “in these rules” for “herein” near the end of the next to last sentence, and “rule” for “section” in the last sentence.

#### **19-106. Financing the plan.**

The financing of the plan shall be derived from applicants and participants in the plan and such other sources as the Supreme Court may from time to time approve. If fees are not established by the Supreme Court, the board shall establish reasonable fees in 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, the fees must be approved by the Supreme Court as provided in Paragraph C of Rule 19-107.

#### **19-107. Retained jurisdiction of the Supreme Court.**

The Supreme Court retains jurisdiction with respect to the following matters:

- A. amending this plan;
- B. hearing appeals taken from actions of the board; and
- C. establishing or approving fees to be charged in connection with this plan.

#### **19-108. Withdrawn.**

### **ANNOTATIONS**

**Withdrawals.** — Pursuant to a court order dated January 18, 1995, this rule, relating to the effective date, is withdrawn effective March 15, 1995.

#### **19-109. Board staff.**

Subject to the approval of the Supreme Court, the board may appoint or contract for such services, equipment, facilities and staff as may be needed for the efficient administration of the board's work. Subject to the approval of the Supreme Court, the board shall fix the compensation of the staff appointed or contracted with pursuant to this rule and shall promulgate policies for the orderly and efficient conduct of their duties. The annual salaries and other expenses incurred pursuant to this rule shall be paid by the board from funds collected pursuant to Rule 19-106 NMRA.

[Approved by Supreme Court Order 06-8300-34, effective January 1, 2007.]

## **ARTICLE 2**

### **Specialization Plan**

#### **19-201. Specialization rules; purpose.**

The purpose of the Rules of Legal Specialization is to assist in the delivery of legal services to the public by:

- A. providing greater access by the public to appropriate legal services;
  - B. identifying and improving the quality and competence of legal services;
- and
- C. providing appropriate legal services at reasonable cost.

[As amended, effective March 15, 1995.]

#### **ANNOTATIONS**

**The 1995 amendment**, effective March 15, 1995, substituted "Specialization rules" for "Plan of specialization" in the rule heading, and substituted "the Rules of Legal Specialization" for "this plan of specialization ('plan')" in the introductory paragraph.

#### **19-202. Privileges conferred and limitations imposed.**

The board in the implementation of these rules shall not alter the following privileges and responsibilities of certified specialists and other lawyers.

A. **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. A lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though the lawyer is certified as a specialist in a particular field of law.

B. **Practice of nonspecialist.** No lawyer shall be required to be certified as a specialist in order to practice in the field of law covered by that specialty. A lawyer,

alone or in association with any other lawyer, shall have the right to practice in any field of law, even though the lawyer is not certified as a specialist in that field.

C. **Individual certification.** All requirements for and all benefits 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 specialist may be a member.

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

E. **Multiple specialties.** A lawyer may be certified as a specialist in more than one field of law. The limitation on the number of specialties in which a lawyer 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.

F. **Limited representation.** When a client is referred by another lawyer to a lawyer who is a certified specialist under these rules on a matter within the specialist's field of law, such specialist shall not take advantage of the referral to enlarge the scope of representation and, consonant with any requirements of the Rules of Professional Conduct of this state, such specialist shall not enlarge the scope of representation of a referred client outside the area of the specialty field.

G. **Advertisement.** Any lawyer certified by the board as a specialist may include the following or similar statement in a legal advertisement or solicitation: "New Mexico Board of Legal Specialization certified specialist in the area of \_\_\_\_\_ (*set forth board certified specialty*)" to the extent permitted by the Rules of Professional Conduct.

[As amended, effective January 1, 1989; July 15, 1991; March 15, 1995; February 16, 2004.]

## ANNOTATIONS

**The 1991 amendment**, effective July 15, 1991, in Paragraph G, substituted "New Mexico board of legal specialization recognized specialist" for "board recognized specialist".

**The 1995 amendment**, effective March 15, 1995, substituted "these rules" for "this plan" in the introductory paragraph and in Paragraph F, substituted "A lawyer" for "Any lawyer" and "the lawyer" for "he" in the second sentence in Paragraph A and B, and rewrote Paragraph G.

**The 2003 amendment**, effective February 16, 2004, substituted "certification" for "recognition" and "certified" for "recognized" throughout the rule.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 7 Am. Jur. 2d Attorneys at Law § 66.

7 C.J.S. Attorney and Client §§ 48, 86.

## **19-203. Minimum standards for certification of specialists.**

**A. Application and fee.** To qualify for certification as a specialist, a lawyer applicant must:

- (1) submit an application;
- (2) pay any required fee;
- (3) demonstrate to the board, with respect to the specialty, knowledge of the law of this state and competence; and
- (4) comply with the minimum standards described in this rule.

**B. Licensed; good standing; malpractice insurance.** The applicant must be licensed, currently be in good standing to practice law in this state and carry a minimum of two hundred fifty thousand dollars (\$250,000) malpractice insurance coverage, unless the applicant is practicing exclusively as an employee of a governmental agency or exclusively as an employee as in-house corporate counsel for a single corporate entity.

**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 a normal full-time practice. Reasonable and uniform practice equivalents may be established, including, but not limited to, teaching, judicial, government or corporate legal experience.



**D. Continuing legal education.** The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of continuing legal education approved pursuant to the Rules of Minimum Continuing Legal Education and approved for relevancy for the specialty by the board, the minimum being an average of ten (10) hours of credit for continuing legal education, or its equivalent, for each of the three (3) years immediately preceding application. Upon establishment of a new specialty, this standard may be satisfied in such manner as the board, upon advice from the appropriate specialty committee, may prescribe or may be waived if, and to the extent, suitable continuing legal education courses have not been available during the three (3) years immediately preceding establishment of the specialty.

**E. Peer review.** The applicant must make a satisfactory showing of qualification in the specialty through peer review as provided in Rule 19-306 NMRA. The applicant by filing an application consents to confidential inquiry by the board, or appropriate specialty committee, of all such references, the appropriate disciplinary body and other persons regarding the applicant's competence and qualification to be certified as a specialist.

[As amended, effective September 1, 1994; February 14, 1997; February 16, 2004.]

## ANNOTATIONS

**The 1994 amendment**, effective September 1, 1994, inserted "The board may modify, as recommended by a specialty committee, the peer review requirements and allow substitution of up to two of the lawyers named for peer review with two non-lawyer professionals who are familiar with the competence and qualifications of the applicant as a specialist" in Paragraph D.

**The 1997 amendment**, effective February 14, 1997, in Paragraph A, added "malpractice insurance" in the paragraph heading, substituted "currently be in good" for "and currently in good" near the beginning, and added the language beginning "and carry a minimum" at the end; and in Paragraph D, deleted "or, at the time of application, a partner of or otherwise associated with the applicant in the practice of law" at the end of the third sentence, added the fourth sentence, and substituted "by filing an application" for "by his application" in the fifth sentence.

**The 2003 amendment**, effective February 16, 2004, substituted "certification" for "recognition" and "certified" for "recognized" throughout the rule, designated the former introductory language as present Paragraph A and Subparagraphs (2) through (4) and, in that paragraph, added the paragraph heading, inserted Subparagraph (1), deleted "must" at the beginning of Subparagraphs (3) and (4), and deleted "following" preceding "minimum" and added "described in this rule" in Subparagraph (4), redesignated former Paragraphs A through D as present Paragraphs B through E, substituted "approved pursuant to the Rules of Minimum Continuing Legal Education and approved for relevancy for the specialty by the board" for "accredited by the board for the specialty" in

the first sentence of Paragraph D, and rewrote Paragraph E, which had provided details for the peer review process.

## **19-204. Minimum standards for continued certification of specialists.**

A. **Certification period and renewal.** The period of certification as a specialist shall be five (5) years. During such period the board or appropriate specialty committee may require evidence from the specialist of the specialist's continued qualification for certification as a specialist and the specialist must consent to inquiry by the board, or appropriate specialty committee, of lawyers and judges, the appropriate disciplinary body or others in the community regarding the specialist's continued competence and qualification to be certified as a specialist. Application for and approval of continued certification as a specialist shall be required prior to the end of the five (5) year period. To qualify for continued certification as a specialist, a lawyer applicant must:

- (1) submit an application and pay any required fee prior to the end of the five (5) year certificate period;
- (2) demonstrate to the board both continued knowledge of the law of this state and continued competence with respect to the specialty; and
- (3) comply with each of the minimum standards prescribed by Paragraph B of this rule.

B. **Minimum standards for certification renewal.** To be eligible for renewal of certification, a specialist shall:

- (1) make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of substantial involvement in the specialty during the entire period of certification as a specialist as provided in Rule 19-203 NMRA;
- (2) make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of continuing legal education approved pursuant to the Rules for Minimum Continuing Legal Education and approved for relevancy for the specialty by the board during the period of certification as a specialist, the minimum being an average of ten (10) hours of credit for continuing legal education, or its equivalent, for each year during the entire period of certification as a specialist; and
- (3) comply with the requirements set forth in Paragraphs A and E of Rule 19-203 NMRA.

C. **Judicial service.** The certification period will be tolled for the time during the certification period that the certified specialist is actually engaged in judicial service. The

certified specialist must notify the board when he or she ceases to be engaged in judicial service. During the tolled period the judge will not be required to pay annual dues or comply with certification rules and standards, and shall not be identified as a board certified specialist.

[As amended, effective March 15, 1995; February 16, 2004; as amended by Supreme Court Order No. 08-8300-37, effective October 29, 2008.]

## ANNOTATIONS

**The 1995 amendment**, effective March 15, 1995, substituted "the specialist's" for "his" in the second sentence in the introductory paragraph.

**The 2003 amendment**, effective February 16, 2004, substituted "certification" for "recognition" and "certified" for "recognized" throughout the rule and rewrote the rule so as to designate the formerly undesignated introductory language as present Paragraph A and Subparagraphs (1) through (3) and to redesignate former Paragraphs A through C as present Subparagraphs (1) through (3) in Paragraph B and, in Paragraph A, added the paragraph heading and substituted "five (5) years" for "no less than three (3) years and no more than five (5) years as determined in the complete discretion of the board" in the first sentence and "the" for "each three (3) to" preceding "five (5) year" near the end of the next to last sentence of the introductory language, added "submit an application and" and "prior to the end of the five (5) year certificate period" in Subparagraph (1), deleted "must" at the beginning and "with respect to the specialty" preceding "both" and inserted "with respect to the specialty" in Subparagraph (2), and deleted "must" at the beginning and substituted "each of the minimum standards prescribed by Paragraph B of this rule" for "the following minimum standards" in Subparagraph (3) and, in Paragraph B, inserted the paragraph heading and introductory language, deleted the former paragraph heading and "the specialist must" at the beginning and "(which shall be determined in accordance with the principles set forth in Paragraph B of this rule)" following "involvement" near the middle and added "as provided in Rule 19-203 NMRA" at the end in Subparagraph (1), deleted the former paragraph heading and "the specialist must" at the beginning and substituted "approved pursuant to the Rules for Minimum Continuing Legal Education and approved for relevancy for the specialty by the board" for "accredited by the board for specialty" in Subparagraph (2), and deleted the former paragraph heading and "the specialist must" at the beginning and substituted "E" for "D" following "A and" in Subparagraph (3).

**The 2008 amendment**, approved by Supreme Court Order 08-8300-37, effective October 29, 2008, added Paragraph C.

### **19-205. Suspension or revocation of certification.**

A. **Grounds.** The board may revoke its certification of a lawyer as a specialist of the specialization program if the specialty is terminated or may suspend or revoke such certification if it is determined, upon the board's own initiative or upon recommendation

of the appropriate specialty committee and after hearing before the board on appropriate notice, that:

(1) the certification of the lawyer as a specialist was made contrary to the rules and regulations of the board;

(2) the lawyer certified as a specialist made a false representation, omission or misstatement of material fact to the board or appropriate specialty committee;

(3) the lawyer certified as a specialist has failed to abide by all rules and regulations promulgated by the board;

(4) the lawyer certified as a specialist has failed to pay the fees required;

(5) the lawyer certified as a specialist no longer meets the standards established by the board for the certification of specialists; or

(6) the lawyer certified as a specialist has been disciplined, disbarred or suspended from practice by the Supreme Court or any other state or federal court or agency.

**B. Duty to inform.** The lawyer certified as a specialist has a duty to inform the board promptly of any fact or circumstance described in Subparagraphs (1) through (6) of Paragraph A of this rule.

**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 therefor 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.

[As amended, effective March 15, 1995; February 16, 2004.]

## ANNOTATIONS

**The 1995 amendment**, effective March 15, 1995, substituted "the lawyer qualifies" for "he so qualifies" in the first sentence of Paragraph C, and added Paragraph D.

**The 2003 amendment**, effective February 16, 2004, substituted "certification" for "recognition" and "certified" for "recognized" throughout the rule.

### **19-206. Right of hearing and appeal to Supreme Court.**

A lawyer who is denied certification or continued certification as a specialist or whose certification is suspended or revoked shall have the right to a hearing before the board and the right to appeal the ruling of the board to the Supreme Court as provided in these rules.

[As amended, effective February 16, 2004.]

#### **ANNOTATIONS**

**The 2003 amendment**, effective February 16, 2004, substituted "certification" for "recognition" throughout the rule, deleted "thereafter" preceding "the right to appeal," and substituted "of" for "made thereon by" following "the ruling" and "as provided in these rules" for "under such rules and regulations as the board, with the approval of the Supreme Court, may prescribe."

### **19-207. Withdrawn.**

#### **ANNOTATIONS**

**Withdrawals.** — Pursuant to a court order dated January 18, 1995, this rule, providing for a transitional period, is withdrawn effective March 15, 1995.

## **ARTICLE 3**

### **Specialty Certification**

#### **19-301. Definitions.**

As used in these rules:

- A. "MCLE board" means the board of the Court created pursuant to Rule 18-102 NMRA of the Rules for Minimum Continuing Legal Education;
- B. "Court" means the New Mexico Supreme Court;
- C. "Disciplinary Board" means the board created by the Court pursuant to Rule 17-101 NMRA of the Rules Governing Discipline;

D. "notice" means a written communication sent by certified mail, return receipt requested, postage prepaid or in the manner provided for service of process by the Rules of Civil Procedure for the District Courts;

E. "specialty" means any area or specialization of legal practice designated as such by the board and for which specialist will be certified by the board; and

F. "specialty committee" means those committees established by the board for each specialty in which specialists are to be certified, the composition and duties of which are set forth in Rule 19-103 NMRA and Rule 19-104 NMRA, respectively.

[Formerly Board Rule 19-2; effective January 1, 1989; as amended, effective December 1, 1990; approved, effective February 16, 2004.]

## ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 2 as this rule, deleted former Paragraphs 2.1 and 2.6, defining "board" and "rules" respectively, and changed all remaining paragraph designations accordingly, substituted "certified" for "recognized" throughout the rule, deleted "and regulations" at the end of the introductory language, substituted "board created by the Court" for "committee of the court created" in Paragraph C, and added "or in the manner provided for service of process by the Rules of Civil Procedure for the District Courts" in Paragraph D.

### **19-302. Board meetings.**

A. **Meetings.** Meetings of the board shall be held at such times and places as may be fixed by the chair or the board. Upon good cause shown, the board may recommend to the Court that a member of the board be removed from office. Absence from three meetings in any twelve (12) month period shall constitute good cause.

B. **Notice of meetings.** Reasonable notice of the time and place of a meeting shall be given to all members.

C. **Quorum and voting.** All board members shall have one vote. A quorum of the board consists of a majority of its members.

D. **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.

[Formerly Board Rule 19-3; effective January 1, 1989; approved, effective February 16, 2004.]

## ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 3 as this rule and changed all paragraph designations accordingly, substituted “board meetings” for “the board” in the heading, and added the last two sentences of Paragraph A.

### **19-303. Applications for initial certification and renewal.**

**A. Completion of requirements.** Prior to filing an application for certification as a specialist, an applicant shall complete all requirements set forth in the specialty standards and shall together with the application submit all information required by the particular specialty standards for which certification is sought. Peer review shall occur subsequent to filing the application.

**B. Form and content.** Applications shall be typewritten or printed on application forms furnished by the board. 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:

(1) 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

(2) the information submitted in the application is true and correct.

**C. 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.

**D. Processing of application.** The applicant shall be notified of an application incomplete or insufficient on its face. The provision of any supplemental information pursuant to Paragraph C of this rule 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 and shall result in a denial by the committee.

**E. Withdrawal of an application.** An applicant may withdraw by written notice to the board an application at any time during the application process. If an application remains incomplete for a period of ninety (90) 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 shall be deemed to have been withdrawn.

**F. Confidentiality.** The contents of the application form, and all documents, records, communications, other papers and statements of reference shall be the property of the board and shall be held in confidence and not released, except as provided by Paragraph F of Rule 19-306 NMRA of these rules, or upon prior order of the Court.

**G. Effective date of certification and renewal.**

(1) The effective date of certification shall be the date the board authorizes certification.

(2) The effective date of renewal shall be five (5) years from the first of January following the effective date of certification.

(3) A recognized specialist whose certification period is interrupted by judicial service may, on approval by the board, be permitted to apply for renewal even though more than five (5) years has elapsed since the previous certification.

**H. Applicant consents to confidential inquiry.** An applicant for certification as a specialist consents to confidential inquiry by either the board or appropriate specialty committee to the Disciplinary Board, to all persons who served as references and to other persons regarding the applicant's competence and qualifications to be certified as a specialist. By filing the application, the applicant waives the right to discover the replies to or the requests for information from the board or specialty committee and such information and references shall remain confidential, unless waived by the source of the information or by the source of the information appearing as a witness at a hearing conducted pursuant to these rules.

**I. Applicant authorizes release of disciplinary action.** By filing an application, the applicant agrees to reveal as to all jurisdictions:

(1) any pending disciplinary action;

(2) prior discipline;

(3) malpractice claims; and

(4) judgment or settlement arising from a malpractice claim or its counterpart in any other jurisdiction.

In addition, the applicant authorizes the Disciplinary Board to advise the board of the imposition of any discipline, public or private, which has been imposed on the applicant.

[Formerly Board Rule 19-4; effective January 1, 1989; as amended, effective March 15, 1995; approved, effective February 16, 2004.]



## ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 4 as this rule and changed all paragraph and subparagraph designations and internal cross-references accordingly, substituted “certification” for “recognition” and “certified” for “recognized” throughout the rule, deleted the former last sentence, which had concerned prohibitions relating to incomplete applications, and added “and shall result in a denial by the committee” at the end of the present last sentence in Paragraph D, deleted the former first sentence, which had concerned the confidentiality of filing applications until publication, and inserted “as provided by Paragraph F of Rule 19-306 NMRA of these rules, or” in Paragraph F, and substituted “waived by the source of the information or by the source of the information appearing as a witness at a hearing conducted pursuant to these rules” for “such references waive confidentiality expressly or by appearing as a witness at a hearing conducted under the provisions of Section 9 of these rules and regulations” in Paragraph H.

### **19-304. Fees.**

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 course sponsors fees as a condition to filing an application for recognition credit for an educational course.

[Formerly Board Rule 19-5; effective January 1, 1989; approved, effective February 16, 2004.]

## ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 5 as this rule.

### **19-305. Task requirements and special educational experience.**

A. **Task requirements.** Task requirements for specialists are set forth in the applicable specialty standards.

B. **Course approval required.** Continuing legal education programs must be approved by the board as to relevance in order to satisfy the continuing legal education requirements. All educational programs approved by the MCLE board will be deemed to be acceptable by the specialization board for purposes of continuing legal education requirements of the rules, subject to specialization board approval of relevance. The specialization board will not directly engage in the approval of educational programs except with respect to relevancy to the speciality or related fields.

**C. Verification of educational credit and correspondence with MCLE rules.**

Credit will only be given for continuing legal education programs if such credit is verified by the minimum continuing legal education board in accordance with MCLE board procedures. Except as specifically otherwise provided in these rules, the Rules for Minimum Continuing Legal Education, as amended, applicable to credits for continuing legal education shall be applicable to education credits for specialization.

{Formerly Board Rule 19–6; effective, January 1, 1989; as amended, effective December 1, 1990; March 15, 1995; approved, effective February 16, 2004.}

**ANNOTATIONS**

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 6 as this rule, deleted former Paragraphs 6.3 to 6.7, 6.9, and 6.10, and redesignated former Paragraphs 6.1, 6.2, and 6.8 as present Paragraphs A, B, and C, added “to the speciality or related fields” at the end of the last sentence of Paragraph B and “and correspondence with MCLE rules” in the paragraph heading of Paragraph C, and substituted “minimum continuing legal education board in accordance with MCLE board procedures” for “MCLE Board in accordance with their board procedures for such” in the first sentence and added the last sentence in that paragraph.

**19-306. Peer review procedures.**

A. **Peer review.** After the applicant has satisfied all other requirements established for certification or renewal but prior to certification or renewal, the 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.

B. **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.

(1) 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 officer 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 within the last five (5) years or may limit the judicial references to one.

(2) The board and the specialty committee reserve the right to request further references.

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

(1) a reference who is related by blood or marriage to the applicant;

(2) 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

(3) 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.

**D. 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.

**E. 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 and 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 engage in an independent inquiry as to the issues reflecting adversely on the applicant's competence.

**F. Publication of applications.** The names of attorneys applying for certification or renewal of certification shall be published in the New Mexico Bar Bulletin. Within thirty (30) days after publication, any person may comment upon the applicant's qualifications. Such comments shall be considered as part of the independent inquiry and review process.

**G. 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 attorney has not demonstrated proficiency in the specialty field, or if a serious question in the exclusive 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.

H. **Oral interview.** If the board or specialty committee desires further information, it may request the applicant to appear for an oral interview.

I. **Review and recommendation.** Within sixty (60) days of the date of receipt of the minimum number of references or when the comment date following publication expires, whichever occurs later, the specialty committee shall review the application. In the event of a recommendation for denial of specialty certification, the specialty committee's recommendation shall not be forwarded to the board until the specialty committee has complied with the provisions of Rule 19-308 NMRA of these rules. If the review is delayed, the applicant shall be notified of the delay.

[Formerly Board Rule 19-7; effective, January 1, 1989; as amended, effective December 1, 1990; July 15, 1991; approved, effective February 16, 2004.]

## ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 7 as this rule and changed all paragraph and subparagraph designations accordingly, substituted "certification" for "recognition" throughout the rule, rewrote the former first two paragraphs so as to create present Paragraph A, substituted "lawyers who are licensed and currently in good standing to practice law in this state and" for "persons who are lawyers or judges who" and "requested" for "sought" in the introductory language of Paragraph B, deleted "shall" following "five references" and substituted "or other judicial officer" for "etc." in the first sentence of Subparagraph (1) of that paragraph, substituted "New Mexico Supreme Court, the board or" for "board or on" in Subparagraph (3) of Paragraph C, rewrote Paragraph D and the third sentence of Paragraph E, substituted "attorneys applying for certification or renewal of certification" for "those seeking to qualify shall be released for publication and" in the first sentence and deleted "such" preceding "publication" in the last sentence of Paragraph F, and substituted "Rule 19-308 NMRA of these rules" for "Section 9 of these rules and regulations" in the next to last sentence and rewrote the last sentence of Paragraph I.

### **19-307. Board action on applications.**

A. **Board action.** Within sixty (60) days after the final recommendation of the specialty committee has been forwarded to the board, the board shall approve or deny the application. The applicant shall be notified of the action of the board; and, if the application has been denied, the notice shall specify the basis of the denial.

B. **Finality of action.** The decision of the board shall become final unless a timely appeal therefrom is taken to the Court.

[Formerly Board Rule 19-8; effective January 1, 1989; approved, effective February 16, 2004.]

## ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 8 as this rule and changed both paragraph designations accordingly.

### **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 confidentiality 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 to the board.

[Formerly Board Rule 19-9; effective, January 1, 1989; as amended, effective March 15, 1995; approved, effective February 16, 2004.]

## **ANNOTATIONS**

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 9, Paragraph 9.1, as this rule, substituted "certification" for "recognition" throughout the rule and "specialty committee" for "rules for" in the heading, added the paragraph headings in Paragraphs A through K, substituted "19-303 NMRA" for "Subsection 4.6 of Section 4" and deleted "and regulations" following "these rules" in Paragraph A, substituted "after" for "of" following "forty-five (45 days)" in the first sentence and "a" for

“such” following “absence of” in the last sentence of Paragraph D, rewrote former Paragraph E so as to create present Paragraphs E and F and redesignated subsequent paragraphs accordingly, and inserted “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” in the last sentence of Paragraph I.

### **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 argument 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.

[Formerly Board Rule 19–9.2(A) to (G); approved, effective February 16, 2004.]

### ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 9, Paragraph 9.2, Subparagraphs A through G as this rule, added the paragraph headings in Paragraphs B through G, substituted “certification” for “recognition” in Paragraph A and “thirty (30)” for “seven (7)” in Paragraph B, and rewrote the second sentence in Paragraph C.

### 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.

[Formerly Board Rule 19–9.2(H); effective, January 1, 1989; as amended, effective March 15, 1995; approved, effective February 16, 2004.]

### ANNOTATIONS

**The 2003 amendment**, effective February 16, 2004, redesignated former Board Rule 9, Paragraph 9.2, Subparagraph H as this rule, designated the formerly undesignated



language as present Paragraphs A through C, and added the paragraph headings in each of those paragraphs.

### **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.

[Formerly Board Rule 19–9.2(I); approved, effective February 16, 2004.]

#### **ANNOTATIONS**

**The 2003 amendment**, effective February 16, 2004, redesignated the first sentence of former Board Rule 9, Paragraph 9.2, Subparagraph I as this rule and rewrote the rule.

### **19-312. Revocation of specialty certification.**

If the lawyer's certification is revoked by the board or Court, the lawyer must take all appropriate steps to ensure that all advertisements and solicitations containing the representation that the lawyer is a certified specialist are discontinued.

[Formerly Board Rule 19–9.2(I); approved, effective February 16, 2004.]

#### **ANNOTATIONS**

**The 2003 amendment**, effective February 16, 2004, redesignated the last sentence of former Board Rule 9, Paragraph 9.2, Subparagraph I as this rule, added the heading, and substituted “certification” for “recognition” and “certified” for “recognized.”

## **Table Of Corresponding Rules**

The first table below reflects the disposition of the former Rules Governing the Specialization Board (Rule), the former Regulations of the Specialization Board (Reg.), and the former Rules and Regulations of the Board of Legal Specialization (R. & R.). The left-hand column contains the former rule or regulation, and the right-hand column contains the corresponding present Rule of Legal Specialization.

The second table below reflects the antecedent provisions of the former Rules Governing the Specialization Board (Rule), Regulations of the Specialization Board (Reg.), or Rules and Regulations of the Board of Legal Specialization (R. & R.), as set out in the right-hand column, of the present Rules of Legal Specialization, as set out in the left-hand column.

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Former Rule

NMRA

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Former Rule

NMRA

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Rule 1	19-101	Reg. C	19-205, 19-206
Rule 2	19-101	R. & R. 2	19-301
Rule 3	19-101	R. & R. 3	19-302
Rule 4	19-102	R. & R. 4	19-303
Rule 5	19-102	R. & R. 5	19-304
Rule 6	19-102	R. & R. 6	19-305
Rule 7	19-102, 19-106	R. & R. 7	19-306
Reg. A	19-106	R. & R. 8	19-307
Reg. B	19-102, 19-104, 19-203, 19-204	R. & R. 9	19-308 to 19-312

NMRA	Former Rule	NMRA	Former Rule
19-101	Rules 1, 2, 3	19-207	None
19-102	Rule 4 to 7, Reg. B	19-301	R. & R. 2
19-103	None	19-302	R. & R. 3
19-104	Reg. B	19-303	R. & R. 4
19-105	None	19-304	R. & R. 5
19-106	Rule 7, Reg. A	19-305	R. & R. 6
19-107	None	19-306	R. & R. 7
19-108	None	19-307	R. & R. 8
19-201	None	19-308	R. & R. 9
19-202	None	19-309	R. & R. 9
19-203	Reg. B	19-310	R. & R. 9
19-204	Reg. B	19-311	R. & R. 9
19-205	Reg. C	19-312	R. & R. 9
19-206	Reg. C		