

# Rules of Legal Specialization

## Article 1. Board of Legal Specialization

### Rule

- 19-101. Board of Legal Specialization; title.
- 19-102. Powers and duties.
- 19-103. Specialty committees.
- 19-104. Duties of specialty committees.
- 19-105. Establishment of additional standards.
- 19-106. Financing the plan.
- 19-107. Retained jurisdiction of the supreme court.
- 19-108. Effective date.

## Article 2. Specialization Plan

- 19-201. Plan of specialization; purpose.
- 19-202. Privileges conferred and limitations imposed.
- 19-203. Minimum standards for recognition of specialists.
- 19-204. Minimum standards for continued recognition of specialists.
- 19-205. Suspension or revocation of recognition.
- 19-206. Right of hearing and appeal to supreme court.
- 19-207. Transitional rule.

## APPENDIX A. Rules and Regulations of the Board 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 nine members appointed by the supreme court. All members of the board shall be lawyers who have passed the bar examination and are licensed and currently in good standing to practice law in this state. The members of the board shall be representative of the legal profession and shall include lawyers who are in general practice as well as those who specialize. 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 term of three (3) years. Those members appointed after the expiration of the initial terms shall be appointed by the supreme court to staggered terms of office as follows: three shall serve for one (1) full calendar year after appointment; three shall serve for two (2) full calendar years after appointment; and three shall serve for three (3) full calendar years after appointment. 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.]

**The 1989 amendment**, effective January 1, 1989, in the first sentence in Paragraph B, inserted "initial" and "term of" and deleted "except those initially appointed who shall serve as hereinafter designated" from the end and, in the second sentence, inserted "Those members appointed after the expiration of the initial terms" at the beginning and deleted "and the initial appointees shall serve" following "staggered terms of office".

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

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

A. to administer the plan of specialization;

B. to designate specialties of law practice and define 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 recognition 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 recognize specialists or deny, suspend or revoke the recognition 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 this plan;

G. to propose, and request the supreme court to make, amendments to this plan 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, or educational alternatives, for the purpose of meeting the continuing legal education requirements established by the board for the recognition of specialists and, in connection therewith, to determine the specialties for which credit shall be given and the number of hours of credit to be given in cooperation with the authority having jurisdiction over continuing legal education; to determine whether and what credit is to be allowed for educational alternatives, including other methods of legal education, teaching, writing and the like; to issue rules and regulations for obtaining approval of continuing legal education courses and educational alternatives; to publish or cooperate with others in publishing current lists of approved continuing legal education courses and educational alternatives; and to encourage and assist law schools, the authority having jurisdiction over continuing legal education, local bar associations and other groups engaged in continuing legal education to offer and maintain programs of continuing legal education designed to develop, enhance and maintain the skill and competence of legal specialists; and

J. to cooperate with other organizations, boards and agencies engaged in the recognition of legal specialists or concerned with the topic of legal specialization.

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

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

A. **Composition.** The specialty committee shall be composed of five members appointed by the board, one of whom shall be designated annually by the board as chairperson of the specialty committee. Members of the specialty committee shall be lawyers licensed after passing the bar examination and currently in good standing to practice law in this state who, in the judgment of the board, are 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.

#### **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 recognition 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 recognition, continued recognition, denial, suspension or revocation or recognition of specialists and for procedures with respect thereto;

C. administer procedures established by the board for applications for recognition and continued recognition as a specialist and for denial, suspension or revocation of such recognition;

D. administer examinations and other testing procedures, if applicable, investigate references of applicants and, if deemed advisable, seek additional information regarding applicants for recognition or continued recognition 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.

### **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 herein for recognition or continued recognition as a specialist. Additional standards or requirements established under this section need not be the same for initial recognition and continued recognition as a specialist.

### **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. Effective date.**

The effective date of the plan for administrative purposes only and not for participation by lawyers shall be the date of adoption of the plan by the supreme court.

**Compiler's notes.** - The plan of specialization was adopted by the court on June 26, 1986, effective July 1, 1987.

## **Article 2**

### **Specialization Plan**

#### **19-201. Plan of specialization; purpose.**

The purpose of this plan of specialization ("plan") 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.

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

The board in the implementation of this plan shall not alter the following privileges and responsibilities of recognized specialists and other lawyers:

- A. **Scope of practice.** No standard shall be approved which shall in any way limit the right of a recognized specialist to practice in all fields of law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is recognized as a specialist in a particular field of law;
- B. **Practice of nonspecialist.** No lawyer shall be required to be recognized as a specialist in order to practice in the field of law covered by that specialty. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in any field of law, even though he is not recognized as a specialist in that field;
- C. **Individual recognition.** All requirements for and all benefits to be derived from recognition 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 recognized as a specialist in more than one field of law. The limitation on the number of specialties in which a lawyer may be recognized 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 recognition as a specialist;

**F. Limited representation.** When a client is referred by another lawyer to a lawyer who is a recognized specialist under this plan on a matter within the specialist's field of law, such specialist shall not take advantage of the referral to enlarge the scope of his 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; and

**G. Advertisement.** Any lawyer recognized as a specialist under this plan shall be entitled to advertise that he is a "board recognized specialist" in his specialty to the extent permitted by the Rules of Professional Conduct of this state.

[As amended, effective January 1, 1989.]

**The 1989 amendment,** effective January 1, 1989, substituted "board recognized specialist" for "board registered specialist" in Paragraph G.

## ANNOTATIONS

**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 recognition of specialists.**

To qualify for recognition as a specialist, a lawyer applicant must pay any required fee, must demonstrate to the board, with respect to the specialty, knowledge of the law of this state and competence and must comply with the following minimum standards:

**A. Licensed; good standing.** The applicant must be licensed and currently in good standing to practice law in this state;

**B. 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 his 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 recognition 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;

**C. 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 accredited by the board for the specialty, 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; and

**D. Peer review.** The applicant must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of qualification in the specialty through peer review by providing, as references, the names of at least five lawyers, all of whom are licensed and currently in good standing to practice law in this state, or judges, who are familiar with the competence and qualification of the applicant as a specialist. None of the references may be persons related to the applicant or, at the time of application, a partner of or otherwise associated with the applicant in the practice of law. The applicant by his 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 recognized as a specialist.

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

The period of recognition as a specialist shall be no less than three (3) years and no more than five (5) years as determined in the complete discretion of the board. During such period the board or appropriate specialty committee may require evidence from the specialist of his continued qualification for recognition 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 recognized as a specialist. Application for and approval of continued recognition as a specialist shall be required prior to the end of each three (3) to five (5) year period. To qualify for continued recognition as a specialist, a lawyer applicant must pay any required fee, must demonstrate to the board with respect to the specialty both continued knowledge of the law of this state and continued competence and must comply with the following minimum standards:



A. **Substantial involvement in specialty.** The specialist must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of substantial involvement (which shall be determined in accordance with the principles set forth in Paragraph B of this rule) in the specialty during the entire period of recognition as a specialist;

B. **Continuing legal education.** The specialist must make a satisfactory showing, as determined by the board after advice from the appropriate specialty committee, of continuing legal education accredited by the board for the specialty during the period of recognition 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 recognition as a specialist; and

C. **License; good standing; peer review.** The specialist must comply with the requirements set forth in Paragraphs A and D of Rule 19-203.

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

A. **Grounds.** The board may revoke its recognition of a lawyer as a specialist of the specialization program if the specialty is terminated or may suspend or revoke such recognition 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 recognition of the lawyer as a specialist was made contrary to the rules and regulations of the board;

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

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

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

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

(6) the lawyer recognized 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 recognized 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 recognition of a lawyer as a specialist, the lawyer cannot again be recognized as a specialist unless he so qualifies upon application made as if for initial recognition as a specialist and upon such other conditions as the board may prescribe. If the board suspends recognition of a lawyer as a specialist, such recognition cannot be reinstated except upon the lawyer's application therefor and compliance with such conditions and requirements as the board may prescribe.

### **19-206. Right of hearing and appeal to supreme court.**

A lawyer who is denied recognition or continued recognition as a specialist or whose recognition is suspended or revoked shall have the right to a hearing before the board and, thereafter, the right to appeal the ruling made thereon by the board to the supreme court under such rules and regulations as the board, with the approval of the supreme court, may prescribe.

### **19-207. Transitional rule.**

Any lawyer, whether a participant in the plan or not, who holds himself out as a specialist or otherwise designates the area of his practice in a manner which violates the plan, any rules and regulations of the specialization board or the Rules of Professional Conduct will not be subject to sanctions authorized by the plan, the rules and regulations of the specialization board or the Rules of Professional Conduct if:

A. such violation is the result of a contract with a third party entered into prior to November 1, 1989; and

B. the lawyer has taken remedial steps and has or will have cured the violation prior to July 1, 1990.

(As amended, effective January 1, 1989 and October 1, 1989.)

### **ANNOTATIONS**

**The first 1989 amendment**, effective January 1, 1989, deleted former Paragraph A which read "such violation occurs within the first year after the effective date for participation by lawyers in the plan", redesignated former Paragraph B as present Paragraph A, substituting therein "November 1, 1988; and" for "the effective date for participation by the lawyers in the plan", and redesignated former Paragraph C as present Paragraph B, substituting therein "prior to July 1, 1989" for "within the first year after the effective date for participation by lawyers in the plan".

**The second 1989 amendment**, effective on and after October 1, 1989, substituted "November 1, 1989" for "November 1, 1988" in Paragraph A and "July 1, 1990" for "July 1, 1989" in Paragraph B.

## RULES AND REGULATIONS OF THE BOARD OF LEGAL SPECIALIZATION

### **1. Preface.**

These Rules and Regulations are adopted pursuant to Paragraph F of Rule 19-102 of the Rules of Legal Specialization in furtherance of and in order to implement the Rules of Legal Specialization of the New Mexico Supreme Court.

[Effective January 1, 1989.]

### **2. Definitions.**

As used in these rules and regulations:

2.1. "board" means the Board of Legal Specialization established in Rule 19-101 of the Rules of Legal Specialization, which board is the authority having jurisdiction over the subject of specialization of lawyers and is empowered to and performs the duties set forth in Rule 19-102.

2.2. "MCLE Board" means the board of the court created pursuant to Rule 18-102 of the Rules for Minimum Continuing Legal Education.

2.3. "court" means the New Mexico Supreme Court.

2.4. "Disciplinary Board" means the committee of the court created pursuant to Rule 17-101 of the Rules Governing Discipline.

2.5. "notice" means a written communication sent by certified mail, return receipt requested, postage prepaid.

2.6. "rules" means the Rules of Legal Specialization (Rule 19-101 through Rule 19-207) as adopted by the court and the rules and regulations of the board and specialty committee as approved by the court.

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

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

[Effective January 1, 1989; as amended, effective December 1, 1990.]

### **3. The board.**

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

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

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

3.4. **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.

[Effective January 1, 1989.]

#### **4. Applications for initial recognition and renewal.**

4.1. **Completion of requirements.** Prior to filing an application for recognition 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 recognition is sought. Peer review shall occur subsequent to filing the application.

4.2. **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:

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

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

4.3. **Supplementary information.** The board or specialty committee may require an applicant to submit information relevant to the applicant's recognition as a specialist in addition to that called for on the application form.

4.4. **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 Subsection 4.3 of this section 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. A specialty committee shall not recommend to the board the granting or denial of specialty recognition and the board shall not grant or deny specialty recognition unless the application is complete.

**4.5. 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.

**4.6. Confidentiality.** The filing of the application shall remain confidential until publication pursuant to Section 7 of these rules and regulations. 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 upon prior order of the court.

**4.7. Effective date of recognition and renewal.**

A. The effective date of recognition shall be the date the board authorizes recognition.

B. The effective date of renewal shall be three (3) years from the first of January following the effective date of recognition.

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

**4.8. Applicant consents to confidential inquiry.** The applicant by his or her application 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 recognized 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 of specialty committee and such information and references shall remain confidential, unless 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.

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

A. any pending disciplinary action;

B. prior discipline;

C. malpractice claims; and

D. judgment or settlement arising from a malpractice claim or its counterpart in any other jurisdiction.

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

[Effective January 1, 1989.]

## **5. 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.

[Effective January 1, 1989.]

## **6. Task requirements and special educational experience.**

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

**6.2. 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 board for purposes of continuing legal education requirements of the rules, subject to board approval of relevance. The board will not directly engage in the approval of educational programs except with respect to relevancy.

**6.3. Relevancy.** The content of an educational program shall be relevant to the specialty or related fields.

**6.4. Determination of relevance.** Annually, coinciding with MCLE board reporting requirements, a recognized specialist shall submit a compliance statement which shall include a list of the continuing legal educational program or programs attended along with credits allowed for self-study, lecturing and publication during the prior calendar year together with an outline of the course or courses.

**6.5. Self-study.** No credit for continuing legal education will be given for self-study other than for viewing a video tape or listening to an audio cassette to the extent the same is approved by the MCLE board.

**6.6. Lecturing.** Speakers who participate at a MCLE board accredited provider's program or an approved program may receive credit for preparation time and presentation time, including credit for repeated presentations.

**6.7. Publication.** Credit may be awarded for authorship and publication with respect to legal issues in the specialty field for which the applicant seeks recognition. Credit may not be awarded for authorship of articles in the specialty field until the article has been published. Credit may be earned of one hour for each fifty (50) minutes spent preparing an article which is actually published in a legal periodical or journal which is approved by the MCLE administrator or the MCLE board. A maximum of one-half of the special educational requirements per recognition period may be fulfilled through this method.

**6.8. Verification of educational credit.** Credit will only be given for continuing legal education programs if such credit is verified by the MCLE board in accordance with their procedures for such.

**6.9. Failure to satisfy continuing legal education requirements for a specialty.**

A. If an attorney fails to submit a compliance statement or submits a compliance statement which, on its face, indicates noncompliance with these regulations, the board shall send a notice of noncompliance within sixty (60) days from the date the compliance statement is due to the attorney's address currently maintained on the court's attorney registration records. The notice of noncompliance shall advise the attorney that within fifteen (15) days after receipt of the notice the attorney must either correct the noncompliance, submit a specific plan to make up the deficiency, or must request a hearing before the appropriate specialty committee.

B. An attorney failing to complete the required units may submit to the specialty committee within fifteen (15) days following his or her applicable compliance period a specific plan for making up the deficiency. The deficiency must be made up within ninety (90) days after the date the specific plan is due. When filed, the plan shall be accompanied by a makeup plan filing fee determined by the board. The plan shall be specific and include the names and locations of accredited activities, the number and types of credits that will be earned, the dates on which such credits will be earned, and the specialty to which the credits are to be applied. The number and types of credit to be earned shall be sufficient to make up the deficiency.

C. The makeup plan shall be deemed accepted by the specialty committee unless within thirty (30) days after receipt the specialty committee notifies the attorney to the contrary. When the attorney completes his or her makeup plan, he or she shall report to the appropriate specialty committee no later than fifteen (15) days following such ninety (90) day period.

D. The appropriate specialty committee shall promptly set the matter for hearing under subsection 6.9 of this section. Notice of the time and place of the hearing shall be given to the attorney at least fifteen (15) days prior to the hearing by mailing a notice of hearing by certified mail to the attorney's address currently maintained by the court's attorney registration records.

E. At the conclusion of the hearing, the members of the specialty committee who conducted the hearing shall make findings of fact and shall make a determination of whether the attorney involved has complied with the requirements of these regulations and, if it determines that there was noncompliance, whether there was reasonable cause for noncompliance. A copy of such findings of fact and determination shall be sent to the attorney involved by certified mail at the address currently maintained by the court's attorney registration records. If it is determined that compliance has occurred, the matter shall be dismissed, and the attorney shall be so advised in writing. The continuing legal education committee's records shall be made to reflect such compliance. If it is determined that the compliance has not occurred, the specialty committee shall proceed pursuant to the rules for review of denial or revocation of a specialty recognition.

**6.10. Correspondence with MCLE rules.** Except as explicitly modified herein, all provisions of the Rules for Minimum Continuing Legal Education applicable to credits for continuing legal education shall be applicable to education credits for specialization. Should the Rules for Minimum Continuing Legal Education be amended in regards to applicable credit, the board's rules for specialization education credit are deemed amended.

[Effective January 1, 1989; as amended, effective December 1, 1990.]

## **7. Peer review.**

**7.1. Timing.** After the applicant has satisfied all other requirements established for recognition or renewal but prior to recognition or renewal, the specialty committee shall conduct independent inquiry and review of the applicant.

**7.2. Criteria.** 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 has achieved recognition as having a level of competence indicating proficient performance in handling the usual matters in the specialty field. Such information may include 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 recommendation.

**7.3. Number and qualification of references.** An applicant shall submit to the board the names and addresses of at least five persons who are lawyers or judges who can attest to the applicant's competence in the specialty field in which recognition is sought.

A. 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 shall be judges, administrative law judges, referees, etc., before whom the applicant has appeared within the one year period immediately preceding the filing of the application for recognition. 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.

B. The board and the specialty committee reserve the right to request further references.

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

A. a reference who is related by blood or marriage to the applicant;

B. more than one reference who is, or within the year immediately preceding the filing of the application for recognition was, a partner, associate of, or co-worker with the applicant; or

C. a reference who is serving or has served within the three (3) years immediately preceding the filing of the application for recognition, on the board or on the specialty committee for the specialty field in which recognition is sought.

**7.5. Forms.** The board, specialty committee, or a delegate thereof, shall contact the individuals listed as references by the applicant and shall furnish them with forms for Statements of Reference.

**7.6. 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 recognition is sought. In the event any information is received which indicates the applicant may not have achieved an acceptable standard of competence in the field in which recognition is sought, then in such event, the board or the specialty committee shall engage in an independent inquiry as to the issues reflecting adversely on the applicant's competence.

**7.7. Publication of applications.** The names of those seeking to qualify shall be released for publication and shall be published in the New Mexico Bar Bulletin. Within thirty (30) days after such publication, any person may comment upon the applicant's qualifications. Such comments shall be considered as part of the independent inquiry and review process.

**7.8. 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.

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

7.10. **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 and make a recommendation to the board that the application be approved or denied. In the event of a recommendation for denial of speciality recognition, the specialty committee's recommendation shall not be forwarded to the board until the specialty committee has complied with the provisions of Section 9 of these rules and regulations. In the event that the review is delayed, each applicant so affected shall be notified of the delay.

[Effective January 1, 1989; as amended, effective December 1, 1990.]

## **8. Board action on applications.**

8.1. **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.

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

[Effective January 1, 1989.]

## **9. Rules for review of denial or revocation of specialty recognition.**

### **9.1. Proceedings before the specialty committee.**

A. If the specialty committee determines an applicant has failed to meet the requirements for recognition or renewal or has failed to comply with specialty recognition requirements, it shall notify the applicant in writing without violation of the confidentiality provisions of Subsection 4.6 of Section 4 of these rules and regulations as to the specific reasons why the specialty committee recommends rejection of the application.

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

C. 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. Within forty-five (45) days of 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 such request for hearing, the recommendation of the special committee shall stand and shall be transmitted to the board.

E. 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. The members of the panel shall be guided by the same rules regarding conflicts of interest, recusal and peremptory challenge as are applicable to New Mexico state 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.

F. 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.

G. 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.

H. 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 his or her qualifications for specialty recognition. The hearing shall be recorded by means of a tape recording which shall be kept as the official record of the hearing.

I. 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.

J. 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.

## **9.2. Proceedings before the board.**

A. Within thirty (30) days of receipt of final notice from the specialty committee of recommended denial or revocation of specialty recognition, 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. Within seven (7) days of receipt of the request for review, the specialty committee shall submit to the board its entire record regarding the application.

C. 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 same rules regarding conflicts of interest, recusal and peremptory challenge as are applicable to New Mexico state 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. Within twenty (20) days after filing of the request for review, the applicant may submit a memorandum brief setting forth his 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. 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. The amount of time and procedure for oral argument may be determined by the board or hearing panel.

G. 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.

H. If the decision of the board is adverse to the applicant, the applicant may appeal to the court. 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. that 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.

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.

I. An applicant who had been previously recognized, but whose recognition is the subject of revocation proceedings, may represent himself as a specialist during the pendency of the proceedings. After the decision of the board or court becomes final, the applicant must take all appropriate steps to ensure that he is not misrepresented as a specialist.

[Effective January 1, 1989.]

## **10. Public hearing regarding specialty standards.**

10.1. **Purpose.** The purpose of the public hearing is to afford the members of the bar and the public an opportunity to become sufficiently informed about the proposed specialization requirements.

### **10.2. Notice.**

A. Notice of any public hearing required under the Rules shall be placed in the New Mexico Bar Bulletin at least three (3) weeks prior to any scheduled public hearing. The notice of public hearing shall include the date, time, and place of the scheduled public hearing. The notice shall also contain a summary of the text of the specialty committee requirements.

B. The notice required by this section shall be published in the New Mexico Bar Bulletin at least two times prior to the scheduled public hearing.

C. The notice required by this section shall also be published once at least thirty (30) days prior to the public hearing date in a newspaper of general circulation stating the date, time and place of the public hearing, an identification of the specialty committee whose requirements are to be acted upon and a statement that the full text of the proposed specialty committee requirements may be obtained at the office of the State Bar of New Mexico.

### 10.3. Record of proceedings.

A. The public hearing shall be recorded by means of tape recording which shall be kept as a part of the official records of the board.

B. Minutes from the public hearing shall be taken and shall be circulated to the members of the board as soon as practicable after the conclusion of the public hearing.

C. Written public comments received before and during the public hearing shall be made a part of the official record of the public hearing.

### 10.4. Conduct of public hearing.

A. The chair of the specialty committee shall preside over the public hearing.

B. A quorum of the specialty committee for purposes of conducting a public hearing shall consist of at least three members of the specialty committee.

C. The chair, or other member of the specialty committee, shall give an overview of the content of the proposed specialty committee requirements.

D. A question, answer, and comment period shall be allowed regarding the proposed specialty committee requirements.

E. After consideration of the comments at the public hearing, the specialty committee shall vote on recommending the referral of the specialization requirements to the board pursuant to Paragraph A of Rule 19-104.

F. A majority vote of the members of the specialty committee shall be required before a referral for approval can be made to the board.

[Effective January 1, 1989.]

**The 1990 amendment**, effective December 1, 1990, in Section 2, substituted "'MCLE Board' means the board" for "'CLE committee' means the committee" in Regulation 2.2; rewrote Section 6; and, in Section 7, deleted the former third sentence in Regulation 7.7, which read "The publication shall take place only after all requirements, other than independent inquiry and review, have been met".