

# State Bar of New Mexico Legal Specialization Program Policies and Procedures

## I. Authority and Purpose

The State Bar of New Mexico (State Bar) is authorized by the New Mexico Supreme Court (NMSC) to implement and administer a Legal Specialization Program under the authority and control of the State Bar. NMSC Order No. 18-8300-018, November 1, 2018. The Board of Bar Commissioners (BBC) voted to establish a Legal Specialization Program at its regular meeting on May 17, 2019 and appointed a Legal Specialization Commission on June 19, 2020 to administer the Program.

This set of policies and procedures are established by the State Bar Legal Specialization Commission (Legal Specialization Commission or Commission) to define and regulate the State Bar Legal Specialization Program (Program).

The purpose of the Legal Specialization Program is to assist in the delivery of legal services to the public by: providing greater access by the public to appropriate legal services; identifying and improving the quality and competence of legal services; and providing appropriate legal services at reasonable cost.

### A. Privileges and limitations.

The Commission shall not implement policies that alter the following privileges and responsibilities of certified specialists and other lawyers.

#### i. 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 in which the lawyer can competently do so, even though the lawyer is certified as a specialist in a particular field of law.

#### ii. Practice of non-specialist.

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 in which the lawyer can competently do so, even though the lawyer is not certified as a specialist in that field.

#### iii. 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.

#### iv. Voluntary participation.

Participation in the program shall be completely voluntary.

#### v. 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 Commission as a prerequisite to certification as a specialist.

**vi. Advertisement.**

Any lawyer certified by the Commission as a specialist may include the following or similar statement in a legal advertisement or solicitation: "State Bar of New Mexico Certified Specialist in the area of (certified specialty)" or "Board Certified by the State Bar of New Mexico in the area of (certified specialty)" to the extent permitted by the Rules of Professional Conduct.

**B. Definitions.**

As used in these policies and procedures:

- i. "Commission" means the Legal Specialization Commission established by the State Bar of New Mexico;
- ii. "Court" means the New Mexico Supreme Court;
- iii. "Disciplinary Board" means the board created by the Court pursuant to Rule 17-101 NMRA of the Rules Governing Discipline;
- iv. "Exam Methodology" is a document that defines the basic outline for all examinations including drafting and scoring guidelines for essays and multiple-choice questions, along with examination format and length; "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;
- v. "Specialty" means any area or specialization of legal practice designated as such by the Commission and for which a specialist will be certified by the Commission; and
- vi. "Specialty Committee" means those committees established by the Commission for each specialty in which specialists are to be certified, the composition and duties of which are set forth in these Policies and Procedures.

## **II. Program Structure**

There are three main structural components of the State Bar Legal Specialization Program: the Board of Bar Commissioners (BBC); the Legal Specialization Commission (Commission); and Specialty Committees.

**A. Board of Bar Commissioners**

The BBC is the controlling authority for the Legal Specialization Program and has jurisdiction under New Mexico Supreme Court Order over the subject of specialization of lawyers in New Mexico. The BBC has the following duties with respect to the program:

- i. Appoint members to the Legal Specialization Commission; and
- ii. Decide appeals from decisions of the Commission regarding denial or revocation of a

lawyer's specialty certification.

## **B. Legal Specialization Commission**

The Legal Specialization Commission (Commission) is a Commission of the BBC.

### **i. Commission Composition.**

The Commission shall be composed of seven (7) members appointed by the BBC. All members of the Commission shall be lawyers who have passed the bar examination, are licensed and currently in good standing to practice law in New Mexico and have practiced law for a minimum of seven years. The members of the Commission 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 BBC as chairperson of the Commission.

### **ii. Terms.**

Initially, the BBC shall appoint Commissioners to staggered terms of office as follows: two (2) Commissioners to serve one (1) year terms; two (2) Commissioners to serve two (2) year terms; and three Commissioners to serve three (3) year terms. Appointment by the BBC to a vacancy shall be for the remaining term of the Commissioner leaving the Commission. Any Commissioner shall be eligible for reappointment to not more than one (1) additional three (3) year term after having served on one (1) full three (3) year term.

### **iii. Meetings.**

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

A quorum at any meeting of the Commission shall consist of fifty (50) percent plus one of the Commissioners. Action can only be taken at a meeting when a quorum is present. No official action at a meeting can be taken if no quorum is attained. However, once a quorum is lost, any remaining item on the agenda which was disseminated to all the Commissioners prior to the date of the meeting can be discussed and voted upon.

### **iv. Powers and duties of the Commission.**

The Commission shall have general jurisdiction of all matters pertaining to regulation of legal specialization in New Mexico including certification of specialists in the practice of law. The Commission shall have the following powers and duties:

- a. Establish and administer these and any other necessary procedures, policies and regulations required to regulate legal specialization in New Mexico;
- b. Approve or deny law practice specialties. Define the scope and limits of approved specialties. Suspend or discontinue law practice specialties;
- c. Appoint, supervise, act on the recommendations of and consult with specialty committees as hereinafter defined;
- d. Establish standards for the certification of specialists, upon the Commission'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. Develop an Examination Methodology that establishes the minimum examination requirements and standards;
- f. In the sole discretion of the Commission, certify or deny specialists based on the standards defined in these Policies and Procedures, 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;
- g. 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; and
- h. Cooperate with other organizations, boards and agencies engaged in the certification of legal specialists or concerned with the topic of legal specialization.

**C. Specialty Committees.**

The Commission shall establish a specialty committee for each approved area of specialization.

**i. Committee Composition.**

The specialty committee shall be composed of not less than five (5) nor more than seven (7) members appointed by the Commission, one of whom shall be designated by the Commission as chairperson of the specialty committee.

Members of the **initial** specialty committee for each area of specialization must meet all certification requirements described by these policies except the examination requirement.

Members of subsequent specialty committees shall be lawyers licensed and currently in good standing to practice law in this state who are board-certified specialists in the specialty area.

**ii. Terms.**

Members shall hold office for three (3) years, except those members initially appointed who shall serve staggered terms as follows: one shall serve a one (1) year term; two shall serve two (2) year terms; and two shall serve three (3) year terms. 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.

**iii. Meetings.**

Meetings of a specialty committee shall be held monthly, at such times and places and upon such notice as the specialty committee may from time to time prescribe.

A quorum at any meeting of a specialty committee shall consist of fifty (50) percent plus one of the committee members. Action can only be taken at a meeting when a quorum

is present. No official action at a meeting can be taken if no quorum is attained. However, once a quorum is lost, any remaining item on the agenda which was disseminated to all the committee members prior to the date of the meeting can be discussed and voted upon.

If a committee member is absent, except for reasons occasioned by physical or mental disability, from three (3) consecutive committee meetings or is absent for a total of four (4) committee meetings in any year, his or her term is subject to termination by the committee or the Commission upon 20 days' written notice to the committee member. The committee member may make written request for a hearing before the Commission at its next regularly scheduled meeting. The decision of the Commission to terminate shall be final.

**iv. Powers and Duties of Specialty Committees**

Each specialty committee shall advise and assist the Commission in carrying out program objectives for the specialty including the following:

- a. Recommend to the Commission reasonable and nondiscriminatory standards for the specialty. Specialty standards shall comply with the minimum standards for all specialties defined by the Commission;
- b. Recommend to the Commission for certification, continued certification, denial, suspension or revocation of certification of specialists;
- c. Administer procedures established by the Commission regarding applications for certification and continued certification as a specialist and for denial, suspension or revocation of such certification;
- d. Develop job/skill analysis of the specialty area. Including definition of the knowledge, skills and ability required to practice in the specialty area and which areas of practice and skills are to be included in the specialty;
- e. Develop examination specification based on the job analysis. The specification ensures the examination tests the knowledge and skills as defined by the job analysis. The specification must identify the statutes, rules, significant case law for each area of the specialty to be tested. The specification must also identify the weighting (the number and type of examination questions on each topic);
- f. Attend examination development training;
- g. Develop, verify, and maintain the examination for the specialty. Development of the examination should be completed within one (1) year of the specialty being approved by the Commission;
- h. Administer examinations and other testing procedures, investigate references of applicants and, if deemed advisable, seek additional information regarding applicants for certification or continued certification as specialists;
- i. Evaluate and approve, or disapprove, continuing legal education (CLE) courses for the purpose of relevancy as requested by the State Bar Minimum Continuing Legal Education (MCLE) department; and

- j. Perform such other duties and make such other recommendations as may be requested of or delegated to the specialty committee by the Commission.

#### **D. Alternate Path to Specialization**

If New Mexico does not offer a Specialization in a given practice area, attorneys may apply individually to the Legal Specialization Commission to become a Legal Specialist.

Attorneys using this path to specialization must meet all requirements for certification in New Mexico and be certified as a specialist by “an appropriate authority” or program that has been approved by the Legal Specialization Commission for this purpose. Such programs that may qualify for approval are specialization programs certified by the ABA, state legal specialization programs and national specialization programs that require an exam.

### **III. Legal Specialty Creation**

The Commission will consider a proposal to create a new specialty area upon receipt of one or more of the following: written application from interested lawyer(s); written application from a section of the State Bar of New Mexico or other professional organization; a motion from the Board of Bar Commissioner; or by its own motion.

#### **A. Required showing**

A lawyer or organization seeking recognition of a new specialty shall submit a written application to the Commission, which shall include the following:

- i. **Signatures of 50 New Mexico licensed lawyers recommending the creation of the proposed specialty area. (Lawyers do not have to qualify for or be interested in being certified in the practice area.)**
- ii. A statement as to whether the State Bar of New Mexico or other reputable professional organization has a practice section or committee in the proposed specialty area and the current number of members in that section or committee.
- iii. A demonstration that the proposed specialty area is an established practice area by providing information about one or more of the following:
  - a. Other states or accredited national organizations that offer a specialty in the practice area;
  - b. Listings as practice area for lawyers in representative publications or online services;
  - c. An ABA section for the practice area;
  - d. Listing as practice area in Martindale Hubbel;
  - e. Listing as practice area in Best Lawyers in America; and
  - f. Referral service listings.
- iv. Signatures of 15 lawyers who are interested in seeking certification in the proposed specialty area.
- v. A definition of the proposed specialty area.
- vi. A statement that the contemplated definition of the proposed specialty area is not in

substantial conflict, nor substantially overlaps, with the definition of a current specialty area, or, if substantial conflict or overlap exists, a statement explaining why the proposed specialty area should be recognized despite the conflict or overlap.

- vii. An explanation about how recognition of the proposed specialty area will benefit members of the public.
- viii. A listing of the CLE courses in the proposed specialty area provided during the previous two (2) years that were approved by the State Bar of New Mexico MCLE department.
- ix. Signatures of ten (10) lawyers who are willing and qualified to apply to be members of the initial specialty committee that will draft the standards and examination for the proposed specialty. These lawyers must meet all of the minimum qualifications for specialist certification defined in these Policies with the exception of taking and passing the examination.

#### **B. Legal Specialty Evaluation Process**

Upon receipt of a written application that complies with the requirements listed above, the Commission shall circulate copies of the application to the members of the existing specialty committees and members of the Board of Bar Commissioners for written comment. The allotted time for comment shall be thirty (30) days.

The Commission shall consider the application and comments received and make a decision regarding approval of the proposed legal specialty. The Commission shall notify application sponsors of its decision no later than sixty (60) days after receipt of the application.

Approval or denial of a proposed area of legal specialty in New Mexico is fully within the discretion of the Legal Specialization Commission and/or the BBC. The Commission and/or the BBC may decline to approve an area of specialization for any reason.

#### **C. Appointment of Specialty Committee**

Once the application for a legal specialty has been approved by the Commission, the Commission will appoint the initial specialty committee. Committee appointments shall be conducted through an application process.

Applicants to serve on the **initial** specialty committee must meet requirements for being certified as a specialist within the specialty area with the exception of having taken the exam. Applicants for subsequent specialty committee positions must be specialists in the area. Applicants for appointment to the committee shall follow the application process for specialist certification defined in these Policies.

After appointment, the initial specialty committee will, under the direction of the Commission, draft the specialty standards, complete examination development training, draft the examination specification, and draft and administer the initial exam.

#### **D. Exam Development and Verification**

Except as otherwise provided in these Policies, all specialists certified under the State Bar of New Mexico's legal specialization program must take and pass an examination designed specifically for the specialty for which certification is sought. The examination may be created by the specialty committee or it may be an examination associated with a national or other

state organization that has been approved by the Commission, which offers a specialty in the specialty area.

**i. Job Analysis.**

Regardless of whether a specialty committee decides to create an exam or rely on a national certification for the exam component of the certification the specialty committee shall begin by performing a job analysis for the practice area. The job analysis will define the skill and knowledge sets that a lawyer must have to be certified as a specialist in the practice area. These skills and knowledge sets will be tested by the examination and other application requirements for the specialty.

**ii. Examination and certification by a national organization.**

As an alternative, or in addition to, creating an examination for a new specialty, a specialty committee may choose to recognize and recommend for certification by the Commission specialists certified by a national organization that requires an examination in the specialty area. Organizations that a specialty committee wishes to use in this compacity must be approved in advance by the Commission.

**iii. Examination creation by specialty committee.**

Each legal specialty committee may create a written examination of suitable length and complexity to evaluate an applicant's knowledge of the substantive and procedural law in the specialty area. The exam must also test professional responsibility and ethics as related to the specialty area.

To ensure reliability and validity, each form of the examination must be developed in accordance with the *New Mexico Legal Specialization Commission Examination Methodology*. Reliability refers to the consistency of test results, and whether the results can be replicated. Validity is the extent to which the subject matter addressed by the examination reflects the knowledge and skills an experienced practitioner in the specialty area needs.

All examinations will be created in collaboration with a psychometrician who will help determine the right mix of essay, true-false, and multiple-choice questions, and will also consult with the committee regarding examination validity and reliability, as well as the pass rates of the examination.

Exams shall be administered and scored by the specialty committee in accordance with the *New Mexico Legal Specialization Commission Examination Methodology*.

Members of the specialty committee who create and grade the **initial** version of the examination required under this Section are not required to take and pass the examination to obtain certification in the specialty area; however, they must meet all other requirements for specialization prior to being appointed to the specialty committee.

**E. Establishment of Additional Standards**

The Commission may establish, on its own initiative or upon the specialty committee's recommendation, additional or more stringent standards for certification than those provided in these Policies.



#### **F. Legal Specialization Sunset Provisions**

A legal specialization that has fewer than ten (10) specialists for three (3) years or more is subject to being sunset by the Commission or the BBC. If a specialty is sunset, the specialists currently certified under that specialty will be allowed to continue to be specialists for the duration of their specialization term.

## **IV. Minimum Standards for Specialist Certification**

Minimum standards required for specialists to achieve certification and renewal are established by the Commission.

#### **A. Minimum Standards for Certification of Specialists.**

To qualify for certification as a specialist, an attorney must: submit an application; pay any required fee; demonstrate to the Commission knowledge of the law of this state and competence with respect to the specialty; obtain a passing score on the specialty examination; and comply with the minimum standards described in this rule.

To qualify for certification as a specialist, an applicant must:

- i. Be admitted to the practice of law in New Mexico and in good standing.
- ii. Have no record of public discipline for the past seven years.
- iii. Carry professional liability insurance with minimum limits as defined in Rule 16-104(C) NMRA unless the applicant is practicing exclusively as an employee of a governmental agency or is exclusively employed as in-house corporate counsel for a single corporate entity.
- iv. Have been a practicing attorney for a minimum of five (5) years and make a satisfactory showing of a substantial involvement in the specialty area in New Mexico throughout the three (3) year period immediately preceding application for certification.

Substantial involvement is measured by the type and number of cases or matters handled and the amount of time spent practicing in the specialty area and requires that the time spent in practicing the specialty be no 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 service, government or corporate legal experience.

- v. Have obtained a minimum of 36 hours of continuing legal education in the specialty area in the three-year period preceding the lawyer's application for certification. Continuing legal education obtained for this requirement must comply with Rule 18-204 NMRA.
- vi. Have taken and passed the written examination developed by the specialty committee as defined in these Policies or are certified by a national certifying body that has been pre-approved by the Commission.

- vii. Make a satisfactory showing of qualification in the specialty through peer review as provided in these Policies. By filing an application, the applicant consents to confidential inquiry by the Commission, or appropriate specialty committee, of all such references, appropriate disciplinary bodies and other persons regarding the applicant's competence and qualification to be certified as a specialist. The applicant also acknowledges that he/she is not entitled to receive copies of the information obtained by the Commission or specialty committee.

**B. Establishment of Additional Standards**

Each specialty committee may recommend, and the Commission may establish, additional or more stringent standards beyond the minimum standards defined by the Commission. Additional standards or requirements established under this rule need not be the same for initial certification and continued certification as a specialist.

**C. Minimum Standards for Continued Certification of Specialists.**

The period of certification as a specialist shall be five (5) years from January 1 of the year following certification. During such period the specialist must certify during annual license renewal process the specialist's continued qualification for certification.

As part of the annual certification, the specialist must consent to inquiry by the Commission, 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. The specialist is not entitled to receive copies of the information obtained by the Commission or specialty committee.

**D. Judicial service.**

The certification period will be tolled for up to two (2) years for a certified specialist who is actively engaged in judicial service. The certified specialist must notify the Commission 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 will not be identified as a certified specialist.

If a specialist continues in judicial service after the two (2) year tolling period, the specialist's certification shall be suspended. If the lawyer desires to reactivate his or her specialist certification after he or she ceases to be engaged in judicial service, the lawyer shall be required to recertify as a specialist.

**E. Minimum Standards for Certification Renewal.**

Application for renewed certification as a specialist shall be required prior to the end of the five (5) year period. To qualify for renewed certification as a specialist, a specialist must comply with all of the requirements of initial certification with the exception of taking and passing the examination.

## **V. Specialist Certification and Renewal**

**A. Applications for Initial Certification and Renewal**

Overview of process for initial certification:

- i. Applicant completes the application for certification form including the names and addresses of a minimum of five (5) lawyers who are licensed and currently in good standing to practice law in New Mexico and who can attest to the applicant's competence in the specialty field in which certification is requested.
- ii. The specialty committee reviews the application to ensure the applicant meets the minimum qualifications for certification in the area of specialty.
- iii. Applicant takes the specialty exam.
- iv. If the applicant passes the exam, the applicant contacts each of the applicant's references and request that he/she complete the reference form for the applicant. (see peer review below for more information)
- v. After all reference forms have been received, reviewed, and found to be satisfactory, the specialty committee will publish the applicant's candidacy for specialization in the Bar Bulletin for public comment.
- vi. The specialty committee reviews all information and votes to approve or deny the application. The committee forwards its recommendation to the Commission.
- vii. The Commission approves or rejects the committee's recommendation and notifies the applicant of its decision.

Overview of process for renewal:

- i. Applicant completes the application for certification form including the names and addresses of a minimum of five (5) lawyers who are licensed and currently in good standing to practice law in New Mexico and who can attest to the applicant's competence in the specialty field in which certification is requested.
- ii. The applicant contacts each reference and requests that he/she complete the reference form for the applicant. (see peer review below for more information)
- iii. After all reference forms have been received, reviewed, and found to be satisfactory, the specialty committee shall publish the applicant's candidacy for recertification in the Bar Bulletin for public comment.
- iv. The specialty committee reviews all information and votes to approve or deny the application. The committee forwards its recommendation to the Commission.
- v. The Commission approves or rejects the committee's recommendation and notifies the specialist of its decision.

Applications shall be typewritten or printed on application forms furnished by the Commission. Application forms shall be designed to determine whether requirements set forth in the specialty standards have been met. The applicant shall certify that:

- i. 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
- ii. The information submitted in the application is true and correct.

The Commission 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.

## **B. Processing of Applications**

The applicant shall be notified of an application that is incomplete or insufficient on its face.

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 of certification or

renewal by the committee.

If a response from an attorney reference is not received within 30-days of being requested by the Specialty Committee, the Committee will notify the attorney and give the attorney the opportunity to reach out to the reference or to submit the name of a replacement reference.

An applicant may withdraw by written notice to the Commission 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 Commission, 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.

The contents of the application form, and all documents, records, communications, other papers and statements of reference shall be the property of the Commission and the State Bar and shall be held in confidence and not released, except as provided by these policies, or upon prior order of a Court.

**C. Effective Date of Certification and Renewal**

The effective date of certification shall be the date the Commission authorizes certification.

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

A recognized specialist whose certification period is interrupted by judicial service must recertify as discussed in Section IV.D above.

**D. Applicant Consent to Confidential Inquiry**

An applicant for certification as a specialist consents to confidential inquiry by either the Commission or appropriate specialty committee to any applicable regulatory or disciplinary agency, 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 applicant's right to confidentiality in any records maintained by any applicable regulatory or disciplinary agency and records or opinions held by any persons who served as references and authorizes applicable regulatory or disciplinary agencies and any other persons who served as a reference to disclose to the Commission or specialty committee any information or records requested by the Commission or specialty committee.

Further, the applicant waives the right to discover the replies to or the requests for information from the Commission 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 policies.

**E. Applicant Authorized Release of Disciplinary Action**

By filing an application, the applicant agrees to reveal as to all jurisdictions: any pending disciplinary action; prior discipline; malpractice claims; and judgment or settlement arising from a malpractice claim or its counterpart in any other jurisdiction.

In addition, the applicant authorizes the disciplinary agency to advise the Commission of the

imposition of any discipline, public or private that has been imposed on the applicant.

**F. Fees.**

The Commission from time to time shall set the amount and time for payment of all fees that it determines are appropriate. Payment of application or renewal fees is required as a condition for processing any initial or renewal application. Payment of examination fees is required as a condition of taking the exam.

**G. Task Requirements and Special Educational Experience**

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

**H. Continuing Legal Education Requirements for Specialization Certification**

Annual CLE requirements are set forth in the applicable specialty standards. CLE programs and credits for specialization and annual MCLE compliance are approved, tracked, and certified by the State Bar Regulatory Programs department.

**I. Examination**

If, after review, the specialty committee determines that the applicant's application is complete and that the applicant meets the minimum qualifications for certification in the specialty area, the specialty committee shall notify the applicant that they are approved to sit the exam. The applicant shall then arrange for payment of the examination fee and schedule an exam with the specialty committee.

**J. Peer Review Procedures**

The specialty committee shall conduct an independent inquiry and review of each applicant to determine whether the applicant has the level of competence necessary for proficient performance in handling the usual matters in the specialty field.

As noted above, as part of the application process, an applicant shall submit the names and addresses of a minimum of five (5) lawyers who are licensed and currently in good standing to practice law in this state and who can attest to the applicant's competence in the specialty field in which certification is requested. The applicant shall ask each reference to complete the specialty reference form supplied by the specialty committee and request that the references return the completed form directly to the specialty committee chair.

References must be representative of various facets of practice in the specialty field. 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 special circumstances, the Commission 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.

An applicant shall not submit as a reference the name of any lawyer or judge in the following categories:

- i. A reference who is related by blood or marriage to the applicant; or
- ii. More than one reference who is or, within the year immediately preceding the filing of the application for certification, was a partner, associate of or co-worker of the applicant

If an applicant submits as a reference a person currently serving on the commission or committee, The commissioner or committee member must recuse themselves from discussion and votes related to the applicant.

The Commission and the specialty committee reserve the right to request additional references.

The specialty committee shall consider information furnished by the applicant's 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.

**K. Publication of Applications**

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

**L. Independent Inquiry and Evaluation by Specialty Committee**

An application shall not be acted upon until the minimum number of references required for the specialization have been received and the comment period following publication has expired. At that point, the specialty committee shall engage in an independent inquiry into the applicant's qualification for specialization certification.

The inquiry shall consider information furnished by the applicant's references, comments received in response to publication of the application in the Bar Bulletin, 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.

If information is received by the Commission or specialty committee indicating the applicant may not have achieved an acceptable standard of competence in the field in which certification is requested, the Commission or specialty committee shall engage in an independent inquiry as to the issues reflecting adversely on the applicant's competence. The specialty committee, in its discretion, shall determine the manner and extent of this independent inquiry. Negative responses shall be investigated to assure that they are related to competence and not to personality conflicts or other factors irrelevant to competence.

**M. Oral interview.**

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

**N. 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 or recertification the specialty committee's recommendation shall not be forwarded

to the Commission until the specialty committee has complied with the provisions of these Policies. If the review is delayed, the applicant shall be notified of the delay.

#### **O. Final Evaluation**

If the specialty committee determines that the applicant meets all requirements for specialization including passing the exam, the committee shall submit the application along with the specialty committee's recommendation for certification to the Commission for final evaluation.

#### **P. Commission Action on Applications**

Within sixty (60) days after the final recommendation of the specialty committee has been sent to the Commission, the Commission shall approve or deny the application. The applicant shall be notified of the action of the Commission; and, if the application has been denied, the notice shall specify the basis of the denial and describe the process for appealing the decision including all applicable deadlines.

#### **Q. Finality of Action**

The decision of the Commission shall become final unless a timely request for reconsideration is filed.

## **VI. Revocation or Suspension of Specialist Certification**

#### **A. Revocation of Specialist Certification**

The Commission may suspend or revoke a specialist's certification if it is determined, upon the Commission's own initiative or upon recommendation of the appropriate specialty committee and after appropriate notice, that:

- i. The certification of the lawyer as a specialist was made contrary to the rules and regulations of the Commission;
- ii. The lawyer made a false representation, omission or misstatement of material fact to the Commission or appropriate specialty committee;
- iii. The lawyer has failed to abide by all rules and regulations promulgated by the Commission;
- iv. The lawyer has failed to pay the fees required by the Commission;
- v. The lawyer no longer meets the standards established by the Commission for the certification of specialists; or
- vi. The lawyer has been disciplined, disbarred or suspended from practice by the Supreme Court, the Disciplinary Board, or any other state or federal court or agency.

If the Commission revokes a specialist's certification, it shall notify the applicant in writing as to the specific reasons why the certification was revoked or suspended. The notification shall describe the process for appealing the Commission's decision including all applicable deadlines.

**B. Duty to inform**

A certified specialist has a duty to inform the Commission promptly of any fact or circumstance described in Section VI.A of these policies.

**C. Reinstatement**

If the Commission revokes its certification of 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 Commission may prescribe. In the Commission's sole discretion, the lawyer may be required to retake the specialty exam as part of the reapplication process.<sup>1</sup> If the Commission suspends certification of a specialist, such certification cannot be reinstated except upon the lawyer's application therefor and compliance with such conditions and requirements as the Commission 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 specialist who files a petition for inactive status with the State Bar shall also file a copy of the petition with the Legal Specialization Commission. If the attorney is granted reinstatement from inactive status, the Legal Specialization Commission may reinstate the lawyer's specialty certification upon recommendation by the applicable specialty committee and the attorney's satisfactory completion of the certification renewal process defined in these Policies.

**E. Right of hearing and appeal to Board of Bar Commissioners**

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 Legal Specialization Commission and the right to appeal the ruling of the Commission to the Board of Bar Commissioners as provided in these policies.

## **VII. Petition for Reconsideration**

**A. Petition for reconsideration**

Within fifteen (15) days of receiving notice from the Commission of a denial or revocation of certification, the specialist or applicant may petition the Commission for reconsideration. The petitioner bears the burden of showing by substantial evidence that the Commission's decision should be altered.

The petition must adequately identify the basis for the determination for which reconsideration is requested, the date on which notice of the Commission decision was received and the reasons why the applicant believes the decision should be altered.

Within forty-five (45) days after receipt of a petition for reconsideration, the Commission shall review the petition and notify the lawyer either that the petition has been granted or denied. The Commission's decision regarding reconsideration is final.

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<sup>1</sup> For example, retaking of the exam might not be required in the case of administrative suspension but would be required in the case of suspension for misconduct.