

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

RULES AND REGULATIONS OF THE
ARIZONA BOARD OF LEGAL
SPECIALIZATION

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Administrative Order
No. 2018 - 36

Pursuant to Rules 32(d)(10) and 44, Arizona Rules of the Supreme Court, the State Bar of Arizona Board of Governors may make recommendations to be approved by the Arizona Supreme Court to amend and publish rules, regulations, and standards to define the authority and duties of the Arizona Board of Legal Specialization (BLS). Therefore,

IT IS ORDERED that the attached rules and regulations of the BLS are approved effective July 1, 2018.

IT IS FURTHER ORDERED that the BLS is directed to conduct a review of the current standards for certification and make appropriate recommendations to the Supreme Court to eliminate unneeded inconsistencies between standards and ensure standards are appropriate.

Dated this 25th day of April, 2018.

FOR THE COURT:

SCOTT BALES
Chief Justice



**RULES AND REGULATIONS
OF THE
ARIZONA BOARD OF LEGAL SPECIALIZATION
(Effective July 1, 2018)**

Section I. Mission Statement

The purpose of the legal specialization program is to identify to the public and the Bar those lawyers who have demonstrated superior knowledge, skill, integrity, professionalism, and a high degree of competence in a specific field of law so that the public can more closely match its needs with available services, and to permit lawyers to better serve the public by increasing the quality of legal services.

For purposes of the program in legal specialization, an applicant shall be deemed to have “engaged in legal service” if, following admission to the bar of any state or the District of Columbia, the applicant has: (1) engaged in the private practice of law; (2) served as a judge or commissioner of any court of record; (3) been employed in a legal capacity by a corporation, firm or other business entity or a governmental agency, provided the services performed were legal in nature either primarily for the purpose of advising or representing the business entity or governmental agency or individuals connected therewith, or primarily involving the evaluation, analysis, and resolution of legal questions through application of legal criteria; or (4) been engaged in the teaching of law at any law school accredited by the American Bar Association.

Section II. Board of Governors

A. Authority

1. Pursuant to Rules 32(d)(10) and 44, Ariz. R. Sup. Ct., the State Bar of Arizona Board of Governors will administer the Board of Legal Specialization (“BLS”) program under the supervision of the Arizona Supreme Court.
2. Administration of the program shall be re-evaluated by the Board of Governors when appropriate to determine if measures to modify the program’s administration should be taken.
3. The Board of Governors may make recommendations to be approved by the Arizona Supreme Court to amend and publish rules, regulations, and standards to define the authority and duties of the BLS.

B. Designation of Specialty Areas

1. The Board of Governors has designated the following fields of specialization: Workers’ Compensation (1978), Criminal Law (1978), Tax (1978), Real Estate (1986),

Bankruptcy (1986), Injury and Wrongful Death Litigation (1989), Domestic Relations (1990) (renamed Family Law in 1997), and Estate and Trust (1995).

2. The number of fields included in the program and the jurisdiction of the BLS may be enlarged, altered, or terminated from time to time by the Board of Governors with the approval of the Arizona Supreme Court.

Section III. Board of Legal Specialization

A. Authority

Created by and subject to the continuing jurisdiction and authority of the Arizona Supreme Court, the BLS shall have general jurisdiction of all matters pertaining to specialization in the practice of law.

B. Membership

1. **Composition.** The BLS will consist of thirteen members, as follows: eight practicing attorneys, four of whom are not specialists and four of whom are certified specialists; one representative from an ABA-accredited law school in Arizona; and four members of the public. Members of the BLS will be nominated by the Board of Governors and appointed by the Arizona Supreme Court. BLS members will serve four-year terms, with a limit of two terms.
2. **Public Members.** Public members are non-lawyers who shall be nominated through the Board of Governors' Appointments Committee and appointed by the Arizona Supreme Court. There will be no residence restriction, other than being a resident of the State of Arizona.
3. **Officers.** The Board of Governors shall nominate a Chair from among the BLS members and the chair shall be appointed by the Arizona Supreme Court to serve a two-year term. The BLS chair will be a voting member of the board. The Chair may be appointed to a second term. The BLS may appoint a Vice Chair from its membership.
4. **Ex-officio Members.**
 - a. **Immediate Past Chair.** The Immediate Past Chair of the BLS will be an ex-officio non-voting member of the BLS.
 - b. **Advisory Commission Members.** All members of each Advisory Commission shall be ex-officio members of the BLS and shall be entitled and encouraged to attend BLS meetings and to participate in discussions, but shall not be entitled to vote or to be counted in determining the existence of a quorum.
5. **Removal of Members; Attendance at Meetings.** Upon good cause shown, the BLS may recommend to the Arizona Supreme Court that a BLS member be removed from office. Upon good cause shown, the BLS may recommend to the President of the Board of Governors that a Commission member be removed from office. Absence from three meetings in any 12-month period shall constitute good cause.

C. Powers and Duties

The BLS shall have the authority and duty:

1. To administer the program for the certification of specialization in the law.
2. To advise the Board of Governors and the Arizona Supreme Court concerning specialty fields and the appointment of Advisory Commissions.
3. To make and publish reasonable and non-discriminatory standards concerning education, experience, and other relevant matters for the certification of lawyers as specialists, which may from time to time be amended or altered.
4. To approve or deny applicants for certification.
5. To provide procedures for the investigation of the qualifications of applicants.
6. To issue appropriate certificates to certified legal specialists.
7. To cooperate with other agencies of the State Bar in establishing and enforcing standards of professional conduct for specialized lawyers.
8. To encourage law schools, the State Bar Continuing Legal Education Working Group, local bar associations, and other CLE providers to develop and maintain programs of legal education and continuing legal education consistent with the Standards established by the BLS.
9. To report as required, but at least annually, to the Board of Governors and the Arizona Supreme Court.

D. Limitations on Power

The power of the BLS shall be limited in the following ways:

1. No rule, regulation, or standard shall be approved which shall in any way limit the right of a certificate holder to practice in all fields of law. Any lawyer, alone or in association with another lawyer, shall have the right to practice in all fields of law, even though they are certified in a particular field of law.
2. No lawyer shall be required to obtain a specialty certificate before they can practice law in any specialty field. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in any field of law, even though they are not certified as a specialist in that field.
3. 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.
4. Participation in the program shall be on a completely voluntary basis.

5. The limit on the number of specialties in which a lawyer may be certified shall be determined by such practical limits as are imposed by the requirement of substantial involvement and such other standards as may be established by the BLS as a prerequisite to certification.
6. No rules, regulations, or standards shall be adopted in contravention of the Rules of Professional Conduct.

E. Meeting Requirements

1. **Public Meetings.** Meetings of the BLS are open to the public and shall be held in a manner consistent with the State Bar of Arizona Public Meetings Policy. Meetings of the Advisory Commissions are closed to the public.
2. **Time and Location.** Meetings of the BLS and Advisory Commissions may be held at such places in the State of Arizona and at such times as may be fixed by the Chair, Vice Chair, or the presiding member. Notice of the time and place of a meeting shall be given to all members at least 15 days prior thereto, when practicable. Notice of the time and place of BLS meetings will be provided to the public in accordance with the State Bar of Arizona Public Meetings Policy.
3. **Quorum.** Eight of the thirteen members shall constitute a quorum of the BLS for the transaction of business. Six of the ten members shall constitute a quorum of the Advisory Commissions. A majority of the members present, assuming the existence of a quorum, is sufficient for adoption of a motion. If a quorum is not present, the meeting will be adjourned and rescheduled with proper notice being sent to all members.

Section IV. Advisory Commissions

A. Authority

Advisory Commissions to the BLS shall be established for each field of law in which legal specialists are to be certified as those fields may be recommended from time to time by the Board of Governors and approved by the Arizona Supreme Court.

B. Powers and Duties

The Advisory Commissions shall advise and assist the BLS in carrying out its objectives and in the conduct and regulation of the program. The Advisory Commissions will advise the BLS in setting standards for certification and in any other relevant matters. However, the BLS shall have authority to recommend adoption or modifications of the standards for certification in each specialty field for approval by the Supreme Court. The Advisory Commission for each field shall be charged with actively administering the program in its particular field in cooperation with and under the general policy guidance of the BLS.

Members of the Advisory Commissions shall be appointed by the President of the Board of Governors for terms of three years and shall serve until their successors are appointed.

Subject to review and approval by BLS, the Advisory Commissions are responsible for establishing the percentage of time criteria used to define substantial involvement within a particular specialty field. The Advisory Commissions shall establish a minimum requirement for substantial involvement within the specialty field which shall be no less than 33.3% and no more than 50% of the full-time practice of law.

The test and its grading criteria for each specialty field shall be formulated at the direction of the Advisory Commission for that field and approved by the BLS.

C. Composition

A qualified person shall be eligible for appointment to the Advisory Commission if they are an active practicing member in good standing of the State Bar of Arizona, or if the person is teaching law on a full-time basis at an ABA-accredited law school in the State of Arizona and is teaching in the field of the applicable specialty.

1. **Bankruptcy Advisory Commission.** This commission shall be composed of ten attorneys practicing/teaching in the field of bankruptcy law, selected in a manner to give the commission a balanced representation of practitioners from the various fields of bankruptcy law.
2. **Criminal Law Advisory Commission.** This commission shall be composed of ten attorneys practicing/teaching in the field of criminal law selected in a manner to give the commission a balanced representation of practitioners from the various fields of criminal law, which includes at least one private defense attorney, one public defender, and one prosecutor.
3. **Family Law Advisory Commission.** This commission shall be composed of ten attorneys selected from among attorneys practicing/teaching in the field of domestic relations law, selected in a manner to give the commission a balanced representation of practitioners from the various fields of domestic relations law.
4. **Estate and Trust Advisory Commission.** This commission shall be composed of ten attorneys selected from among attorneys practicing/teaching in the field of estate and trust law, selected in a manner to give the commission a balanced representation of practitioners from the various fields of estate and trust law.
5. **Injury and Wrongful Death Advisory Commission.** This commission shall be composed of ten attorneys selected from among attorneys practicing/teaching in the field of injury and wrongful death law, selected in a manner so as to give the commission a balanced representation of practitioners from the various fields of injury and wrongful death litigation.
6. **Real Estate Advisory Commission.** This commission shall be composed of ten attorneys selected from among attorneys practicing/teaching in the field of real estate law, selected in a manner to give the commission a balanced representation of practitioners from the various fields of real estate law.

7. **Taxation Advisory Commission.** This commission shall be composed of ten attorneys selected from among attorneys practicing/teaching in the field of tax law, selected in a manner to give the commission a balanced representation of practitioners from the various fields of tax law.
8. **Workers' Compensation Advisory Commission.** This commission shall be composed of ten attorneys selected from among attorneys practicing/teaching in the field of Workers' Compensation law, selected in a manner to give the commission a balanced representation of practitioners from the various fields of workers' compensation law, which shall include at least one Industrial Commission Administrative Law Judge who is a member of the State Bar.
9. **Officers.** For each Advisory Commission, the President of the Board of Governors shall appoint a Chair and Vice Chair to serve two-year terms. The immediate past Chair will be an ex-officio member of the Advisory Commissions with full voting privileges.

Section V. Requirements for Certification

To qualify for certification in a designated specialty field, an applicant must demonstrate that they meet the requirements for specialization prior to the date the application was submitted and that they meet the following minimum standards. Each Advisory Commission may recommend, and the BLS may establish, additional or higher standards premised on objective criteria.

- A. Applicant shall have been admitted to the practice of law for a minimum of 5 years.
- B. Applicant must have practiced law within the State of Arizona for a minimum of 2 years immediately preceding the application.
- C. Applicant must be an active member in good standing of the State Bar of Arizona.
- D. Applicant shall have been engaged in legal service as defined in Section I at least to the equivalent of 50% of a full-time practice.
- E. Applicant must make a satisfactory showing of substantial involvement in the specialty field during four of the five years immediately preceding the application. Substantial involvement as used in this program shall be defined by the BLS as to each particular field of law based on a consideration of the nature and extent of practice in the particular field of law. It is intended to be a measurement of the actual experience and competence within the particular specialty field. Substantial involvement may be measured by several standards, such as the percentage of time devoted to work in the specialty area, the number or type of matters handled within a certain period of time, teaching the law of a specialty field, or any combination of these or other appropriate factors.
- F. Applicant must demonstrate honesty, integrity, and professionalism as defined by the Lawyer's Creed of Professionalism of the State Bar of Arizona, and a high degree of competence in the practice of the particular field of law. The required degree of competence is substantially higher than that possessed by a general practitioner who regularly handles a matter in that

particular field of law. For purposes of this rule, a “high degree of competence” shall meet the following standards:

1. The applicant demonstrates a substantially complete knowledge of substantive law and rules of practice, procedure, evidence, and ethics pertaining to that particular field of law;
2. The applicant demonstrates a high degree of skill, thoroughness, preparation, effectiveness, professionalism, and judgment in that particular field of law;
3. The applicant satisfactorily completes a written examination in the topics specified in paragraphs (1) and (2) above; and
4. The applicant possesses a substantially complete knowledge of and can demonstrate a high degree of skill in the use of alternative dispute resolution as it applies in the field.
5. Legal competence is measured by the extent to which an attorney (1) is specifically knowledgeable about the fields of law in which they practice, (2) performs the techniques of such practice with skill, (3) manages such practice efficiently, (4) identifies issues beyond their competence relevant to the matter undertaken, bringing these to the client’s attention, and (5) properly prepares and carries through the matter undertaken.

G. Applicant must pay all application, investigation, and testing fees as specified in the Standards.

Section VI. Procedure for Initial Certification and Recertification

A. Applications. Applications shall be submitted on forms provided by the BLS. The content of the applications shall conform to the standards established for certification of lawyers in each of the specialty fields. Applications are to be submitted to the State Bar office of the BLS by August 1st of each year and must be accompanied by the application fee. The fee will be set by the BLS.

For purposes of determining when an application or supplemental information is timely, the application or supplemental information shall be deemed submitted when received at the offices of the BLS.

B. Withdrawal of Applications. If an application is withdrawn, 50 percent of the application fee shall be refunded. Written notice of withdrawal shall be required before any refund is extended to any applicant, and the notice of withdrawal must be submitted no later than 30 days after the date of the filing of the application. An applicant shall not be entitled to a refund if they fail to timely withdraw the application for certification.

C. Expiration of Applications. Applications not completed, including examination, within two years of the filing date will expire, unless the application is pending recommendation by an Advisory Commission or decision by the BLS or Board of Governors. An application can be denied at any time within the two-year application period for failure to successfully meet the requirements.

D. Late Applications. Applications received after the August 1st deadline but before October 1st must be accompanied by a \$75.00 late fee. Applications received after October 1st will not be accepted for that application cycle.

E. Confidentiality

1. **Applications.** The contents of the application and statements of references shall be confidential and privileged from disclosure, except to the applicant upon request. To preserve the integrity of the peer review process, applicant shall not share any statements of references or disclose information contained therein, including the identity of the references, to anyone other than applicant's attorney representing the applicant with respect to their certification or recertification.
2. **Investigations.** Records of investigations, hearings, evidence, and written findings and recommendations shall be confidential and privileged from disclosure to the extent they contain confidential personal information or information confidential under the attorney-client privilege or other rules or law; however, such records shall be provided to the applicant upon request to the extent necessary to permit the applicant to appeal from an adverse decision with respect to his or her application for certification or recertification.
3. **Scope.** The provisions on confidentiality and nondisclosure contained in this section shall also extend to hearings by the Advisory Commissions and hearings and other proceedings before the BLS or its designees. Discussion of confidential information during any public meeting of the BLS shall take place in an executive session, pursuant to the State Bar of Arizona Public Meetings Policy.
4. **Immunity from Civil Suit.** Pursuant to Ethical Rule 7.4(b), no civil action predicated on information communicated to the BLS or its Advisory Commissions relating to applicant's qualifications for specialization certification may be instituted or maintained against any evaluator, staff, or witness who communicates with the BLS or its Advisory Commissions. Members of the BLS, its Advisory Commissions, and others involved in the specialization certification process shall be immune from suit for any conduct in the course of their official duties.

F. Initial Review. Applications shall be examined promptly upon receipt by the BLS staff to determine whether the application is complete. The applicant shall be notified and given 30 days to supplement any missing information.

G. Review by Advisory Commission. A completed application shall be referred to the appropriate Advisory Commission for investigation, review, and recommendation to the BLS. To ascertain eligibility for certification, the Advisory Commission may independently review any public record, including records of the State Bar of Arizona Lawyer Regulation Office that are public. An applicant may also be required to submit information in addition to that called for on the application form, including the following:

1. Specific information indicating the percentage of time devoted by the applicant to the practice of law in the particular specialty area;

2. The nature, number, and dates of specific matters handled, and the nature of the applicant's participation;
3. The nature, number of, and examples of documents filed or prepared for use in particular matters;
4. Specific information concerning any form of disciplinary sanction imposed under Rule 60, Ariz. R. Sup. Ct.
5. Such other non-privileged information relating to applicant's law practice as the Advisory Commission or BLS may require.

If the BLS or Advisory Commission determines that the applicant has not provided sufficient information to make a determination, the applicant shall be given written notice of the additional or supplemental information required. The notice shall specifically identify the scope and nature of the information required. The notice shall advise the applicant that they have 30 days from the date the notice was mailed to supplement the application, unless the supplemental information must be forwarded to the BLS or Advisory Commission directly by a third party, in which case the applicant shall be advised that they have 60 days to ensure that such information is delivered to the Specialization Administrator. If the supplemental information is not received by the Specialization Administrator within the prescribed time, the Advisory Commission will make its decision based on the information in the file.

H. Investigation Fee. If adverse allegations require further investigation by the BLS or Advisory Commission, the applicant shall be assessed a reasonable investigation fee.

I. Peer Review

1. With each application, the applicant will submit the names of at least five Arizona attorneys, other professionals* who practice in the field, and/or judges before whom the applicant has appeared, who are familiar with the applicant's practice, not including current partners or associates. (*Other professionals may only be included in the list of references where approval has been authorized in the Standards for Certification in the applicable specialty field.) The Advisory Commission will select at least five additional Arizona lawyers, judges, or qualified professionals as references from cases/matters/projects submitted by the applicant. The references will be requested to provide written comments concerning the applicant not limited to such specific topics as knowledge, skill, thoroughness, preparation, effectiveness, and judgment. References who provide negative and/or adverse comments concerning an applicant will be requested to provide the factual basis and any substantiating information for them.
2. Names of applicants will be published in a State Bar publication, providing an opportunity for comment, at least 30 days before consideration of applications by the Advisory Commission. Reference names supplied by the applicant shall not include members of the BLS or Advisory Commission. The Advisory Commission may also consult other peer review sources. Documentation of all matters and comments considered by the Advisory Commission shall be contained in the applicant's file. All comments provided by these references and all peer review letters associated with the

application shall be subject to the confidentiality and disclosure provisions set forth in Section VI.E., above.

3. Applicant may be asked to supplement the record with additional names for peer review if necessary.
4. Advisory Commissions may investigate, research, substantiate, and corroborate any information provided in peer review letters which may help them make a recommendation. No anonymous peer review comments will be considered by the Advisory Commission or the BLS.

J. Exams

1. The exam must be taken by initial applicants only.
2. Applicant must pay all applicable exam fees.
3. Written examinations will be given once each year at a date, time, and location determined by the relevant Advisory Commission.
4. The results of the examination, including the examination itself and the applicant's answers, become part of the application file and shall be confidential and privileged from disclosure in accordance with this Rule.
5. If the applicant does not pass the exam, an intent to deny notice will be mailed. The applicant may elect to retake the exam during the next cycle, may request to appear before the Advisory Commission to discuss the results of the exam, or may take no action.
 - a. If the applicant elects to retake the exam, they must supplement their original application with information regarding their continued substantial involvement in the specialty area. The Advisory Commission may elect to conduct additional peer review. This option is limited to one time only.
 - b. If the applicant requests to appear before the Advisory Commission, the applicant will be provided with a copy of the applicant's exam questions and answers. Model answers will not be provided.
 - c. If the applicant takes no action, the Advisory Commission will recommend denial to the BLS.
 - d. In all specialty areas where an outside exam is administered, the appeal process utilized by the testing agency will apply.

K. Recommendation by Advisory Commission

1. The Advisory Commission will review the complete record to determine whether the applicant has established by a preponderance of the evidence that the applicant meets the requirements for certification as stated in Section V. If the applicant has successfully met the burden, the Advisory Commission will recommend approval of

the applicant to the BLS. If the applicant has not successfully met the burden, the Advisory Commission will issue an intent to deny.

2. The Advisory Commission is responsible for creating a complete record, including all peer review contacts and documentation of the results of its investigation.
3. The Advisory Commission will make a recommendation to the BLS, including findings of facts and conclusions.

L. Intent to Deny

1. **Notice.** In the event an Advisory Commission decides to recommend that an application for certification be denied, it shall notify the applicant, in writing, of its recommendation. Subject to the confidentiality provisions in Section VI.E., above, the Notice of Intent to Deny shall set forth the reasons and the factual bases for the recommendation and advise the applicant that they are entitled to appear before the BLS.
2. **Request to Appear Before BLS.** The applicant shall have 20 days after the date of receipt of the Notice of Intent to Deny to file with the Specialization Administrator a Request to Appear before the BLS. A Request to Appear may be filed even if the applicant does not wish to dispute the recommendation. If the applicant wishes to dispute the recommendation, the request must set forth their reasons for disputing the recommendation and may contain additional supporting documentation. The applicant must file an original of the Request to Appear and all supporting documentation with the Specialization Administrator at the offices of the State Bar of Arizona. A Request to Appear is a prerequisite to appearing for oral argument before the BLS. Upon receipt of a Request to Appear, the BLS shall issue a Notice of Appearance as soon as practicable. The Notice of Appearance shall set forth the date and time when the applicant may appear before the BLS in accordance with section VI.N., below.
3. **Dispute of Advisory Commission's Recommendation.** In those cases where an applicant appears before the BLS to dispute the Advisory Commission's Intent to Deny, the BLS shall consider the Advisory Commission's recommendation based on the applicant's presentation, the applicant's supplemental supporting documentation, if any, and further investigation, if any. The BLS may then approve the application, deny the application, or remand the application to the Advisory Commission.
4. **Consent.** Failure of the applicant to file a Request to Appear shall constitute consent to the Advisory Commission recommendation. In such event, the Advisory Commission shall forward the file and its recommendation to the BLS.
5. **Decision.** The BLS shall conduct an independent review of the record to determine if the documentation in the file substantiates the recommendation and, thereafter, notify the applicant of its decision to grant or deny certification. Any Notice of Denial shall contain the reasons for denial.

M. Review by BLS

1. If the Advisory Commission recommends approval, the BLS will review the recommendation from the Advisory Commission and approve the application, deny the application, or remand the application to the Advisory Commission.
2. If the Advisory Commission recommends denial, the BLS will proceed in accordance with section VI.L., above.
3. The BLS shall notify the applicant in writing of its decision to grant, remand, or deny an application. The Notice of Denial shall contain the reasons for denial.
4. If the file is remanded, the Advisory Commission has 60 days to conduct additional investigation or document the file.
5. If the BLS denies the application, the applicant shall have 30 days from the date of Notice of Denial to file a Request for Reconsideration with the Specialization Administrator. In the Request for Reconsideration, the applicant shall state all reasons why the applicant should be certified (but shall not include any new supporting documentation not considered by the Advisory Commission). The applicant must file an original of the Request for Reconsideration with the Specialization Administrator at the offices of the State Bar of Arizona within 30 days of the Notice of Denial. If a timely Request for Reconsideration is not received, the decision of the BLS is final.
6. Upon receipt of a Request for Reconsideration, the BLS shall issue a Notice of Oral Argument stating the date and time of argument at least 30 days in advance thereof. Any new evidence submitted will not be considered.

N. BLS Oral Argument

1. At the time of oral argument, the Advisory Commission representative will have approximately five minutes to summarize the record. The applicant shall have a maximum of 30 minutes to make a presentation to the BLS.
2. As soon as practicable after oral argument, the BLS shall notify the applicant in writing of its decision, including the reasons for the decision to grant, deny, or remand the application.
3. If the BLS upholds its decision to deny the application, the decision is final, and the applicant may seek discretionary review pursuant to Arizona Supreme Court Rule 44(f).

O. Discretionary Review by the Arizona Supreme Court

Pursuant to Rule 44(f), Ariz. R. Sup. Ct., an attorney aggrieved by a decision of the BLS may file a verified petition for review with the Arizona Supreme Court within 20 days after the decision becomes final. The attorney must succinctly state the facts that form the basis of the petition and the attorney's reasons for seeking review. The attorney must promptly serve the BLS with a copy of the petition. The BLS will have 30 days after service to file a response and to transmit the attorney's file to the Arizona Supreme Court. The Court will then decide whether to grant review.

Any document filed with the Court under Rule 44(f) will be considered open to the public pursuant to Rule 123, Ariz. R. Sup. Ct. The attorney or the BLS may request that the Court seal a portion of the materials submitted for review.

Section VII. Recertification

Recertification is required every five years. The application process as set forth in Section VI applies to recertification with the exception of Section VI.J (Exams). An application for recertification must be submitted prior to the expiration of the current certificate. Each Advisory Commission may recommend, and the BLS may establish, additional requirements, but each applicant for recertification shall meet the following minimum standards:

- A.** Applicant shall make a satisfactory showing of continued substantial involvement in the particular field of law during each of the 5 years preceding the application for recertification;
- B.** Applicant shall make a satisfactory showing of having completed the annual continuing legal education requirements in the particular field of law during each of the 5 years preceding the application for recertification; and
- C.** Applicant shall pay all required fees.
- D.** Where there has been no break in certification, an applicant for re-certification, or an applicant in the case of a revocation of certification, shall retain his or her status as a certified specialist until such time as a final determination of denial or revocation is made.

Section VIII. Annual Requirements

A. Annual Fee and Penalty for Delinquency

- 1.** Following the year of the specialists' initial certification, the annual fee shall be \$200.00 and shall be due on or before December 31st of each year.
- 2.** In the year of a specialist's initial certification, the fee shall be as follows:
 - a.** If certified between January 1 and March 31, 100% of the annual fee;
 - b.** If certified between April 1 and July 31, 75% of the annual fee;
 - c.** If certified between August 1 and October 31, 50% of the annual fee;
 - d.** If certified between November 1 and December 31, 25% of the annual fee.

The fee for the year of initial certification not paid within 60 days of the date of the letter advising the specialist of their certification shall be deemed delinquent and shall be handled as stated in Section VIII.A.3. hereof, except that Notice of Delinquency shall be sent to the specialist by regular mail within 30 days of the date when the fee was delinquent.

- 3.** Annual fees not paid by February 1 of each year shall be delinquent. Notice of Delinquency shall be sent to the specialist by regular mail by March 1, if the annual fee is not paid by the time specified. The notice shall inform the specialist: (i) of the amount of the unpaid fee; (ii) that failure to pay the fee may result in revocation of the

certificate of specialization; (iii) that the specialist may resign from the specialization program in lieu of revocation; and (iv) that a late charge of \$25.00 has been assessed for such delinquency.

4. Delinquency shall be cause for revocation of certification if not cured before a Notice of Intent to Revoke is issued as hereinafter provided in Section IX.
5. The application fee for recertification shall be the same as the fee for certification as set forth above unless initial certification was revoked for noncompliance with these rules and regulations. In the case of an individual who has had his or her certification revoked pursuant to these rules and regulations, a recertification fee of \$300.00 shall be charged upon application.

B. Continuing Legal Education Requirements

1. Annual CLE

- a. Each specialist must complete 15 or more hours per year at one or more CLE Activities that meet the standards stated in Section VIII.B.2. This includes a substantive requirement of 12 hours and a professional responsibility requirement of 3 hours.
 - i. Substantive Requirement: The 12-hour substantive requirement refers to CLE Activities in the specialist's area of specialization.
 - ii. Professional Responsibility Requirement: The 3-hour professional responsibility requirement refers to CLE Activities on topics of professional responsibility, as defined in Rule 45, Ariz. R. Sup. Ct. (MCLE Rule).
 - iii. Categories of CLE Activities: Within the overall 15-hour CLE requirement, 12 of which must be substantive and 3 of which must be professional responsibility, the following minimum and maximums apply:
 - 1) At least 5 hours must be earned by attendance at Interactive CLE.
 - 2) No more than 7.5 hours may be earned through a combination of teaching and/or writing CLE. Writing legal material must be in the area of specialization.
 - 3) A maximum of 5 hours may be earned through Self-study.
- b. Carry Forward Hours: If a specialist has completed more than the required 12 hours in their area of specialization, up to 5 hours in that area of specialization may be carried forward to the next educational year. Additionally, up to 3 hours in professional responsibility may be carried forward to the next educational year. The annual CLE requirement must be met for each year a specialist is certified, including the year of certification.
- c. By September 15 of each year, each specialist must submit an affidavit prescribed by the BLS demonstrating compliance with the CLE requirements set forth above.

The affidavit shall set forth the titles of the seminars attended or taught, articles written, sponsoring or publishing organization, and dates and location of the seminar or publication. All CLE Activities must meet the standards of Section VIII.B.2.

2. Standards

CLE Activities that are claimed toward the annual requirement shall meet the following standards:

- a. **Significant Content.** The activities shall have significant intellectual and/or practical content and shall be directed toward development of the attendee's advanced skills in the area of specialization. The content of activities may include a broad or narrow range of subjects dealing with the particular specialty field.
- b. **Organized Program.** The activities shall be an organized program of learning, deal with matters directly related to the specialization field or professional responsibility, and follow the agenda defined by the written materials or exercises distributed as part of the activities. The level of instruction of CLE Activities in the area of the specialization field shall be directed toward the development of advanced skills in the area of specialization.
- c. **Instructors.** The instructors of CLE Activities shall have subject matter expertise in the field in which they are teaching. The instructors' qualifications and appropriate background information shall be set forth in the activity's brochure or written materials.
- d. **Written Material.** Scholarly written materials or exercises shall be distributed to the attendees at, or before, the time the activity is presented.
- e. **Records.** Course outlines, written materials, verification of attendance, and other evidence of a CLE Activity identifying the course, sponsor, and date and place of presentation and/or publication must be retained by the specialist for recertification and any MCLE audit.

3. Calculation of Credit Hours

- a. Calculation of credit hours shall be determined by dividing the total minutes of instruction by 60 and rounding to the nearest quarter hour. Breaks shall not be included as part of instructional time. For CLE Activities in the specialization field, if the activity contains other subject matter not directly related to the specialty, credit shall be allowed for the time spent in the specialty area.
- b. **Teaching Hours.** Credit may be earned for teaching at a CLE Activity or at an Arizona university or any Arizona community college, whether the teaching is computer-based, online or in a classroom, so long as the instruction meets the standards of Section VIII.B.2, except that the instruction may be at a basic level.

- i. Speakers whose presentations are accompanied by written materials prepared, augmented, or updated by the speaker may earn teaching credit, as follows:

For the original presentation:

First hour of presentation x 6 = total credit hours

Additional hours of presentation x 2 = total credit hours

Repeat live presentation hours x 1 = total credit hours

- ii. Speakers, including college of trial advocacy educators, whose presentations are not accompanied by written materials prepared, augmented, or updated by the speaker may earn teaching credit as follows:

Each hour of presentation x 1 = total credit hours

- iii. Credit hours earned through a combination of teaching and/or writing CLE may be reported to satisfy a maximum of 7.5 credit hours each year.

- c. **Writing Hours.** Credit may be earned for writing legal material in the area of specialization not used in conjunction with a CLE Activity. Such material must address an attorney audience, be at least 3,000 words in length, and be published by a recognized third-party publisher of legal material or a sponsor.

- i. For each 3,000 words of original material written, the author(s) may earn two credit hours. Multiple authors may share credit for material written.
- ii. The first two credit hours may be basic in nature, but beyond that must be at an advanced level.
- iii. Credit hours earned through a combination of teaching and/or writing CLE may be reported to satisfy a maximum of 7.5 credit hours each year.

- d. **Self-study.** Credit hours may be earned for participation in self-study activities. “Self-study” may include listening to or viewing course materials.

- i. Specialists may claim up to 5 hours of CLE in their area of specialization via self-study formats. Self-study formats are CDs, DVDs, and non-interactive videos or webcasts, or non-interactive online programming. The self-study programs must meet the higher standards for specialists insofar as intellectual and/or practical content and be primarily focused on the area of specialization. Credit hours earned by self-study of course materials shall be equal to the hours of presentation of the seminar on which the materials are based, or the actual time spent in self-study, whichever is less.

- ii. A specialist may not receive credit for both attendance at a seminar and self-study of course materials from that seminar.
- iii. Credit hours earned through self-study may be reported to satisfy up to a maximum of 5 hours of CLE in their area of specialization.
- iv. Specialists may not receive substantive self-study credit for service as a non-compensated arbitrator.

4. Delinquent Compliance

Failure to obtain the required 15 hours of continuing legal education credit by the June 30 deadline will result in the following late fees:

- a. If CLE requirements are completed between July 1 and July 31, a delinquent compliance fee of \$33 is assessed.
- b. If CLE requirements are completed between August 1 and August 31, a delinquent compliance fee of \$67 is assessed.
- c. If CLE requirements are completed between September 1 and September 15, a delinquent compliance fee of \$133 is assessed.
- d. If CLE requirements are completed after September 15, a delinquent compliance fee of \$166 is assessed.

5. Late Filing Fees

Failure to file the Affidavit of Compliance when due under Section VIII.B.1.c. herein will result in the following late fees:

- a. Members who file their affidavits between September 16 and October 15 will be assessed a delinquent filing fee of \$133.
- b. Members who file their affidavits between October 16 and November 15 will be assessed a delinquent filing fee of \$166.
- c. Members who file their affidavits after November 16 will be assessed a delinquent filing fee of \$200.

Such fees shall be in addition to any fee for delinquent compliance as set forth above. Failure to file the affidavit of compliance by December 15 may result in revocation of certification and summary suspension pursuant to Rule 45, Ariz. R. Sup. Ct.

6. Failure to Comply

- a. Any affidavit filed pursuant to Section VIII.B hereof that is, or appears to be, not in compliance shall be referred to the attention of the Advisory Commission or the BLS for a determination of compliance.

- b. The BLS may revoke a specialist's certification for failure to satisfy the annual CLE requirements.

Section IX. Revocation/Suspension of Certification

A. Procedure. The certification of any lawyer may be revoked or suspended by the BLS if it is determined that: (1) the certificate was granted contrary to the rules and regulations of the BLS; (2) the certificate was granted to a lawyer who was not eligible to acquire a certificate or who made any false representation or misstatement of material fact to the BLS; (3) the certificate holder has failed to abide by all rules and regulations covering the program promulgated by the BLS, as amended from time to time, including any continuing legal education requirements necessary to maintain certified status; (4) the certificate holder has failed to pay any fee established by the BLS; (5) the certificate holder no longer meets the qualifications established by the BLS; or (6) the certificate holder has been disciplined pursuant to Rule 60, Ariz. R. Sup. Ct., by the Presiding Disciplinary Judge or the Supreme Court or any other state or federal court or agency.

The certificate holder has a duty to inform the BLS promptly of any act or circumstance described above. The BLS may refer any question of revocation or suspension to the appropriate Advisory Commission for investigation and recommendation.

B. Notice. The BLS shall give the certificate holder whose certificate is subject to revocation or suspension notice of its intent to revoke or suspend the holder's certificate and the reason(s) therefore at least 30 days prior to revocation or suspension. Such notification shall be sent by regular mail, addressed to the applicant at the address last furnished by the applicant to the State Bar of Arizona. The Notice shall describe that the certificate will be suspended or revoked if the certificate holder does not request a hearing and describe that procedure for requesting a hearing.

C. Hearing. A hearing on the revocation or suspension of certification status, if requested, shall be held within 60 days of the receipt of the Notice of Intent to Revoke or Suspend issued by the BLS. Hearings shall be conducted in the manner set forth above and in accordance with the State Bar of Arizona's Public Meetings Policy. At said hearing, the BLS may consider the specific reasons(s) set forth in the Notice of Intent to Revoke or Suspend, as well as any other disciplinary matters involving the certificate holder during their current term of certification.

D. Discretionary Review by the Arizona Supreme Court. Pursuant to Rule 44(f), Ariz. R. Sup. Ct., an attorney aggrieved by a decision of the BLS may file a verified petition for review with the Arizona Supreme Court within 20 days after the decision becomes final. The attorney must succinctly state the facts that form the basis of the petition and the attorney's reasons for seeking review. The attorney must promptly serve the BLS with a copy of the petition. The BLS will have 30 days after service to file a response and to transmit the attorney's file to the Arizona Supreme Court. The Court will then decide whether to grant review.

Any document filed with the Court under Rule 44(f) will be considered open to the public in accordance with the Rule 123, Ariz. R. Sup. Ct. The attorney or the BLS may request that the Court seal a portion of the materials submitted for review.

Section X. Establishing New Area of Specialization

Interested parties may petition the BLS to consider recommending a new area of specialization to the Board of Governors of the State Bar of Arizona by following the procedures below:

A. Attorneys seeking recognition of a new area of specialization by the BLS shall submit a written application to the BLS which shall include the following:

- 1.** Signatures of 20 attorneys recommending the proposed area of specialization.
- 2.** A statement as to whether the State Bar of Arizona has recognized a section for the proposed area of specialization and the number of members of that section for the previous 5 years.
- 3.** An estimate and the basis for such estimate as to the number of attorneys statewide who practice in the proposed area of specialization.
- 4.** A definition of the proposed area of specialization and demonstration that it is an established practice area. Documentation or information to support a proposed area as an established practice area may include:
 - a.** Other states or accredited national organizations offering specialization in the area;
 - b.** Listings as practice area in publications such as Martindale Hubbard, Best Lawyers in America, etc.;
 - c.** Referral Service listings (Public Service Center or other services); and
 - d.** CLE availability options in the proposed area.
- 5.** A statement that the contemplated definition of the proposed area of specialization is not in substantial conflict, nor substantially overlaps, with the definition of a current area of specialization, or if substantial conflict or overlap exists, a statement explaining why the proposed area of specialization should be recognized as a separate area of specialization.
- 6.** A statement explaining how recognition of the proposed area of specialization will benefit members of the public and how recognition of the proposed area of specialization will benefit lawyers who practice in the area.
- 7.** A listing of the continuing legal education courses that comply with Arizona MCLE requirements in the proposed area of specialization offered within the past 2 years.
- 8.** A draft of Standards for Certification for the proposed area of specialization.
- 9.** A draft of a subject matter outline covering the knowledge and skills that candidates would be expected to exemplify in the proposed area of specialization. Such outline would be the basis to develop the certification examination for the area of specialization if the area of specialization is approved by the Board of Governors.

10. Signatures of at least 10 attorneys who would be willing to serve as an initial Advisory Commission to the BLS in the proposed area of specialization.

B. Upon receipt of a written application that complies with the requirements of Section X.A above, the BLS shall circulate copies to the members of all existing Advisory Commissions for written comment. Incomplete applications will not be considered by the BLS.

C. After receipt and consideration of written comments from existing Advisory Commission members and after conducting its own review of the advisability of recognition of the proposed area of specialization, the BLS may:

1. Recommend to the Board of Governors recognition of the proposed area of specialization and proposed standards for certification in this area;
2. Present the proposed recommendation for the new area of specialization to the Board of Governors and make a recommendation, supported by a written statement, that the Board of Governors deny recognition of the proposed area of specialization; or
3. Request additional information or clarification from the applicants for recognition of the proposed area of specialization. The BLS may also seek additional information on its own to assist in making its final recommendation to the Board of Governors.

D. In the event the Board of Governors approves the BLS recommendation to recognize a new area of specialization, the Board shall forward its recommendation to the Supreme Court for final approval.