

TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007

DIVISION 2. ATTORNEY MEMBERS

Chapter 2. Legal Specialization

Article 1. General provisions

Rule 3.90 California Board of Legal Specialization

- (A) The California Board of Legal Specialization (“board”) is appointed by the Board of Trustees of the State Bar of California to establish and administer a program to encourage attorney competence by certifying as legal specialists attorneys who have demonstrated proficiency in specified areas of law.¹ This chapter sets forth the rules for those certified specialists.
- (B) The board consists of the following members, including a chair, vice-chair, and the immediate past chair, each entitled to vote:
 - (1) twelve attorney members, up to two of whom need not be certified specialists; and
 - (2) three non-attorneys.
- (C) The board may recommend that the Board of Trustees approve additional areas of legal specialization and their related certification standards.
- (D) The board may recommend that the Board of Trustees authorize other entities to grant certification. The rules applicable to such entities are set forth elsewhere in this title.²

Rule 3.90 adopted effective January 1, 2014.

Rule 3.91 Certification standards

The Board of Trustees adopts certification standards for each specialty to supplement these rules.

Rule 3.91 adopted effective January 1, 2014.

¹ See Rule of Court 9.35.

² Rule 3.900 et seq.

Rule 3.92 Advisory commissions

An advisory commission (“commission”) is appointed by the Board of Trustees to recommend and apply certification standards for each area of legal specialization. A commission consists of an even number of attorney members, but no more than eight, and a non-attorney member. One of the attorney members need not be a certified specialist.

Rule 3.92 adopted effective January 1, 2014.

Rule 3.93 Terms

- (A) Each board and commission member is appointed for a term of four years. A member whose four-year term is expiring may serve an additional year as chair, vice-chair, or immediate past chair. An immediate past chair may also serve an additional year.
- (B) A vacancy on the board or a commission occurs when a member dies, resigns, or an attorney member ceases to be an active member of the State Bar. A vacancy must be filled by the Board of Trustees.

Rule 3.93 adopted effective January 1, 2014.

Rule 3.94 Meetings

Meetings of the board and its advisory commissions are governed by the Rules of the State Bar.³

Rule 3.94 adopted effective January 1, 2014.

Rule 3.95 Conflicts of interest

- (A) To avoid a conflict of interest that may interfere or appear to interfere with impartial evaluation of an applicant, a board or commission member considering an application must immediately disclose to the chair of the board or commission any significant past or present relationship with the applicant, whether familial, professional, political, social, or financial.
- (B) A board or commission member who believes that the length or nature of a relationship would unduly influence or appear to influence evaluation of an applicant may in no way participate in or attempt to influence the evaluation. Representing opposing parties in a legal matter does not necessarily require recusal.

³ See Rule 6.60 et seq.

- (C) If a board or commission member believes recusal is not required and the chair disagrees, the determination of the chair prevails. Factors the chair is to consider in making the determination include the date of the relationship, its duration, and whether it is more than casual or incidental.
- (D) A board or commission member may in no way participate in or attempt to influence board or commission consideration of his or her own application for certification.

Rule 3.95 adopted effective January 1, 2014; amended effective July 24, 2015.

Rule 3.96 Confidentiality

- (A) A certified specialist's certification is public information, but all applications, examination development, examination administration, examinations, grading materials, scores, references, and other records are confidential, unless otherwise provided by these rules or by law. Hearings and informal conferences of the board and the commissions are confidential.
- (B) This rule does not preclude disclosure of information about an applicant or certified specialist by and between the board and the State Bar's Office of the Chief Trial Counsel or the Office of General Counsel in furtherance of the State Bar's regulatory and disciplinary responsibilities.
- (C) A board or commission member may be removed by the Board of Trustees for a breach of confidentiality.

Rule 3.95 adopted effective January 1, 2014; amended effective July 24, 2015.

Article 2. Certified specialists

Rule 3.110 Certification requirements in general

- (A) In these rules "applicant" means an initial applicant for certification or an application for recertification, unless otherwise specified. An applicant must establish proficiency in the specialty area by meeting the following requirements:
 - (1) be an active member in good standing of the State Bar and not currently in disciplinary proceedings or on disciplinary or criminal probation;
 - (2) submit an application with an application fee; and
 - (3) meet the requirements of these rules and any relevant standards regarding
 - (a) education;

- (b) practice and tasks;
 - (c) examination; and
 - (d) references familiar with the applicant's proficiency in performing tasks relied upon for certification in the specialty area.
- (B) An applicant must submit the application within eighteen months of the date on which the applicant took the examination. An applicant may request an extension of up to eighteen months for completion of all requirements. Requests are granted for good cause shown at the discretion of the board.

Rule 3.110 adopted effective January 1, 2014; amended effective July 24, 2015.

Rule 3.111 Fees and deadlines

- (A) These rules refer to fees and deadlines that are set forth in the Schedule of Charges and Deadlines.⁴
- (B) A certified specialist who fails to make timely payment of a required fee will be notified of the delinquency and may be assessed a late charge. Failure to pay the annual fee or late charge within thirty days of notice of delinquency may result in suspension of certification.

Rule 3.111 adopted as Rule 3.112 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.

Rule 3.112 Application for Certification

- (A) An Application for Certification must be submitted with an application fee.
- (B) An application is deemed abandoned and ineligible for a refund of the application fee if
- (1) the application is not complete within sixty days of receipt by the State Bar, unless an extension has been granted;
 - (2) the application is complete but the applicant fails to provide additional information requested by the State Bar within ninety days of the request; or
 - (3) an applicant fails to complete any other certification application requirement.

⁴ See Rule 1.20(L).

(C) Certification requirements completed for an abandoned application may be used for a subsequent application.

(D) An applicant may apply for certification in more than one specialty.

Rule 3.112 adopted as Rule 3.113 effective January 1, 2014; renumbered effective July 24, 2015.

Rule 3.113 Reporting requirement

Every applicant and every certified specialist has an ongoing duty to comply with these rules and any relevant standards and to promptly disclose to the board any information that might affect eligibility for certification⁵ or that the State Bar Act requires the member to report to the State Bar.⁶

Rule 3.113 adopted as Rule 3.114 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.

Rule 3.114 Education

(A) Board-approved education or board-approved education alternative must be completed in the specialty area of law as follows:

(1) by applicants for initial certification: at least forty-five hours in the three years immediately preceding the application; and

(2) by certified specialists: at least thirty-six hours during the specialist's Minimum Continuing Legal Education (MCLE) compliance period. The specialist must report specialty education compliance to the board when reporting MCLE compliance.⁷

(B) A provider intending to offer specialty education must be approved by the State Bar as a Multiple Activity Provider in a specialty area of law⁸ or must file an application to the board or a designated commission for approval of a single education activity designed to attain or maintain proficiency in a specialty area of law.

(C) The board may grant specialty education credit for education that meets certification requirements,⁹ inclusive of activities approved for MCLE credit¹⁰ as well as credit for MCLE requirements for legal ethics, elimination of bias, and competence issues.¹¹

⁵ Rule 3.110.

⁶ Business and Professions Code § 6068(o).

⁷ Rules 2.70 and 2.71.

⁸ See Rule 2.52 and Rule 3.600 et seq.

⁹ Rule 2.84.

¹⁰ See Rules 2.51; 2.80; 2.81; 2.82 and 2.83.

¹¹ Rule 2.72.

- (D) The board may grant specialty education credit to a certified specialist who mentors an applicant or a prospective applicant for certification as well as to the mentored applicant or prospective applicant, provided the specialty education is documented to the satisfaction of the board and otherwise meets the requirements of these rules.¹²

Rule 3.114 adopted as 3.115 effective January 1, 2014; renumbered effective July 24, 2015.

Rule 3.115 Practice and task requirements

In the five years immediately preceding the Application for Certification, an applicant must complete the tasks prescribed by the relevant standards with proficiency; demonstrate current substantial involvement in the practice; and spend at least twenty-five percent of the time given to occupational endeavors practicing law in the specialty in which certification is sought. The board's acceptance or rejection of the computation is final.

Rule 3.115 adopted as Rule 3.116 effective January 1, 2014; renumbered effective July 24, 2015.

Rule 3.116 Examination

- (A) An applicant must pay an examination registration fee and take and pass a written examination that tests knowledge of the substantive law and procedures of a legal specialty. The board determines the scope, format, topics, grading process, and passing score of the examination.
- (B) Results reported to applicants are final. Applicants are not entitled to receive their examination answers or to see their scores.
- (C) Upon approval of a new area of legal specialization by the Board of Trustees, the board may approve for a period of no more than two years satisfactory completion of one or more alternative tasks in lieu of a written examination.

Rule 3.116 adopted as Rule 3.117 effective January 1, 2014; renumbered effective July 24, 2015.

Rule 3.117 References

An applicant must provide references from attorneys or judges whom the applicant has identified as familiar with the applicant's proficiency in performing the tasks required for certification. At least three positive references must be provided unless the relevant standards require more. A commission may seek additional references.

Rule 3.117 adopted as Rule 3.118 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.

¹² Rule 2.86.

Rule 3.118 Waivers and modifications

- (A) A certified specialist who serves full-time in a state or federal court of record as a judge, magistrate, commissioner, or referee or as an administrative law judge is exempt during the period of service from the annual fee required of a certified specialist and from recertification requirements. The specialist is not eligible for the fee waiver until the service officially begins; any fee paid prior to that time is not refundable.
- (B) The board may waive or permit modification of a certification requirement.

Rule 3.118 adopted as Rule 3.119 effective January 1, 2014; renumbered effective July 24, 2015.

Rule 3.119 Recertification

- (A) To maintain certification in a specialty area, a certified specialist must recertify every five years, which includes submitting a completed application,¹³ paying fees,¹⁴ and meeting education, practice and task, and reference requirements as specified by the board.
- (B) If permitted by the relevant standards, education or practice and task requirements completed in the last six months of certification that exceed recertification requirements may be applied to the next certification period.
- (C) An applicant who fails to pay fees will be notified of the delinquency and may be assessed a late charge. Failure to pay fees or any assessed late charge within 30 days of the notice of delinquency may result in suspension of certification.
- (D) Action on an application for recertification is governed by the process applicable to action on an initial application.¹⁵
- (E) Certified specialists who choose not to recertify will be terminated from the legal specialization program.

Rule 3.119 adopted as Rule 3.124 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.

¹³ Following the process outlined in Rule 3.112.

¹⁴ See Rule 3.111

¹⁵ Rules 3.122-3.124 and 3.126.

Rule 3.120 Denial of certification or recertification

An applicant may be denied certification or recertification for

- (A) failure to timely file a completed application, pass the examination for certification, meet the practice and task requirements, obtain at least three positive references, and pay all certification or recertification fees;
- (B) pending disciplinary charges in the State Bar Court, transfer to inactive status, suspension, resignation, or disbarment in California;
- (C) pending disciplinary charges, other disciplinary actions, suspension, resignation, or disbarment in another jurisdiction or before another regulatory body that has licensing or professional disciplinary authority over the applicant;
- (D) prior discipline;
- (E) lack of candor, including any material omissions or material false representations or misstatements made in an Application for Certification or Application for Recertification, or to a commission, the board, or the State Bar;
- (F) failure to report information the applicant must report to the State Bar¹⁶ and to the board¹⁷; or
- (G) information bearing negatively on proficiency that is obtained from references.

Rule 3.120 adopted as Rule 3.111 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.

Rule 3.121 Commission action on application

- (A) Within 180 days of receipt of an application, a commission must recommend that the board grant or deny certification or advise the applicant that
 - (1) it requires additional time or information to consider the application; or
 - (2) because of substantial and credible concerns regarding the applicant's qualifications, it is allowing the applicant to withdraw the application or to request an informal conference to address the concerns.¹⁸
- (B) A commission must recommend that the board grant or deny certification no later than 180 days after

¹⁶ For example, see Business and Professions Code §§ 6068(o)(1)-(7) and 6086.8(c).

¹⁷ Rule 3.113

¹⁸ See Rule 3.122.

- (1) an informal conference with an applicant;
- (2) the date of a scheduled conference at which the applicant failed to appear; or,
- (3) if an applicant did not request a conference, the date of the notice regarding the commission's concerns.

Rule 3.121 adopted as Rule 3.120 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.

Rule 3.122 Informal conference

- (A) An applicant notified of a commission's concerns regarding his or her application may request an informal conference within thirty days of the date of the notice. The conference must be held within one year of the State Bar's receipt of the request. The applicant's failure to attend the conference entails no negative inference.
- (B) An informal conference may be recorded as the commission deems appropriate. The applicant may attend with counsel; make a written or oral statement; and present documentary evidence. Counsel is limited to observation and may not participate. The commission may require the applicant to provide further documentation or information after the conference.

Rule 3.122 adopted as Rule 3.121 effective January 1, 2014; renumbered effective July 24, 2015.

Rule 3.123 Board action on application

- (A) Within 120 days of receiving a commission's recommendation to grant or deny certification, the board must make a determination to
 - (1) grant certification;
 - (2) direct the commission to further consider the application and report back within 100 days; or
 - (3) deny certification.
- (B) If the board intends to deny certification, it must notify the applicant of its reasons for doing so and allow the applicant thirty days to withdraw the application, provide further support for it, or request a hearing before the board.
- (C) Within ninety days of receiving a timely request for hearing, the board will schedule a hearing. Following the hearing, the board may then continue to deny certification. The applicant must be provided with written notice of the reasons for the board's denial.

- (D) Within thirty days of deciding to grant certification, the board must notify the applicant that certification begins on a specified date for a five-year period. Certification may be terminated sooner as provided by these rules or upon the request of a certified specialist. Certification remains in effect pending final action on a timely application for recertification, except where certification is suspended or revoked pursuant to Rule 3.124.
- (E) The board may postpone commission or board action on an application
 - (1) when a disciplinary recommendation has been made by the State Bar Court or another body that has licensing or professional disciplinary authority over the applicant; or
 - (2) if the applicant is on probation as a result of a disciplinary recommendation; or
 - (3) upon an applicant's suspension, resignation, disbarment or another status change not entitling an applicant to practice law in any jurisdiction where admitted to practice law.

Rule 3.123 adopted as Rule 3.122 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.

Rule 3.124 Suspension or revocation of certification

- (A) Certification may be suspended by the board when a disciplinary recommendation has been made by the State Bar Court, or upon transfer to inactive status, suspension, resignation, or disbarment in California; or
- (B) Pending disciplinary charges, other disciplinary actions, suspension, resignation, or disbarment in another jurisdiction or before another regulatory body that has licensing or professional disciplinary authority over the certified specialist.
- (C) Certification may otherwise be revoked or suspended by the board for failure to comply with a material requirement of these rules or any relevant standard.¹⁹
- (D) If the board intends to suspend or revoke certification, it must notify the certified specialist of its reasons for doing so and allow the applicant thirty days either to respond in writing to the board that suspension or revocation would be inappropriate or to request a hearing before the board. The response or request for hearing must be supported by any additional relevant evidence. Suspension or revocation of certification is final if the specialist fails to provide a timely written response or a request for hearing.

¹⁹ Rule of Court 9.35(d).

- (E) The board must consider a timely response to a notice of intent to suspend or revoke certification of a certified specialist within ninety days of receiving the response. The board may then continue certification with or without conditions, or suspend or revoke certification. The certified specialist must be provided with written notice of the reasons for the board's action. A decision to continue certification with or without conditions is final.

- (F) Within ninety days of receiving a timely request for hearing, the board will schedule a hearing. Following the hearing, the board may then continue certification with or without conditions, suspend or revoke certification. The certified specialist must be provided with written notice of the reasons for the board's action.

Rule 3.124 adopted as Rule 3.125 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.

Rule 3.125 Appeal of certification denial, suspension, or revocation

An applicant who is denied certification or recertification pursuant to Rule 3.120 (C)-(G) or a certified specialist whose certification is suspended or revoked pursuant to Rule 3.124(B) or (C) may file a petition for hearing in the State Bar Court in accordance with the rules of that court with the fee set forth in the Schedule of Charges and Deadlines no later than thirty days after the notice of denial, suspension or revocation is served on the applicant or certified specialist. A copy of the petition must be served on the board and the Office of the Chief Trial Counsel at the San Francisco office of the State Bar.

Rule 3.125 adopted as Rule 3.126 effective January 1, 2014; renumbered effective July 24, 2015; amended effective July 24, 2015.

Rule 3.126 Designation as certified specialist

Certification may be indicated by "Certified by The State Bar of California Board of Legal Specialization," the logo of the certified specialization program, or both. Certification is individual and may not be attributed to a firm. Anyone whose certification has been revoked or suspended may not claim to be certified specialist.

Rule 3.126 adopted as Rule 3.123 effective January 1, 2014; renumbered effective July 24, 2015.