

# TEXAS BOARD OF LEGAL SPECIALIZATION

## ATTORNEY RULES AND REGULATIONS

### Definitions as used in these Rules:

“**TBLS**” refers to the Texas Board of Legal Specialization. The authority of TBLS is created by the Court. TBLS appointments are made by the SBOT Board of Directors.

“**SBOT**” refers to the State Bar of Texas.

“**Court**” refers to the Supreme Court of Texas.

“**AC**” refers to the Advisory Commissions appointed by TBLS. An AC is assigned for each specialty area.

“**EC**” refers to the Exam Commissions appointed by TBLS. An EC is assigned for each specialty area.

“**Plan**” refers to the Texas Plan for Recognition and Regulation of Specialization in the Law.

“**Standards**” refers to the Standards for Attorney Certification.

“**Rules**” refers to these TBLS Attorney Rules and Regulations.

“**CLE**” refers to continuing legal education.

“**Applicant**” refers to either a certification or recertification applicant unless otherwise specifically stated.

“**Annual reporting**” refers to the process in which a board certified attorney reports his or her percentage of substantial involvement in the specialty area for the previous calendar year to TBLS and submits payment of the required annual fee for the current calendar year.

“**Hold**” refers to a status issued by TBLS to a board certified attorney who is being monitored because he or she has not met requirements to maintain certification as provided in the Standards. An attorney may not continue to use the “Board Certified” designation while on this status.

## SECTION I

### CERTIFICATION AND RECERTIFICATION REQUIREMENTS

- A. FORM AND CONTENT.** Documents, applications, and forms used for the purposes of certification, recertification, and annual reporting may be updated annually and will be furnished by TBLS. The application and annual reporting form and the information contained therein shall be affirmed by the applicant or board certified attorney as being true and complete. These forms shall not be altered or amended by the applicant or board certified attorney.
- B. COMPLETION OF REQUIREMENTS.**
1. Certification.
    - a. The substantial involvement requirements shall be completed by the application filing deadline established by TBLS.

- b. The following shall be completed by December 31st of the year of application:
    - (1) The 5 year period of law practice required for certification, and
    - (2) The CLE requirements for certification.
  - c. A certification applicant who has been approved for the exam shall have 2 consecutive opportunities to attain a passing grade on the examination. The first opportunity shall be during the year in which the application was filed. The second opportunity shall be only during the year immediately following the submission of the initial application, subject to review and re-approval by TBLS, and payment of a certification application resubmit fee.
  - d. In order to withdraw an application, a certification applicant shall submit a written request to TBLS before the application is reviewed by the appropriate AC. Withdrawal of an application does not entitle the certification applicant to a refund of the filing fee and will void the opportunity to reapply under Section I, B, 1, c of these Rules.
2. **Recertification.** A board certified attorney shall complete recertification tasks every 5<sup>th</sup> year of certification. Refer to Part II-Section I, C of the Standards-Specific Area Requirements for the applicable specialty area for the substantial involvement requirements for recertification.
- a. A recertification applicant shall:
    - (1) Complete annual reporting by the deadline established by TBLS;
    - (2) Pay both the annual and recertification fee for the applicable specialty area by the deadline established by TBLS;
    - (3) Provide names and addresses of attorneys and judges to serve as references for the peer review process by the deadline established by TBLS; and
    - (4) Complete the CLE requirement for recertification.
  - b. A board certified attorney who does not wish to recertify in a specialty area is not required to pay the recertification fee or provide references. However, to maintain certification through the end of the 5 year period of certification, payment of the annual fee is required for the specialty area.

**C. SUPPLEMENTARY INFORMATION.** In order to ascertain qualification for certification or recertification, TBLS may require an applicant to submit information in addition to that called for on the application form, and may require an applicant to submit to a personal interview before TBLS, any of its individual members, or any authorized representative.

**D. DEADLINES.**

- 1. **Certification.** An application must be submitted to TBLS by the filing deadline established by TBLS or postmarked on or before the filing deadline in order to be accepted for consideration.
  - a. **Filing Fee.** A filing fee of \$150.00 for each specialty area in which the applicant is applying must be submitted to TBLS by the filing deadline established by TBLS. An application submitted without payment of the filing fee shall be considered incomplete and shall not be accepted by TBLS.
  - b. **Refund.** Denial or withdrawal of an application will not entitle the applicant to a refund of the filing fee or any part thereof.
  - c. **Resubmission.** An application initially approved under Section I, B, 1, c of these Rules will be considered resubmitted in the following year only upon payment of a \$50.00 certification application resubmit fee.
- 2. **Annual Reporting / Recertification.** Annual reporting and recertification tasks described in Section I, B, 2 of these Rules must be submitted to TBLS by the filing deadline established by TBLS or postmarked on or before the filing deadline.
  - a. **Annual Fee.** A fee of \$125.00 shall be charged to a board certified attorney for each certificate of special competence earned. Payment of the annual fee must be submitted to TBLS by the deadline established by TBLS.

- b. Recertification Fee. A fee of \$50.00 shall be charged to a board certified attorney who is eligible for recertification in a specialty area. This fee is paid in addition to the annual fee for the applicable specialty area if he or she wishes to recertify. Payment of the recertification fee must be submitted to TBLS by the deadline established by TBLS.
    - c. Revocation. Failure to timely complete annual reporting or recertification tasks or failure to pay the annual fee shall be grounds for revocation of certification.
    - d. TBLS "Hold" Status. A board certified attorney who has been placed on a "hold" status by TBLS, must complete annual reporting and pay the annual fee; and if eligible for recertification, must complete the recertification tasks described in Section I, B, 2 of these Rules until a final determination has been made by TBLS regarding his or her certification status.
  - 3. Extension to Deadline. TBLS may grant an extension to an initial deadline of no more than 30 days upon a showing of good cause. Before the applicable deadline, an applicant or board certified attorney must provide TBLS with a written request for an extension which sets out the reasons for the extension. The determination as to whether good cause exists shall be in the sole discretion of TBLS. TBLS will notify the applicant or board certified attorney of its decision on the extension.
- E. FEES.** Any fees charged by TBLS may be adjusted as TBLS deems appropriate. Failure to timely pay any required fee shall be grounds for revocation of certification or denial of certification or recertification.
- F. ALTERATION OF FORM.** Any form created by TBLS that has been altered or amended by an applicant or board certified attorney will be reviewed by TBLS. An alteration or amendment that results in the omission, misrepresentation, or incomplete disclosure of a certification requirement shall be cause for denial of certification or recertification or revocation of certification.
- G. PROCESSING.**
- 1. Upon receipt of an application or annual reporting form, TBLS will:
    - a. In the case of an application, assign an appropriate file number.
    - b. Deposit any required fee.
    - c. Review the application or annual report and determine if it is complete.
    - d. Notify the applicant or board certified attorney of any necessary information which has not been provided on the application or annual report.
  - 2. The AC for each specialty area will review each application and make recommendations to TBLS for approval or denial.
  - 3. TBLS will review AC recommendations and make the final determination regarding the approval or denial of applications.
  - 4. An applicant or board certified attorney will be notified of the TBLS action as follows:
    - a. An approved certification applicant will be sent an exam payment form.
    - b. An approved recertification applicant will be sent a seal to update his or her certificate of special competence.
    - c. An applicant who is denied will be notified of the appellate process.
    - d. A board certified attorney who has been placed on a "hold" status by TBLS will be so notified and advised that he or she may not continue to use the "Board Certified" designation while on this status. TBLS will notify the attorney at such time as it makes a final determination on his or her certification status.
- H. CONFIDENTIALITY.** All materials and information received or used by TBLS in connection with the certification and annual reporting and recertification tasks, including, but not limited to, TBLS forms and Statements of Reference, shall be confidential and shall not be subject to disclosure.
- I. RETENTION.** Inactive files will be destroyed after 3 years from the date the file is closed.

## **SECTION II DISCLOSURE OF CONDUCT**

- A. CONDUCT TO BE REVIEWED.** TBLS shall review findings of professional misconduct as defined in Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct by any authorized disciplinary authority, including a court that involve a certification applicant or board certified attorney. Such findings include, but are not limited to, the following:
1. Disciplinary sanctions, which include disbarment, resignation in lieu of discipline, indefinite disability suspension; suspension for a specific period of time, probated suspension, public reprimand, or private reprimand;
  2. Pending disciplinary complaints in which a finding of just cause has been made;
  3. Conviction of a serious crime as defined in Part I-Section III, B of the Standards;
  4. Concluded civil matters involving malpractice or other attorney misconduct; and
  5. Findings of ineffective assistance of counsel.
- B. CERTIFICATION APPLICANT.**
1. A certification applicant shall disclose any finding described in Section II, A of these Rules which was concluded prior to the filing of the application and any pending disciplinary complaint in which a finding of just cause has been made.
  2. A certification applicant shall submit the TBLS Disclosure of Conduct Form as part of the application along with the pertinent documents and any explanation he or she wishes to be considered in the review of the conduct issue.
  3. A certification applicant has a continuing duty during the application process to report any finding described in Section II, A of these Rules within 30 days of conclusion or notification of a finding of just cause. The certification application shall submit the TBLS Disclosure of Conduct Form with the pertinent documents and any explanation he or she wishes to be considered in the review of the conduct issue.
  4. Failure to disclose a finding described in Section II, A of these Rules within the applicable 30 day period may be a basis for denial of certification.
  5. After review, TBLS:
    - a. Will deny certification to an applicant who is disbarred, has resigned in lieu of disbarment, is suspended from the practice of law for any period of time, or has been convicted of a serious crime.
    - b. May deny certification to an applicant who is subject to any of the findings described in Section II, A of these Rules.
- C. BOARD CERTIFIED ATTORNEY.**
1. A board certified attorney must disclose any finding of professional misconduct described in Section II, A of these Rules within 30 days of conclusion.
  2. After receiving notification of any finding described in Section II, A of these Rules, TBLS will:
    - a. Revoke the certification of an attorney who has been disbarred, has resigned in lieu of discipline, or been convicted of a serious crime.
    - b. Place an attorney who has been suspended from the practice of law for a specific period of time on a TBLS “hold” status (regardless of whether an appeal is pending) which prohibits the attorney from using the “Board Certified” designation.
    - c. Review the certification of an attorney who has received a probated suspension, public or private reprimand, criminal indictment, or is subject to a finding as described in Section II, A of these Rules to determine appropriate action on its part.

**D. REVIEW/HEARING PROCESS FOR CONDUCT ISSUES.** TBLS will review findings of professional misconduct of a board certified attorney in the following manner:

1. AC Review.
  - a. The appropriate AC or its subcommittee shall review a finding of professional misconduct and make a recommendation to TBLS regarding suitable action to take on the attorney's certification.
  - b. The AC may request additional information from the attorney and/or ask to meet personally with the attorney should they feel it necessary in order to make an appropriate recommendation. Failure to respond to a request for information or interview may be taken into account by TBLS when making its final decision.
  - c. The AC may recommend to TBLS the following:
    - (1) That no action be taken.
    - (2) That the attorney's certification be revoked or suspended (with all or part of the suspension being probated) and/or placed on a TBLS status of "hold" for further review; or
    - (3) That other action appropriate under the circumstances is taken.
2. TBLS Review.
  - a. TBLS shall review the AC recommendation concerning a finding of professional misconduct received by a board certified attorney. TBLS may accept the AC recommendation or make a different recommendation.
  - b. TBLS shall notify the attorney of their recommendation regarding the conduct issue. If the attorney does not agree with the TBLS recommendation, he or she must submit a written response to such notification within 15 days from the date of the receipt of notice. The TBLS recommendation will become final if the attorney does not respond within 15 days from the date of the receipt of notice.
  - c. A written response to the TBLS recommendation regarding a conduct issue shall request review of the TBLS recommendation, shall state the reasons the attorney believes the TBLS recommendation is in error, and shall specify whether the attorney wishes TBLS to consider only his or her written response or whether he or she wishes to have a hearing.
  - d. The review of an attorney's written response or a hearing on such TBLS recommendation may be conducted either by the entire TBLS or by a committee appointed by the Chair.
  - e. The recommendation regarding the attorney's conduct issue must be submitted to the entire TBLS for final action. In making the final decision, TBLS shall not be bound by the recommendation under consideration, but may take action of greater or lesser degree as it deems appropriate based on any evidence or argument presented or obtained during the appeal process. Such final action shall be taken within a reasonable time after the review of the written response or the hearing. The attorney shall be provided written notification of the final TBLS action.
  - f. Only arguments, authorities and evidence submitted in writing by the date of the TBLS hearing will be considered on a subsequent appeal to the SBOT Board of Directors.

### **SECTION III PEER REVIEW**

**A. TYPES OF REFERENCES.**

1. An applicant shall submit names and addresses of attorneys and judges, not his or her partners, shareholders, employees or associates, who can attest to his or her competence in a specialty area, in accordance with the Standards.
2. A certification applicant described in Section I, B, 1, c of these Rules is not required to submit references unless deemed necessary by TBLS.
3. TBLS may solicit at random additional attorneys and/or judges to attest to the applicant's competence.

4. Absent a specific determination by TBLS or its designee to the contrary, no more than a total of 15 Statements of Reference may be solicited on an individual applicant.
5. Statements of Reference shall be submitted on forms approved and furnished by TBLS. All Statements of Reference received by TBLS shall be confidential.

**B. EVALUATION OF REFERENCES.** TBLS shall review the Statements of Reference received for an applicant to determine whether he or she has demonstrated sufficient knowledge, skills, and abilities in the specialty area, and whether his or her conduct conforms to that required by the Texas Disciplinary Rules of Professional Conduct (TDRPC). All Statements of Reference received by TBLS shall be confidential.

1. Minimum Number of Favorable References. A favorable reference is one in which the respondent: (i) works in the specialty area; (ii) is familiar with the applicant's work in the specialty area; (iii) based on a scale of 1-5, has rated the applicant's skills and knowledge of the specialty area at an average of 3.0 or greater; and (iv) has affirmed that the applicant should be certified in the specialty area. TBLS may approve an applicant with fewer favorable references than those specified in the applicable portion of

Section III, B, 1, a-b of these Rules only on a finding that an applicant's practice is limited because of geographical location, nature of practice, or similar reasons.

a. Certification.

- (1) A certification applicant shall submit the names and addresses of persons with whom he or she has had dealings in the 3 years immediately preceding application.
- (2) A certification applicant in the specialty areas of Criminal Law, Civil Trial Law, Family Law, Juvenile Law, and Personal Injury Trial Law shall receive a minimum of 5 favorable references.
- (3) A certification applicant in any other specialty area not listed in Section III, B, 1, a of these Rules shall receive a minimum of 3 favorable references.

b. Recertification.

- (1) A recertification applicant shall submit the names and addresses of persons with whom he or she has had dealings since certification or the most recent recertification.
- (2) A recertification applicant in any specialty area shall receive a minimum of 3 favorable references.

2. Negative or Adverse Responses. TBLS shall seek additional information on an applicant at any time during the year of application or recertification if: (i) two references indicate that the applicant does not demonstrate special competence in the specialty area; (ii) a serious question is raised concerning the applicant's special competence in the specialty area; or (iii) the applicant has failed to conform his or her conduct to the TDRPC. TBLS shall seek this additional information even if this applicant has received the requisite number of favorable references. Significant negative responses shall be investigated to assure that they are related to special competence or failure to abide by the TDRPC and not to personality conflicts or other factors irrelevant to special competence. Reasonable efforts shall be made to contact the source or sources of negative or adverse comments and reasonable efforts shall be made to obtain independent verification of the negative or adverse comments. Whenever possible, continuing and exclusive reliance shall not be placed on the same source of information in evaluating various applicants from any given geographical area.
3. Denial Based on Statements of Reference. An applicant may be denied if he or she receives fewer than the requisite number of favorable reference responses or on the basis of substantial and credible information received in the peer review process that reflects that he or she does not demonstrate special competence. All Statements of Reference received by TBLS shall be confidential.

## SECTION IV CONTINUING LEGAL EDUCATION

- A. CLE REQUIREMENT.** For TBLS purposes, CLE is calculated on a calendar year basis (January 1 through December 31). Refer to the applicable portion of Part I, Section V of the Standards.
1. Certification. A certification applicant shall complete CLE activities in the specialty area within the 3 years immediately preceding application through December 31 of the year the application is submitted.
  2. Recertification. A recertification applicant shall complete CLE activities in the specialty area by December 31 of each 5<sup>th</sup> year of certification.
- B. FORMAL CLE PROGRAMS.**
1. Approval Required. CLE credit in the specialty area will be given for qualifying CLE as described in Part I-Section V, B of the Standards.
  2. Criteria for Approval of Educational Programs.
    - a. Content. The content of a program may include a broad or narrow range of subjects in the specialty area or related areas.
    - b. Level of Curriculum. A program must not be designed or conducted principally as a "review" course to prepare an applicant for the written exam, but should be directed towards attorneys who meet the law practice and experience requirements as set forth in the Standards. In determining whether the program is so designed, the type of advertising employed by the sponsor shall be considered.
    - c. Instructors. The instructors shall be qualified experts in the area in which he or she is teaching.
  3. Proof of Completion. An applicant or board certified attorney shall report CLE activities to the Minimum Continuing Legal Education (MCLE) office so it can be entered into his or her SBOT computer record. An applicant or board certified attorney seeking to claim credit for courses not reported to MCLE or for whom MCLE does not maintain records shall provide the course information to TBLS which will determine if credit should be allowed for the applicable specialty area(s).
- C. SELF-STUDY.**
1. An applicant or board certified attorney may receive a maximum of 5 hours self-study credit in a specialty area each year by claiming such credit on the application or annual report.
  2. An applicant or board certified attorney may also request approval of self-study credit by submitting details of the activity in the specialty area to TBLS so that this credit may be added to the applicant's or board certified attorney's TBLS CLE Summary.
  3. Reporting "general self-study" hours to MCLE does not provide sufficient information for TBLS approval.

## SECTION V EXAMINATION

- A. PLACE.** The exam for a certification applicant shall be conducted in such place and on such date as set by TBLS.
- B. EXAM FEE.** A fee of \$250.00 shall be due and payable after a certification applicant has been notified that he or she is eligible to take the exam. The full exam fee must be paid for each exam taken. The exam fee may be adjusted by TBLS as it deems appropriate.

- C. **SPECIAL EXAM REQUESTS.** Special exam arrangements can be made if a certification applicant is physically unable to take the exam as regularly administered.
- D. **CONFIDENTIALITY.** TBLS handles all exams on a confidential basis. A certification applicant shall not divulge the contents of an exam to another person. Any violation of the confidentiality of an exam will result in the denial, suspension, or revocation of certification.
- E. **IMPROPER EXAM CONDUCT.** If TBLS determines that a certification applicant engaged in improper or unethical conduct during the exam process, the certification applicant will automatically be given a failing score on the exam. The certification applicant shall be prohibited from filing any future application for a period of 3 years following the incident, and must secure TBLS approval prior to submitting any future application.
- F. **EXAM FORMAT AND SCORING.** The exam for each specialty area is 6 hours in length, consisting of a 3 hour Part I (morning session) and a 3 hour Part II (afternoon session). Part I is 3 essay questions, and Part II is approximately 100 objective questions. Part I is worth 300 points, and Part II is worth 200 points. The maximum possible score is 500 and a scaled score of 350 is the minimum passing score.
- G. **PASSING THE EXAM.**
1. **Notification.** A certification applicant who passes the exam will be notified, but will not be provided his or her exam scores.
  2. **Retention.** The exam books of a certification applicant who passed the exam will be destroyed after final grading.
- H. **FAILURE OF EXAM.**
1. **Notification.** A certification applicant who fails the exam will be notified of his or her exam score and the required passing score.
  2. **Regrade.** Exams within 2 percentile points below the passing grade will be automatically regraded.
  3. **Review / Appeal.** A certification applicant who fails the exam may not review his or her exam. A certification applicant may not appeal the failure of the exam.
  4. **Retention.** The exam books of a certification applicant who failed the exam will be destroyed after one year.

## **SECTION VI DENIAL OF CERTIFICATION OR RECERTIFICATION**

- A.  **GROUNDS FOR DENIAL.**
1. **Certification.** A certification applicant may be denied based on the following reasons:
    - a. Failure to be licensed to practice law for 5 years.
    - b. Failure to be an active practicing member in good standing of the SBOT with an office in Texas as described in Part I-Section II, A, 2 of the Standards.
    - c. Receipt of a disciplinary sanction as described in Part I-Section III of the Standards.
    - d. Receipt of negative information from Statements of Reference or an insufficient number of favorable references.
    - e. Failure to meet the special competence or substantial involvement requirements.
    - f. Failure to furnish information requested by TBLS or misrepresentation of any material fact to TBLS.
    - g. Failure to pay the application filing fee.
    - h. Failure to satisfy any other application requirement.
    - i. Any other reason which in the discretion of TBLS indicates that a certification applicant is not qualified.

2. **Recertification.** A recertification applicant may be denied based on the following reasons:
  - a. Failure to pay the annual and/or recertification fee(s).
  - b. Failure to be an active practicing member in good standing of the SBOT.
  - c. Receipt of a disciplinary sanction as described in Part I-Section III of the Standards.
  - d. Receipt of negative information from Statements of Reference or an insufficient number of favorable references.
  - e. Failure to meet the special competence or substantial involvement requirements.
  - f. Failure to furnish information requested by TBLS or misrepresentation of any material fact to TBLS.
  - g. Failure to satisfy any other requirement for recertification.
  - h. Any other reason which in the discretion of TBLS indicates that a recertification applicant is not qualified.

**B. NOTICE OF DENIAL.** An applicant shall be provided written notice by certified mail of the denial of his or her certification application or recertification. Such notice shall advise the applicant with as much specificity as possible, the reason(s) for such denial, and shall inform the applicant of the right to appeal the decision to TBLS. Refer to Section VIII of these Rules for the TBLS appellate process.

## **SECTION VII REVOCATION OF CERTIFICATION OF SPECIAL COMPETENCE**

A board certified attorney whose certification is revoked by TBLS must return his or her certificate of special competence to the office of the Executive Director of TBLS.

**A. ADMINISTRATIVE REVOCATION WITH REMEDIAL PROVISIONS.**

1. **Reasons for Revocation.** TBLS shall revoke the certificate of special competence of a board certified attorney for the following reasons.
  - a. Failure to timely pay SBOT dues or other fees.
  - b. Failure to meet MCLE requirements.
  - c. Failure to timely pay any TBLS fees.
  - d. Failure to timely file any TBLS reports.
  - e. Inactive status with SBOT.
2. **Reinstatement Process.**
  - a. An attorney shall be notified by TBLS of revocation for one or more of the administrative reasons stated above.
  - b. An attorney receiving such notice shall be reinstated within a period of 30 days after receiving such notice if he or she rectifies the problem(s), pays any necessary fees, and provides written confirmation to TBLS that these actions have been taken.
  - c. An administrative reinstatement fee of \$100.00 for each affected specialty area may be charged as prerequisite for reinstatement as a board certified attorney.
  - d. If all remedial actions are not completed within this 30 day period, the attorney must reapply and requalify for certification as directed under Section VIII, D of these Rules.

**B. ADMINISTRATIVE REVOCATION IN OTHER SITUATIONS.**

1. **Reasons for Revocation.** TBLS shall revoke the certificate of special competence of a board certified attorney for the following reasons:
  - a. Failure to meet the substantial involvement requirements in his or her specialty area for two consecutive years.
  - b. Failure to comply with any other Standards in the specialty area or Rules.

2. Revocation Process.
  - a. An attorney who is to be revoked under this section will be notified by TBLS of the basis for the proposed revocation and will be allowed 30 days from receipt of such notice to provide TBLS with a written explanation.
  - b. TBLS will review the explanation, make a final determination on the revocation, and notify the attorney of the result.
  - c. A board certified attorney whose certification is revoked under this section is not eligible for reinstatement, but must reapply and requalify for certification as directed under Section VIII, D of these Rules.

**C. NON-ADMINISTRATIVE REVOCATION.**

1. Reasons for Revocation. TBLS shall revoke the certificate of special competence of an attorney when it discovers that:
  - a. The certificate was issued contrary to the Rules.
  - b. The certificate was issued to an attorney who was not eligible to receive a certificate of special competence or who made any misrepresentation, misstatement, or omission of material fact to TBLS.
  - c. The certificate holder failed to abide by the Rules covering the program promulgated by TBLS as amended from time to time.
2. Non-Administrative Revocation Appellate Process. An attorney whose certification has been revoked due to non-administrative reasons (other than situations mandating automatic revocation listed in Section VII, B, 1 of these Rules) shall refer to Section VIII of these Rules for the TBLS appellate process.

## **SECTION VIII APPEAL TO TBLS**

**A. APPLICATION/APPELLANT HEARING PROCESS.**

1. An applicant or board certified attorney may appeal the denial of his or her certification application or recertification, or revocation of certification by submitting a written response to TBLS within 15 days after receipt of the notice of denial or revocation. The written response may include a petition for reconsideration in which the attorney states as specifically as possible the reasons he or she believes the decision of TBLS was in error or the attorney can request hearing at which he or she may make a personal appearance or request hearing by teleconference.
2. Hearings Procedures.
  - a. Notice of Hearing. TBLS shall notify the attorney at least 10 days in advance of the date on which the petition for reconsideration will be reviewed or the hearing will take place. The attorney who has requested a hearing will also be notified of time and place of the hearing.
  - b. Hearing Panel. At the discretion of the Chair, the hearing may be considered before either the full TBLS or an appellate committee appointed by the Chair. An Appellate Committee will make a recommendation on an appeal to the entire TBLS for a final decision.
  - c. Representation of Counsel. An attorney may be represented by counsel at a hearing.
  - d. Evidence. Any arguments, authorities, or evidence which the attorney wishes to have considered shall be submitted to TBLS in writing by the date on which the appeal is considered. Only the arguments, authorities, and evidence so submitted will be considered on a subsequent appeal to the SBOT Board of Directors. Additionally, both the attorney and TBLS may present testimonial and documentary evidence at a hearing.

Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to relying in the conduct of serious affairs, regardless of any common law or statutory rule which might make the admission of such evidence over objection improper in civil actions. However, all Statements of Reference received by TBLS shall be confidential and shall not be disclosed.

e. Burden of Proof. The attorney shall prove by a preponderance of evidence that the denial should be overturned.

3. Final Decisions on Appeal. The final decision on an appeal shall be made by the entire TBLS. An Appellate Committee shall make a recommendation after hearing to the entire TBLS for final decision. TBLS shall make a decision within a reasonable time after an appeal hearing or its review of a petition for reconsideration and shall notify the attorney of the decision by certified mail.

**B. RECUSAL.** A member of the AC and TBLS shall recuse himself or herself from any and all participation in consideration of attorney, or from attempting to influence others with respect to an attorney in the following circumstances:

1. Reasons for Recusal.

- a. He or she is a current or former law partner or associate of the applicant or board certified attorney.
- b. He or she or his or her spouse is related to the applicant or board certified attorney by consanguinity or affinity within the third degree according to the rules of civil law.
- c. He or she has personal/professional bias or prejudice concerning the applicant or board certified attorney which would prevent him or her from fairly evaluating all of the evidence and information concerning the qualification of the applicant or board certified attorney.
- d. He or she has appeared as an expert witness or acted as a consultant or has been consulted with reference to an actual or threatened lawsuit for or against the applicant or board certified attorney for malpractice.

2. Recusal Process.

- a. Immediately disclose to the full TBLS or AC that he or she has a disqualifying interest but need not state the reasons therefore;
- b. Withdraw from any participation in the matter of the applicant or board certified attorney;
- c. Refrain from attempting to influence another member of AC or TBLS;
- d. Refrain from voting upon the applicant or board certified attorney.

3. Recusal Request. Any applicant or board certified attorney who is aware of circumstances in Section IX, B, 1 of these Rules may request in writing that an AC or TBLS member be recused.

**C. DISQUALIFICATION.** In the event that a member of AC or TBLS does not voluntarily recuse himself or herself, the Chair of AC or TBLS shall, upon becoming aware of factors which indicate a conflict of interest as described above, determine whether or not such member should be disqualified.

**D. REAPPLICATION FOR CERTIFICATION.**

1. A certification applicant whose application has been denied, a recertification applicant who has been denied recertification, or an attorney whose certification has been revoked may submit a new application the following year of such notification by TBLS.
2. Upon reapplication, a certification applicant shall demonstrate compliance with all requirements for certification in the year of reapplication unless the applicant meets Section I, B, 1, c of these Rules.
3. The filing fee for reapplication shall be the same as for the certification application unless the applicant meets Section I, B, 1, c of these Rules.
4. A board certified attorney who resigned his or her certificate of special competence, a recertification applicant who was denied recertification, or an attorney whose certificate of special competence was revoked may reapply for certification and shall demonstrate compliance with the certification requirements in the year of reapplication.

**SECTION IX**  
**APPEAL TO THE STATE BAR OF TEXAS**

**A. FILING REQUIREMENTS.**

1. An attorney eligible to appeal a TBLS decision of denial of his or her certification application or recertification, revocation, or disciplinary action shall file a petition for review with the Executive Director of the SBOT within 15 days following receipt of notification by TBLS of its decision and shall provide a copy to the Executive Director of TBLS.
2. The petition need not be in any particular format, but shall set forth as specifically as possible the reasons the attorney feels the decision of TBLS was in error.

**B. RESPONSE.** Within 30 days after receipt of the petition for review by TBLS, the Executive Director of TBLS shall file an answer with the Executive Director of the SBOT.

**C. HEARING.**

1. The SBOT Board of Directors shall refer the petition for review to an appropriate Committee of the Board. That Committee shall review the petition and response and may allow oral argument by the parties. The Committee shall only consider evidence submitted at the hearing before TBLS.
2. The Committee shall determine whether substantial evidence exists to uphold the decision of TBLS. The burden of proof shall be on the attorney filing the petition for review.

**D. DECISION.** The Committee shall report its determination as to whether substantial evidence exists to the SBOT Board of Directors. The Board of Directors' decision on the matter shall be final. Within 15 days of that action, the Executive Director of the SBOT shall notify the attorney and the Executive Director of TBLS of the Board's decision.