

# Texas Board of Legal Specialization

## ATTORNEY RULES AND REGULATIONS

### **DEFINITIONS:**

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

“**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.

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

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

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

“**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.

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

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

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

“**Standards**” refers to the TBLS Standards for Attorney Certification which is divided in two parts. Part I – General Requirements pertains to all applicants and board-certified members. Part II – Specific Area Requirements provides the task requirements for each individual specialty area.

“**TBLS**” refers to the Texas Board of Legal Specialization.

“**TDRPC**” refers to the Texas Disciplinary Rules of Professional Conduct.



**Note: All references to a particular Section in this document pertain to these Rules unless otherwise specified.**

# SECTION I

## CERTIFICATION AND RECERTIFICATION REQUIREMENTS

### A. FORM AND CONTENT

TBLS will provide all forms online that are used to certify, recertify and annual reporting purposes. In some cases, the annual reporting form is sent in paper form and is to remain unaltered. When the attorney certifying, recertifying, or reporting annually uses TBLS' online forms, the attorney is affirming that the information submitted is true and complete. An annual reporting form (in paper form) without alterations must be signed to attest that the information submitted is true and complete. As stated in Section I, G below, if an applicant alters a TBLS form, the attorney is incurring risks that TBLS will deny the attorney's certification or recertification.

### B. TBLS CONTACT INFORMATION

TBLS contacts an attorney using the information the attorney provided to the SBOT (mailing address, email address and telephone number). TBLS primarily uses email but may send a notice to the attorney by regular or certified mail. The attorney is responsible for keeping his or her contact information on the SBOT membership rolls updated and accurate to thus assure that TBLS can contact the attorney.

### C. COMPLETION OF REQUIREMENTS

#### 1. Certification

- a. TBLS sets the filing deadline for the attorney to complete the substantial involvement requirements in the application.
- b. By December 31 of the year of attorney's application, the attorney is responsible for completing the following two requirements:
  - (i) The 5-year period of law practice required for certification, and
  - (ii) The CLE requirements for certification.
- c. The attorney applying for a certification will have two opportunities to pass the examination:
  - (i) First, during the year in which the attorney filed the application ("application year").
  - (ii) Second, during the year immediately following the application year, but subject to TBLS review and re-approval, and the attorney paying a fee for resubmission of the application.
- d. An attorney may withdraw an application if the applying attorney submits a written request to TBLS before the appropriate AC reviews the application. If an attorney withdraws an application, the attorney is not entitled to a refund of the filing fee. Further, once an attorney withdraws an application, the attorney will be denied an opportunity to reapply under Section I, C, 1, c.

#### 2. Recertification 1

- a. Once certified, a board-certified attorney will be entitled to retain the certification for 5 years, provided the attorney pays the annual fee required for the specialty area for each

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1 (i) An attorney granted senior status designation should refer to the Standards, Part I-General Requirements, Section VIII, D for the specific requirements for annual reporting and recertification requirements specific to senior status.

(ii) An attorney with judicial status should refer to the Standards, Part I-General Requirements, Section VI, C, 1, b for the specific annual reporting and recertification requirements specific to judicial status.

year of the 5 year period of certification and meets all other requirements set forth in TBLS Standards (Part I-General Requirements and Part II-Specific Area Requirements for the specialty area), including meeting the minimum substantial involvement percentage for the applicable specialty area, and TBLS Attorney Rules and Regulations.

- b. To continue to be certified, the attorney will be required to complete those tasks required for recertification every 5<sup>th</sup> year of certification. Refer to Standards, Part II-Specific Area Requirements, Section I, C in the applicable specialty area for the substantial involvement requirements for recertification.
- c. The tasks required for a board-certified attorney to recertify are:
  - (i) Timely complete annual reporting by the deadline (according to the TBLS established deadline),
  - (ii) Timely pay both the annual and recertification fee for the applicable specialty area (according to the TBLS established deadline),
  - (iii) Timely provide names and addresses of attorneys and judges to serve as references for the peer review process (according to the TBLS established deadline), and
  - (iv) Complete the CLE requirements for recertification.
- d. 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, the annual fee must be paid for the specialty area if the attorney wishes to remain board-certified through December 31 to complete the 5-year-period of certification.

#### D. SUPPLEMENTARY INFORMATION

TBLS may ask the attorney applying for certification or recertification for supplemental information in addition to the information originally submitted, including a personal interview.

#### E. DEADLINES

##### 1. Certification

- a. **Application for Certification.** An attorney applying for certification must timely file an application by the deadline established by TBLS.
- b. **Filing Fee.** The filing fee for certification is \$250 (for each specialty area). The applying attorney is required to timely pay the required filing fee or the application will not be accepted.
- c. **Refund.** Once paid, the filing fee is non-refundable.
- d. **Resubmission of Application.** If an attorney applies for and is approved for certification but elects to not pursue the certification for the application year, then the attorney will be permitted to resubmit the same application the following year if the attorney pays a \$50 certification application resubmission fee.

##### 2. Annual Reporting - Recertification

A board-certified attorney is subject to the following annual reporting and recertification requirements described in more detail in Section I, C, 2. The board-certified attorney must submit these requirements to TBLS by the filing deadline, as established by TBLS.

- a. **Annual Fee.** To be certified each year of the 5-year certification period, the attorney must timely pay the annual fee. Each board specialty requires an annual fee of \$200.
- b. **Recertification Fee.** To be recertified, the attorney must timely pay the recertification fee. In addition to the annual fee of \$200 (for each specialty), an attorney applying to be recertified for a specialty area is required to pay an additional recertification fee of \$100.

A board-certified attorney who has Senior status or Judicial status with TBLS is exempt from paying the recertification fee.

- c. **Revocation.** If the attorney fails to pay the required fees, then the certification for the specialty area will be revoked.
- d. **“Hold” Status.** If TBLS places a board-certified attorney on a “hold” status, the attorney must complete annual reporting and pay the annual fee each year the attorney remains on hold; and if eligible for recertification, must complete the recertification tasks described in Section I, C, 2 until TBLS makes a final determination regarding his or her certification status.

### 3. **Extension to Deadline**

Any deadline may be extended by TBLS in its discretion for a period of up to 30 days upon written request showing good cause by the attorney.

## F. **FEES**

Failure to timely pay any required fee will result in revocation of certification, or denial of certification or recertification. TBLS may adjust any fees as it deems appropriate, in its sole discretion.

## G. **ALTERATION OF FORM**

As stated in Section I, A, any TBLS forms created for the TBLS administrative processes are not to be altered. If an attorney alters a TBLS form, then TBLS in its sole discretion may revoke the attorney’s certification or deny the attorney’s application for certification or recertification, as TBLS may determine. TBLS will decide whether an alteration of a form results in the omission, misrepresentation, or incomplete disclosure of a certification requirement.

## H. **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. Receive and deposit any required fee.
  - c. Review the application or annual report for completeness.
  - d. Notify the attorney applying for certification or recertification of any necessary information that has not been provided on the application or annual reporting form.
2. The AC for each specialty area will review each application and make recommendations to TBLS for approval or denial of an application.
3. Following receipt of the AC’s review and recommendation, TBLS will make the final determination regarding the approval or denial of an application.
4. Following the TBLS final determination, TBLS will notify the attorney applying for certification or recertification as follows:
  - a. An approved certification applicant will be sent exam details and payment information.
  - 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 decision and the procedure for filing a petition for reconsideration.
  - d. TBLS will notify the attorney at such time when it makes a final determination on his or her certification status.

- e. TBLS will notify and advise a board-certified attorney who has been placed on a “hold” status by TBLS that he or she may not use the “Board Certified” designation while on “hold” status.

## I. CONFIDENTIALITY

TBLS treats 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, as confidential and not subject to disclosure.

## J. RETENTION

TBLS destroys inactive files after three years from the date the file is closed.

## K. INACTIVE STATUS

1. **Who May Qualify for Inactive Status.** A board-certified attorney may request to be placed on inactive status in the circumstances listed below. The attorney requesting inactive status should state in the request that:
  - a. Maintaining active status with TBLS would create an undue hardship upon the attorney due to illness or disability to themselves or a family member, or
  - b. There exists other mitigating circumstance confronting the board-certified attorney, or
  - c. The attorney’s practice is interrupted due to government service, including active-duty military service, or other employment that precludes the board-certified attorney from practicing law in his or her specialty area.
2. **Request for Inactive Status.** A board-certified attorney who desires to be placed on inactive status should submit a written request for inactive status to TBLS explaining in detail the reasons supporting the request for inactive status.
3. **Consideration of Request for Inactive Status.** All requests for inactive status will be determined by TBLS on a case-by-case basis. In considering a request, TBLS may request the board-certified attorney to supply additional information.
4. **Term.** If approved, TBLS will grant inactive status for a term not to exceed one year. TBLS may impose requirements on the inactive service. If a board-certified attorney seeks inactive status beyond one year, the attorney must submit a written request each year.
5. **Requirements.**
  - a. During the period of inactive status, TBLS will waive the following requirements for the board-certified attorney to maintain his or her certification:
    - (i) Maintain a full-time work schedule in the practice of law.
    - (ii) Maintain a minimum percentage of substantial involvement in the specific specialty area for which the board-certified attorney is certified.
  - b. During the period of inactive status, the board-certified attorney will be subject to the following requirements:
    - (i) May not represent themselves as a board-certified attorney.
    - (ii) Pay all required annual dues and fees, unless waived by TBLS.
    - (iii) Remain an active member in good standing with the State Bar of Texas.
6. **Reinstatement of Certification to Active Status.** When the board-certified attorney wishes to return from inactive status to active status, the attorney will provide TBLS:
  - a. Written notice to TBLS of the attorney’s desire to return his or her certification to active status,

- b.** The notice will be provided to TBLS no less than 60 days prior to the expiration of the inactive status designation, and
  - c.** The notice must include proof of compliance with all applicable TBLS Standards and Rules.
  - d.** TBLS will decide whether to approve a request for reinstatement of a certification to active status after considering the proof submitted by the attorney. If the inactive board-certified attorney allows his or her inactive status designation to expire and has not provided TBLS with the required written notice of the attorney's desire to return to an active status or failed to provide sufficient proof of compliance with all applicable TBLS Standards and Rules, then the inactive attorney's certification will be subject to revocation.
- 7. Application for Recertification.** A board-certified attorney with an inactive status whose certificate comes due for recertification may apply for recertification during the inactive status period. If TBLS approves the application, the certification of the attorney will be renewed for an additional five years, but the attorney will continue inactive status until reinstatement of his or her certification to active by TBLS subject to Section I, K, 4.

## **SECTION II DISCLOSURE OF CONDUCT**

### **A. CONDUCT TO BE REVIEWED**

TBLS will 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:

- (i) A disciplinary sanction, 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;
- (ii) A pending disciplinary complaint in which a finding of just cause has been made;
- (iii) A conviction of a serious crime as defined in Part I-Section III, B of the Standards; and
- (iv) A finding of ineffective assistance of counsel.

### **B. CERTIFICATION APPLICANT**

- 1.** A certification applicant will disclose any finding described in Section II, A that 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 will 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. A certification applicant will provide any additional information requested by TBLS concerning a finding described in Section II, A.
- 3.** A certification applicant has a continuing duty during the application process to report any finding described in Section II, A within 30 days of the conclusion or notification of a finding of just cause. The certification application will 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. A certification applicant will provide any additional information requested by TBLS concerning a finding described in Section II, A.

4. Failure to disclose a finding described in Section II, A within the applicable 30-day period or failure to provide any additional information requested by TBLS concerning such finding 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, or failure to provide any additional information requested by TBLS concerning such finding.

### **C. BOARD CERTIFIED ATTORNEY**

1. A board-certified attorney must disclose any finding of professional misconduct described in Section II, A within 30 days of conclusion or notification of just cause. A board-certified attorney will submit the TBLS Disclosure of Conduct Form along with the pertinent documents and any explanation he or she wishes to be considered in the review of the conduct issue. A board-certified attorney will provide any additional information requested by TBLS concerning a finding described in Section II, A.
2. Failure to disclose a finding described in Section II, A within the applicable 30-day period or failure to provide information requested by TBLS concerning such finding may result in revocation or suspension of certification or imposition of a “hold” status of a member’s certification.
3. After receiving notification of any finding described Section II, A, 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 received an active suspension 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 an active suspension, probated suspension, public or private reprimand, criminal conviction, or is subject to a finding of ineffective assistance as described in Section II, A 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 will 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 or ask to meet personally with the attorney should they feel it necessary to make an appropriate recommendation. TBLS may consider when making its final decision the attorney’s failure to respond to a request for information or interview.

- c. The AC may recommend to TBLS that the following determinations be made:
    - (i) No action be taken;
    - (ii) The attorney's certification be revoked or suspended (with all or part of the suspension being probated) and/or placed on a TBLS "hold" status for further review; or
    - (iii) Other action appropriate under the circumstances.
- 2. TBLS Review.**
- a. TBLS will review the AC's recommendation concerning a finding of professional misconduct received by a board-certified attorney. TBLS may accept the AC's recommendation or make a different determination.
  - b. TBLS will notify the attorney of their decision regarding the conduct issue. If the attorney does not agree with the TBLS decision, the attorney must request a review by TBLS of its decision by submitting a petition for reconsideration of the TBLS decision within 10 days from the date of the receipt of notice. The attorney's petition for reconsideration will state the reasons the attorney believes the TBLS decision is in error and whether a hearing is requested.
  - c. A \$50 fee is required when the petition for reconsideration is filed.
  - d. If the attorney does not submit a petition for reconsideration within 10 days from the date of the receipt of notice, the TBLS decision will become final.
  - e. The entire TBLS or a committee appointed by the TBLS Chair will review an attorney's petition for reconsideration.
  - f. The recommendation regarding the attorney's conduct issue must be submitted to the entire TBLS for final determination. In making the final decision, TBLS will not be bound by the recommendation under consideration but may make a determination as it deems appropriate based on any evidence or argument presented or obtained during the appeal process. TBLS will make a final determination within a reasonable time after the review of the petition for reconsideration and the hearing concerning the petition. TBLS will notify the attorney in writing of the final determination.
  - g. Only arguments, authorities and evidence submitted in writing by the date of the TBLS hearing will be considered on an appeal to the SBOT Board of Directors.

## **SECTION III PEER REVIEW**

### **A. TYPES OF REFERENCES**

- 1. An applicant will submit names and addresses of attorneys and judges who can attest to his or her competence in a specialty area, in accordance with the Standards. Excluded from suitable references are partners, shareholders, employees or associates within the current firm or agency of the applying attorney.
- 2. A certification applicant described in Section I, C, 1,c (ii) is not required to submit references unless TBLS deems it necessary.
- 3. TBLS may solicit additional references from attorneys or judges to attest to the applicant's competence.
- 4. The maximum of 15 references may be submitted on an application, unless TBLS determines otherwise.

5. TBLS will furnish a Statements of Reference form to solicit comments from reference respondents on behalf of the applicant. The Statement of Reference form may be completed online which is provided directly to TBLS or TBLS will furnished a form (paper copy sent by mail or email) which must be sent directly back to TBLS. TBLS will treat all Statements of Reference as confidential.

## **B. EVALUATION OF REFERENCES**

TBLS will consider the Statements of Reference received for an applicant to determine whether the applicant has demonstrated sufficient knowledge, skills, and abilities in the specialty area, and whether the applicant's conduct conforms to that required by the Texas Disciplinary Rules of Professional Conduct (TDRPC).

1. **Minimum Number of Favorable References.** A favorable reference is one in which the reference:
  - (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, rates the applicant's skills and knowledge of the specialty area at an average of 3.0 or greater; and
  - (iv) Affirms 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 only on a finding that an applicant's practice is limited because of geographical location, nature of practice, or similar reasons.

2. **Certification.**
  - a. A certification applicant will submit the names and addresses of persons with whom the applying attorney has had dealings in the three years immediately preceding the application.
  - b. A certification applicant in the specialty areas of Aviation Law (applying with trial experience), Criminal Law, Civil Trial Law, Family Law, Juvenile Law, and Personal Injury Trial Law will require a minimum of 5 favorable references.
  - c. A certification applicant in Aviation Law (applying without trial experience) and any other specialty area not listed in Section III, B, 2, b will require a minimum of three favorable references.
3. **Recertification.**
  - a. A recertification applicant will submit the names and addresses of persons with whom he or she has had dealings since the most recent 5-year period of certification.
  - b. A recertification applicant in any specialty area will require a minimum of three favorable references.
4. **Negative or Adverse Responses.** TBLS will seek additional information on an applicant at any time during the year of certification or recertification if:
  - (i) Two references indicate that the applicant does not demonstrate special competence in the specialty area,
  - (ii) The issue of the applicant's special competence in the specialty area is raised, or
  - (iii) The applicant has failed to conform his or her conduct to the TDRPC.

TBLS may seek additional information even if the applicant has received the requisite number of favorable references. If the applicant's references provide significant negative responses, TBLS will investigate further 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 will be made to contact the source or sources of negative or adverse comments

and reasonable efforts will be made to obtain independent verification of the negative or adverse comments. Whenever possible, continuing, and exclusive reliance will not be placed on the same source of information in evaluating various applicants from any given geographical area.

5. **Denial Based on Statements of Reference.** TBLS may deny certification or recertification to an applicant if he or she receives fewer than the requisite number of favorable reference responses or based on substantial and credible information received in the peer review process that reflects that the applicant does not demonstrate special competence. TBLS will treat all Statements of Reference as 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 Standards, Part I-General Requirements, Section V.

1. **Certification.** A certification applicant will complete CLE activities in the specialty area within the three years immediately preceding application through December 31 of the year the application is submitted.
2. **Recertification.** A recertification applicant will complete CLE activities in the specialty area by December 31 of each 5<sup>th</sup> year of certification. A member may carry forward CLE credit hours completed during a recertification period in excess of the 100-hour requirement to a following recertification period up to a maximum of 15 credit hours.

### B. FORMAL CLE PROGRAMS

1. **Approval Required.** CLE credit in the specialty area will be given for qualifying CLE as described in the Standards, Part I-General Requirements, Section V, B.
2. **Criteria for Approval of Educational Programs.** Qualifying CLE is required to satisfy the following requirements:
  - a. **Content.** The content of a CLE program may include a broad or narrow range of subjects in the specialty area or related areas.
  - b. **Level of Curriculum.** A CLE 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 will be considered.
  - c. **Instructors.** The instructors for a CLE program are required to be qualified experts in the area in which he or she is teaching.
3. **Proof of Completion.** An applicant or board-certified attorney is obligated to report CLE activities to the MCLE office of the SBOT so it can be entered into his or her MCLE 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 will provide the course information to TBLS who will then determine if credit should be allowed for the applicable specialty area(s).

### **C. SELF-STUDY**

The requirements for self-study in the application are:

- (i) An applicant or board-certified attorney could receive a maximum of five hours self-study credit in a specialty area each year.
- (ii) An applicant or board-certified attorney may 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.
- (iii) Reporting "general self-study" hours to MCLE is insufficient information for TBLS approval.

### **D. OTHER APPROVED CLE ACTIVITIES**

1. CLE credit may be earned through teaching or participating in a Texas SBOT accredited CLE activity. TBLS may grant CLE credit for preparation time and presentation time, including preparation credit for repeated presentations.
2. Credit may be earned through legal research-based writing upon application to the Committee provided the activity:
  - (i) Produced material published or to be published in the form of an article, chapter, or book written, in whole or in part, by the applicant,
  - (ii) Contributed substantially to the continuing legal education of the applicant and other attorneys, and
  - (iii) Is not done in the ordinary course of the practice of law, the performance of regular employment, or as a service to clients.
3. A member who holds a full-time faculty position in any law school approved by the American Bar Association may be credited as fulfilling the requirements of this section. A member who holds a part-time faculty position in any such law school may claim participatory credit for the actual hours of class instruction time not to exceed 12 hours per compliance year.
4. TBLS will consider mediation, arbitration, or collaborative law courses on a case-by-case basis for credit towards a specialty area.

## **SECTION V EXAMINATION**

### **A. PLACE OF EXAM**

TBLS will set the date and location for the exam for a certification applicant.

### **B. EXAM FEE**

The applying attorney will submit the applicable exam fee(s) after receiving notification by TBLS of his or her eligibility to take the exam. The full exam fee must be paid for each exam taken. TBLS may adjust the exam fee, as it deems appropriate.

### **C. SPECIAL EXAM REQUESTS**

1. If a certification applicant is unable to take the exam on the date the exam is regularly administered, TBLS may, in its sole discretion, schedule an alternative exam date.

## **2. Examinees with Disabilities.**

- a.** The process of conducting each specialization examination will be administered to all eligible applicants in a reasonable manner, while maintaining the integrity of the examination. TBLS will provide facilities that are reasonably accessible, including to those applicants having disabilities.
- b.** Any applicant who desires special testing accommodations based upon a disability must complete the TBLS Application for Testing Accommodations.
- c.** The TBLS Application for Testing Accommodations must be accompanied by written proof evidencing the existence of the disability. Statements from licensed physicians or a professional specialist that specifically set forth the physical, mental, or emotional handicap or disability and the relationship between the disability and the inability to take the examination under standard conditions will be required. TBLS may require additional information or evidence from the applicant and may, at its option, seek professional evaluation of such data. The applicant will be responsible for the cost of obtaining documented medical evidence and other required information.
- d.** After considering the application and the evidence submitted, TBLS will determine what reasonable special testing accommodations will be granted.
- e.** TBLS deliberations and determinations regarding testing accommodations for the specialization examination will be closed to the public and associated records are confidential. However, this does not limit TBLS's option under Section V, C, 2, c to seek professional evaluation of any confidential information supplied by applicants.

## **D. CONFIDENTIALITY**

TBLS treats all exams as confidential. A certification applicant will 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 will be prohibited from filing any future application for a period of three 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 three essay questions, and Part II is approximately 100 multiple-choice 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.** TBLS will notify a certification applicant who passes the exam but will not provide the exam score.
- 2. Retention.** TBLS will destroy the exam books of a certification applicant who passed the exam after the grading is finalized.

## 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 10 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 five years.
  - b. Failure to be an active practicing member in good standing of the SBOT with an office in Texas as described in the Standards, Part I-General Requirements, Section II, A, 2.
  - c. Receipt of a disciplinary sanction as described in the Standards, Part I-General Requirements, Section III.
  - 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 in the discretion of TBLS that 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 the Standards, Part I-General Requirements, Section III.
  - 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. Failure to comply with TBLS Attorney Rules and Regulations or any other reason in the discretion of TBLS that indicates that a recertification applicant is not qualified.

## **B. NOTICE OF DENIAL**

An applicant will be provided notice of the denial of his or her certification or recertification advising the applicant with as much specificity as possible the reason(s) for such denial and will inform the applicant of the right to petition for reconsideration of the decision to TBLS. Refer to Section VIII, A for the TBLS petition for reconsideration and hearing process.

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

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

- 1. Reasons for Revocation.** TBLS will 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 complete the TBLS annual reporting requirements.
  - e. Failure to be an active practicing member in good standing with SBOT.
- 2. Reinstatement Process.**
  - a. An attorney will be reinstated within a period of 30 days after receiving such revocation 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.
  - b. An administrative reinstatement fee of \$100 for each affected specialty area will be charged as prerequisite for reinstatement as a board-certified attorney.
  - c. If all remedial actions are not completed within 30 days after receiving notice of revocation, the attorney must reapply and requalify for certification as directed under Section VIII, D.

### **B. ADMINISTRATIVE REVOCATION, SUSPENSION, OR TBLS ACTION IN OTHER SITUATIONS**

- 1. Reasons for Revocation, Suspension, or Other TBLS Action.** TBLS may revoke or suspend the certificate of special competence of a board-certified attorney or take other appropriate action 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.
  - c. Failure to comply with TDRPC Rules 7.01 or 7.02.
- 2. Revocation, Suspension, or Other TBLS Action Process.**
  - a. An attorney revoked, suspended, or who has received other TBLS action under this section will be notified by TBLS of the basis for the proposed revocation, suspension, or other action and 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, suspension, or other action, and notify the attorney of the result.

- c. A board-certified attorney whose certification is revoked, suspended, or who has received other TBLS action under this section is not eligible for reinstatement but must reapply and requalify for certification as directed under Section VIII, D.

## C. NON-ADMINISTRATIVE REVOCATION

1. **Reasons for Revocation.** TBLS will 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 Petition for Reconsideration Process.** An attorney whose certification is revoked, suspended, or who has received other TBLS action due to non-administrative reasons (other than situations mandating automatic revocation listed in Section VII, C, 1 above) will refer to Section VIII, A for the petition for reconsideration process to TBLS.

## SECTION VIII PETITION FOR RECONSIDERATION TO TBLS

### A. PETITION FOR RECONSIDERATION / HEARING PROCESS

1. **Filing Requirements for Petition for Reconsideration.**
  - a. An applicant or board-certified attorney may petition for reconsideration of the denial of his or her certification or recertification, revocation of certification, or disciplinary sanction by submitting a petition for reconsideration to TBLS within 10 days after receipt of the notice. The petition for reconsideration will state as specifically as possible the reasons the attorney believes the decision of TBLS was in error. The petition for reconsideration should also state whether the attorney wishes TBLS to consider only the petition for reconsideration or request for a hearing before TBLS (in person or by teleconference or video conference).
  - b. A \$50 fee is required when the petition for reconsideration is filed.
2. **Notice of Hearing.** TBLS will 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. If the attorney requests a hearing, TBLS will notify the attorney of the time, place, and manner of the hearing.
3. **Hearing Panel.** At the discretion of the TBLS Chair, the hearing may be considered before either the full TBLS or a committee appointed by the Chair. The committee will make a recommendation on to TBLS for a final decision.
4. **Representation of Counsel.** An attorney may be represented by counsel at a hearing.
5. **Evidence.** Any arguments, authorities, or evidence the attorney wishes TBLS to consider must be provided to TBLS no later than the date specified in the notice of denial or revocation. Any written information submitted after the designated date will not be considered by TBLS and only the arguments, authorities, and evidence timely presented to TBLS will be considered on a subsequent appeal to the SBOT Board of Directors. The attorney and TBLS may present testimonial evidence at a hearing. Any relevant testimony will 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 that might make the admission of such evidence over objection improper in civil actions. All Statements of Reference received by TBLS will be confidential and will not be disclosed.

6. **Burden of Proof.** The attorney will prove by a preponderance of evidence that the denial, revocation, or disciplinary sanction should be overturned.
7. **Final Decisions.** TBLS will make the final decision on a petition for reconsideration. A committee will make a recommendation after hearing to the TBLS for final decision. TBLS will decide within a reasonable time after the hearing or its review of a petition for reconsideration and will thereafter promptly notify the attorney of its decision.

## **B. RECUSAL**

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

1. **Reasons for Recusal.**
  - a. The member is a current or former law partner or associate of the applicant or board-certified attorney.
  - b. The member 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. The member has personal/professional bias or prejudice concerning the applicant or board-certified attorney that would prevent him or her from fairly evaluating all the evidence and information concerning the qualification of the applicant or board-certified attorney.
  - d. The member 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 the member 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 VIII, B, 2 (a) may request in writing that an AC or TBLS member be recused.

## **C. DISQUALIFICATION**

If a member of the AC or TBLS does not voluntarily recuse himself or herself, the Chair of AC or Chair of TBLS will, upon becoming aware of factors that indicate a conflict of interest as described above, determine whether such member 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 year following such notification by TBLS.
2. Upon reapplication, a certification applicant will demonstrate compliance with all requirements for certification in the year of reapplication and will pay the application filing fee.

3. 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 will demonstrate compliance with the certification requirements in the year of reapplication and will pay the application filing fee.

## **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 will file a petition for review with the Executive Director of the SBOT within 10 days following receipt of notification by TBLS of its decision and will provide a copy to the Executive Director of TBLS.
2. The petition need not be in any particular format but will set forth as specifically as possible the reasons the attorney feels the decision of TBLS was in error.

#### **B. RESPONSE**

Within 10-days after receipt of the petition for review by TBLS, the Executive Director of TBLS will file an answer with the Executive Director of the SBOT.

#### **C. HEARING**

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

#### **D. DECISION**

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