

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 96 - 9207

ORDER OF THE COURT APPROVING AMENDMENTS TO THE
TEXAS PLAN FOR RECOGNITION AND REGULATION
OF SPECIALIZATION IN THE LAW

WHEREAS, the Texas Board of Legal Specialization approved certain amendments to the Texas Plan for Recognition and Regulation of Specialization in the Law on June 20, 1996, and

WHEREAS, it appears to this Court that said Plan will advance the administration of justice,

IT IS THEREFORE ORDERED by the Court that the aforementioned Plan be adopted and that the Texas Plan for Recognition and Regulation of Specialization in the Law be amended so as to hereafter read as follows:

III.

Jurisdiction of the Board

- K. Establish and publish reasonable non-discriminatory standards for accreditation of private certifying organizations which grant certification in a manner similar to that granted by the Board.

IV.

Limitations on Power of the Board

- C. All requirements for and all benefits to be derived from certification granted by the Board or from an organization approved by the Board are individual and may not be fulfilled by or attributed to a law firm of which the specialist may be a member.

VIII.

Revocation of Certification

~~A certificate of special competence may be revoked by the Board if the program for certification in that field is terminated or if it is determined after hearing on appropriate notice that:~~

- ~~A. The certificate was issued contrary to the rules and regulations of the Board of the State Bar of Texas, or~~

- ~~B. The certificate was issued to a lawyer who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the Board, or~~
- ~~C. The certificate holder has failed to abide by all rules and regulations covering the program promulgated by the Board as amended from time to time including any requirement or safeguard for continued proficiency, or~~
- ~~D. The certificate holder has failed to pay any fees established by the Board, or~~
- ~~E. The certificate holder no longer meets the qualifications established by the Board.~~
- A. A certificate of special competence issued by the Board may be revoked:
 - 1. If recognition of certification in that field is terminated; or
 - 2. If a determination is made that the certificate holder has not complied with applicable rules and regulations of the Board, is no longer a member in good standing of the State Bar of Texas, has made a false representation or misstatement of material fact to the Board, has engaged in professional misconduct or has engaged in other conduct which constitutes good cause for revocation.
- B. A certificate of special competence shall be revoked automatically if a certificate holder is convicted of a serious crime, is disbarred or resigns from the practice of law.
- C. Upon revocation of the certificate, the certificate holder shall immediately return the certificate to the office of the Executive Director. Upon notice of the determination of the Board that the certificate of special competence has been revoked, the certificate holder shall return the certificate of special competence to the Board.
- D. A certificate of accreditation issued to a private certifying organization by the Board may be revoked upon a determination that:
 - 1. the certifying organization has ceased to exist; or
 - 3. the certifying orgaization no longer meets the standard; or.
 - 2. the certifying orgaization has failed to abide by the Rules and Regulations of the Board..

X.

Responsibilitites of Certified Lawyers

- A. When a client is referred to a lawyer who is certified under this program on a matter within the lawyer's specialty field, the lawyer so certified shall not take advantage of his position to enlarge the scope of his representation. In addition to any requirements of the ~~Canons of Ethics~~ Texas Disciplinary Rules of Professional Conduct, the lawyer so certified shall encourage a referred client to return to the referring lawyer for the handling of future legal needs.
- B. Special Controls for Program.
 - 1. Each participant in the program, as a part of the application for participation in the program, shall agree to abide by all rules and regulations promulgated by the Board covering the program as amended from time to time.
 - 2. During the operation of the program, no individual lawyer or group of lawyers shall have any vested rights thereunder.
- C. Rules of Professional Conduct.
During the operation of this program, any lawyer holding a current certificate of special competence shall be entitled to the following:

1. To state in recognized and conventional legal directories or law lists that the lawyer is certified by the Board in a particular field in the following words: "Board Certified (e.g., Labor Law)—Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the ~~Canons of Ethics~~ Texas Disciplinary Rules of Professional Conduct.
2. To state in a notice mailed to lawyers, clients, former clients, personal friends and relatives that the lawyer is certified by the Board in a particular field in the following words: "Board Certified (e.g., Family Law)—Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the ~~Canons of Ethics~~ Texas Disciplinary Rules of Professional Conduct.
3. To state in the classified section of telephone directories that the lawyer is certified by the Board in a particular field in the following words: "Board Certified (e.g., Criminal Law)—Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the ~~Canons of Ethics~~ Texas Disciplinary Rules of Professional Conduct.
4. To state on a professional card that the lawyer is certified by the ~~Board~~ **BOARD** in a particular field in the following words: "Board Certified (e.g., Civil Trial Law)—Texas Board of Legal Specialization". Said information is also permitted on the letterhead under the individual listing of the attorney on the margin of the stationary, but not under the styled name of the firm at the top of the letterhead. In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the ~~Canons of Ethics~~ Texas Disciplinary Rules of Professional Conduct.
5. To display in the lawyer's office the certificate issued by the Board.

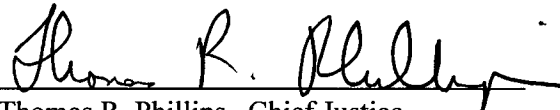
No statement of certification shall be permitted other than as above specifically described unless permitted by the rules of the State Bar of Texas, including the ~~Canons of Ethics~~ Texas Disciplinary Rules of Professional Conduct.

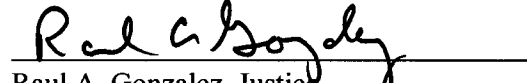
XI. **Financing of the Program**

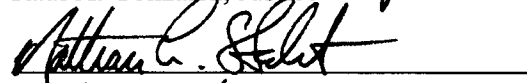
A fee as established by the Board shall be charged for filing an application for certification or recertification. An additional fee may be established by the Board for the granting of the certificate payable in annual installments or in other manner determined by the Board. Said fees shall be reasonable and in an amount as may be necessary to defray the expense of administering the program, and may be adjusted from time to time.

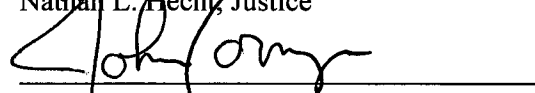
A fee schedule shall be established by the Board for accreditation of attorney certifying organizations.

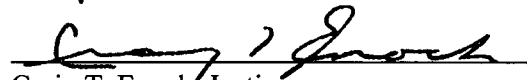
Signed this 1st day of October, 1996.
~~September~~


Thomas R. Phillips, Chief Justice



Raul A. Gonzalez, Justice


Nathan L. Hecht, Justice

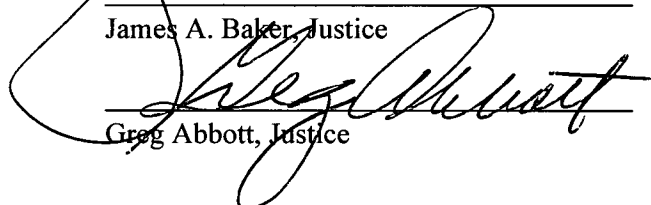

John Cornyn, Justice


Craig T. Enoch, Justice

Rose Spector, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice

PROPOSED AMENDMENTS -ACCREDITATION OF PRIVATE ORGANIZATIONS

**TEXAS PLAN FOR RECOGNITION AND REGULATION
OF
SPECIALIZATION IN THE LAW**

I.

Purpose and Objective

To promote the availability, accessibility and quality of the services of lawyers to the public in particular fields of the law is to serve the public interest and advance the standards of the legal profession. That is the purpose and objective of the following program for the recognition and regulation of those lawyers who have special competence in a particular field of the law.

II.

Texas Board of Legal Specialization

The State Bar of Texas hereby establishes a Texas Board of Legal Specialization (hereinafter referred to as the "Board"). The Board shall be composed of twelve members appointed by the President of the State Bar of Texas, with the approval of its Board of Directors. The Board shall be representative of the legal profession in Texas and shall consist only of licensed lawyers, some of whom specialize and some of whom are in general practice. All members shall hold office for three years and until their successors are appointed. Members shall be appointed to staggered terms of office, and the initial appointees shall serve as follows: four members shall serve until the June 30 next following their appointment; four members shall serve until the second June 30 following their appointment; and four members shall serve until the third June 30 following their appointment. Any vacancy shall be filled in the manner provided for original appointments. All members of the Board shall be eligible for reappointment but for no more than one additional term.

III.

Jurisdiction of the Board

Subject to the continuing jurisdiction of the Board of Directors of the State Bar of Texas, the Board shall have general jurisdiction of all matters pertaining to specialization in the practice of law and shall have the authority and duty to:

- A. Administer the program for the recognition and regulation of specialization in the law.
- B. Upon appropriate petition, define and designate fields of law in which certificates of special competence may be granted and provide procedures by which such fields may be determined, redefined or eliminated.
- C. Make and publish reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certificates of special competence to lawyers in defined and designated fields of law, after public hearings on due notice have been held.

- E. Make and publish reasonable and nondiscriminatory standards for continuing proficiency, recertification or renewal of certificates of special competence after public hearing on due notice.
- F. Encourage law schools, the State Bar Committee on Continuing Legal Education, local bar associations and other agencies of continuing legal education to develop and maintain a program of legal education and continuing legal education to meet the standards prescribed by the Board.
- G. Cooperate with other agencies of the State Bar of Texas in establishing and enforcing standards of professional conduct necessary for the recognition and regulation of specialization in the law in the manner determined by the Board.
- H. Cooperate with the ~~Special~~ *Standing* Committee on Specialization of the American Bar Association and with the agencies in other states engaged in the regulation of legal specialization.
- I. Report as required, but at least annually, to the Board of Directors of the State Bar and to advise such Board concerning the appointment of advisory commissions.
- J. Make and publish standards, rules and regulations to implement this authority, all in accordance with the limitations on the power of the Board and the minimum standards prescribed by the Board.
- K. *Establish and publish reasonable non-discriminatory standards for accreditation of private certifying organizations which grant certification in a manner similar to that granted by the Board.*

IV.

Limitations on Power of the Board

The following limitations on the power of the Board are established.

- A. No standards shall be approved which shall in any way limit the right of a certificate holder to practice law in all fields. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is certified in a particular field of law.
- B. No lawyer shall be required to be certified before he can practice law in any particular field of the law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he is not certified as a specialist in any particular field.
- C. All requirements for and all benefits to be derived from certification *granted by the Board or from an organization approved by the Board* are individual and may not be fulfilled by or attributed to a law firm of which the specialist may be a member.
- D. Participation in the plan shall be on an entirely voluntary basis.
- E. The limit on the number of fields of law in which a lawyer may be certified shall be determined by such practical limits as are imposed by the requirement of "substantial involvement" and such other standards as may be established by the Board.
- F. No rules or standards shall be adopted in contravention of the rules of the State Bar of Texas.

V.

Advisory Commissions

Advisory Commissions to the Board shall be established for each field of law in which certificates of special competence are to be issued. These commissions shall advise and assist the Board in

carrying out its objectives and in the conduct and development of the program for the recognition and regulation of specialization in law. Standards for the issuance of certificates of special competence shall be established by the Board, but it will be advised in this and other relevant matters by the advisory commission for each field of law. The advisory commission for each field of law shall be charged with actively administering the program in its particular field in cooperation with and under the general policy guidance of the Board.

Members of the advisory commission shall be appointed by the Board in such number and for such terms as the Board shall direct.

A lay person advisory commission to the Board shall be established composed of nine members appointed by the Board of Directors of the State Bar of Texas. Such commission shall have equal status with other advisory commissions so that the Texas Board of Legal Specialization shall receive formal input as to the public's legal needs and how the public can be served through the specialization program.

VI.

Minimum Standards for Certification

The minimum standards for certification under this program are prescribed below. Each advisory commission may recommend, and the Board may establish, additional or higher standards. A lawyer (1) who is an active member in good standing of the State Bar of Texas; and (2) who currently maintains an office in the State of Texas; and (3) who meets the requirements prescribed by the Board be granted a certificate in a form approved by the Board which shall certify, under the name of the Board, the lawyer's special competence in a particular field of law designated by the Board as a field of law in which certificates of special competence may be granted.

- A. Requirements for qualifying for certification without examination are:
 - 1. A minimum of ten (10) years of actual practice of law on a full time basis.
 - 2. A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of special competence and substantial involvement in the particular field of law for which certification is sought during a continuous five-year, or other reasonable period, (but not less than three years) immediately preceding certification.
 - 3. Payment of any fees required by the Board.
 - 4. Certification without examination may be granted only within a period of two years after the date on which the plan for certification of a particular field of law is made effective by the Board.
- B. Requirements for qualifying for certification by examination are:
 - 1. A minimum of five (5) years of actual practice of the law on a full time basis.
 - 2. A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of a substantial involvement in the particular field of law for which certification is sought for such reasonable period of time immediately preceding certification as may be determined by the Board after advice from the appropriate advisory commission.
 - 3. A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of such educational experience in the particular field of law for which certification is sought as the Board deems advisable.

4. Passing a written examination applied uniformly to all applicants before certification to demonstrate sufficient knowledge, proficiency and experience in the field of law for which certification is sought and in the various fields of law relating to such field as is necessary to justify the representation of special competence to the legal profession and to the public.
5. Passing an oral examination, if determined to be advisable by the Board, with the advice of the appropriate advisory commission.
6. Payment of any fee required by the Board

"Substantial involvement", as used in these standards, shall be defined by the Board as to each particular field of law from a consideration of its complexity and distinction from other fields, and from consideration of the time and extent of necessary devotion to the particular field of practice.

VII.

Standards for Recertification

No certificate of special competence shall be issued or renewed for a period longer than five years, and the term of any certificate shall be stated on its face.

Each advisory commission may recommend, and the Board may establish additional requirements and safeguards to insure the continued proficiency of any holder of a certificate of special competence, but recertification shall be required at least every five years under the following minimum standards:

- A. A satisfactory showing, as determined by the Board with the advice of the appropriate advisory commission, of a substantial involvement in the particular field of law for which certification was granted, during the period of certification,
- B. A satisfactory showing, as determined by the Board after advice from the appropriate advisory commission, of such continuing educational experience in the field of law for which certification was granted, during the period of certification as the Board deems advisable, and
- C. The payment of any fee prescribed by the Board. In the event a lawyer's previous certificate is not effective at the time application is made for recertification or he fails to meet the requirements for recertification, he shall be entitled to seek certification by examination as provided in Section VI above.

VIII.

Revocation of Certification

~~A certificate of special competence may be revoked by the Board if the program for certification in that field is terminated or if it is determined after hearing on appropriate notice that:~~

- ~~A. The certificate was issued contrary to the rules and regulations of the Board of the State Bar of Texas, or~~
- ~~B. The certificate was issued to a lawyer who was not eligible to receive a certificate or who made any false representation or misstatement of material fact to the Board, or~~
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- B. A certificate of special competence shall be revoked automatically if a certificate holder is convicted of a serious crime, is disbarred or resigns from the practice of law.
- C. Upon revocation of the certificate, the certificate holder shall immediately return the certificate to the office of the Executive Director. Upon notice of the determination of the Board that the certificate of special competence has been revoked, the certificate holder shall return the certificate of special competence to the Board.
- D. A certificate of accreditation issued to a private certifying organization by the Board may be revoked upon a determination that:
1. the certifying organization has ceased to exist; or
 3. the certifying organization no longer meets the standard; or.
 2. the certifying organization has failed to abide by the Rules and Regulations of the Board..

IX.

Right of Appeal

A lawyer who is refused certification, recertification or whose certificate is revoked by the Board, or any person who is aggrieved by a ruling or determination of the Board, shall have the right to appeal the ruling of the Board to the Board of Directors of the State Bar of Texas under such rules and regulations as it may prescribe. The exhaustion of this right of appeal shall be a condition precedent to judicial review.

X.

Responsibilities of Certified Lawyers

- A. When a client is referred to a lawyer who is certified under this program on a matter within the lawyer's specialty field, the lawyer so certified shall not take advantage of his position to enlarge the scope of his representation. In addition to any requirements of the ~~Canons of Ethics~~ Texas Disciplinary Rules of Professional Conduct, the lawyer so certified shall encourage a referred client to return to the referring lawyer for the handling of future legal needs.
- B. Special Controls for Program.
1. Each participant in the program, as a part of the application for participation in the program, shall agree to abide by all rules and regulations promulgated by the Board covering the program as amended from time to time.
 2. During the operation of the program, no individual lawyer or group of lawyers shall have any vested rights thereunder.
- C. Rules of Professional Conduct.
- During the operation of this program, any lawyer holding a current certificate of special competence shall be entitled to the following:

1. To state in recognized and conventional legal directories or law lists that the lawyer is certified by the Board in a particular field in the following words: "Board Certified (e.g., Labor Law)—Texas Board of Legal Specialization". In all other respects the listing shall conform to the present rules of the State Bar of Texas, including the ~~Canons of Ethics~~ Texas Disciplinary Rules of Professional Conduct.
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5. To display in the lawyer's office the certificate issued by the Board.

No statement of certification shall be permitted other than as above specifically described unless permitted by the rules of the State Bar of Texas, including the ~~Canons of Ethics~~ Texas Disciplinary Rules of Professional Conduct.

XI.

Financing of the Program

A fee as established by the Board shall be charged for filing an application for certification or recertification. An additional fee may be established by the Board for the granting of the certificate payable in annual installments or in other manner determined by the Board. Said fees shall be reasonable and in an amount as may be necessary to defray the expense of administering the program, and may be adjusted from time to time.

A fee schedule shall be established by the Board for accreditation of attorney certifying organizations.

XII.

Retained Jurisdiction of Supreme Court

The jurisdiction of the Board shall be limited to fourteen fields of law: Criminal Law, Labor and Employment Law, Family Law, Estate Planning and Probate Law, Civil Trial Law, Personal Injury Trial Law, Immigration and Nationality Law, Real Estate Law, Tax Law, Bankruptcy Law, Oil, Gas

and Mineral Law, Civil Appellate Law, Administrative Law, and Consumer Law and to the development and operation of the program in the recognition and regulation of specialization in the law, provided, however, that the number and type of fields included in the program and the jurisdiction of the Board may be enlarged, altered, or terminated from time to time by the Supreme Court of Texas.

XIII.

Legal Assistant Certification

The Board may administer a specialty certification program for legal assistants as described in the Texas Plan for Recognition and Regulations of Voluntary Specialty Certification for Legal Assistants in the State of Texas.