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MSBA Certified Criminal Law Specialist Board

RESOLVED: That the MSBA approve changes to the certified criminal law specialist standards as outlined in the attachment.

Report

Since 1987, the Minnesota State Bar Association has been approved as an independent professional organization for certifying lawyers as legal specialists. Through testing, peer review from lawyers and judges, and documenting experience, the MSBA Legal Specialist Certification Program measures a lawyer's expertise in a specialty area. One of the practice areas where attorneys can become certified is as a criminal law specialist.

Criminal Law Certification was approved by the Minnesota Board of Legal Certification in December 2009 and began accepting applications in 2010. As one of the first new certification programs in 20 years, the Board has had thoughtful discussions on how to make the program successful and financially viable. The Board is chaired by Andrew Birrell. Other members of the Board are: Judge Kevin Burke, Judge Joseph Carter, Katherian Roe, Jon Hopeman, William Mauzy, Daniel Scott, Kevin DeVore, Deborah Ellis, and Joe Friedberg.

The current process to becoming certified starts with completing a short examination agreement, taking the exam, and if a pass score is achieved submitting the application within one year.

At issue is the low rate of applicants submitting completed applications. Presently, only 60% of successful examinees complete their applications. This presents two issues. The first is use of volunteer time; volunteers expend a large amount of time grading the exams of those who are really not qualified or do not intend to apply for certification. It takes at least an hour for Board volunteers to grade each exam and each exam needs to be reviewed by a minimum of two Board members.

The second issue is that from a fiscal perspective, MSBA staff work on files of examinees for over a year before we can collect the associated fee. When an attorney applies for criminal law certification the first step is to submit the exam agreement and a \$50 (or \$65 for non MSBA members) fee. The attorney then takes the exam and, if successful, has one year to submit their initial application with the larger fee of \$375 for private practice attorneys or \$150 for those in public practice. For those who only take the exam and never submit a completed application, the certification program loses money.

By interchanging the sequence of application requirements, attorneys must satisfy the requirements for eligibility in the specialty area prior to sitting for the examination and

only those attorneys who are serious about becoming certified will complete the paperwork and pay the fee upfront. This is how the certified Civil Trial Specialist program has operated for over 20 years and it would greatly assist the financial viability of Criminal Law certification to do the same.

The MSBA's Criminal Law Section supports these proposed changes. The Minnesota Board of Legal Certification also expressed support for the changes.

Standards and Requirements for Specialist Certification and Recertification

The following are Standards and Requirements for Certification and Recertification of lawyers as Criminal Law Specialists. The Minnesota State Board of Legal Certification “Rules” (www.blc.state.mn.us), supplemented by these Standards, governs initial and continued recognition of Certified Criminal Law Specialists.

I. GENERAL REQUIREMENT AND DEFINITIONS.

- A. No standard shall in any way limit the right of certified Criminal Law Specialists to practice in all fields of law. Any lawyer shall have the right to practice in all fields of law, even though recognized as a certified Specialist in criminal law.
- B. No lawyer shall be required to be certified as a Criminal Law Specialist in order to practice in the field of criminal law. Any lawyer shall have the right to practice in the field of criminal law, even though he or she is not recognized as a Certified Specialist in that field.
- C. Every lawyer Applicant (“Applicant”) shall be admitted to practice on active status in this state.
- D. Certification, once granted, shall be for a period of six (6) years, unless the Specialist is decertified as provided for under these Standards. Specialists are required to be recertified at the end of every six (6) year period by the Rules of the Minnesota Board of Legal Certification.
- E. Criminal Law specialty area is the practice of law dealing with the defense or prosecution of crimes in state and federal trial courts.
- F. The Criminal Law Specialist Certification Board (“Certification Board”) shall be composed of seven (7) to nine (9) members appointed by the Minnesota State Bar Association Criminal Law Section. The make-up of the Certification Board shall be geographically diverse and include both the prosecution and defense practice. The Certification Board will be responsible for the administration of the Criminal Law Specialist Certification program.

II. MINIMUM STANDARDS FOR SPECIALIST CERTIFICATION.

To become certified as a Criminal Law Specialist, an Applicant shall meet the following Standards:

- A. **The Applicant is licensed as an attorney and on active status in Minnesota.**
- B. **Substantial Involvement in Criminal Law Practice.** The Applicant must have practiced continuously for five (5) years immediately preceding filing of the Exam Agreement. During those five (5) years, the Applicant shall have spent 25% of their full-time practice (or its equivalent) in active participation in criminal law.

Criminal Law Specialist Certification and Recertification: Program Standards and Requirements

C. Criminal Law Knowledge. The Applicant shall pass a written examination applied uniformly to all Applicants to demonstrate sufficient knowledge, proficiency and experience in criminal law to justify the representation of special competence to the legal profession and to the public. The examination shall also test professional responsibility and ethics as it relates to criminal law.

~~III. After notification that the Applicant has passed the examination, t~~The Applicant shall ~~have one year from the date of that notification to~~ document that the following Standards demonstrating competence have been met by submitting the Application and all Attachments and paying the Application fee. ~~Failure to meet the deadline will require re-opening a new Certification file.~~

A. Experience. The Applicant must demonstrate substantial involvement in criminal law by fulfilling one of the following trial requirements and submitting a transcript of testimony:

A *jury trial* is defined as a contested court proceeding in state or federal court tried from jury selection to closing argument, involving the presentation of live testimony.

Principal counsel means the Applicant had substantial input into trial tactics and strategy, and conducted substantive activities during trial, such as witness examinations, opening or closing arguments. More than one attorney may be a principal counsel so long as each is involved in the presentation of a substantial part of the case or proceeding.

1. Jury Trials. The Applicant shall have been principal counsel in a minimum of three (3) jury trials, in any state or U.S. District court, in the past five (5) years immediately preceding submission of the Application and those trials must include a total minimum number of eight (8) days of testimony.

The Applicant shall provide a list of the jury trials, including case title and year, Judge and Court, name of opposing counsel, nature of case and charges, and number of days of testimony in each trial.

OR

In the alternative, the Applicant shall have been principal counsel in a minimum of ten (10) jury trials in any State or U.S. District Court, and those trials must include a total minimum number of thirty (30) days in trial.

The Applicant shall provide a list of the jury trials including, case title and year, Judge and Court, name of opposing counsel, nature of case and charges, and number of days in each trial.

OR

In the alternative, the Applicant shall have been principal counsel in a minimum of five (5) jury trials, each of which lasted at least ten (10) trial days.

The Applicant shall provide a list of the five (5) jury trials including, case title and year, Judge and Court, name of opposing counsel, nature of case and charges, and number of days in each trial.

2. Transcript of Testimony. The Applicant shall submit a transcript of a lay witness testimony, including both the direct and cross examination of the witness, in which the Applicant conducted either the direct or the cross-examination. The transcript must demonstrate organization and familiarity with the rules of evidence.

B. Reputation for Criminal Law Competence in the Legal Community. The Applicant shall demonstrate to the satisfaction of the Certification Board a reputation among his or her peers for working in a professional manner and demonstrating knowledge, skills and competence in criminal law.

An Applicant must receive at least five (5) positive references and must:

1. Request two (2) letters of recommendation for certification on Certified Criminal Law Specialist forms. One shall be from a judge who has observed the Applicant try a criminal law case and one shall be from opposing counsel in a contested criminal law matter. The forms will direct the judge or attorney to return the reference to the MSBA Certified Criminal Law Specialist program. The provider of these references can agree to release them to the applicant.
2. Submit the names and addresses of an additional five (5) individuals, who are not related to or engaged in legal practice with the Applicant, to attest to the Applicant's competence and involvement in the practice of criminal law. Such individuals shall be substantially involved in criminal law and shall be familiar with the Applicant's practice. The MSBA Certified Legal Specialists program will request these additional references directly from the reviewers.
 - a. At least two (2) of the five (5) listed names shall be trial court judges before whom the Applicant has appeared as a criminal law advocate.
 - b. At least two (2) of the five (5) listed names shall be lawyers with whom or against whom the Applicant has tried a criminal matter immediately preceding application or an opponent in a contested criminal law matter.
 - c. One of the five (5) listed names may be a lawyer generally familiar with the Applicant's criminal law practice and skills.
3. Reference requests may be sent to other lawyers and judges the Applicant has not listed or requested. The Certification Board also reserves the right to require the Applicant to submit additional names and addresses of references.

4. Completed references shall be kept strictly confidential by the Certification Board, with the exception of the references described in paragraph III.B.(1.). These may only be disclosed to the Applicant or Specialist with the express written consent of the reviewer. All other references, communications, reference forms, and information gathered pertaining to the applicant are confidential and neither the forms nor any information concerning them will be provided to the Applicant.

The Applicant shall be required to acknowledge confidentiality and to waive any right to seek any information of any type about references. Certification may be denied based upon information disclosed in references.

- C. Continuing Criminal Law Education.** The Applicant shall verify continuing education in the specialty area of criminal law by completing no less than thirty (30) hours in continuing legal education courses about criminal law or trial skills specific courses. These thirty (30) credits must be completed in the three (3)-year period immediately before filing Attachment E—Continuing Legal Education List.

- D. Legal Writing Competence.** The Applicant shall demonstrate to the satisfaction of the Certification Board proficiency and competence in legal writing by submitting the following documents:

1. The Applicant shall submit no fewer than one and no more than three (3) court memoranda or briefs. The Applicant must have substantially prepared the memoranda and submitted them to a state or federal court. These memoranda or briefs shall state facts and argue law in sufficient detail to demonstrate the Applicant’s criminal law competence.
2. The Certification Board reserves the right to require the Applicant to submit additional writing samples. The quality of the Applicant’s legal writing will be considered in determining whether the Applicant is qualified for certification.

- E. MBLC Rule 114.** An Applicant shall agree to provide a release to share information with the Minnesota State Board of Legal Certification (MBLC) as required by MBLC Rule 114.

IV. STANDARDS REGARDING DISCLOSURE OF CONDUCT: INITIAL APPLICATION, CONTINUED CERTIFICATION OR RECERTIFICATION.

- A.** To become and to remain certified as a Criminal Law Specialist, the Applicant or Specialist shall demonstrate to the satisfaction of the Certification Board good character and ethical behavior. The Applicant or Specialist shall have a continuing obligation to disclose:

1. Any conviction of a crime, regardless of whether the conviction was the result of a plea of guilty or *nolo contendere*, or of a verdict after a trial, and whether such conviction resulted in imprisonment, probation, fine, or suspension of sentence, excluding misdemeanor traffic offenses.
2. Any Finding of Ineffective Assistance of Counsel or Finding of Prosecutorial Misconduct entered by a District or Appellate Court.

3. Any formal admonishment by any Court.
 4. Any proceeding which resulted in the Applicant or Specialist being disbarred, suspended, publicly reprimanded, sanctioned or otherwise subjected to public discipline by any disciplinary board in any jurisdiction in which an Applicant or Specialist has an active license.
- B.** The Certification Board shall determine whether the circumstances of any conviction, Finding of Ineffective Assistance of Counsel, Finding of Prosecutorial Misconduct, formal court admonishment, or public disciplinary sanction disclosed by the Applicant or Specialist are such that he/she should be denied initial or continued certification. In making such determination, the experience of the Applicant or Specialist at the time of the incident; the experience and reputation since the incident; the seriousness of the acts or omissions involved and the resolution may be considered. There will be no right to reconsideration of Certification Board determinations made pursuant to this provision.
- C.** The failure of an Applicant or Specialist to disclose a conviction, Finding of Ineffective Assistance of Counsel, Finding of Prosecutorial Misconduct, formal court admonishment or public disciplinary sanction as defined above, is a material misrepresentation and may be grounds for decertification or for refusal to grant certification or recertification.
- D.** An Applicant or Specialist shall have a continuing duty to disclose any matters as outlined in this Standard within thirty (30) days of final imposition or disposition or as directed by the Certification Board. Failure to do so may be grounds for decertification or for refusal to grant certification or recertification.
- E.** If an Applicant has been disbarred or suspended and later re-issued a license by the Minnesota Supreme Court, the Certification Board shall determine whether the Applicant should be granted or denied certification based upon the factors set forth in paragraph IV.B. The Applicant must meet the requirement that at least five (5) years of the Applicant's practice shall be immediately preceding application.
- V. STANDARDS REGARDING CONTINUING LEGAL EDUCATION: CONTINUED CERTIFICATION OR RECERTIFICATION.**

To remain certified as a Criminal Law Specialist, a Specialist shall meet the following Standard:

- A. Continuing Criminal Law Education.** The applicant shall verify continuing education in the specialty area of criminal law by completing no less than thirty (30) hours of in continuing legal education courses about criminal law or trial skills specific courses every three (3) years. These thirty (30) credits shall be completed during the Specialists' three (3)-year reporting period for attorney licensure and reported on program forms during the reporting year for licensure.

VI. STANDARDS FOR RECERTIFICATION.

Recertification shall be governed by the following Standards:

- A. The Applicant is licensed as an attorney and on active status in Minnesota.**
- B. Substantial Involvement in Criminal Law Practice.** The Applicant shall demonstrate substantial involvement in criminal law practice by demonstrating that in the five (5) years immediately preceding application the Applicant shall have spent 25% of a full-time practice of law (or its equivalent) in active participation in criminal law.
- C. Experience.** The Applicant must demonstrate substantial involvement in criminal law practice by fulfilling the following requirements:
 - 1. The Applicant shall have had primary responsibility for one jury trial with a minimum of three (3) days of testimony and twenty-five (25) contested criminal law matters in the five (5) years immediately preceding application. The Applicant shall list the date, case name, Judge, opposing counsel and days in trial. Applicant shall submit an affidavit certifying completion of the twenty-five (25) contested matters.
 - 2. If the trial requirement is not met, the Applicant shall demonstrate to the satisfaction of the Certification Board criminal trial experience substantially equivalent to the trial experience described in this paragraph. The Applicant may demonstrate substantial equivalency in the narrative described below.
 - 3. The Applicant shall also submit a narrative in a form provided by the Certification Board outlining his or her criminal law practice, describing any changes to that practice and describing any increased expertise, honors, teaching, speaking, significant cases, or advanced education that would be pertinent to the Applicant's recertification.
- D. Reputation for Criminal Law Competence in the Legal Community.** The Applicant shall demonstrate to the satisfaction of the Certification Board a reputation among his or her peers as having good character and special knowledge, skills and competence in criminal law.

The Applicant shall:

- 1. Submit the names and addresses of two (2) references, who are not related to or engaged in legal practice with the Applicant, to attest to the Applicant's competence and involvement in the practice of criminal law. One of the references shall be from a trial court judge before whom the Applicant has appeared as an advocate. One shall be from opposing counsel in a contested criminal law matter.
- 2. Reference requests may be sent to other lawyers and judges the Applicant has not listed or requested. The Certification Board also reserves the right to require the Applicant to submit additional names and addresses of references.
- 3. Completed references shall be kept confidential by the Certification Board. Certification may be denied based upon information disclosed in references.

VII. STANDARDS FOR DECERTIFICATION, SUSPENSION AND DENIAL OF CERTIFICATION.

A. Automatic Denial or Revocation of Certification. The certification of a lawyer will automatically be denied or revoked if:

1. The lawyer fails to maintain thirty (30) Continuing Legal Education credit hours in the area of criminal law or trial skills every three (3) years;
2. The lawyer is suspended or disbarred from the practice of law in any jurisdiction in which the lawyer is licensed;
3. The lawyer is suspended for nonpayment of license fees or for failing to maintain mandatory continuing legal education credits for the lawyer's license;
4. The lawyer fails to satisfactorily complete the process required by the Certification Board for application, continued certification or recertification; or
5. The lawyer fails to pay the fees established by the Certification Board.
6. The lawyer ceases to meet the qualifications for certification as a Criminal Law Specialist.
7. The lawyer sends written notice that he/she seeks decertification.

B. Discretionary Denial, Suspension or Revocation of Certification. The certification of a lawyer may be denied, suspended or revoked if:

1. The authority of the certifying agency is rescinded by the MBLC. The MBLC has the authority to determine how the certification of lawyers certified by the agency shall be affected;
2. The lawyer falsely or improperly announces the specialty area of certification;
3. The lawyer fails to cooperate with the Certification Board or submits false or misleading information during the certification or recertification process,
4. Certification was granted contrary to the Rules of the MBLC and the Certification Board;
5. Five (5) members of the Certification Board determine that certification should be denied, suspended or revoked because the Applicant or Specialist fails to meet any of the minimum Standards for Certification set forth in Standards II., III. or IV.

VIII. STANDARDS FOR REAPPLICATION AFTER A LAPSE IN CERTIFICATION.

A. Specialists who have voluntarily relinquished their certification or whose certification has been revoked or suspended for failure to file the Annual Audit or to satisfactorily complete the recertification process, failure to pay fees, or ceasing to meet qualifications for certification, may reapply for certification if they meet the following requirements:

Criminal Law Specialist Certification and Recertification: Program Standards and Requirements

1. If the lapse in certification has been for three (3) years or less, the Applicant must complete a Recertification Application and pay the fee(s).
 2. If certification has lapsed for more than three (3) years, the Applicant must also pass a written examination on criminal law when next offered after application for recertification.
- B. A certified Specialist whose certification has been revoked for any other reason may be considered for re-admission to the Certified Criminal Law Specialist program under terms and conditions established by the Certification Board based on the circumstances of the individual case. Upon request, the Certification Board shall inform the Applicants in writing of the Standards they must meet in order to be recertified. There will be no right to reconsideration of Certification Board determinations made pursuant to this provision.

IX. RIGHT OF APPEAL.

A lawyer who is refused certification, recertification, or whose certification is suspended or revoked shall have the right to petition the Certification Board for reconsideration in accordance with standards and requirements as it may prescribe, and subject to limits set forth in these Standards. A copy of the Criminal Law Due Process Procedure form may be obtained from the office of the Minnesota State Bar Association or through the Web site, www.mnbar.org/certify.

Minnesota State Bar Association

Certified ▲ Specialist

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