

**BANKRUPTCY AND DEBTOR-CREDITOR LAW
SPECIALIZATION ADVISORY BOARD**

**STANDARDS AND PROCEDURES
FOR
CERTIFICATION, RECERTIFICATION AND DECERTIFICATION**

By virtue of the authority vested in the Bankruptcy and Debtor-Creditor Law Specialization Advisory Board (Board) and the Commission on Continuing Lawyer Competence (Commission) by the South Carolina Supreme Court (Court), the Board prescribes the following standards and procedures for certification, recertification, and decertification as a specialist in bankruptcy law (see Rule 408 SCACR and Commission Regulations).

I. GENERAL REQUIREMENTS AND DEFINITIONS

- A. Nothing herein shall in any manner limit the right of an attorney certified in bankruptcy law to practice in all fields of law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though certified in bankruptcy law.
- B. No lawyer shall be required to obtain a certificate in bankruptcy law before practicing in that field. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in the field of bankruptcy law, even though not certified therein.
- C. All applicants for certification or recertification in bankruptcy law must be active members in good standing with the South Carolina Bar, entitled to practice before the United States District Court for the District of South Carolina, and shall meet the requirements for certification or recertification prescribed by the Board.
- D. Certification in bankruptcy law is individual and voluntary. Requirements for and benefits derived from certification may not be fulfilled by or attributed to a law firm, corporation, company, or other entity of which the certified lawyer is a member or employee.
- E. Forms, documents, applications, questionnaires, and examinations involved in the certification, recertification, or decertification process, as well as fees required of applicants and certified lawyers shall be as prescribed by the Board and/or Commission.
- F. Certification shall be for a period of five (5) years at the end of which time recertification shall be permitted as indicated in §IV, below.
- G. Bankruptcy and Debtor-Creditor Law is defined as the practice of law dealing with all aspects of federal bankruptcy law, including, but not limited to: personal and business bankruptcies; reorganizations and liquidations; the rights, obligations and remedies of debtors, creditors, trustees, and other parties in interest; state insolvency laws, including,

but not limited to foreclosure, claim and delivery, collection, receivership, and attachment proceedings; and practice before the United States Bankruptcy Court and other federal and state courts.

- H. Applicants for certification or recertification shall furnish satisfactory evidence of their good character and reputation. Unless otherwise prohibited by the Rules for Lawyer Disciplinary Enforcement, they shall also provide information in whatever form required by the Board as to whether they are now subject to an investigation, complaint, inquiry, or other disciplinary proceedings by any segment of the Bar, including but not limited to any local, state, or other grievance board, committee, or commission (hereinafter committee); and if so, the details of such investigation, complaint, inquiry, or proceedings including whether they have ever been reprimanded, suspended, disbarred, or otherwise disciplined by any court or grievance committee.

The Board may deny certification or recertification on a finding of a grievance committee, a court, or administrative agency or other governmental agency that an applicant has been guilty of professional misconduct, or defer certification or recertification based upon the pendency of such proceedings. However, the Board will consider the seriousness of the underlying facts of the grievance, the passage of time since such discipline, the applicant's experience since that time, and any history of other disciplinary actions or pending actions. Failure to disclose such information is a material misrepresentation and may be cause for rejection.

- I. Applicants for certification or recertification will provide information in whatever form required by the Board as to whether they have ever been convicted, given probation, fined, or otherwise punished for any crime except a minor traffic offense, regardless of whether the conviction and/or punishment resulted from a plea of guilty, nolo contendere, or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The Board may deny certification or recertification if an applicant has been convicted, given probation, fined, or otherwise punished for any crime except a minor traffic offense.
- J. An applicant shall apply for certification or recertification as a specialist by completing and filing with the Board an application form furnished by the Board calling for information indicative of and relevant to the applicant's involvement, experience, competency, and practice in the field of bankruptcy law. By completing and filing such application, the applicant shall be deemed to have authorized the Board to take all appropriate action to resolve any questions with respect to the applicant's involvement, experience, competency, and practice in the field of bankruptcy law and to verify the information furnished by the applicant in making the application.

In the appraisal of each applicant, the Board will take such steps as it deems advisable or necessary under the circumstances to assure that the applicant presented to the Court for certification as a specialist is a lawyer who is technically competent in the field and of

whom the Board has no notice of any personal or ethical deficiencies that might impair his/her professional performance as a specialist. Accordingly, the Board shall require applicants to disclose any information needed to determine whether to present his/her application to the Court for certification. The Board may not only verify information submitted by the applicant, but may, in its discretion, conduct its own investigation into the applicant's competency, experience, involvement, and reputation. Should the Board determine that an applicant's competency, character, experience, involvement, or reputation does not support his/her application for certification, the Board shall reject the application subject to such rights of hearing and appeal as may be promulgated by the Commission and the Court.

- K. Each applicant shall submit the names and addresses of five (5) lawyers engaged in the "practice of law" (as that term is defined in §II A) who are familiar with the applicant's practice; who do not practice in the same firm, company, association or office as the applicant; and who are not members of this Board or the Commission, to be contacted as references to attest to the applicant's experience, involvement, and competency in the practice of bankruptcy law. At least one (1) of the five (5) lawyers must be currently engaged in the practice of bankruptcy law as defined in §I G. Provided, however, that at least one (1) of the five (5) lawyers whose names are provided as references must be currently certified bankruptcy law specialists. The Board may, in its discretion and without notice to an applicant, secure information concerning any particular applicant's practice, involvement, experience, and competency in the specialty area from lawyers and judges other than those whose names are submitted by an applicant.
- L. In addition to any requirement heretofore or hereinafter listed, the Board may, in its sole discretion, require additional information from a particular applicant when in its judgment such additional information is necessary to a decision with respect to certification, recertification, or decertification.

II. MINIMUM STANDARDS FOR CERTIFICATION

A. REQUIRED PERIOD OF LAW PRACTICE

Applicants shall have been engaged in the practice of law for a period of five (5) years on a full-time basis. "Practice of law" means full-time legal work done primarily for the purpose of legal advice or representation. Service, after admission to the Bar of any state or the District of Columbia, as a judge of any court of record shall be considered practice of law. Corporate or government service, including military service, as an attorney, after admission to the Bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of giving legal advice to, or representation of, the corporation or government agency or individuals primarily connected with the corporation or government agency. Practice of law which otherwise satisfies these requirements but which is on a part-time basis will satisfy the

requirement if the balance of the applicant's activity is work such as law teaching or legal writing which, although legal in nature, may not qualify as practice of law.

B. SUBSTANTIAL INVOLVEMENT

Applicants must show substantial involvement and special competency in bankruptcy law practice during the five (5) years immediately preceding application by providing such information as may be required by the Board. During each of the five (5) years immediately preceding application, applicants must show:

1. that they have devoted a minimum of 35% of their time practicing bankruptcy law as defined herein (see §I G) and
2. that their time devoted to the practice of bankruptcy law equals at least 35% of a full-time practice of law.

The test for substantial involvement has two parts. The first part is subjective, relating to the individual applicant's practice, and requires that at least 35% of that practice be devoted to bankruptcy law. The second part is objective and (considering an eight (8) hour work day, five (5) days per week as average or normal) requires an applicant to spend (on average) at least two and eight-tenths (2.8) hours a day and 14 hours per week involved in bankruptcy law practice.

C. CONTINUING LEGAL EDUCATION - MINIMUM REQUIREMENTS

During the five (5) years preceding application for initial certification, applicants must have earned, in approved educational activities directed to the subject of bankruptcy law, not less than 60 hours of continuing legal education credit. Not more than 15 hours of the required 60 hours of continuing legal education credit may be in trial advocacy type courses.

For this purpose "approved educational activities" shall mean courses/programs accredited by the Board for the bankruptcy law specialty or courses/programs that would qualify for such accreditation.

D. EXAMINATION

Applicants for initial certification must pass an oral interview/examination and upon successful completion thereof, must take and pass a written examination to demonstrate sufficient knowledge, proficiency, competency, and experience in bankruptcy law to justify the representation of special competency to the legal profession and to the public. The written examination shall be administered only once during each calendar year, provided

applications are pending, at a time and place to be determined by the Board, giving due consideration to the convenience of such applicants.

E. FEES

Applicants shall timely pay the fees established from time to time by the Board and/or Commission, including but not limited to application fees, filing fees, examination fees, and certification fees.

F. FAILURE TO FURNISH INFORMATION; MISREPRESENTATION

Certification or recertification may be denied because of applicant's failure to furnish requested information or because of misrepresentation of any material fact requested by the Board.

III. REQUIREMENTS FOLLOWING CERTIFICATION

A. During each annual reporting period certified specialists in bankruptcy law shall complete not less than 12 hours of approved specialty continuing legal education. "Approved specialty continuing legal education" means educational activities accredited by the Board for the specialty (see §IV C concerning CLE credit required for recertification).

B. A certified specialist must report annually to the Commission his/her compliance with §III A and pay such filing fees, including late fees, as the Commission may from time to time prescribe. Failure to file and/or pay required fees may result in suspension from the practice of law in accordance with Commission Regulations in addition to revocation of certification.

C. During the period of certification, all certified specialists must continue to practice law and to be substantially involved in the practice of bankruptcy law (see §II A & B regarding the meaning of "practice of law" and "substantially involved in the practice of bankruptcy law"). Should any certified specialist cease to practice law or to be substantially involved in the practice of bankruptcy law, he/she shall promptly notify the Board for such action with respect to decertification as the Board shall deem to be appropriate. The failure of a certified specialist to notify the Board that he/she is no longer engaged in the practice of law or substantially involved in the practice of bankruptcy law may constitute grounds for decertification of the individual concerned.

D. During any period of initial or subsequent certification, all certified specialists shall report to the Commission any administrative action or malpractice claim in which settlement is made or suit filed and, unless otherwise prohibited by the Rules for Lawyer Disciplinary Enforcement, shall likewise report to the Commission any case in which any certified specialist learns that he/she is the subject of an investigation, inquiry, or other disciplinary

proceedings by any segment of the Bar, including but not limited to any local, state, or other grievance board, committee, or commission.

IV. RECERTIFICATION

- A. Renewal of certification under the program shall be required every five (5) years.
- B. Applicants must demonstrate their continuing substantial involvement and special competency in the practice of bankruptcy law as may be required by the Board. Provided, however, that requirements for recertification shall not exceed the requirements for original certification except as noted in §IV C, below.
- C. To qualify for recertification, applicants must demonstrate the completion of a minimum of seventy-five (75) hours of approved specialty continuing legal education in the five (5) years since their original or latest certification. Not more than 15 of the required 75 hours of approved specialty continuing legal education credit may be in trial advocacy type courses.

V. REVOCATION OF CERTIFICATION

The Board may revoke the certification of any lawyer if the certification program for this field is terminated, if a lawyer wishes to withdraw from the specialty and submits a letter resigning his/her certification, or if it is determined after hearing, on appropriate notice, that:

- A. Certification was granted contrary to the Board's Standards and Procedures, Commission Regulations, or South Carolina Appellate Court Rules; or
- B. Certification was granted to a lawyer who was not eligible for certification or who made any false representation; or
- C. A certified lawyer has failed to abide by all Board Standards and Procedures, Commission Regulations, and South Carolina Appellate Court Rules, as amended from time to time; or
- D. A certified lawyer has failed to meet the continuing legal education requirements of §III A or to file the annual report and/or pay the fees prescribed by §II E and §III B; or
- E. A certified lawyer no longer meets the minimum standards for certification established by the Board's Standards and Procedures, including practice of law and substantial involvement requirements (see §II A & B).

VI. WAIVERS

In cases of rare and unusual circumstances, the Board may waive compliance with any of the standards herein for the purpose of certifying or recertifying an individual as a specialist in bankruptcy law except that a waiver may not be granted to certify an applicant who has not practiced law for at least five (5) years, an applicant who has not been substantially involved in the practice of bankruptcy law for at least the preceding three (3) years, or to excuse an applicant from the requirement to take and pass a written examination. In any case in which a waiver is granted pursuant to this section, notification to the Court recommending certification or recertification shall indicate that a waiver has been granted and will specify the reason(s) therefor.

VII. EFFECTIVE DATE

These Standards and Procedures shall be effective November 1, 1992, or whenever approved by the South Carolina Supreme Court, whichever date is later.