

RULE 1:39. Specialty Certification Of Attorneys

An attorney of the State of New Jersey may be certified as a civil trial attorney, a criminal trial attorney, a matrimonial law attorney, a workers' compensation law attorney, or a municipal court trial attorney, or in more than one designated area of practice, but only on establishing eligibility and satisfying requirements regarding education, experience, knowledge, and skill for each designated area of practice as set forth below.

To assist in the administration of the certification function, the Supreme Court shall establish, in accordance with these rules, a Board on Attorney Certification.

Note: Adopted January 26, 1979 to be effective April 1, 1979; amended May 15, 1980 to be effective September 8, 1980; amended June 28, 1996 to be effective September 1, 1996; caption and text amended July 20, 2011 to be effective September 1, 2011.

1:39-1. Board on Attorney Certification

(a) Appointment; Officers. The Supreme Court shall appoint a Board on Attorney Certification consisting of not more than eleven members of the bar of the State of New Jersey. Members shall be appointed for three-year terms. No member who has served four full three-year terms successively shall be eligible for immediate appointment. Members appointed to fill unexpired terms may be reappointed to four successive terms. The Supreme Court shall annually designate a Chair and a Vice Chair from among the members of the Board. The Secretary of the Board of Bar Examiners shall serve as Secretary. The Administrative Director of the Courts shall designate a member of the Administrative Director's staff with fiscal responsibilities to serve as Treasurer.

(b) Quorum. One more than half of the number of members sitting on the Board shall constitute a quorum and all determinations shall be made by a majority of a quorum except that a decision to grant certification or recertification shall have the concurrence of at least one more than half the members sitting on the Board.

(c) Regulations. The Board on Attorney Certification shall, subject to the prior approval of the Supreme Court, promulgate and amend Regulations governing the certification program and providing that the proceedings and files shall be confidential and shall not be disclosed to or attended by anyone except as authorized by these rules, the Regulations, or upon the direction of the Court.

(d) Operations. The Board shall, consistent with these rules and its Regulations, establish procedures, publish forms and maintain records as required for the conduct of the Board's operations and the certification of attorneys. The Board shall function as an appellate arm for Certification Committee decisions. The Board shall be responsible for the financial and administrative operations of the certification program. The Board shall maintain responsibility for policy, for making recommendations to the Supreme Court in respect of Rule and Regulation amendments, and for the general oversight of the functions of the Certification Committees.

(e) Legal Education Activities. The Board shall cooperate with law schools in this State, the Institute for Continuing Legal Education, and other recognized continuing legal education sponsors in developing and maintaining courses, clinics and other offerings by such institutions to enhance the skills and increase the knowledge of attorneys who seek to be certified by the Supreme Court. The Board may also cooperate with other law schools, bar associations and agencies interested in legal education.

(f) Reports. Reports as to the activities of the Board may be submitted to the Supreme Court from time to time.

(g) Staffing and Funding. To the extent that the Board is not self-supporting, funds necessary for the operation of the certification program for attorneys shall be provided by the Administrative Office of the Courts.

(h) Fees. Each applicant for certification and recertification and each certified attorney shall pay required fees to the Secretary for the use of the Board. The fees shall be established in amounts to be set from time to time by the Board, subject to the approval of the Supreme Court, and, to the extent possible, so as to enable the program to be self-supporting.

(i) Effect of Board Membership. While serving on the Board, no member shall apply for or be examined for certification in any of the designated areas of specialty in this State. A Board member who previously received certification may be recertified during the member's term of service on the Board.

(j) Immunity. Members of the Board and their lawfully appointed designees and staff shall be absolutely immune from suit based on their respective conduct in performing their official duties.

Note: Adopted January 26, 1979 to be effective April 1, 1979; paragraphs (a), (b), (c), (d), (g), (h), and (i) amended May 15, 1980 to be effective September 8, 1980; paragraph (i) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended February 8, 1993 to be effective immediately; paragraphs (a), (b), (c), (d), (e), (g), (h), and (i) amended June 28, 1996, to take effect September 1, 1996; paragraphs (a), (b), (c), (d), (e), and (f) amended July 5, 2000 to be effective September 5, 2000; paragraphs (d), (f), (h), and (i) amended, paragraphs (e) and (g) caption and text amended, and new paragraph (j) adopted July 20, 2011 to be effective September 1, 2011.

1:39-1A. Certification Committees

(a) Appointment; Officer. The Supreme Court shall appoint a Civil Trial Law Committee, a Criminal Trial Law Committee, a Matrimonial Law Committee, a Workers' Compensation Law Committee, and a Municipal Court Trial Law Committee. The Court shall appoint no fewer than three and no more than eleven members of the bar to serve on each Attorney Certification Committee. Committee members shall be appointed for three-year terms. No member who has served four full three-year terms successively shall be eligible for immediate reappointment. Members appointed to fill unexpired terms may be reappointed to four successive full terms. The Supreme Court shall designate one member of each Committee to serve as Chair of that Committee. The Chairs shall serve as members of the Board on Continuing Legal Education and the Board on Attorney Certification.

(b) Quorum. For each Committee, one more than half the total number of members shall constitute a quorum and all determinations shall be made by a majority of the quorum.

(c) Operations. The Committees shall, consistent with the Regulations of the Board, draft applications for certification and recertification, review applications to determine eligibility for certification and recertification, create and grade examinations, and undertake such other tasks as may be assigned by the Board. In accordance with these Rules and the Board's Regulations, adverse decisions by a Certification Committee in respect of eligibility or examination are reviewable by the Board or the Supreme Court.

(d) Effect of Certification Committee Membership. During service on a Certification Committee, no Committee member shall apply for or be examined for certification in this State. A Committee member who is not yet certified and who has served his or her full term on the Committee may apply for certification at the conclusion of his or her term on the Committee. Once making application, the former Committee member, if otherwise eligible for certification, will not have to take the appropriate certification examination. A previously-certified Committee member may be recertified during his or her term of service on the Committee. An attorney who sits on a Certification Committee who is not yet certified may offer a referral fee pursuant to RG. 402:6 so long as a referral fee is permitted.

(e) Immunity. Members of the Certification Committees and their lawfully appointed designees and staff shall be absolutely immune from suit based on their respective conduct in performing their official duties.

Note: Adopted June 28, 1996, to be effective September 1, 1996; paragraphs (a) and (c) amended and new paragraph (d) adopted July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended, paragraph (d) caption amended, and new paragraph (e) adopted July 20, 2011 to be effective September 1, 2011.

1:39-2. Eligibility

Subject to the specific requirements contained in the Regulations of the Board, an attorney shall be eligible to apply for certification in a designated area of practice on demonstrating to the Board on Attorney Certification the following:

(a) Minimum Admission Period; Practice of Law. Applicants for certification must be members in good standing with a plenary license at the bar of the State of New Jersey for at least five years. Applicants for certification must be (1) engaged in the private practice of law, wherein the applicant represents and gives legal advice to clients, and maintains the appropriate bank accounts pursuant to Rule 1:21-6; or (2) employed by State, county, or municipal government representing and giving legal advice to clients.

(b) Professional Experience. Extensive and substantial experience as an attorney in the designated area of practice as set forth in the Board's Regulations.

(c) Professional Reputation. The Board shall require each applicant to establish his or her professional fitness and competence in the designated area of practice. Pursuant to the Regulations of the Board, the applicant shall submit to the relevant Certification Committee the names of a specified number of peer references of whom the Committee may inquire with regard to the applicant's professional fitness and competence as an attorney within the designated area of practice. The Board or the Committee may inquire of other attorneys or judges with respect to the professional qualifications and reputation of the applicant.

(d) Educational Experience. An applicant must demonstrate to the Board satisfactory and substantial educational involvement within the three years immediately preceding his or her application. The Board will evaluate the nature and content of educational involvements submitted by applicants on a case by case basis. The Board shall adopt Regulations governing the number of credits of continuing legal education required for certification.

(e) Ongoing Obligation. Each applicant has an ongoing responsibility to report to the Board any malpractice actions brought, disciplinary complaints filed, fee arbitrations filed, or any discipline imposed on him or her during the pendency of the application. In

addition, each applicant has an ongoing obligation to notify the Board during the pendency of the application process of any additional information that relates to the requirements for certification.

Note: Adopted January 26, 1979 to be effective April 1, 1979; paragraph (a) amended, former paragraph (b) deleted and former paragraph (c) redesignated as (b) and amended, former paragraph (d) redesignated as (c) and amended, and new paragraph (d) adopted May 15, 1980 to be effective September 8, 1980; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (d) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b)(2) and (c) amended July 13, 1994 to be effective September 1, 1994; introduction and paragraphs (b), (c), and (d) amended June 28, 1996, to be effective September 1, 1996; corrective amendment to paragraph (c) adopted August 1, 1996 to be effective September 1, 1996; paragraphs (a), (b), (c), and (d) amended and new paragraph (e) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraphs (a), (c) and (d) amended July 20, 2011 to be effective September 1, 2011.

1:39-3. Written Examination

An attorney shall be eligible for certification in a designated area of practice upon successful completion of a written examination on that area of practice within 18 months of the notification by the Board that the qualification requirements of R. 1:39-2 have been met. Admission to each written examination shall be upon payment of the examination fee to be set from time to time by the Board, subject to approval by the Supreme Court. The Board shall adopt Regulations governing the format and content of the examination and grading procedures to be followed.

Note: Former rule adopted January 26, 1979 to be effective April 1, 1979; former rule deleted and present rule adopted May 15, 1980 to be effective September 8, 1980; amended June 28, 1996, to be effective September 1, 1996; corrective amendment adopted August 1, 1996 to be effective September 1, 1996; amended July 5, 2000 to be effective September 5, 2000.

1:39-4. Decision by Certification Committee or Board

(a) Ineligible Applicants. An applicant who is found ineligible to sit for the examination shall be notified of those areas in which he or she did not meet the program's requirements. An applicant may supplement his or her application to correct deficiencies, but such supplemental materials must be submitted within fourteen days of the date of notification of ineligibility. Should a Certification Committee determine that an applicant is ineligible to sit for the examination, that applicant has fourteen days to apply to the Board for de novo review pursuant to the Board's Regulations.

(b) Duration of Eligibility; Qualified Applicants. An applicant found eligible must successfully complete the examination requirements as found in Part Two and Three of the Board's Regulations within eighteen months of notification of eligibility to sit for the examination. If eligibility expires, the applicant must file a new application for certification. When an applicant has complied with the requirements of Rule 1:39-2 and 3 and the Board's Regulations, the Certification Committee shall forward the file to the Board, which shall review the file and make such further inquiry, pursuant to its Regulations, as it deems necessary and appropriate. Thereafter, the Board shall determine within a reasonable time whether the applicant is qualified for certification in the designated area of practice.

Note: Former rule adopted January 26, 1979 to be effective April 1, 1979; former rule deleted and former Rule 1:39-5 redesignated Rule 1:39-4 and amended May 15, 1980 to be effective September 8, 1980; new paragraph (a) adopted and former rule amended and designated paragraph (b) June 28, 1996, to be effective September 1, 1996; paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000; caption amended July 20, 2011 to be effective September 1, 2011.

1:39-5. Grant; Duration; Withholding of Certification

(a) Grant of Certification. If upon due consideration the Board determines that an applicant is qualified for certification as a civil or a criminal trial attorney, a matrimonial law attorney, a workers' compensation law attorney, or a municipal court trial attorney, it shall so report to the Supreme Court, which shall direct the making of an appropriate entry on the roll of attorneys and shall cause to be issued an appropriate document attesting thereto.

(b) Duration of Certification. A grant of certification shall be effective for five years from the date of entry on the roll of attorneys. Subject to the approval of the Supreme Court, the Board may adopt regulations authorizing a tolling of the duration period of certification under specific circumstances, such as government employment or appointment to the judiciary.

(c) Withholding of Certification. If upon due consideration the Board determines that an applicant is not qualified for certification in a designated area of practice, it shall so notify the applicant, advising as to the procedure for reapplication in accordance with its regulations.

Note: Adopted January 26, 1979 as Rule 1:39-6 to be effective April 1, 1979; redesignated Rule 1:39-5 and paragraphs (a) and (c) amended and paragraph (d) deleted May 15, 1980 to be effective September 8, 1980; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c) amended June 28, 1996, to be effective September 1, 1996; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 20, 2011 to be effective September 1, 2011.

1:39-6. Effect of Certification

(a) Not Exclusive. The standards and systems adopted herein shall in no way limit the right of a certified attorney to practice law in any respect nor shall any attorney-at-law of this State be barred from engaging in a designated area of practice by reason of lack of eligibility or certification.

(b) Use of Designation. An attorney who has satisfied the requirements of this rule and who has been certified may make dignified use of the area of practice designation as provided in the Regulations of the Board.

(c) Restrictions on Designation Use. No use may be made of the designations set forth in the Regulations of the Board except as therein provided, nor may other words or combination of words be used by a certified attorney in place of such designations.

(d) Division of Fees. A certified attorney who receives a case referral from a lawyer who is not a partner in or associate of that attorney's law firm or law office may divide a fee for legal services with the referring attorney or the referring attorney's estate. The fee division may be made without regard to services performed or responsibility assumed by the referring attorney, provided that the total fee charged the client relates only to the matter referred and does not exceed reasonable compensation for the legal services rendered therein. The provisions of this paragraph shall not apply to matrimonial law matters that are referred to certified attorneys.

(e) Obligation of Certified Attorneys. A certified attorney is under a continuing obligation, during the duration of the certification period, to notify the Board of any malpractice action brought, fee arbitrations filed, disciplinary complaints filed, or discipline imposed.

Note: Adopted January 26, 1979 as Rule 1:39-7 to be effective April 1, 1979; amended and redesignated Rule 1:39-6 May 15, 1980 to be effective September 8, 1980; amended December 13, 1983 to be effective January 3, 1984;

paragraph (d) adopted November 1, 1985 to be effective January 2, 1986; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a), (b), (c), and (d) amended June 28, 1996, to be effective September 1, 1996; corrective amendment adopted August 1, 1996 to be effective September 1, 1996; new paragraph (e) adopted July 5, 2000 to be effective September 5, 2000.

1:39-7. Renewal of Certification

A member of the bar of this State who has been certified pursuant to these rules and the Regulations of the Board, may apply for a renewal of such certification during the last twelve months of the five year period for which the attorney had received certification. The application for renewal shall include information specified in the Regulations of the Board, which will set forth the substantive, professional fitness and educational requirements for recertification. The appropriate Certification Committee and the Board shall render a decision regarding the application for renewal of certification in the same manner as provided by these rules and Regulations for initial certification.

Note: Adopted January 26, 1979, as Rule 1:39-8 to be effective April 1, 1979; amended and redesignated Rule 1:39-7 May 15, 1980 to be effective September 8, 1980; amended November 2, 1987 to be effective January 1, 1988; amended June 28, 1996, to be effective September 1, 1996; amended July 5, 2000 to be effective September 5, 2000; amended July 20, 2011 to be effective September 1, 2011.

1:39-8. Termination of Certification

(a) Basis for Termination. Certification may be terminated after a finding by the Board that a certified attorney no longer demonstrates continuing competence or has engaged in conduct or omissions to discharge responsibility that are not acceptable on the part of a certified attorney.

(b) Procedures to Follow. In all cases a complaint, notice, and opportunity to be heard shall be given in accordance, so far as applicable, with the rules and administrative guidelines governing plenary ethics hearings (Rule 1:20-3(h) to -3(m), -3(o)).

(c) Effect of Determination of Unethical Conduct. Whenever an attorney has been found guilty, either as an attorney or a judge, of unethical conduct in a disciplinary proceeding in this state resulting in public discipline, a copy of the decision or opinion in that matter shall be conclusive evidence of the facts established there. The sole issue to be determined by the Board shall be the extent of the sanction to be imposed. However, a respondent may introduce relevant evidence in mitigation that is not inconsistent with the essential facts established in the disciplinary decision or opinion.

(d) Hearing Panels; Recommendation to Court. In all cases hearings may be held before a panel of no fewer than three members of the Board, which shall render a report to the full Board. In appropriate circumstances, the matter may be referred for consideration to the District Ethics Committee. The Board shall recommend to the Supreme Court the sanction to be imposed, which may include either termination or conditions imposed for a stated period. Should the Supreme Court approve the Board's recommendation to terminate certification, the Board shall notify other certifying agencies to which the attorney holds a certification of that termination.

(e) Burden of Proofs; Effect of Termination. In proceedings under this Rule, the presenter shall have the burden of proof. The respondent shall have the burden of proving all affirmative defenses, constitutional challenges, and mitigating circumstances, if any. The standard of proof for the presenter and the respondent shall be clear and convincing evidence on all issues. No person whose certification has been terminated

pursuant to this Rule may be thereafter again certified except in accordance with the procedure set forth in Rule 1:39-1 to -9 and the Regulations of the Board.

(f) Lapsing of Certification. An attorney who allows his or her certification to lapse and thereafter seeks to be certified shall be required to comply with all of the requirements for making an initial application for certification. The Board shall notify other certifying organizations to which the certified attorney holds a certification that his or her certification by the Supreme Court has lapsed.

Note: Adopted January 26, 1979, as Rule 1:39-9 to be effective April 1, 1979; amended and redesignated Rule 1:39-8 May 15, 1980 to be effective September 8, 1980; amended November 2, 1987 to be effective January 1, 1988; amended and rule designated as paragraphs (a), (b), (c), (d), and (e) June 28, 1996, to be effective September 1, 1996; paragraph (d) amended and new paragraph (f) adopted July 5, 2000 to be effective September 5, 2000; paragraph (d) amended July 20, 2011 to be effective September 1, 2011.

1:39-9. Review of Action of Board

Within 30 days after final action of the Board on Attorney Certification with respect to an application for certification, recertification, or termination of certification, an aggrieved member of the bar may seek review thereof by serving on the Secretary of the Board a notice of petition for review and by filing the original notice with the Clerk of the Supreme Court. The notice shall set forth the petitioner's name and address and, if he or she is represented, the name and address of counsel. The notice shall designate the action of the Board sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved. It shall be accompanied by the required filing fee. Thereafter, deposit for costs, filings and proceedings shall be as set forth in R. 1:19-8, Petition for Review, except that the record on review shall be the Board's entire file with respect to the applicant or respondent as to whom review is sought.

The applicant shall not have access to the materials in the file submitted by another person.

Note: Adopted January 26, 1979, as Rule 1:39-10 to be effective April 1, 1979; amended and redesignated Rule 1:39-9 May 15, 1980 to be effective September 8, 1980; amended November 2, 1987 to be effective January 1, 1988; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996, to be effective September 1, 1996; amended July 5, 2000 to be