

# Judicial Merit Selection Commission



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## **MEDIA RELEASE** September 5, 2006

The Judicial Merit Selection Commission is currently accepting applications for the judicial offices listed below. In order to receive application materials, a prospective candidate must notify the Commission in writing of his/her intent to apply. Correspondence and questions may be directed to the Judicial Merit Selection Commission as follows:

Jane O. Shuler, Chief Counsel  
Post Office Box 142  
Columbia, South Carolina 29202  
(803) 212-6092

The Commission will not accept applications after **12:00 noon on Wednesday, October 4, 2006.**

The term of the office currently held by the Honorable John W. Kittredge, Judge of the Court of Appeals, Seat 3, will expire on June 30, 2007.

A vacancy will exist in the office currently held by the Honorable C. Tolbert Goolsby, Judge of the Court of Appeals, Seat 4, upon Judge Goolsby's retirement on or before June 30, 2007.

The term of the office currently held by the Honorable J. Ernest Kinard, Jr., Judge of the Circuit Court for the Fifth Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable J. Derham Cole, Judge of the Circuit Court for the Seventh Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable Deadra L. Jefferson, Judge of the Circuit Court for the Ninth Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable J.C. Nicholson, Jr., Judge of the Circuit Court for the Tenth Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable Anne Gue Jones, Judge of the Family Court for the First Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable Dale Moore Gable, Judge of the Family Court for the Second Judicial Circuit, Seat 2, will expire on June 30, 2007.

The term of the office currently held by the Honorable W. Jeffrey Young, Judge of the Family Court for the Third Judicial Circuit, Seat 2, will expire on June 30, 2007.

A vacancy will exist in the office currently held by the Honorable R. Wright Turbeville, Judge of the Family Court for the Third Judicial Circuit, Seat 3, upon Judge Turbeville's retirement on or before June 30, 2007.

The term of the office currently held by the Honorable Jamie Lee Murdock, Jr., Judge of the Family Court for the Fourth Judicial Circuit, Seat 2, will expire on June 30, 2007.

The term of the office currently held by the Honorable Leslie K. Riddle, Judge of the Family Court for the Fifth Judicial Circuit, Seat 2, will expire on June 30, 2007.

The term of the office currently held by the Honorable Rolly W. Jacobs, Judge of the Family Court for the Fifth Judicial Circuit, Seat 3, will expire on June 30, 2007.

The term of the office currently held by the Honorable Brian M. Gibbons, Judge of the Family Court for the Sixth Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable Georgia V. Anderson, Judge of the Family Court for the Seventh Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable James F. Fraley, Jr., Judge of the Family Court for the Seventh Judicial Circuit, Seat 2, will expire on June 30, 2007.

The term of the office currently held by the Honorable Joseph W. McGowan, III, Judge of the Family Court for the Eighth Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable Billy A. Tunstall, Jr., Judge of the Family Court for the Eighth Judicial Circuit, Seat 3, will expire on June 30, 2007.

The term of the office currently held by the Honorable Paul W. Garfinkel, Judge of the Family Court for the Ninth Judicial Circuit, Seat 2, will expire on June 30, 2007.

The term of the office currently held by the Honorable Wayne M. Creech, Judge of the Family Court for the Ninth Judicial Circuit, Seat 4, will expire on June 30, 2007.

The term of the office currently held by the Honorable Barry W. Knobel, Judge of the Family Court for the Tenth Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable Tommy B. Edwards, Judge of the Family Court for the Tenth Judicial Circuit, Seat 3, will expire on June 30, 2007.

A vacancy will exist in the office currently held by the Honorable C. David Sawyer, Jr., Judge of the Family Court for the Eleventh Judicial Circuit, Seat 2, upon Judge Sawyer's retirement on or before June 30, 2007.

The term of the office currently held by the Honorable Richard W. Chewning, III, Judge of the Family Court for the Eleventh Judicial Circuit, Seat 3, will expire on June 30, 2007.

The term of the office currently held by the Honorable Mary E. Buchan, Judge of the Family Court for the Twelfth Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable A. Eugene Morehead, III, Judge of the Family Court for the Twelfth Judicial Circuit, Seat 2, will expire on June 30, 2007.

The term of the office currently held by the Honorable R. Kinard Johnson, Jr., Judge of the Family Court for the Thirteenth Judicial Circuit, Seat 2, will expire on June 30, 2007.

The term of the office currently held by the Honorable Gerald C. Smoak, Jr., Judge of the Family Court for the Fourteenth Judicial Circuit, Seat 1, will expire on June 30, 2007.

The term of the office currently held by the Honorable Robert S. Armstrong, Judge of the Family Court for the Fourteenth Judicial Circuit, Seat 3, will expire on June 30, 2007.

A vacancy will exist in the office currently held by the Honorable H.E. Bonnoitt, Jr., Judge of the Family Court for the Fifteenth Judicial Circuit, Seat 1, upon Judge Bonnoitt's retirement on or before June 30, 2007.

The term of the office currently held by the Honorable Henry T. Woods, Judge of the Family Court for the Sixteenth Judicial Circuit, Seat 2, will expire on June 30, 2007.

The term of the office currently held by the Honorable John D. McLeod, Judge of the Administrative Law Court, Seat 2, will expire on June 30, 2007.

The term of the office currently held by the Honorable Curtis G. Clark, Master-in-Equity for the Eighth Circuit (Abbeville County), will expire on June 30, 2007.

The term of the office currently held by the Honorable Robert A. Smoak, Jr., Master-in-Equity for the Second Circuit (Aiken County), will expire on June 30, 2007.

The term of the office currently held by the Honorable Benjamin H. Culbertson, Master-in-Equity for the Fifteenth Circuit (Georgetown County), will expire on January 1, 2007.

The term of the office currently held by the Honorable Jeffrey M. Tzerman, Master-in-Equity for the Fifth Circuit (Kershaw County), will expire on July 1, 2007.

A vacancy will exist in the office currently held by the Honorable Robert D. Jennings, Master-in-Equity for Lee County, Third Judicial Circuit, upon Judge Jennings' retirement on or before December 31, 2007.

For further information about the Judicial Merit Selection Commission and the judicial screening process, you may access the website at [www.scstatehouse.net/html-pages/judmerit.html](http://www.scstatehouse.net/html-pages/judmerit.html).

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**OPINIONS  
OF  
THE SUPREME COURT  
AND  
COURT OF APPEALS  
OF  
SOUTH CAROLINA**

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**ADVANCE SHEET NO. 35**

**September 11, 2006  
Daniel E. Shearouse, Clerk  
Columbia, South Carolina  
[www.sccourts.org](http://www.sccourts.org)**

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26195 – The State v. Willie Earl Reese, Jr.	Denied 9/7/06
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**EXTENSION OF TIME TO FILE PETITION FOR REHEARING**

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2004-UP-610-Owenby v. Kiesau et al.	Pending
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2005-UP-115-Toner v. SC Employment Sec. Comm'n	Denied 08/24/06
2005-UP-116-S.C. Farm Bureau v. Hawkins	Pending
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2006-UP-115-Brunson v. Brunson	Pending
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2006-UP-230-Ex parte Van Osdell (Babb v. Graham)	Pending
2006-UP-237-SCDOT v. McDonald's Corp.	Pending

2006-UP-243-Sun Trust Mortgage v. Gobbi	Pending
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# The Supreme Court of South Carolina

In re: Amendments to the Commission's Regulations for Mandatory  
Continuing Legal Education for Judges and Active  
Members of the South Carolina Bar

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## ORDER

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By Order dated May 3, 2006, the Court amended Rules 408, 419, and 504, South Carolina Appellate Court Rules, to modify the deadlines for lawyers and judges to submit proof of compliance with Continuing Legal Education requirements. These amendments also altered the dates on which members are placed on administrative suspension for failure to comply. However, the deadlines in several of the Appendices to Part IV, which implement the above Rules, are also affected by the amendments. Additionally, it has come to the Court's attention that the Appendices contain a number of scriveners' errors.

Therefore, pursuant to Article V, § 4, of the South Carolina Constitution, and previous Orders of this Court, we hereby amend Appendices C, D, and E to Part IV, South Carolina Appellate Court Rules, as set forth in the attachment to this Order.

The amendments are effective immediately.

IT IS SO ORDERED.

s/ Jean H. Toal CJ.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ E. C. Burnett, III J.

s/ Costa M. Pleicones J.

Columbia, South Carolina

**APPENDIX C  
REGULATIONS FOR MANDATORY CONTINUING LEGAL  
EDUCATION  
FOR JUDGES AND ACTIVE MEMBERS OF THE SOUTH  
CAROLINA BAR**

**I. Purpose**

These Regulations implement Rules 408, 419, and 504, SCACR.

**II. Requirements**

**A. Active Members of the South Carolina Bar.**

1. Except as otherwise provided in Regulation III, each active member of the South Carolina Bar, as defined in the By-Laws of the South Carolina Bar, shall complete a minimum of 14 hours of accredited continuing legal education (CLE) each annual reporting period.
2. At least 2 of the 14 hours shall be devoted to legal ethics/professional responsibility (LEPR). LEPR shall include, but not be limited to, instruction focusing on the Rules of Professional Conduct as they relate to law firm management, malpractice avoidance, lawyer fees, legal ethics, and the duties of lawyers to the judicial system, the public, clients and other lawyers.
3. An active member who accumulates in excess of 14 hours credit in an annual reporting period may carry a maximum of 14 hours forward to the next annual reporting period, of which a maximum of 2 hours may be LEPR credit (earned LEPR credit in excess of the required 2 hours may be applied to CLE requirements and/or carried forward not to exceed the maximum of 14 hours).

## B. Judicial Members.

### 1. Minimum Requirements.

Judicial members specified in Rule 504(a), SCACR, shall complete a minimum of 15 hours of accredited judicial continuing legal education (JCLE) each annual reporting period. JCLE credit accumulated in any annual reporting period in excess of 15 hours may be carried forward to the next annual reporting period; provided, however, that not more than 30 hours credit may be carried forward to the next annual reporting period.

### 2. Mandatory Attendance at Designated Educational Activities.

Without regard to any JCLE credit accumulated pursuant to the requirements of Regulation II(B)(1), judicial members shall attend any educational activity designated as mandatory by the Supreme Court of South Carolina or the Commission on Continuing Legal Education and Specialization (Commission). “Educational activity” means any seminar, program, conference, roundtable, or other activity which has been accredited for JCLE purposes and which has been designated mandatory for judicial members. Attendance at an educational activity may be designated as mandatory for all judicial members or only for certain specified categories of judicial members (for example: mandatory for probate judges only).

## **III. Exemptions**

The following shall be exempt from the requirements of Regulation II:

A. Active members of the South Carolina Bar who are at least 60 years old, who have been admitted to practice law for 30 or more years and who submit to the Commission affidavits establishing that fact and requesting exemption (exempt status pursuant to this provision shall apply to both the CLE and LEPR requirements);



B. Certified specialists who comply with the CLE requirements of their specialty; provided, however, that at least 2 hours of the CLE credits completed by certified specialists shall be devoted to LEPR and that any certified specialist who completes more than 2 hours of LEPR credit may carry forward to the next annual reporting period up to 2 hours of such credit.

C. Newly admitted lawyers in the year in which they are licensed.

D. For JCLE requirements imposed by Regulation II(B), judicial members in the year in which they are sworn into office, provided they have satisfied the CLE requirements for active members of the South Carolina Bar.

#### **IV. Hours and Accreditation**

A. General.

One (1) hour of accredited CLE means 60 minutes of instruction as teacher or student at any CLE program which has been accredited by the Commission or which is sponsored or co-sponsored by an accredited organization. A list of currently accredited sponsors can be obtained from the Commission.

B. Application for Accredited Sponsor Status.

A sponsor wishing to apply for sponsor accreditation shall submit to the Commission:

1. An application for status as an accredited sponsor of CLE activities (forms available from the Commission);
2. Copies of written materials described in that application form; and
3. Any further information the Commission requires.

Except for accredited sponsors designated by the Commission, sponsor accreditation must be renewed every 5 years; provided, however, that sponsor accreditation may be withdrawn for cause at any time after 60 days notice to the sponsor and the South Carolina Bar.

### C. Accreditation of Courses Sponsored by Non-accredited Sponsors.

CLE courses presented by sponsors which have not been granted sponsor accreditation will be considered for accreditation on an individual basis. An application for accreditation of a program may be obtained from the Commission and must be submitted to the Commission by the sponsor or by a lawyer who desires credit for attending the program. Except as provided in IV(D), the Commission will consider applications for the retroactive as well as prospective accreditation of programs.

### D. In-House CLE.

In-house CLE, which is defined as CLE courses, training, programs, etc., sponsored or offered by law firms (individually or collectively), corporate legal departments, and similar organizations (but excluding public/governmental organizations and their subdivisions, agencies, etc.) primarily for the education of their members and employees, may be approved for credit under the rules and regulations applicable to other sponsors, subject to the following additional conditions:

1. The courses shall be submitted for approval on a course-by-course rather than an approved-sponsor basis;
2. The courses, including all written material related thereto, must be filed with an application for accreditation on or before the date on which the course is to be held;
3. The courses must be attended by at least 5 lawyers, not including the instructors; and
4. Not more than one-half of the approved credits for any reporting period may be earned through in-house programs.

#### E. Client Seminars.

Client seminars, which are defined as educational activities sponsored by a law firm in which the target audience is clients or potential clients of the sponsoring law firm, shall not be accredited even though the educational activities otherwise satisfy the accreditation standards specified in Regulation V. For this purpose, a law firm may be a professional corporation, professional association, partnership, sole practitioner or any other association of lawyers engaged in the private practice of law.

#### F. Fees.

Fees for the processing of applications for accreditation of individual programs or applications for accredited sponsor status and fees for other applications and purposes shall be as specified by the Commission.

#### G. Enhanced Credit for Teaching.

Upon application to the Commission, enhanced CLE credit may be earned through teaching at an accredited CLE activity. Information regarding the enhanced credit, including qualifications for the credit, the formula for calculating the credit, and exceptions to the credit, may be obtained from the Commission.

#### H. CLE Credit for Legal Writing.

Upon application to the Commission, CLE credit may be earned through authorship of articles or books concerning substantive or procedural law which are published or accepted for publication in approved third party publications. Information about this credit may be obtained from the Commission.

## V. Accreditation Standards

The following standards will be considered by the Commission in the granting, denying, or withdrawal of accreditation of sponsors, programs, or parts of programs:

- A. Courses must have significant intellectual or practical content;
- B. Subject matter must deal primarily with the theory, practice, or ethics of law and the legal profession;
- C. Courses must be directed to and intended for an audience of lawyers or judges;
- D. Faculty members must be qualified by practical or academic experience to teach the subject;
- E. High quality written materials must be distributed to participants;
- F. Suitable classroom or laboratory setting must be provided for participants;
- G. Ethical considerations pertaining to the subject matter should be included in the program;
- H. Audio-visual and Media Presentations.
  - 1. Audio-visual or media presentations, including telephone and on-line seminars, are acceptable provided:
    - (a) A faculty member is in attendance or available by telephone hook-up to comment and answer questions; or
    - (b) Other appropriate mechanisms, as determined by the Commission, are present to enable the attendee to participate or react with the presenters and other attendees. Appropriate

mechanisms include quizzes or examinations, response tracking, user prompts, and instant messaging.

2. In addition to meeting the standards of A through G, above, audio-visual or media presentations must:

(a) Utilize some mechanism to monitor course participation and completion in such a manner that certification of attendance is controlled by the provider. Courses must not be susceptible to a “fast forward” finish by attendees;

(b) High quality written materials must be available to be downloaded or otherwise furnished so that the attendees will have the ability to refer to such materials during and subsequent to the presentation;

(c) Telephone and on-line educational activities must be pre-approved by the Commission;

(d) Telephone activities will be accredited for the actual time spent to a maximum of 90 minutes per activity, and on-line educational activities, to include live webcasts, will be accredited for the actual time spent to a maximum of 6 hours per activity; and

(e) Providers shall furnish to the Commission password and/or log-in capabilities for accredited programs. Access will allow for review of course mechanisms, such as interactive functionality. Any such activity may be audited by 1 or more representatives of the Commission without charge.

3. CLE credit earned through audio-visual or media presentations and applied to the annual 14 hour minimum requirement shall not exceed 6 hours of credit per annual reporting period.

J. A written report of attendees shall be submitted to the Commission within 30 days of the course/program.

## **VI. Reports and Fees**

### **A. Active Members.**

On forms prepared by the Commission and available through its offices (or a reasonable facsimile), each active member of the South Carolina Bar not exempt from Regulation II(A) shall, not later than March 1 of each year, file with the Commission a sworn annual report of compliance for the preceding annual reporting period and pay an annual filing fee of \$20.00. Any active member submitting a report of compliance after March 1 shall pay, in addition to the annual filing fee, a late filing fee of \$50.00. The late filing fee shall be doubled for any member who files after the filing deadline and who has filed late and paid a late filing fee on any prior occasion.

### **B. Judicial Continuing Legal Education (JCLE).**

On forms prepared by the Commission and available through its offices (or a reasonable facsimile), each judicial member specified in Rule 504(a), SCACR, shall, not later than April 15 of each year, file with the Commission an annual report of compliance for the preceding educational period and pay an annual filing fee of \$20.00. Any judicial member submitting a report of compliance after April 15 shall pay, in addition to the annual filing fee, a late fee of \$50.00.

### **C. Amended Reports of Compliance.**

For the purposes of these Regulations, an amended report of compliance is one that seeks to change a report of compliance previously submitted to the Commission. A report of compliance may be amended within 1 year from the date that the original report was received by the Commission or 1 year from the filing deadline for the original report, whichever date is later. An amended report shall be executed in the same manner as the report it is amending and shall be accompanied by the filing fees specified for such original report, to include late filing fees if appropriate.

#### D. Revenue From Filing and Other Fees.

The fees specified in these Regulations and fees paid by certified specialists shall be used only to defray operating expenses of the Commission and its staff and may be adjusted by the Commission from time to time in order to produce the actual income required for the expenditures, plus a reasonable reserve fund.

### **VII. Non-compliance**

#### A. Active Members.

1. Automatic Suspension. An active member of the South Carolina Bar who is neither exempt nor excused from the requirements of Regulation II(A) and/or VI(A) and who has failed to comply with these requirements by March 31 shall be automatically suspended from the practice of law.

2. Notice of Suspension. Notice of suspension will be provided to suspended members, the Clerk of the South Carolina Supreme Court, and to the judge or judges of the judicial circuit in which any suspended lawyer principally practices and/or maintains a principal residence. Suspended members will also be advised that unless they comply and are reinstated by the Commission by May 1, their names will be published in the Advance Sheets.

3. Publication of Names of Suspended Lawyers. The names of suspended lawyers who have not been reinstated by May 1 shall be provided to the Clerk of the South Carolina Supreme Court for publication in the Advance Sheets.

#### B. Judicial Members.

Any judicial member specified in Rule 504(a), SCACR, who is not exempt from the requirements of Regulation II(B)(1), II(B)(2), and/or VI (B) and who is in violation thereof shall be notified of the violation by certified mail

at the judicial member's last known address. The judicial member shall then have 60 days after the date the notice was mailed to file an affidavit responding to the notice. Any response may include documents establishing that the judicial member concerned has cured the deficiency. If any judicial member fails to respond to the notice of violation or if after considering a judicial member's response the Commission believes the judicial member is still in violation of Rule 504, SCACR, and these Regulations, the Commission shall report the matter to the South Carolina Supreme Court for action as deemed appropriate by the Court.

### **VIII. Petition for Reinstatement**

#### **A. Reinstatement by the Commission.**

An active member of the South Carolina Bar who has been suspended for failure to comply with these Regulations may petition the Commission for reinstatement. Petitions for reinstatement by the Commission must be received by the Commission not later than June 1. Each petition for reinstatement shall be accompanied by proof that the petitioner is then in compliance and that a reinstatement fee of \$200.00 plus filing fees and late fees have been paid. If the petitioner is found to be in compliance by the Commission, to include payment of all fees, the petition shall be granted and the Commission will notify the petitioner, the Clerk of the South Carolina Supreme Court, and the judge or judges of the judicial circuit in which the petitioner principally practices and/or maintains a principal residence. The Commission shall inform the petitioner of the curative actions necessary for reinstatement if the petition is found not to be in compliance.

#### **B. Reinstatement After June 1.**

Petitions received after June 1 will be returned to the petitioner who will be informed that the petition for reinstatement must be filed with the Clerk of the South Carolina Supreme Court.



C. Notice to the Clerk of South Carolina Supreme Court.

Promptly after June 1, the Commission shall provide to the Clerk of the South Carolina Supreme Court the names of all lawyers who remain suspended.

## **IX. Waivers and Extensions**

A. Waivers.

In individual cases involving extraordinary hardship or extenuating circumstances, the Commission may waive or modify the requirements of Regulation II(A) or extend the requirements of Regulation VI(A). When appropriate, and as a condition for any such waiver or modification, the Commission may proportionally increase the member's requirements for the succeeding annual reporting period. For example, if a member receives a waiver of 6 hours credit for one annual reporting period, the requirement for the following annual reporting period may be increased by 6 hours.

B. Extensions.

The Commission has no authority to extend the deadlines for compliance reporting or automatic suspension and all requests for such extensions made to the Commission will be denied.

## **X. Reconsideration**

Any judicial member or active member of the South Carolina Bar or any sponsor aggrieved by a decision or action of the Commission may request reconsideration. A request for reconsideration must be submitted to the Commission (a) in writing, (b) within 30 days from the mailing of notice of the decision to the requesting judge or active member of the South Carolina Bar or sponsor or the publication of notice of the action in the South Carolina Bar News (or successor publication), and (c) may be accompanied by supporting evidence or documentation including affidavits. The request for reconsideration may, but need not, include a demand for a hearing. If a

hearing is demanded, the judicial member, active member, or sponsor requesting the hearing will be heard by the Commission or by a committee appointed by the Commission for that purpose and may present evidence and argument in support of the request for reconsideration.

## **XI. Appeals**

Any person aggrieved by the operation of these Regulations and who has exhausted all other remedies available hereunder, may petition the South Carolina Supreme Court for redress; provided, however, that any appeal must be submitted to the Court, in writing, not later than 30 calendar days after notice of final action by the Commission is mailed (via United States Postal Service) to the individual concerned.

Last amended by Order dated September 7, 2006.

**APPENDIX D  
REGULATIONS FOR LEGAL SPECIALIZATION IN SOUTH  
CAROLINA**

**I. PURPOSE**

These Regulations implement the specialization plan promulgated by the Supreme Court of South Carolina in Rule 408, SCACR.

**II. DEFINITIONS**

As used in these Regulations:

A. “Court” means the Supreme Court of South Carolina.

B. “Commission” means the Supreme Court Commission on Continuing Legal Education and Specialization.

C. “Advisory Board” means a board appointed by the Commission to administer a field of law designated a specialty area.

D. “ABA” means the American Bar Association.

E. “CLE” means continuing legal education.

F. “Independent certifying organization” means an organization, bar association, group or entity other than the Supreme Court of South Carolina which certifies or intends to certify lawyers as specialists.

G. “Specialty field” and “specialty area” mean a field of the law in which lawyers are certified as specialists by the Court or an independent certifying organization.

**III. JURISDICTION**

Pursuant to Rule 408, SCACR, the Commission has jurisdiction over all matters pertaining to specialization in the practice of law in South Carolina.

The Commission's responsibilities include, but are not limited to:

A. Administration of a program to recognize and regulate specialization in the law.

B. Designation and definition of fields of law in which certificates of certification may be issued by the Court.

C. Publication of reasonable and nondiscriminatory standards concerning education, experience, proficiency, and other relevant matters for granting certification to lawyers in designated and defined fields of law.

D. Approval and accreditation of independent organizations to certify lawyers as specialists in specialty fields in which certification is not offered by the Court.

E. Establishment of Advisory Boards in each field of law designated by the Commission in which certification shall be offered and appointment of members of such Boards.

F. Designation of filing and other fees to defray the expense of administering the specialization program.

#### **IV. EXECUTIVE DIRECTOR**

The Commission's Executive Director is responsible for the execution of the policies and directives of the Commission with respect to all specialization activities. The Executive Director, or a staff member designated by the Executive Director for that purpose, shall be ex officio a member of each Advisory Board and in that capacity, shall serve as Secretary to the Advisory Board, performing all duties that may be required of Secretary by these Regulations to include keeping and transcribing Minutes of all Advisory Board meetings.

## **V. ADVISORY BOARDS**

A. General. Advisory Boards to the Commission shall be established for each field of law in which certification is to be offered by the Court.

B. Composition and Terms. Each Advisory Board shall consist of not less than five (5) members who are certified in the specialty field and who are appointed by the Commission to serve for three (3) years and until their successors are appointed. With respect to members initially appointed to an Advisory Board, such members must be lawyers who practice substantially in the specialty field and their terms shall be staggered so that not more than two (2) members' terms shall expire at the same time. No person shall be appointed for more than two (2) consecutive terms. One (1) member of each Advisory Board shall be designated as chairperson by the Commission.

C. Responsibilities. See Rule 408(d), SCACR. Advisory Boards shall advise and assist the Commission in carrying out its objectives and in the conduct and development of the program of specialization in the law. Standards and procedures for certification and recertification shall be prepared by each Advisory Board for approval by the Commission and the Court. The Advisory Board for each field of law shall be charged with actively administering the program in its particular field in cooperation with and under the general guidance of the Commission.

## **VI. INDEPENDENT CERTIFYING ORGANIZATIONS**

A. Application for Approval. An independent certifying organization seeking approval from this Commission to issue certificates of specialization to South Carolina lawyers shall file an application requesting such approval. Application may be by letter and shall be accompanied by evidence of accreditation by the ABA and a complete copy of its application for accreditation which it submitted to the ABA (including any amendments or supplements thereto). An applicant shall specify each field of law for which it is seeking approval to issue certificates of specialization in South Carolina.

B. Designation of Specialty Fields - Limitations. Each field of law in which certification is to be offered by an independent certifying organization in South Carolina must be susceptible of meaningful definition and be an area in which a significant number of South Carolina Lawyers regularly practice.

C. Standards for Approval. An independent certifying organization, whose standards and procedures equal or exceed the minimum standards for certification specified in Rule 408, SCACR, and these Regulations, which has been accredited by the ABA, may be approved to issue certificates of specialization to South Carolina lawyers. However, such certificates of specialization may be offered only in those fields of the law in which specialization is not available from the Court. For this purpose, if specialization is available from the Court in any sub-area of a field of law in which an independent certifying organization offers or proposes to offer certification, that field of law shall be considered one in which specialization is available from the Court. Applications from independent certifying organizations that have not been accredited by the ABA will be rejected.

D. Fees. See Regulation IX, *infra*.

E. Term of Authorization to Issue Certificates. Approval of an independent certifying organization to issue certificates of specialization in South Carolina shall be for a term of three (3) years. To retain approval to issue certificates of specialization, a certifying organization shall be required to reapply at or near the end of the third (3rd) year of its initial approval period and every three (3) years thereafter.

F. Revocation/Termination of Authority to Issue Certificates.

1. Revocation. In any case in which an approved independent certifying organization ceases to exist, has its ABA accreditation withdrawn or suspended, fails to pay the annual administrative fee specified in Regulation IX E, *infra*, or fails to comply with the provisions of these Regulations, its approved status shall be revoked automatically.

2. Termination. In the event the Commission ceases to exist, its jurisdiction over South Carolina's specialization program is revoked, or its authority to approve the issuing of certificates of specialization by independent certifying organizations is withdrawn, the authority for independent certifying organizations to issue certificates of specialization to South Carolina lawyers shall terminate automatically.

G. Publication of Certified Status. After an independent certifying organization is authorized to issue certificates of specialization in South Carolina, any South Carolina lawyer certified as a specialist by that organization may publicize his or her certification, provided the communication states the name of the certifying organization and is not false or misleading. (For example, a lawyer certified by the ABC Board of Trial Advocacy as a civil trial specialist could publicize that fact in this manner: "Certified Civil Trial Specialist - ABC Board of Trial Advocacy.") In the event the authority of an independent certifying organization to issue certificates of specialization is revoked or terminated for any reason, South Carolina lawyers may not publicize a certification from that organization.

H. Required Reports. An independent certifying organization approved to issue certificates of specialization to South Carolina lawyers shall report to the Commission:

1. The name, South Carolina Bar number, mailing address, field of law in which certified, and period of certification (beginning and ending dates) of any South Carolina lawyer certified by it.
2. The name, South Carolina Bar number, and mailing address of any South Carolina lawyer certified by it whose certificate of specialization is revoked, suspended, modified, or whose certificate expires and is not renewed.
3. The name, South Carolina Bar number, and mailing address of any South Carolina lawyer certified by it who fails to comply with its CLE requirements.
4. Notice of renewal, revocation, modification, or suspension of its

ABA accreditation.

5. Notice of any change in its constitution, bylaws, articles of incorporation, or other governing document or of any change to its standards and procedures for certification and recertification of specialists.

6. Any other information that may be required.

## **VII. APPLICATIONS FOR CERTIFICATION AND RECERTIFICATION**

A. General. Applications shall be typewritten on forms provided by the Commission. Each question shall be answered responsively or shown as “not applicable.” Applications and the information included therein shall be sworn to by the applicant as being true and complete.

B. Completion of Requirements for Certification. An applicant shall complete all requirements prior to application; provided, however, that:

1. Oral interview/examination and written examination will be completed after an application is filed.

2. The period of law practice and substantial involvement in the specialty field required by the standards and procedures of that specialty field may be completed after an application is filed, but must be completed not more than three (3) months after the application is received in the Commission’s offices.

3. CLE requirements may be completed after an application is submitted provided the applicant furnishes proof of satisfaction of the requirements within three (3) months of the date his or her application is received in the Commission’s offices.

C. Requirement for Additional Information. To assist in determining an applicant’s entitlement to certification, the Commission, its Executive



Director, or the Advisory Board may require an applicant to submit information in addition to that called for on the application form.

D. Payment of Application Fees. An application shall not be deemed complete until the application fee in the amount specified by the Commission has been paid.

E. References. Advisory Boards shall require applicants to provide names and addresses of at least five (5) lawyers or judges, or both, who can attest to the applicant's competence in the specialty field. Such references should be certified or should practice substantially in the specialty field and may not be related to or in practice with the applicant. Members of the Advisory Board and the Commission are not eligible to serve as references. In addition to references provided by an applicant, the Commission, its Executive Director, or the Advisory Board may solicit at random additional lawyers and/or judges to submit statements concerning the applicant's competence. Statements of references concerning an applicant shall be submitted on forms approved and furnished by the Commission.

F. Minimum CLE Requirements. CLE requirements to enter a specialty field, annual CLE requirements to maintain certification, and CLE requirements to qualify for recertification shall be specified by each specialty field's Advisory Board. However, the minimum CLE requirements to enter a specialty field shall not be less than thirty-six (36) hours of participation in CLE in the specialty area during the three (3) year period preceding a lawyer's application for certification, the annual CLE requirement for certified lawyers shall not be less than twelve (12) hours, and the CLE requirement to qualify for recertification shall not be less than seventy-five (75) hours of CLE in the specialty area.

G. Substantial Involvement in the Specialty Field. Substantial involvement is measured by the type and number of cases or matters handled and the amount of time spent practicing the specialty area. To qualify for certification in a specialty area, time spent practicing the specialty shall be no less than twenty-five percent (25%) of the total practice of a lawyer engaged in a normal full-time practice.

## H. Processing of Applications.

1. The Executive Director and/or a member of the Executive Director's staff shall check each application upon receipt to assure that all portions of the application have been completed and that the applicant has complied with all requirements of the specialty field.
2. An application incomplete on its face or one in which it appears that the applicant does not meet the minimum practice (including substantial involvement in the specialty area) or CLE requirements for certification shall be returned to the applicant with a letter specifying the deficiencies in his or her application.

I. Burden of Proof. An applicant has the burden of establishing that he or she has met the requirements for certification in the specialty field. That burden is satisfied only if the Advisory Board is convinced, by clear and convincing evidence, that the applicant's involvement, experience, competency, practice, and education in the specialty field concerned meets or exceeds the minimum standards specified for certification in the specialty field and that he or she is a person of good character and reputation.

J. Failure of Written Examination. An applicant who fails a specialty field's written examination may not be certified unless he or she reapplies for certification and thereafter makes a passing score on the specialty's written examination. The application for certification of any applicant who has failed a specialty field's written examination three (3) times shall be rejected.

K. Requirements for Recertification. Recertification shall require similar evidence of competence as that required for initial certification in substantial involvement, peer review, and evidence of good standing. Minimum CLE requirements for recertification are indicated in Regulation VII F, supra.

L. Certification When Malpractice Claims or Ethical Complaints are Pending. An Advisory Board should not decline to recommend certification or recertification of an applicant it finds otherwise qualified simply because of a malpractice claim or ethical complaint filed or threatened. In cases involving such claims or complaints, the Advisory Board should undertake a due

diligence review of the facts and circumstances of the claim or complaint and then determine its action with respect to the application for certification or recertification.

## **VIII. WRITTEN EXAMINATION**

A. Requirement. Advisory Boards will require applicants to pass a written examination as a prerequisite to initial certification. An applicant who has not taken a specialty field's written examination within two (2) years of the date his or her application was received in the Commission's offices shall be required to reapply for certification.

B. Time and Place. Written examination for applicants shall be conducted in such place and on such date as fixed by the applicable Advisory Board in coordination with the Executive Director.

C. Grading. The grade given an applicant's written examination by the grader or graders shall be final in all cases except where the written examination is subject to review as indicated hereafter (see Regulation VIII F, *infra*).

D. Destruction of Examination Booklets and Answer Sheets. Examination booklets and answer sheets of applicants who pass a specialty field's written examination will be destroyed after grading. Examination booklets and answer sheets of an applicant who fails a specialty field's written examination will be destroyed fifteen (15) days after the applicant was mailed notice (by certified mail) by the Executive Director that he or she failed the written examination unless, within that fifteen (15) day period, the applicant has filed with the Executive Director a written request to review his or her examination.

E. Review of Written Examination. Within fifteen (15) days of the mailing of notice by the Executive Director that an applicant has failed the written examination, the applicant may request in writing to review his or her examination. If a written request to review the examination is timely submitted, the applicant will be permitted to review the examination in the Commission's offices at a time designated by the Executive Director. To

prevent compromise of the written examination, the applicant shall not be permitted to remove the examination from the Commission's offices or to copy the examination.

F. Petition for Grade Review. After reviewing his or her examination, any applicant who feels errors were made in grading may file with the Commission a Petition for Grade Review. That petition must be filed within fifteen (15) days of the date he or she reviewed his or her written examination in the Commission's offices. The petition should set out in detail the errors the applicant believes were made in the grading of his or her examination. An applicant may file supporting information to substantiate his or her petition. A petition not timely filed shall not be considered.

G. Review Procedure. The Executive Director will submit an applicant's Petition for Grade Review, examination, and answer sheet to the specialty's Advisory Board. All information will be submitted to the Advisory Board in blind form with no identifying information on any document furnished the Advisory Board. The Advisory Board shall review the entire examination of any applicant requesting a review of his or her grade and shall recommend to the Commission that the applicant's grade remain the same or be changed. The Advisory Board's recommendation to the Commission shall be in writing, shall specify the reasons why the Advisory Board reached its recommendation, and shall be submitted within sixty (60) days from the receipt of the Petition for Grade Review unless that period is extended by the Executive Director for good cause.

H. Decision of the Commission. The Commission shall consider a Petition for Grade Review and the recommendation of the Advisory Board pertaining thereto at its first meeting following receipt of the Advisory Board's recommendation. The Commission's decision on whether the applicant passed or failed the examination shall be final.

## **IX. SPECIALIZATION FEES**

The following fees, which may be adjusted as necessary, have been established for the specialization program:

A. Application Fee. A fee of \$100.00 shall be assessed for each application for certification that is submitted. The applicant is not entitled to a refund of the application fee or any portion thereof if his or her application is returned, rejected, or withdrawn.

B. Examination Fee. An examination fee may be instituted if deemed necessary by the Commission to help defray the expense of administering the specialization program.

C. Certification Fee. A fee of \$100.00 is due and payable by an applicant who has been notified that he or she has been approved for certification by the Court. Payment of the certification fee is a prerequisite to issuance of a certificate of specialization.

D. Application Fee for Approval as an Independent Certifying Organization. Independent certifying organizations filing applications for approval to issue certificates of specialization to South Carolina lawyers shall pay a nonrefundable application fee of \$500.00 for each field of the law in which an applicant proposes to offer specialization.

E. Annual Administrative Fee. Each independent certifying organization approved to issue certificates of specialization to South Carolina lawyers shall pay an annual administrative fee of \$500.00 for each field of the law in which it is approved to issue certificates of specialization.

F. Filing Fees. When reporting compliance with a specialty field's annual CLE requirements, each certified specialist shall pay an annual filing fee in an amount specified by the Commission for each such report he or she files with the Commission. Reports filed after the reporting deadline of March 1 (as determined by USPS postmark) shall be assessed a late filing fee in an amount equal to the late filing fee charged active South Carolina Bar members who do not file reports of compliance by March 1.

## **X. REPORTING COMPLIANCE WITH CLE REQUIREMENTS**

### **A. Specialists Certified by the Court.**

1. Reports of Compliance. On forms prepared by the Commission and available through its offices, each specialist certified by the Court shall, not later than March 1 of each year, file a report of compliance with the CLE requirements of each of the relevant specialty field. In addition to CLE requirements imposed by the specialty field, the specialist shall annually report at least two (2) hours of LEPR. Any specialist who reports more than two (2 ) hours of LEPR credit in any annual reporting period may carry forward up to two (2) hours of LEPR credit to the next annual reporting period.

2. Annual Certified Specialist Statement. On forms prepared by the Commission, and available though its offices, each certified specialist shall, not later than March 31 of each year, file a statement pertaining to the nature of the specialist's practice and disclosing whether, during the preceding year, the specialist has been the subject of disciplinary actions, malpractice claims (including claims settled by payments), and/or any criminal convictions, excluding minor traffic offenses. Failure or refusal to file this report may result in revocation of certification.

**B. Specialists Certified by Independent Certifying Organizations.** Lawyers who are certified by approved independent certifying organizations shall comply with the annual CLE requirements of such organizations and shall, not later than March 1 of each year, file an annual CLE report with the Commission on forms prepared by and available through the Commission's offices. Requirements of an independent certifying organization notwithstanding, each such specialist shall complete and report annually to the Commission a minimum of fourteen (14) hours of approved CLE of which at least two (2) hours must be directed to LEPR. Specialists reporting more than two (2) hours of LEPR credit in any annual reporting period may carry forward to the next annual reporting period up to two (2) hours of his or her excess LEPR credit.

## **XI. HEARING AND APPEAL**

A. Denial of Certification or Recertification. An applicant denied certification or recertification by an Advisory Board may request a hearing by petitioning the pertinent Advisory Board (through the Commission's Executive Director) within thirty (30) days after notice is mailed by the Commission that his or her certification or recertification has been denied. However, an applicant who is denied certification because of his or her failure to receive a passing score on a specialty field's written examination may not petition for a hearing pursuant to this paragraph, but may review his or her examination and petition for a review of his or her grade as provided in Regulation VIII, *supra*. No particular form is prescribed for a petition requesting a hearing pursuant to this paragraph, but such a petition shall be in writing and shall set forth in detail the basis upon which the appeal is predicated. Any petition for a hearing not timely filed shall be rejected.

### **B. Hearing Procedures.**

1. Notice: Time and Place of Hearing. The pertinent Advisory Board shall fix a time and place for the hearing as soon as practical after a petition requesting a hearing is received and shall notify the applicant thereof. Such notice shall be given to the applicant at least fifteen (15) days prior to the time fixed for the hearing. Hearings shall normally be held in the South Carolina Bar Building located at 950 Taylor Street in Columbia, South Carolina; however consideration shall be given to any special circumstances affecting the applicant's ability to travel to Columbia.

2. Quorum. A majority of the Advisory Board shall constitute a quorum. All decisions by the Advisory Board shall be by majority vote of those members present and voting.

### **3. Conduct of Hearings: Rights of Parties.**

(a) Hearings shall be reported by a certified court reporter. The applicant shall pay the reporter's fees and shall not be provided a

transcript until those fees are paid. In its sole discretion, the Commission may pay or refund to the applicant the reporting and transcript costs. The applicant shall be entitled to counsel at all stages of the investigation and at all hearings and shall have the right to attend all hearings with his or her counsel. The Advisory Board may seek the services of the Office of the Attorney General. Oral evidence shall be taken on oath or affirmation. The applicant shall have the right to testify in his or her behalf unless that right is waived or the applicant fails to appear at the hearing. An applicant who does not testify on his or her behalf may be called and examined, as if under cross-examination, by the Board, the Executive Director, or any attorney appointed by the Advisory Board to represent it. Failure to appear at a hearing ordered by an Advisory Board, after receiving written notice, shall constitute a waiver by the applicant of his or her right to appeal to the Commission and the Court. The applicant is responsible for all costs associated with his or her appearance including, in addition to the reporter's fees indicated above, travel and lodging costs, counsel fees, witness fees, and fees for document reproduction.

(b) At any hearing, the applicant, the Advisory Board, Executive Director, and any attorney appointed by the Advisory Board to represent it, shall have the right to call and examine witnesses; to introduce exhibits; to cross examine witnesses pertaining to any matter relevant to the issues; to impeach witnesses; and to rebut evidence.

(c) The Chairperson of the Advisory Board or a member appointed by the Chairperson shall preside at the hearing. Strict rules of evidence shall not apply, but the presiding officer is authorized to make evidentiary rulings.

(d) Any hearing may be recessed or adjourned from time to time at the discretion of the Advisory Board to allow for the development of additional evidence if such is deemed necessary to a full, fair, and just determination of the issues before the



Advisory Board.

(e) The hearing shall be completed within ninety (90) days after receiving applicant's request for hearing.

(f) Within thirty (30) days after completing the hearing, the Advisory Board shall notify the applicant and the Commission of its action on applicant's appeal.

4. Oaths. The presiding member of an Advisory Board shall have the authority to administer oaths to witnesses appearing before the Advisory Board.

5. Notices. Notices required by this Regulation and by Regulations VIII and XII may be served by delivering a copy of the notice or the document to be served to the party to be served, or his or her attorney of record, either in person or by registered or certified mail at his or her last known address.

### C. Appeals.

1. Appeal to the Commission. An appeal may be taken to the Commission from a decision of an Advisory Board which denies certification or recertification to an applicant or which revokes a specialist's certification. Any such appeal must be received by the Commission not later than thirty (30) days after notice of the Advisory Board's decision was delivered or mailed to the applicant. No particular form is prescribed for such appeals, but the basis for the appeal should be set forth in detail.

### 2. Supreme Court.

(a) Except as provided otherwise in Regulation VIII, *supra*, with respect to issues pertaining to a failure to achieve a passing grade on a specialty field's written examination, an applicant may appeal to the Court an adverse decision of the Commission concerning his or her certification, recertification, or revocation

of certified status. An appeal is accomplished by filing written notice of intention to appeal within ten (10) days after receipt of the Commission's adverse decision. Notice of appeal shall be filed with the Clerk of the Court and with the Commission's Executive Director.

(b) Procedures for the appeal shall be prescribed by the Court after an applicant files notice of intention to appeal.

## **XII. REVOCATION OF CERTIFICATION**

A. General. See Rule 408(g), SCACR. An Advisory Board may revoke certification of any attorney if the certification program for that specialty field is terminated or if it is determined, after hearing on appropriate notice, that:

1. Certification was granted contrary to the Advisory Board's Standards and Procedures, the Commission's Regulations, or the Court's Rules; or
2. Certification was granted to an attorney who was not eligible for certification in the specialty or who made any false representations or misstatements of material facts; or
3. A certified lawyer has failed to abide by all Advisory Board Standards and Procedures, Commission Regulations, and Court Rules, as amended from time to time; or
4. A certified lawyer has failed to meet the continuing legal education requirements of the specialty field or to file the annual CLE report or to pay the fees prescribed by the Commission; or
5. A certified lawyer no longer meets the minimum standards for certification established by the Advisory Board's Standards and Procedures, including practice of law and substantial involvement requirements.

B. Hearing Procedures. The rules specified in Regulation XI B, supra, shall govern hearings held by Advisory Boards for the purpose of revoking an attorney's certification. However, provisions of Regulation XI B to the contrary notwithstanding, a certified attorney shall be entitled to thirty (30) days notice of the time and place of the hearing to determine if his or her certification should be revoked and he or she shall not be required to pay the court reporter's fees.

C. Report to Certified Attorney and the Commission. Within thirty (30) days after completing its hearing, unless that period is extended by the Executive Director for good cause, the Advisory Board shall notify the certified lawyer and the Commission of its decision with respect to revocation of the attorney's certification.

D. Appeals. See Regulation XI C, supra.

E. Disbarment. Disbarment or suspension of a certified attorney shall automatically revoke his or her certification.

### **XIII. EFFECTIVE DATE**

These Regulations shall be effective May 1, 1994 or whenever approved by the Supreme Court of South Carolina, whichever date is later.

Amended by Order dated September 7, 2006.

**APPENDIX E  
REGULATIONS FOR SPECIALTY FIELDS**

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

**EMPLOYMENT AND LABOR LAW SPECIALIZATION ADVISORY  
BOARD**

**ESTATE PLANNING AND PROBATE LAW SPECIALIZATION  
ADVISORY BOARD**

**TAXATION LAW SPECIALIZATION ADVISORY BOARD**

**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 4.60 hours of continuing legal education credit.

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 an 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 all 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.

#### 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 the 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 the 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.

Approved November 6, 1992 by Order of the Supreme Court of South Carolina

# **EMPLOYMENT AND LABOR LAW SPECIALIZATION ADVISORY BOARD**

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

By virtue of the authority vested in the Employment and Labor Law Specialization Advisory Board (Board) and the Commission on Continuing Legal Education and Specialization (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 employment and labor 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 employment and labor 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 employment and labor law.

B. No lawyer shall be required to obtain a certificate in employment and labor 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 employment and labor law, even though not certified therein.

C. All applicants for certification or recertification in employment and labor law must be active members in good standing with the South Carolina Bar and shall meet the requirements for certification or recertification prescribed by the Board.

D. Certification in employment and labor 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 years at the end of which time recertification shall be permitted as indicated in § IV below.

G. Employment and Labor Law is the practice of law dealing with all aspects of employment relations (public and private) including, but not limited to, unfair labor practices, collective bargaining, contract administration, the rights of individual employees and union members, employment discrimination; all matters arising under the National Labor Relations Act (Wagner Act), Labor Management Relations Act (Taft-Hartley Act), Labor Management Reporting and Disclosure Act (Landrum-Griffin Act), Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, other federal statutes and analogous state statutes; practice before the National Labor Relations Boards, analogous state boards, federal and state courts, and arbitrators.

H. Applicants for certification or recertification shall furnish satisfactory evidence of their good character and reputation. Unless otherwise prohibited by the 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; 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 punishable by confinement for one (1) year or more, 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 punishable by confinement for one (1) year or more.

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 employment and labor 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 employment and labor 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 each applicant to disclose any information needed to determine whether to present his/her application to the Court for certification. The Board not only may 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 two (2) or more judges before whom they have practiced and of five (5) lawyers engaged in the "practice of law," as defined in § II A, who are familiar with the applicant's practice and who are not partners, associates, or 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 employment and labor law. At least one (1) of the five (5) lawyers must be an employment and labor law specialist currently certified by the Supreme Court of South Carolina. 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 other requirements herein, 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 providing legal advice or representation. Service, after admission to the Board of any state or District of Columbia, as a judge of any court of record, as an administrative law judge, arbitrator, law teacher or judicial clerk (at state and federal courts and administrative agencies) shall be considered the practice of law. Corporate or government service, including military service, as an attorney, after admission to the Board 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.

## B. Substantial Involvement

Applicants must show substantial involvement and special competency in employment and labor 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 their time devoted to the practice of employment and labor law as defined herein (see § I G) was not less than 35% of a normal full-time practice of law, and

2. that their practice of employment and labor law has included substantial experience in at least two (2) of the five (5) employment and labor law areas indicated below:

- a. Labor-Management Relations Act (union elections; unfair labor practices)

- b. Collective Bargaining Agreements (negotiation, arbitration, and §301 actions)

- c. Employment Discrimination (Title VII, Age Discrimination in Employment Act, Equal Pay Act, Americans with Disability Act, South Carolina Human Affairs Law, and Compliance with E.O. 11,246)

- d. Individual Employment Rights (wrongful discharge--handbook cases, public policy cases, breach of duty of "good faith," and intentional infliction of emotional distress; workers' compensation retaliation claims, whistle blower claims;

covenants not to compete; drug/alcohol testing; and miscellaneous privacy issues)

e. Miscellaneous (Landrum-Griffin Act, public employee issues-- both statutory and constitutional, Occupational Safety and Health Act, Employee Retirement Income Security Act, Fair Labor Standards Act, Davis-Bacon Act, state-law wage payment claims, Railway Labor Act, Immigration Reform & Control Act, WARN -- plant closings, veterans' employment rights, and negligent hiring/supervision).

### C. Continuing Legal Education - Minimum Requirements

During the five (5) years preceding application for initial certification (or appropriate lesser period if any of the practice or substantial involvement requirements of § II A & B are waived), applicants must have earned credit for not less than sixty (60) hours of continuing legal education (CLE) in approved courses or programs dealing with employment and labor law. Not more than twenty (20) hours of the required sixty (60) hours of CLE may be in trial advocacy type courses. For the purpose of this requirement, "approved courses or programs" shall mean courses/programs accredited by the Board for the employment and labor law specialty or courses/programs that would qualify for such accreditation.

### D. Oral Interview/Examination

Applicants for initial certification must appear personally before the Board for an oral interview/examination. Applicants must demonstrate sufficient knowledge, proficiency, competency, and experience in employment and labor law to justify the representation of special competency to the legal profession and to the public.

### 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 an applicant's failure to furnish requested information or because of misrepresentation of any material fact requested by the Board.

## III. REQUIREMENTS FOLLOWING CERTIFICATION

A. The annual continuing legal education (CLE) requirement for all certified employment and labor law specialists shall be 15 hours of approved specialty CLE. CLE credit in excess of 15 hours may be carried forward to the next annual reporting period. Provided, however, that each annual reporting period, certified specialists in employment and labor law shall complete at least nine (9) hours of specialty CLE without regard to any carry forward credit from the prior annual reporting period. "Approved specialty continuing legal education" means educational activities accredited by the Board for the specialty.

B. Each 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 employment and labor law (see § II A & B, regarding the meaning of "practice of law" and "substantially involved in the practice of employment and labor law"). Should any certified specialist cease to practice law or to be substantially involved in the practice of employment and labor 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 employment and labor law may constitute grounds for decertification of the individual concerned.

D. During any period of initial or subsequent certification, each certified specialist shall report to the Commission any administrative action or malpractice claim in which settlement is made or suit is filed and unless otherwise prohibited by the Rules for Lawyer Disciplinary Enforcement, shall likewise report to the Commission any case in which he/she 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 employment and labor law as may be required by the Board. However, except as provided in § IV C below, requirements for recertification shall not exceed the requirements for original certification.

C. To qualify for recertification, applicants must demonstrate the completion of a minimum of seventy-five (75) hours of approved specialty continuing legal education (CLE) in the five (5) years since their original or latest certification. Of the seventy-five (75) hours CLE required for recertification, not more than thirty (30) hours 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 employment and labor law except that a waiver may not be granted to certify an individual who has not practiced law for at least three (3) years and who has not been substantially involved in the practice of employment and labor law for at least three (3) years. 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, and supersede all prior Employment and Labor Law Specialization Advisory Board Standards and Procedures for Certification, Recertification, and Decertification.

Approved by the South Carolina Supreme Court December 8, 1992.

## **ESTATE PLANNING AND PROBATE LAW SPECIALIZATION ADVISORY BOARD**

### **STANDARDS AND PROCEDURES FOR CERTIFICATION, RE-CERTIFICATION, AND DECERTIFICATION**

By virtue of the authority vested in the Estate Planning and Probate 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 estate planning and probate 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 estate planning and probate 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 estate planning and probate law.

B. No lawyer shall be required to obtain a certificate in estate planning and probate 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 estate planning and probate law, even though not certified therein.

C. All applicants for certification or recertification in estate planning and probate law must be active members in good standing with the South Carolina Bar, and shall meet the requirements for certification or recertification prescribed by the Board.

D. Certification in estate planning and probate 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 years at the end of which time recertification shall be permitted as indicated in § IV, below.

G. Estate Planning and Probate Law is the practice of law dealing with all aspects of the analysis and planning for the conservation and disposition of estates, giving due consideration to: applicable tax consequences; the preparation of legal instruments in order to effectuate estate plans; and the administration of estates, including all tax-related matters.

H. Applicants shall furnish satisfactory evidence of their good character and reputation. 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 or a court 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 fact 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 will provide information in the 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 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 estate planning and probate 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 estate planning and probate 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 not only may 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 Supreme Court.



K. Each applicant shall submit the names and addresses of five (5) lawyers engaged in the “practice of law,” as defined in § II A, who are familiar with the applicant’s practice and who are not partners or associates or 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 estate planning and probate law. 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 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 estate planning and probate 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 have devoted a minimum of 35% of their time practicing estate planning and probate law as defined herein (see § I G). Applicants must show such substantial involvement and special competency in estate planning and probate law during each of such five (5) years by providing information as may be required by the Board regarding both the following categories:

### 1. Estate Planning

Requires, to the satisfaction of the Board, an adequate involvement in a substantial portion of the activities described in each of the following paragraphs:

(a) Counseled persons in estate planning, including giving advice with respect to wills, powers of attorney, trusts, transfers, business arrangements and agreements, and other matters primarily involving estate planning, including but not limited to the tax aspects of the activities listed herein.

(b) Prepared or supervised the preparation of estate planning instruments, e.g., simple and complex wills, including provisions for testamentary trusts, marital deduction, and elections; revocable and irrevocable inter vivos trusts, including short-term and minor trusts; business planning agreements including stock agreements; and estate and gift tax liability and returns including representations before the Internal Revenue Service in connection with such liability or returns.

2. Estate Administration (Probate). Requires, to the satisfaction of the Board, an adequate involvement in a substantial portion of the activities described in each of the following paragraphs:

(a) Handled, advised, or supervised with respect to the probate and/or administration of decedent's estates, trusts, guardianships, conservatorships, determinations of heirship, will contests, construction suits, and court proceedings held thereon.

(b) Prepared, reviewed, supervised, or gave advice concerning the preparation of Federal Estate Tax Returns, state inheritance/estate tax returns, and U.S. Fiduciary Income Tax returns, including representation before the Internal Revenue Service, South Carolina or other state taxing authorities, or the courts in connection with such tax returns and related tax controversies.

#### C. CONTINUING LEGAL EDUCATION - MINIMUM REQUIREMENTS

During each of the five (5) years preceding application, applicants must have earned credit for not less than twelve (12) hours of continuing legal education in approved courses or programs dealing with estate planning and probate law. For this purpose "approved courses or programs" shall mean courses/programs accredited by the Board for the estate planning and probate law specialty or courses/programs that would qualify for such accreditation.

#### D. EXAMINATION

Applicants for certification must pass an oral interview/examination and upon successful completion thereof, must take and pass a written examination to demonstrate sufficient knowledge, proficiency, and experience in estate planning and probate 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, 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 an 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 all certified specialists in estate planning and probate law shall complete not less than twelve (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 which requires ninety (90) hours CLE credit 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.

C. During the period of certification, all certified specialists must continue to practice law and to be substantially involved in the practice of estate planning and probate law (see § II A & B, regarding the meaning of "practice of law" and "substantially involved in the practice of estate planning and probate law"). Should any certified specialist cease to practice law or to be substantially involved in the practice of estate planning and probate 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 estate planning and

probate law may constitute grounds for decertification of the individual concerned.

#### 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 estate planning and probate 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 ninety (90) hours of approved specialty continuing legal education in the five (5) years since their original or latest certification.

#### V. REVOCATION OF CERTIFICATION

The Board may revoke the certification of any lawyer if the certification program for this field is terminated 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 estate planning and probate law except that a waiver may not be granted to certify an individual who has not practiced law for at least three (3) years or to excuse any 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 October 31, 1990, or whenever approved by the South Carolina Supreme Court, whichever date is later, and supersede all prior Estate Planning and Probate Law Specialization Advisory Board Standards and Procedures for Certification, Recertification, and Decertification.

# **TAXATION LAW SPECIALIZATION ADVISORY BOARD**

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

By virtue of the authority vested in the Taxation 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 taxation 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 taxation 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 taxation law.

B. No lawyer shall be required to obtain a certificate in taxation 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 taxation law, even though not certified therein.

C. All applicants for certification or recertification in taxation law must be active members in good standing with the South Carolina Bar, entitled to practice before the Internal Revenue Service, and shall meet the requirements for certification or recertification prescribed by the Board.

D. Certification in taxation 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. Taxation Law is defined as the practice of law dealing with all matters arising under the Internal Revenue Code and the taxation provisions of the

Employee Retirement Income Security Act (ERISA), and state and local tax laws, including counseling and practice before federal and state courts and governmental agencies with respect thereto.

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 fact of the grievance, the passage of time since such discipline, 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 taxation 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 taxation 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 an applicant to disclose any information needed to determine whether to present his/her application to the Court for certification. The Board not only may 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 Supreme Court.

K. Each applicant shall submit the names and addresses of five (5) lawyers engaged in the "practice of law," as defined in § II A, who are familiar with the applicant's practice and who are not partners or associates or 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 taxation law. At least two (2) of the five (5) lawyers must be currently certified taxation 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 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 taxation law practice during the five (5) years immediately preceding application by providing such information as may be required by the Board.

1. During each of the five (5) years immediately preceding application, applicants must show:

- (a) that they have devoted a minimum of 50% of their time practicing taxation law as defined herein (see § I G) and

- (b) that their time devoted to the practice of taxation law equals at least 50% of a full-time practice of law.

Thus, the test for substantial involvement has two parts. The first part is subjective, relating to the individual applicant's practice, and it requires that at least 50% of that practice be devoted to taxation 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 four (4) hours a day and twenty (20) hours per week involved in taxation law practice.

2. In satisfying the 50% requirement in § II B 1 (a), an applicant may count, as time devoted to the practice of taxation law, the entire time devoted to a matter involving both taxation and other fields or areas of law, provided that at least one-half of the applicant's time devoted to such mixed matters is spent on taxation law. However, an applicant may not satisfy more than one-half of the 50% requirement in § II B 1 (a) by the time devoted to practice in a mixed taxation and non-taxation field of law for which a certified specialty is available under Rule 408, SCACR. For example, if an applicant devotes 20% of his/her practice to income taxation, 60% to estate planning, and 20% to other areas or fields, he/she could satisfy no more than one-half of that 50% requirement by his/her estate planning practice since a certified specialty is available in estate planning and probate law. The applicant in this illustration would, therefore, fail the 50% requirement of § II B 1 (a) since he/she could count only 25% from estate planning (1/2 of 50%) and 20% from income taxation, giving a total of 45% of his/her time devoted to taxation practice (5% short of the 50% requirement).

### C. Continuing Legal Education – Minimum Requirements

During the five (5) years preceding application for initial certification (or appropriate lesser period if any of the practice or substantial involvement requirements of § II A & B are waived), applicants must have earned credit for not less than seventy-five (75) hours of continuing legal education in approved courses or programs dealing with taxation law. For this purpose "approved courses or programs" shall mean courses/programs accredited by the Board for the taxation 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 taxation law to justify the representation of special competency to the legal profession and to the public. The requirement for a written examination may be waived for any applicant who has been awarded a Masters degree (LLM) in taxation by an ABA accredited law school not more than five (5) years prior to receipt of his/her application by the Commission. 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. The requirement for a written examination shall apply to all applications received after March 1, 1992.

#### 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 an 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 all certified specialists in taxation law shall complete not less than fifteen (15) 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. Certified specialists 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 taxation law (see § II, A & B, regarding the meaning of “practice of law” and “substantially involved in the practice of taxation law”). Should any certified specialist cease to practice law or to be substantially involved in the practice of taxation 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 taxation 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 is filed and unless otherwise prohibited by the Rules for Lawyer Disciplinary Enforcement, shall likewise report to the Commission any case in which he/she 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 taxation 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 one hundred-fifty (150) hours of approved specialty continuing legal education in the five (5) years since their original or latest certification.

## V. REVOCATION OF CERTIFICATION

The Board may revoke the certification of any lawyer if the certification program for this field is terminated 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 taxation law except that a waiver may not be granted to certify an individual who has not practiced law for at least three

(3) years and who has not been substantially involved in the specialty for at least three (3) years. 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 October 31, 1991, or whenever approved by the South Carolina Supreme Court, whichever date is later, and supersede all prior Taxation Law Specialization Advisory Board Standards and Procedures for Certification, Recertification, and Decertification.

Adopted by South Carolina Supreme Court 12/4/91.

Amended by Order dated September 7, 2006.

# The Supreme Court of South Carolina

In the Matter of Dallas D. Ball,            Petitioner.

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## ORDER

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On October 15, 2001, petitioner was indefinitely suspended from the practice of law. In the Matter of Ball, 347 S.C. 122, 554 S.E.2d 36 (2001). Petitioner has now filed a petition for reinstatement. The Committee on Character and Fitness recommends the petition be granted upon certain conditions.

We grant the petition for reinstatement, subject to the following conditions:

1. For the first two years of his reinstatement, petitioner shall retain an outside accountant to reconcile his law office accounts.
2. The accountant shall file quarterly reports concerning the status of petitioner's law office accounts with the Office of Disciplinary Counsel (ODC). ODC, petitioner's counsel, and the



accountant shall together establish the format for the quarterly reports.

Petitioner's failure to cooperate with the outside accountant or to insure that the quarterly reports are filed with ODC may result in a finding of contempt or the suspension of his license to practice law in this state.

IT IS SO ORDERED.

s/ Jean H. Toal \_\_\_\_\_ C.J.  
FOR THE COURT

Columbia, South Carolina

September 7, 2006

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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Elaine M. Fuller, Respondent,

v.

William F. Fuller, Appellant.

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Appeal From Greenville County  
Aphrodite K. Konduros, Family Court Judge

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Opinion No. 4150  
Heard June 6, 2006 – Filed September 11, 2006

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**AFFIRMED IN PART,  
REVERSED IN PART,  
AND REMANDED**

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Richard H. Rhodes, of Spartanburg, for Appellant.

David Alan Wilson and Kenneth C. Porter, both of  
Greenville, for Respondent.

**BEATTY, J.:** In this domestic action, William F. Fuller (Husband) appeals the awards of equitable distribution, alimony, and expert fees to his former wife, Elaine M. Fuller (Wife). Husband also appeals the finding that a real estate holding company was a marital asset. We affirm in part, reverse in part, and remand.

## **FACTS**

Husband and Wife married in 1980, and two children were born of the marriage: William in 1982, and Brittany in 1985. When the couple first married, Wife was employed at South Carolina National Bank. Later, the couple moved to Charlotte and Wife began working in a clothing boutique. During this time, Husband worked at Owens Corning. While Husband and Wife lived in Charlotte, they became interested in selling real estate and attended classes. Upon finishing, they relocated to Greenville, where both still reside. Wife continued to work in real estate until the birth of the couple's children. At that point, Wife became the party primarily responsible for caring for the children and taking care of the home. The couple and their children lived an affluent lifestyle. The parties had a large home in an exclusive area of Greenville, belonged to a country club, and took numerous family vacations. Wife stated that she did not really think about money and bought whatever she wanted for herself and the children.

Early in the marriage, Husband began to work at American Federal Bank and simultaneously began a residential construction company, Fulco Homes (Fulco). Husband and Wife were each fifty percent shareholders in the company. After eight years, Husband was able to pursue Fulco full-time. In exchange for periodically working as a decorator and doing whatever else needed to be done for Fulco, Wife received a salary of \$18,000 from Fulco. Husband began Fulco with a loan from his aunt that he repaid in monthly installments with interest. When Husband's aunt died, the unpaid balance of the loan amounted to over \$200,000. However, Husband was the beneficiary of aunt's estate, and the debt was forgiven.

Husband and Wife each had interests in numerous companies. In 1989, Husband formed CF Enterprises, a real estate holding company, with his

cousin, Ben Crumpler. Wife's father started Maxwell Family, LLC, (Maxwell Family), which owned a one-third interest in Stonehaven Subdivision Development and various other properties held just for investment purposes. Wife's father gave a fifteen point ninety-four percent interest in Maxwell Family to Wife and a five percent interest to Husband. Both of these interests were gifts, and it is undisputed they are nonmarital. In 2002, Wife received \$74,000 from Maxwell Family and Husband received \$26,000. In 2003, by the time of the final hearing, Wife received \$38,000 and expected to receive around \$4,000 more. Because the neighborhood was being "developed out," there were fewer lots remaining and eventually the income from Maxwell Family would dissipate. Additionally, the parties' company, Fulco, did most of its building in the Stonehaven Subdivision.

Wife had interests in other family enterprises, including Maxwell Road Developers<sup>1</sup> and the Maxwell Family Trust. Wife's father also conveyed to Wife a one-ninth interest in Kensington Apartments, LLC (Kensington), which owned and managed one hundred sixty-eight apartment units. Wife received an income from Kensington of \$2,500 per month.

In March 2002, Wife discovered Husband was having an affair, and she and Brittany moved to one of the apartment units at Kensington. On April 4, 2002, Wife filed the underlying action, seeking divorce on the ground of adultery, custody of Brittany, child support, alimony, and equitable division of the marital estate. Husband admitted his misconduct and also requested equitable division of the marital estate. At the temporary hearing, the family court awarded Wife custody of Brittany and ordered Husband to pay \$1,800 a month in unallocated support.

The final hearing was held in October 2003. Husband and Wife agreed that the assets should, for the most part, be split evenly between the two. Although Wife blamed the breakup of the marriage on Husband's adultery, Husband blamed Wife's overspending and the parties' disagreements on rearing the children. After hearing testimony from both Husband and Wife, the family court granted Wife a divorce based on Husband's adultery. The

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<sup>1</sup> Maxwell Family has a one-third interest in Maxwell Road Developers.

family court found custody was not an issue because both children were over the age of eighteen, but the court ordered child support of \$583 per month to support Brittany throughout her senior year of high school. The court also ordered Husband to pay Wife periodic alimony in the amount of \$1,200 per month.

The court ordered a split of the remaining marital assets with forty-nine percent going to Husband and fifty-one percent going to Wife. This included CF Enterprises, which Husband maintained was nonmarital. The court ordered Husband to sell the marital home and awarded him eighty-five percent of the house's proceeds after the mortgage was fully paid. The court used the appraisal commissioned by Husband in assessing the value of the home for \$650,000. Wife received several bank accounts and an IRA worth \$250,000. Finally, the court ordered Husband to pay Wife's attorney's fees and various fees for experts used in assessing the value of the marital property.

Husband filed a timely motion to reconsider and argued, *inter alia*, that the marital home sold for \$615,000 after the final hearing rather than the appraised value of \$650,000. Husband asserted that because the court awarded him eighty-five percent of the proceeds of the house, his share of the marital assets was substantially reduced and he received closer to forty percent rather than the fifty percent envisioned by the parties. Further, Husband contended he was further prejudiced because the IRA, which the court awarded Wife, substantially increased after the final hearing. On reconsideration, the court adjusted the distribution to account for the inadvertent double counting of the value of a life insurance policy and likewise reduced Wife's interest in Husband's 401k to effectuate a fifty-one/forty-nine split. The court denied Husband's requests to consider the post-hearing increase in the value of the IRA and the actual sales price of the marital home in adjusting the marital distribution. This appeal followed.

### **STANDARD OF REVIEW**

On appeal from the family court, this court has the authority to find facts in accordance with its own view of the preponderance of the evidence.

Rutherford v. Rutherford, 307 S.C. 199, 204, 414 S.E.2d 157, 160 (1992). This broad scope of review does not require us to disregard the family court’s findings, and we remain mindful of the fact the family court, who saw and heard the parties, is in a better position to evaluate their credibility and assign weight to their testimony. Cherry v. Thomasson, 276 S.C. 524, 525, 280 S.E.2d 541, 541 (1981).

## LAW/ANALYSIS

### I. Equitable Division

We first consider the equitable distribution award. Husband argues the family court’s error in using the value of the marital home and the IRA provided at the time of the final hearing resulted in Husband receiving only a forty-two percent distribution of the marital assets. Specifically, Husband contends that in the six months between the time of the final hearing and when the family court issued the divorce decree, the marital home sold for \$35,000 less than the appraisal and the IRA that was awarded to Wife increased in value by \$40,000. Therefore, Husband maintains the family court’s error resulted in his distribution of the marital estate being only forty-two percent rather than the fifty percent the parties agreed to. We disagree.

#### A. Time of Valuation

Generally, in South Carolina marital property subject to equitable distribution is valued as of the date marital litigation is commenced. Fields v. Fields, 342 S.C. 182, 186, 536 S.E.2d 684, 686 (Ct. App. 2000); see Jamar v. Jamar, 308 S.C. 265, 267, 417 S.E.2d 615, 616 (Ct. App. 1992) (“The proper date to value marital property is the time the marital litigation is filed or commenced.”). However, “the parties may be entitled to share in any appreciation or depreciation in marital assets occurring after separation but before divorce.” Fields, 342 S.C. at 186, 536 S.E.2d at 686 (emphasis added); Dixon v. Dixon, 334 S.C. 222, 228, 512 S.E.2d 539, 542 (Ct. App. 1999) (“[G]iven the volume of cases handled by our family courts, there often is a substantial delay between commencement of an action and its ultimate resolution. Thus, it is not unusual for the value of marital assets to

change, sometimes substantially, between the time the action was commenced and its final resolution. In such a case, the family court has the ability to consider the post-filing appreciation or depreciation when valuing and apportioning the marital estate.”).

In the present case, Husband argues the family court erred in the date on which it valued the marital home and the IRA. Initially, we note that the family court valued the IRA at \$250,798. The family court used the IRA’s value on the date the final hearing was held rather than the value on the date litigation was commenced. Although the family court did not specify a reason for departing from the general rule that the valuation occurs the date litigation begins, we find the departure benefited Husband. The family court awarded Wife the IRA and any increase in value was taken into account because the family court gave each party nearly fifty percent of the marital estate.

Husband cites Mallet v. Mallet, 323 S.C. 141, 473 S.E.2d 804 (Ct. App. 1996), for the proposition that when marital property depreciates or appreciates through no fault of either party, it would be “grossly unfair” not to adjust the value. Mallet, 323 S.C. at 151, 473 S.E.2d at 810. Husband fails to realize, however, that Mallet affirmed valuation of a spouse’s business at the time of the final hearing where the business had declined in value since commencement of the divorce action. Id. We are aware of no case law, and Husband points to none, that requires the family court to reassess any increase in value that occurs after the final hearing. Accordingly, the family court did not err by failing to consider the IRA’s increase after the final hearing.

A real estate appraiser, hired by Husband, testified at the final hearing that the value of the marital home was \$650,000.<sup>2</sup> The final hearing occurred in October 2003, the family court issued the divorce decree on April 2, 2004, and the house sold on May 12, 2004, for \$615,000. Because the house sold after the family court issued the divorce decree, we find no error in the family

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<sup>2</sup> Despite the appraisal, Husband listed the house for \$669,000 and the house remained on the market for over a year before selling.

court's failure to reconsider the valuation of the house. Further, the family court has broad discretion in valuing marital property, and we discern no error in the court's reliance on the value presented by Husband's expert. See Fields, 342 S.C. at 187, 536 S.E.2d at 686 ("The family court has broad discretion in valuing marital property such that this Court will affirm when the findings below are supported by the evidence.").

## **B. Distribution**

Husband argues the distribution of the parties' assets and debts were unfair to him because the family court's valuation of the house and IRA resulted in Husband receiving only forty-two percent of the marital assets. We disagree.

Absent an abuse of discretion, the apportionment of marital property will not be disturbed on appeal. Deidun v. Deidun, 362 S.C. 47, 58, 606 S.E.2d 489, 495 (Ct. App. 2004). On appeal, we look to the overall fairness of the apportionment and if the end result is equitable, it is irrelevant if we would have arrived at a different apportionment. Id.

In determining an equitable distribution of marital property, the family court must identify, value, and then equitably apportion the property. Johnson v. Johnson, 288 S.C. 270, 276, 341 S.E.2d 811, 815 (Ct. App. 1986). The court must consider several factors in making an equitable distribution. S.C. Code Ann. § 20-7-472 (Supp. 2005) (outlining fifteen factors for the family court to consider in equitable distribution). Included in those factors is the marital misconduct of either party. S.C. Code Ann § 20-7-472(2) (Supp. 2005) (noting that marital fault is one of the factors to be considered).

At the final hearing, both parties indicated they believed a fifty-fifty split of the marital assets would be fair. In equitably dividing the marital estate, the family court relied on the values of the assets presented at trial, including the \$650,000 value of the marital home and the then-current value of the IRA. The award to Wife amounted to fifty-one percent of the marital estate, while the Husband's award was forty-nine percent. At the hearing on the motion for reconsideration, the family court realized that one asset was



counted twice. The court requested assistance from the parties' attorneys on how best to recalculate the distribution to stay within the "49/51 split." The order on reconsideration adjusted the distribution to stay within those percentages.

As previously addressed, we believe the family court did not abuse its discretion in relying on the values of the home and the IRA at the time of the final hearing. Although the marital home was still for sale at the time of the final hearing, thus the final value was uncertain, Husband's appraisal valued the home at \$650,000. The court awarded Husband eighty-five percent of the house's proceeds. In light of the fact the court attributed the break-up of the marriage to Husband's infidelity, it was not unfair that Husband should be the bearer of the risk that the house should sell for less than the appraisal. Likewise, the increase or decrease in the value of the IRA after the final hearing was uncertain and subject to fluctuating market conditions. We find no error with the court's failure to predict the uncertainties of the market in making a final distribution.

The family court effectuated a nearly even split of the marital assets given the definite values presented at the final hearing. Accordingly, we affirm the family court.<sup>3</sup>

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<sup>3</sup> Husband also argues that the family court erred in awarding him the Thornblade Country Club membership because neither party would benefit from it once the house in the Thornblade community was sold. However, in his motion for reconsideration and in his arguments at the motion hearing, Husband argued the family court erred in the value assigned to the membership because he would be unable to sell it. Because Husband did not raise the lack of "benefit" argument before the family court below, it is not preserved for appellate review. Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (holding that an issue not raised to or ruled upon by the trial judge is not preserved for appellate review). Similarly, Husband's argument that the family court unfairly considered his adultery in equitably dividing the property was not raised before the family court and is not preserved. Id.

## II. Alimony

Husband argues the family court erred in ordering him to pay Wife permanent periodic alimony in the amount of \$1,200 per month. Husband contends the family court failed to take into account Wife's considerable nonmarital assets. We agree.

Alimony is a substitute for the support which is normally incident to the marital relationship, and its purpose is to place the supported spouse as close to the position of support enjoyed during the marriage. Johnson v. Johnson, 296 S.C. 289, 300, 372 S.E.2d 107, 113 (Ct. App. 1988). The decision to grant or deny alimony rests within the sound discretion of the family court and will not be disturbed on appeal absent an abuse of discretion. Williams v. Williams, 297 S.C. 208, 210, 375 S.E.2d 349, 350 (Ct. App. 1988). "Alimony should not dissuade a spouse, to the extent possible, from becoming self-supporting." Rimer v. Rimer, 361 S.C. 521, 525, 605 S.E.2d 572, 574 (Ct. App. 2004). There are several factors the family court must consider in deciding whether to award alimony:

- (1) the duration of the marriage and the ages of the parties at the time of the marriage and at separation;
- (2) the physical and emotional condition of each spouse;
- (3) the educational background of each spouse and the need for additional education;
- (4) the employment history and earning potential of each spouse;
- (5) the standard of living established during the marriage;
- (6) the current and reasonably anticipated income of each spouse;
- (7) the current and reasonably anticipated expenses of each spouse;
- (8) the marital and nonmarital properties of the parties;
- (9) the custody of any children;
- (10) marital misconduct or fault;
- (11) the tax consequences of the award;
- (12) the existence of support obligations to a former spouse; and
- (13) such other factors the court considers relevant.

S.C. Code Ann. § 20-3-130(C) (Supp. 2005); Epperly v. Epperly, 312 S.C. 411, 415, 440 S.E.2d 884, 886 (1994) (noting the statute “sets forth 12 factors which must be weighed when determining alimony”). The family court may weigh these factors as it finds appropriate. S.C. Code Ann. § 20-3-130(C) (Supp. 2005) (“In making an award of alimony . . . the court must consider and give weight in such proportion as it finds appropriate to all of the following factors.”).

At the temporary hearing, Wife submitted a financial declaration showing expenses for herself and Brittany, then eighteen, of \$4,358 per month. Without explanation, Wife’s financial declaration at the final hearing showed expenses of \$9,243 per month. After Husband and Wife separated, Wife purchased a home for herself from Kensington for \$200,000<sup>4</sup> and extensively remodeled the home for an additional \$100,000. Wife also managed to save \$50,000, and her nonmarital assets were valued at \$603,901.

In the final order, the family court found Wife had primarily been a homemaker and mother. The court found that Wife had an income of \$2,500 per month from Kensington and then imputed to her an additional earning capacity of \$1,200. In assessing Wife’s income, the court did not include any future payments from Maxwell Family because the amount Wife would receive in the future was too uncertain. The court reasoned that Wife would no longer have income from Fulco, which was awarded to Husband, and that her employment decisions changed as a result of her role as homemaker and mother. The court found that even though Husband’s financial declaration showed a monthly deficit, with expenses of \$7,795.18 and a net income of only \$4,986, he had been able to pay the \$1,800 a month of unallocated support to Wife that was granted at the temporary hearing, stating “[a]lthough [Husband] shows a monthly deficit it is obvious . . . he has the ability to make the alimony payment out of his income as he has done so . . . and . . . the most recent financial declaration does not reflect [Husband] has incurred an additional indebtedness nor invaded any assets to meet his monthly deficit.” In the portion of the order addressing Wife’s entitlement to alimony, the court

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<sup>4</sup> Kensington bought the house for \$269,000 and then Wife bought the house from Kensington for \$200,000 with a bank loan.

merely stated that Wife had “demonstrated a need and [Husband] has shown an ability to pay alimony.”

It is difficult for this court to discern what factors the family court considered in awarding Wife alimony. The family court only cited Husband’s ability to pay and Wife’s “need” in awarding alimony. It is unclear which of Wife’s financial declarations the court relied upon in determining Wife’s “need.” It does not appear the court considered that Wife’s expenses nearly doubled from the time between the temporary and final hearing. See S.C. Code Ann. § 20-3-130(C)(7) (Supp. 2005) (stating that court must consider “the current and reasonably anticipated expenses and needs of both spouses”).<sup>5</sup> It is also unclear whether the court considered Wife’s substantial nonmarital assets in determining her “need.” Moreover, the family court’s order did not state how it arrived at Wife’s imputed income nor did it consider the fact that Husband’s testimony revealed that he incurred approximately \$49,000 to \$50,000 worth of debt since the couple separated.

We recognize that the family court could weigh the statutory factors as it deemed appropriate. Because the court relied only on Wife’s need and Husband’s ability to pay alimony in making its determination, we believe the court erred by not also considering Wife’s nonmarital assets. Further, although different portions of the order note the length of the marriage, the parties’ health, Husband’s infidelity, and Wife’s income potential, it does not appear from the order that the court considered these matters in awarding alimony. We agree with Husband that the family court failed to consider all the statutory factors in awarding Wife alimony. Accordingly, we reverse the alimony award and remand the matter for a hearing to determine Wife’s entitlement to alimony based upon a consideration of all the statutory factors.

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<sup>5</sup> There was also some evidence Wife’s financial declaration was inflated. For example, Wife’s financial declaration shows an expense of \$457 per month for Brittany’s private high school when her testimony revealed a family trust pays for Brittany’s schooling.

### **III. CF Enterprises**

Husband contends the family court erred in finding CF Enterprises was a marital asset. He argues the money used to start the company was a gift from his aunt and is a nonmarital asset. We disagree.

Marital property is generally defined as all real and personal property acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation, regardless of how legal title is held. S.C. Code Ann. § 20-7-473 (Supp. 2005). However, property is considered nonmarital if it is acquired by gift or inheritance. S.C. Code Ann. § 20-7-473(1) (Supp. 2005). Because of the general presumption that property acquired during the marriage is an asset of the marriage, the burden to show an asset is nonmarital is upon the party claiming the nonmarital status. Brandi v. Brandi, 302 S.C. 353, 356, 396 S.E.2d 124, 126 (Ct. App. 1990).

CF Enterprises had two stockholders, Husband and his cousin, and they started it with an initial investment of \$15,000 each. Husband maintains no marital money was used to start or finance the company and that the money he used was a gift from his aunt. Wife contends the money Husband used was a loan from his aunt. During the hearing, Husband offered no proof by way of check or testimony that CF Enterprises was nonmarital. Additionally, his financial declaration stated the source of the company was a “loan.” Because Husband did not produce evidence to rebut the presumption that CF Enterprises was marital, we find the family court did not err. Accordingly, we affirm the family court’s finding that CF Enterprises was an asset of the marriage.

### **IV. Expert Fees**

Finally, the Husband contests the award of expert fees to Wife. He maintains Wife failed to produce evidence to support the award. We agree.

Although alimony and suit money is provided for by statute, “the claim must be ‘well founded’ [and the] burden of proving that a claim is well founded is on the party seeking suit money.” Taylor v. Taylor, 333 S.C. 209, 220, 508 S.E.2d 50, 56 (Ct. App. 1998) (quoting S.C. Code Ann. § 20-3-120); S.C. Code Ann. § 20-3-120 (Supp. 2005) (noting that a party in a divorce action may request attorney’s fees and costs and the court shall grant a reasonable sum if the claim appears “well-founded”).

The family court ordered Husband to pay \$2,222 for Wife’s forensic economist and \$682 for copies of documents Wife made for the C.P.A. Wife testified that forensic economist Dr. Charles Alford gave her “a wonderful three or four page sheet with the little details that [she] needed to think of what [she] would spend.” Dr. Alford did not testify nor did Wife affirmatively establish what services he performed. Further, Wife testified that she paid for \$682 worth of copies from the C.P.A. but produced no receipt. Wife had the burden to establish her claim was well-founded. Because she produced no evidence supporting the award of fees other than her brief reference to their existence, we find the family court abused its discretion in ordering Husband to pay these fees. Accordingly, we reverse these awards.

## CONCLUSION

For the foregoing reasons, the decision of the family court is

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

**HUFF, and STILWELL, JJ., concur.**