

# **WORKERS' COMPENSATION SPECIALIZATION**

## **Certification Process, Rules and Qualifications**

### **Section IV. Requirements for Attorney Certification**

In order to qualify for certification in Workers' Compensation, an Applicant must demonstrate that they meet the requirements for specialization prior to the date the application was submitted, and that they meet the following minimum standards:

- A.** Applicant shall have been admitted to the active practice of law for a minimum of seven (7) consecutive years.
- B.** Applicant must have practiced law within the state of Nevada for a minimum of three (3) years immediately preceding the application.
- C.** Applicant must be an active member in good standing with the State Bar of Nevada, not have ever had any trust claim paid nor any recovery fund paid by the Bar and not have had any discipline more severe than a private reprimand.
- D.** Applicant shall have been engaged in legal service as defined in Section I as follows:
  - 1. Applicant shall have been engaged in Workers' Compensation law to the equivalent of 33.3% (being at least 480 hours each year) of a full time practice.
- E.** Applicant must make a satisfactory showing of substantial involvement in the Workers' Compensation field during five (5) years immediately preceding the application. Substantial involvement may be measured by several standards such as the percentage of time devoted to work in the Workers' Compensation specialty area, the number or type of matters handled within a certain period of time, or any combination of these or other appropriate factors. If any of the Applicant's substantial involvement in Workers' Compensation law occurred outside the state of Nevada, then such Applicant has the burden to demonstrate to the satisfaction of the Board of Workers' Compensation Legal Specialization that he or she had such substantial involvement in Workers' Compensation and for five (5) years immediately preceding application.
- F.** Applicants must verify that they maintain time records which demonstrate compliance with the required time engaged in Workers' Compensation law, such records required pursuant to Rule 7.4 of the of the Nevada Rules of Professional Conduct, and that such records shall be available to the State Bar of Nevada and the Board of Continuing Legal Education on request.
- G.** Applicant must demonstrate that he or she has at all times a minimum of (\$500,000), but is encouraged to have a least (\$1,000,000), in professional liability insurance from a

Nevada Insurance Division approved and/or authorized insurer. The Applicant shall provide proof of liability coverage by providing the declaration page and policy with his or her application.

- H.** Applicant must demonstrate honesty and integrity, professionalism as defined by the Nevada Rules of Professional Conduct and a high degree of competence in the practice of the field of Workers' Compensation and law. The required degree of competence is substantially higher than that possessed by a general practitioner who regularly handles Workers' Compensation cases. For purposes hereof, a "high degree of competence" shall meet the following standards:
1. The Applicant demonstrate a substantially complete knowledge of substantive law and rules of practice, procedure, evidence and ethics pertaining to Workers' Compensation.
  2. The Applicant demonstrate a high degree of skill, thoroughness, preparation, effectiveness, professionalism, and judgment in Workers' Compensation law.
  3. The Applicant possess a substantially complete knowledge of, and can demonstrate a high degree of skill in, the use of alternative dispute resolution as it applies to Workers' Compensation law.
  4. The Applicant satisfactorily complete an examination in the topics specified in paragraphs (1), (2) and (3) above.
  5. Legal competence is measured by the extent to which an attorney: (1) is specifically knowledgeable about Workers' Compensation law, (2) performs the techniques of such Workers' Compensation and practice with skill, (3) manages such Workers' Compensation and practice efficiently, (4) identifies issues beyond their competence relevant to the matter undertaken, bringing these to the client's attention, and (5) properly prepares and carries through on legal matters concerning Workers' Compensation.
- I.** Applicant must pay all application, investigation and testing fees as specified in these Rules and Regulations.
- J.** Applicants must agree in writing that they will file no civil action predicated on information communicated to the Board of Workers' Compensation Legal Specialization relating to the Applicant's qualifications for specialization certification including, but not limited to, any legal action that may be instituted or maintained against any evaluator, staff or witness who communicates with the Board of Workers' Compensation Legal Specialization.

**K.** Applicants must agree in writing that if they obtain certification as a Workers'

Compensation specialist that they will bring no civil action predicated on information communicated to the Board of Workers' Compensation Legal Specialization relating to such person's qualifications to maintain his or her specialization certification including but not limited to any legal action that may be instituted or maintained against any evaluator, staff or witness who communicates with the Board of Workers' Compensation Legal Specialization.

- L. Applicants must submit to the WC Board concerning their competency, qualifications and ethics demonstrating that he or she should be certified as a specialist in Workers' Compensation. The WC Board may require an in person interview with a member of the Board of Workers' Compensation Legal Specialization in which the Applicant may be examined and questioned concerning any matters required for certification in Workers' Compensation. Before an Applicant may be certified, he or she must obtain approval as an appropriate specialist candidate by the WC Board.
- M. Applicants must have handled a minimum of thirty (30) contested workers' compensation hearings before a Nevada Department of Administration Appeal Officer and must have handled a minimum of five (5) contested workers' compensation Petitions for Judicial Review at the District Court level in Nevada.

#### **Section V. Procedure for Initial Attorney Certification and Attorney Recertification**

- A. **Applications.** Applications shall be submitted on forms provided electronically by the Board of Workers' Compensation Legal Specialization. The content of the applications shall conform to the standards established for certification of lawyers in the field of Workers' Compensation and shall be substantial as set forth in Exhibit A. Applications are to be submitted to the Board of Workers' Compensation Legal Specialization c/o the Nevada Justice Association and must be accompanied by all applicable fees, specifically the application fee (\$200.00) and testing fee (\$200.00) payable to the Nevada Justice Association.

For purposes of determining when an application or supplemental information is timely, the application or supplemental information shall be deemed submitted when actually received by Nevada Justice Association.

- B. **Application Dates.** Applications are only accepted once a year, on or before the third Monday in September.
- C. **Withdrawal of Applications.** If an application is withdrawn, the application and testing fees shall **not** be refunded.
- D. **Expiration of Applications.** Applications not completed, including examination, within one year of the filing date, unless the application is pending recommendation or decision by the Board of Workers' Compensation Legal Specialization, will expire. An application can be denied at any time within the one year application period for failure to

successfully meet the requirements.

**E. Late Applications.** If any application is not complete to the satisfaction of the Board of Workers' Compensation Legal Specialization, an application may be completed after the deadline provided the Applicant pays required late fees of (\$100.00) and the application is completed to the satisfaction of the Board of Workers' Compensation Legal Specialization within twenty (20) days before the testing date. If supplemental materials and information are provided after the deadline, and is not accompanied by the required late fee of (\$100.00), the application will not be accepted for that application cycle.

**F. Confidentiality**

1. **Applications.** The contents of the application except, for those contents required by the Nevada Rules of Professional Conduct and which are required to be provided upon request to the State Bar of Nevada and statements of references, shall be confidential and privileged from disclosure, unless the Board of Workers' Compensation Legal Specialization, the Board of Governors of the State Bar of Nevada or the Board of Governors of the Nevada Justice Association determines that disclosure of certain materials is necessary to permit the Applicant to appeal from an adverse decision with respect to his or her application for certification or recertification.
2. **Investigations.** Investigations, hearings, evidence, findings, and recommendations shall be confidential and privileged from disclosure unless the Board of Legal Specialization, the Board of Governors of the State Bar of Nevada or the Board of Governors of the Nevada Justice Association determines that disclosure of certain materials is necessary to permit the Applicant to appeal from an adverse decision with respect to his or her application for certification or recertification.
3. **Scope.** The provisions on confidentiality and non-disclosure contained in this section shall also extend to investigations and hearings before the Board of Workers' Compensation Legal Specialization or its designees. When confidential information is to be discussed in a session, then that session is closed.
4. **Waiver of all Rights to Pursue a Civil Suit.** Every Applicant and every person certified as a Workers' Compensation Specialist must agree in writing that no civil action predicated on information communicated to the Board of Workers' Compensation Legal Specialization relating to Applicant's qualifications for specialization certification may be instituted or maintained against the Board of Workers' Compensation Legal Specialization, Members of the Board of Workers' Compensation

Legal Specialization, and others involved in the specialization certification including, but not limited to, any evaluator, staff or witness who communicates with the Board of Workers' Compensation Legal Specialization.

**G. Initial Review.** Applications shall be examined promptly upon receipt by Board of Workers' Compensation Legal Specialization staff to determine whether the application is complete. The Applicant shall be notified, and if the application is provided before the deadline date, and shall be given either 20 days or the amount of time remaining until the deadline date to supplement any missing information. If the missing information is provided after the deadline, then the application shall be considered late and the Applicant must comply with Section V (E).

**H. Review by Board of Workers' Compensation Legal Specialization.** A completed application shall be reviewed in order to ascertain eligibility for certification. The Board of Workers' Compensation Legal Specialization may also request a waiver of confidentiality from the Applicant in order to review an investigative charge pending before the State Bar of Nevada. An Applicant may also be required to submit information in addition to that called for on the application form including the following:

1. Specific information indicating the percentage of time devoted by the Applicant to the practice of Workers' Compensation law that complies with the requirements of Rule 7.4(g) of the Nevada Rules of Professional Conduct;
2. The nature, number, and dates of specific matters handled, and the nature of the Applicant's participation;
3. The nature, number of, and examples of documents filed or prepared for use in Workers' Compensation matters;
4. Specific information concerning a dismissed disciplinary charge, or a charge resulting in any form of disciplinary sanction, if necessary;
5. Information concerning a charge pending before the State Bar of Nevada, if necessary; and
6. Such other non-privileged information relating to Applicant's law practice as the Board of Workers' Compensation Legal Specialization may require.

In the event the Board of Workers' Compensation Legal Specialization determines that the Applicant has not provided sufficient information to make a determination, the Applicant shall be given written notice of the additional or supplemental information required. The notice shall specifically identify the scope and nature of the information

required. The notice shall advise the Applicant how many days from the date the notice was mailed to supplement the application. If the supplemental information is not received within the prescribed time, then the application will, at the option of the WC Board, either be not accepted or deferred until the next application period.

**I. Investigation Fee.** In the event that adverse allegations require further investigation by the Board of Workers' Compensation Legal Specialization, the Applicant shall be assessed a reasonable investigation fee. In the event the Applicant is relying upon practice outside the state of Nevada for demonstrating practice in Workers' Compensation law, the Applicant may be assessed a reasonable investigation fee.

**J. Peer Review**

1. With each application, the Applicant will submit the names of at least five (5) Nevada attorneys, other professionals who practice in the field, and/or judges before whom the Applicant has appeared, familiar with the Applicant's practice, and not including current partners or associates. (Other professionals may only be included in the list of references where approval has been authorized in the Standards for Certification in Workers' Compensation). The WC Board will select at least five (5) additional Nevada lawyers, judges, or qualified professionals as references from cases/matters/projects submitted by the Applicant. The references will be requested to provide written comments concerning the Applicant, not only on such specific topics as knowledge, skill, thoroughness, preparation, effectiveness and judgment, but also concerning the Applicant's ethics and professionalism. References who provide negative and/or adverse comments concerning an Applicant should be requested to provide the factual basis and any substantiating information for them. Reference names supplied by the Applicant shall not include members of the Board of Workers' Compensation Legal Specialization. Documentation of all matters and comments considered by the WC Board shall be contained in the Applicant's file.
2. Applicant may be asked to supplement the record with additional names for Peer Review if necessary.
3. The Board of Workers' Compensation Legal Specialization may investigate, research, substantiate, and corroborate any information provided in Peer Review letters which may help them make a determination.

If negative and/or adverse information concerning an Applicant is provided by a reference or any other source, the basis and the identity of the source of the information shall be retained in confidence and not be disclosed, an investigation will be conducted to attempt to substantiate or corroborate the accuracy of the information. If the information is corroborated or substantiated, then it may be considered by the Board of Workers' Compensation Legal Specialization. If the investigation is unable to substantiate or corroborate the adverse information provided by the source requesting confidentiality, then the information may not be considered by the Board of Workers' Compensation Legal Specialization.

4. An applicant, at a time and place set by the WC Board, shall appear in person at a Peer Review where he or she will be inquired about their Workers' Compensation and legal experience, inquired about the law of Workers' Compensation and inquired about anything required for certification to be a Workers' Compensation Specialist.

#### **K. Exam**

The exam must be taken by initial Applicants only.

1. Applicant must pay all applicable exam fees.
2. Written examinations will be offered at least once each year at a date, time, and location determined by the Board of Workers' Compensation Specialization.
3. If the Applicant does not pass the exam, an intent to deny notice will be mailed. The Applicant may elect to retake the exam and may request to appear before the WC Board to discuss the results of the exam, or may take no action.
  - a. If the Applicant elects to retake the exam, he/she must include the application fee and supplement his/her original application with information regarding his/her continued substantial involvement in Workers' Compensation and law. The WC Board may elect to conduct an additional peer review. This option is limited to one time only.
  - b. If the Applicant requests to appear before the WC Board, the Applicant will be allowed to review the Applicant's exam questions and answers. Model answers will not be provided.
  - c. If the Applicant takes no action, the WC Board will deny the applicant.

If the Board of Workers' Compensation Legal Specialization determines at any time to use an outside exam testing service, the appeal process utilized by the outside testing agency will apply.



**L. Determination**

1. The WC Board and its designee will review the complete record to determine whether the Applicant has established to its satisfaction that the Applicant meets the requirements for certification as stated in this Section V. If the Applicant has successfully met the burden, the WC Board will approve the Applicant as a Workers' Compensation Legal Specialist. If the Applicant has not successfully met the burden, the WC Board will issue an intent to deny.

**M. Intent to Deny**

1. **Notice.** In the event that the WC Board makes a determination and decides to deny the application for certification, it shall notify the Applicant, in writing, of its recommendation. Subject to the confidentiality provisions in section V(F) above, the Notice of Intent to Deny shall set forth the reasons, and the factual basis for, the decision.
2. **Request to Appear Before.** The Applicant shall have twenty (20) days after the date of receipt of the Notice of Intent to Deny to file with the WC Board a Request to Appear before the WC Board. A Request to Appear may be filed even if the Applicant does not wish to dispute the recommendation. If the Applicant wishes to dispute the recommendation, the request must set forth the reasons for disputing the recommendation and may contain additional supporting documentation. The Applicant must electronically file the Request to Appear and all supporting documentation with the Workers' Compensation Specialization Administrator at the offices of the Nevada Justice Association. A Request to Appear is a prerequisite to appearing for oral argument before the Board of Workers' Compensation Legal Specialization. Upon receipt of a Request to Appear, the WC Board shall issue a Notice of Appearance as soon as practicable. The Notice of Appearance shall set forth the date and time when the Applicant may appear before the WC Board for a maximum of thirty (30) minutes, subject to enlargement for good cause, at the discretion of the Chair, Vice Chair, or designee.
3. **Consent.** Failure of the Applicant to file a Request to Appear shall constitute consent to the recommendation.

**N. Board of Workers' Compensation Legal Specialization Oral Argument**

1. At the time of the appearance hearing, oral argument is permitted. The Applicant shall have a maximum of 30 minutes to make his or her entire presentation to the Board of Workers' Compensation Legal Specialization.
2. As soon as practicable after oral argument, the Board of Workers'

Compensation Legal Specialization shall notify the Applicant in writing of its decision, including the reasons for the decision, to grant, deny or remand the application.

3. The decision of the WC Board is final.
4. There are no appeal rights to the State Bar of Nevada Board of Governors or the Nevada Justice Association Board of Governors.
5. The applicant is not prevented from re-applying.

**Section VII. Initial Certificate of Workers' Compensation Specialization and Annual Registration Renewal Requirements**

- A. Initial Certification Registration Fee.** Once an attorney is approved for certification, that attorney may register, on the form provided, with the State Bar of Nevada and pay the State Bar of Nevada the sum of (\$250.00). Certified attorneys must register with the State Bar of Nevada prior to holding themselves out as a specialist.

**B. Annual Proof of Insurance Requirement.** Once an attorney is approved for certification, that attorney must annually file a copy of his or her insurance declaration page demonstrating compliance with professional liability insurance. If evidence of current professional liability is not timely provided when required, the WC Board may revoke a specialized certification for such failure of evidence of the required insurance.

**C. Continuing Legal Education Requirements.**

**1. Annual Continuing Legal Education (CLE)**

- a. Each specialist must complete six (6) or more hours per year at one or more CLE Activities that meet the standards stated in Section VII  
(C)(2). This includes a substantive requirement of six (6) hours.
  - i. Substantive Requirement: The six (6) hour substantive requirement refers to CLE Activities in Workers' Compensation and law.
  - ii. Categories of CLE Activities: Within the overall six (6) hour CLE requirement, the following minimum and maximums apply:
    - 1) At least four (4) hours must be earned by attendance at interactive CLE. (Interactive means personally attending a CLE program).
    - 2) Four (4) hours may be earned through a combination of teaching and/or writing CLE. Writing legal material must be in the area of specialization
- b. Carry Forward Hours: **The carry forward and exemption provisions of Supreme Court Rules 210 and 214 do not apply.** The annual CLE requirement must be met for each year a specialist is certified, including the first year of certification.
- c. By December 31 of each year, the Workers' Compensation specialist must submit an affidavit prescribed by the Board of Workers' Compensation Legal Specialization, such affidavit shall be available to the State Bar of Nevada, the Board of Continuing Legal Education and the Nevada Justice Association on request, demonstrating compliance with the CLE requirements set

forth above. The affidavit shall set forth the titles of the seminars attended or taught, articles written, the name of the sponsoring or publishing organization, dates and the location of the seminar or publication. All CLE Activities must meet the standard of Section VII(C)(2).

## 2. Standards

CLE Activities that are claimed toward the annual requirement shall meet the following standards:

- a. **Significant Content.** The activities shall have significant intellectual and/or practical content and the primary objective shall be to increase the attendee's professional ability as a Workers' Compensation Specialist. The content of activities may include a broad or narrow range of subjects dealing with the field of Workers' Compensation.
- b. **Organized Program.** The activities shall be an organized program of learning, deal with matters directly related to the field of Workers' Compensation, and follow the agenda defined by the written materials or exercises distributed as part of the activities. The level of instruction of CLE activities in the area of Workers' Compensation Specialization field be directed toward the development of advanced skills in the area of Workers' Compensation Specialization.
- c. **Appropriate Setting.** The activities shall be conducted in a setting physically suitable to the educational activity of the program.
- d. **Instructors.** The instructors of CLE activities shall be experts in the field in which they are teaching. The instructors' qualifications and appropriate background information shall be set forth in the activity's brochure or written materials.
- e. **Written Material.** Scholarly written materials or exercises shall be distributed to the attendees at, or before, the time the activity is presented.
- f. **Records.** Course outlines, written materials, verification of attendance, and other evidence of a CLE activity identifying the course, sponsor and date and place of presentation and/or publication must be retained by the specialist for recertification.

### 3. Calculation of Credit Hours.

a. Calculation of credit hours for Workers' Compensation legal specialization shall be determined by dividing the total minutes of instruction by 60, and rounding to the nearest quarter hour. Breaks shall not be included as part of instructional time. For CLE activities in the Workers' Compensation Specialization field, if the activity contains other subject matter not directly related to the specialty, credit shall be allowed for only the time spent in Workers' Compensation.

b. **Teaching Hours.** Credit may be earned for teaching at a CLE activity or at an ABA accredited law school, or teaching a law course at any accredited Nevada university or any Nevada community college, provided the teaching is in a classroom and so long as the instruction meets the standards of Section VII(C)(2), except that the instruction may be at a basic level.

i. Speakers whose presentations are accompanied by written materials prepared, augmented, or updated by the speaker may earn teaching credit, as follows:

For the original presentation:

First hour of presentation x 4 = total credit hours

Additional hours of presentation x 2 = total credit hours

Repeat live presentation hours x 1 = total credit hours

ii. Speakers, including college of trial advocacy educators, whose presentations are not accompanied by written materials prepared, augmented, or updated by the speaker may earn teaching credit as follows:

Each hour of presentation x 1 = total credit hours

iii. Credit hours earned through a combination of teaching and/or writing CLE may be reported to satisfy a maximum of three (3) credit hours each year.

c. **Writing Hours.** Credit may be earned for writing legal material in the area of Workers' Compensation Specialization not used in conjunction with a CLE activity. Such material must address an attorney audience, be at least 3,000 words in length, and be published by a recognized third party publisher of legal material or a sponsor.

- i. For each 3,000 words of original material written, the author(s) may earn four (4) credit hours. Multiple authors may share credit for material written.
- ii. The first one (1) hour may be basic in nature, but beyond that it must be at an advanced level.
- iii. Credit hours earned through a combination of teaching and/or writing CLE may be reported to satisfy a maximum of six (6) credit hours each year.

#### **4. Delinquent Compliance**

If a lawyer is unable to complete the hours of accredited CLE required for the Workers' Compensation Specialization during the preceding calendar year, the lawyer may apply to the Board of Workers' Compensation Specialization for an extension of time in which to complete the hours. For good cause, the Board of Workers' Compensation Specialization may extend the time not more than six (6) months. If the lawyer is granted the extension by the Board of Workers' Compensation Specialization, he/she must provide evidence of such extension to the Board of Workers' Compensation Legal Specialization.

Failure to obtain the required six (6) hours of continuing legal education credit by the December 31 deadline will result in the following late fees:

- a. If an extension has been provided by the Board of Workers' Compensation Specialization, then if CLE requirements are completed between January 1 and July 1, a delinquent compliance fee of (\$25) is assessed by the WC Board and shall be payable to the Nevada Justice Association for the Board of Workers' Compensation Legal Specialization.

Failure to file the Affidavit of Compliance when due under section VII(C)(1) thereof will result in the following late fees:

#### **5. Late Filing Fees**

- a. Members who file their affidavits between January 1 and February 28 will be assessed a delinquent filing fee of (\$100), payable to the Nevada Justice Association for the Board of Workers' Compensation Legal Specialization.

- b. Members who file their affidavits between March 1 and June 30 will be assessed a delinquent filing fee of (\$125), payable to the Nevada Justice Association for the Board of Workers' Compensation Legal Specialization.
- c. Members who file their affidavits after June 30 will be assessed a delinquent filing fee of (\$250), payable to the Nevada Justice Association for the Board of Workers' Compensation Legal Specialization.

Such fees shall be in addition to any fee for delinquent compliance as set forth above. Failure to file the affidavit of compliance by December 31 can result in revocation of certification.

#### **6. Failure to Comply**

- a. Any affidavit filed pursuant to Section VII(C)(2) that is, or appears to be, not in compliance shall be referred to the attention of the Board of Workers' Compensation Legal Specialization for a determination of compliance.
- b. Revocation. The Board of Workers' Compensation Legal Specialization may revoke a specialist's certification for failure to satisfy the annual CLE requirements.

### **Section VIII. Revocation of Certification**

- A. Procedure.** The certification of any lawyer may be revoked by the Board of Workers' Compensation Legal Specialization if it is determined that: (1) the certificate was granted contrary to the rules and regulations of the Board of Workers' Compensation Legal Specialization; (2) the certificate was granted to a lawyer who was not eligible to acquire a certificate or who made any false representation or misstatement of material fact to the Board of Workers' Compensation Legal Specialization; (3) the certificate holder has failed to abide by all rules and regulations covering the program promulgated by the Board of Workers' Compensation Legal Specialization, as amended from time to time, including any continuing legal education requirements necessary to maintain certified status; (4) the certificate holder has failed to pay any required fee related to Workers' Compensation Legal Specialization; (5) the certificate holder no longer meets the qualifications established by the State Bar of Nevada and/or the Board of Workers' Compensation Legal Specialization; or (6) the certificate holder has been disciplined, disbarred or suspended by the Nevada Supreme Court or any other state or federal court or agency. The certificate holder has a duty to inform the Board of Workers' Compensation Legal Specialization promptly of any act or circumstance described above.

- B. Notice.** The Board of Workers' Compensation Legal Specialization shall give the certificate holder whose certificate is subject to revocation notice of its intent to revoke the holder's certificate and the reason therefore, at least ten (10) days prior to revocation. Such notification shall be sent by regular mail, addressed to the Applicant at the address last furnished by the Applicant to the State Bar of Nevada.
- C. Hearing.** A hearing on the revocation of certification status, if requested, shall be held within sixty (60) days of the receipt of the notice of intent to revoke issued by the Board of Workers' Compensation Legal Specialization. The applicant shall have only thirty (30) minutes to present his or her case on why the certification should not be revoked. The WC Board's determination is final and not appealable.

**Section IX. Governing Rules**

- A.** The Governing Rules for attorney specialization adopted and from time to time amended by the State Bar of Nevada Board of Governors supersedes and governs these rules and regulations of the Board of Workers' Compensation Legal Specialization.