

AMERICAN BAR ASSOCIATION  
STANDING COMMITTEE ON SPECIALIZATION  
REPORT TO THE HOUSE OF DELEGATES  
RECOMMENDATION

- 1 RESOLVED, That the American Bar Association extend the accreditation of the Social
- 2 Security Disability Advocacy program of the National Board of Social Security
- 3 Disability Advocacy, division of the National Board of Legal Specialty Certification of
- 4 Wrentham, Massachusetts until the adjournment of the House of Delegates meeting
- 5 in August 2010.

# **REPORT**

## **Introduction**

The National Board of Social Security Disability Advocacy program to certify specialists in Social Security Disability Advocacy was accredited in 2004. The program has been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for the Accreditation of Specialty Certification Programs for Lawyers, adopted by the House of Delegates in February 1993. The Social Security Disability Law Advocacy program has requested additional time to make the changes requested by the Standing Committee which is important to keep their program intact. A request for reaccreditation is expected to follow at the House of Delegates meeting in August 2010.

## **Background**

The Standing Committee on Specialization makes this recommendation within the framework of three previous resolutions passed by the House of Delegates. At the 1993 Midyear Meeting, the House adopted Standards for Accreditation of Specialty Certification Programs for Lawyers and delegated to the Standing Committee on Specialization the task of evaluating programs sponsored by organizations that apply to the ABA for accreditation.

The adoption of the accreditation standards in February 1993 followed an August 1992 House resolution requesting that the Association develop standards for accrediting private organizations that certify lawyers as specialists and that the Association establish and maintain a mechanism to accredit such organizations that meet those standards.

The 1992 resolution affirmed the belief that a national accreditation mechanism administered by the Association according to uniform standards would be the most efficient and effective means of dealing with a multiplicity of organizations that are offering, or planning to offer, certification programs.

At the 1999 Annual Meeting, the House extended the initial period of accreditation from three to five years. In addition, the House lengthened the period of reaccreditation from every third year to every fifth year.

ABA accreditation is intended to work in harmony with whatever regulatory approach a state might adopt. It is designed to relieve states of the expense and administrative burden of establishing their own program, while allowing final regulatory authority to rest with the states.

## **Standards - Summary of Key Provisions**

The Standards for Accreditation of Specialty Certification Programs for Lawyers, hereinafter "Standards", are organized into eight sections. Sections 1 through 3 address the organization's purpose, definitions and authority. Section 4 sets out the specific requirements that an organization must meet in order to be accredited. Sections 5 and 6 deal with how the organization handles re-accreditation and revocation of accreditation. Section 7 provides

authority to the Standing Committee on Specialization to implement the Standards, and Section 8 deals with amendment procedures.

Sections 1 and 2 - Policy and Definitions: Section 1 establishes Association policy with respect to accreditation of specialty certification programs. The Standards require an accredited organization to demonstrate that lawyers certified by it possess an enhanced level of skill and expertise, are substantially involved in the specialty area of certification, and that the organization fosters professional development. Section 2 defines several terms commonly used throughout the document.

Section 3 - Authority: This section provides that the House of Delegates, as the official policy-making body of the Association, will act upon each application for accreditation and reaccreditation.

This Standard recognizes that accreditation granted by the Association will be subordinate to any approval process established by a state. ABA accreditation may be a credential that a certifying organization would present to a state when applying for state approval of its certification program. It is further recognized that states may establish standards that are more or less stringent than the Association's Standards for Accreditation.

Section 4 - Accreditation Requirements: The purposes of the certifying organization must include the identification of lawyers possessing an enhanced level of skill and expertise, and the development and improvement of the professional competence of lawyers. Such organization's organizational, financial resources, as well as the experience, background and education of key personnel, must be adequate to carry out its certification program on a continuing basis in a manner consistent with the Standards.

A majority of those persons reviewing applications for certification of lawyers as specialists in a particular area of law must be lawyers who have substantial involvement in the specialty area. An organization's certification requirements must be applied uniformly and without discrimination. Exceptions are recognized for state or local laws and regulations imposing higher requirements and the natural consequence of reasonable experience requirements.

The Standards require that each specialty area in which certification is offered must be described in terms which are understandable to the potential users of such legal services and which will not lead to confusion with other specialty areas. Each specialty certification program sponsored by a certifying organization must be evaluated separately with the Standing Committee retaining authority to approve, modify or reject any proposed specialty definition.

A lawyer certified as a specialist must show substantial involvement in the specialty area during the three-year period immediately preceding application to the certifying organization, devoting to the specialty no less than 25 percent of the total practice of a lawyer engaged in a normal full-time practice.

The Standards also require a minimum of five favorable references, a written examination, a minimum of 36 hours of continuing legal education in the specialty area in the three-year period

preceding the lawyer's application, and that the lawyer be admitted to practice in good standing in one or more jurisdictions.

A certifying organization must establish and maintain an appeal procedure that provides lawyers who are denied certification an opportunity for review of the decision by an impartial decision-maker. The Standards require that certified lawyers apply for recertification within a period no longer than five years and that certifying organizations are required to maintain a procedure for revocation of certification. Certifying organizations must also require lawyers to report their disbarment or suspension from the practice of law in any jurisdiction.

Sections 5 and 6 - Accreditation Period, Reaccreditation and Revocation: The period of accreditation is five years. Prior to the end of the accreditation period, accredited organizations are required to apply for reaccreditation, which may be granted upon a showing of continued compliance with the Standards. Accreditation may be revoked if an applicant organization ceases to exist or ceases to operate its certification program in compliance with the Standards.

Sections 7 and 8 - Authority to Implement and Amendment: The Standards give the Standing Committee authority to interpret the Standards, adopt rules, procedures and a fee schedule, consider and evaluate applications, make recommendations to the House of Delegates as to the approval of applications, and recommend the revocation of accreditation. The Standards became effective upon their adoption by the House of Delegates. The power to approve an amendment to the Standards is vested in the House of Delegates.

### **Applicant for Accreditation**

*Applicant Organization:*            ***National Board of Social Security Disability Advocacy, a division of the National Board of Legal Specialty Certification***

*Specialty Area:*                    ***Social Security Disability Law***

A non-profit entity, the National Board of Social Security Disability Advocacy (NBSSDA) was formed in 2007 for purposes of improving the quality of Social Security Disability Advocacy and aiding clients in choosing experienced legal representation. The NBSSDA became a division of the National Board of Legal Specialty Certification (NBLSC) in 2007 and certifies lawyers in social security disability advocacy.

The NBSSDA certification standards are designed to improve the quality of the social security disability bar. The standards encourage social security disability practitioners to strive toward excellence and recognize those attorneys who are experts in the field of social security disability advocacy. NBSSDA certification serves the public by providing a mechanism by which referring attorneys and the public can identify attorneys who specialize in social security disability advocacy.

### **Reaccreditation and Evaluation Procedures**

In evaluating the Social Security Disability Law program recommended for accreditation, the Standing Committee followed the procedures it adopted on March 2, 1993, as amended on April 24, 1993, June 27, 1995, January 5, 1996, July 8, 1999, July 21, 2001, November 1, 2002, and November 10, 2006. A copy of the "Standards," and "Governing Rules" used by the Standing Committee in evaluating applications for accreditation are available on the Standing Committee's web site at <http://www.LegalSpecialists.org>.

The applicant organization, filed for reaccreditation of their Social Security Disability Law program with the Standing Committee in June 2009. The application was accompanied by payment of the necessary accreditation fees. A request for an extension was received in September 2009.

In order to ensure that the program complies with ABA Standards, the Standing Committee required that the following documents accompany the applications for accreditation:

- a. The Applicant's governing documents, including articles of incorporation, bylaws, and resolutions of the governing bodies of the Applicant or any parent organization, which resolutions relate to the standards, procedures, guidelines or practices of the Applicant's certification Program(s);
- b. Financial information about the Applicant and any supporting parent organization as required by the Standing Committee;
- c. Biographical summaries of members of the governing board, senior staff and advisory panels, including specific information concerning the degree of involvement in the specialty area of persons who review and pass upon applications for certification;
- d. Materials furnished to lawyers seeking certification, including application forms, booklets or pamphlets describing the certification Program, peer reference forms, rules and procedures, and evaluation guides;
- e. A copy of the most recent examination, or in the case of a new organization, a copy of the proposed examination, a description of how examinations are developed, conducted and reviewed, a description of the grading standards used, and the names of persons responsible for determining pass/fail standards. Actual or proposed written examinations are to be made available on a confidential basis, with the understanding that the Applicant, at its option, may rule the person who reviews the examination ineligible for certification by the Applicant for a period of three (3) years from the time of such designation.

- f. Such other materials or information deemed necessary by the Accreditation Review Panel or the Standing Committee.

Upon receipt of the application for re-accreditation, an ABA staff advisor conducted a preliminary review of the materials submitted by the applicant. The staff advisor evaluated the application materials for completeness and continued conformance with the Standards, noting omissions in the materials submitted in support of the application for re-accreditation; where additional information was needed or items required clarification, the staff advisor contacted the sponsoring organization.

Once the staff advisor determined that the application was complete, the staff advisor provided the organization's application and supporting materials (with the exception of the certification examination) to the members of the Accreditation Review Panel for their independent review. Certification examinations were sent exclusively to the appointed examination reviewer.

The Accreditation Review Panel for the Social Security Disability, appointed by the Standing Committee, consisted of a chair and two members and one examination reviewers. The Applicant was provided notice, in writing, of the names and affiliations of the members of the Accreditation Review Panel and the examination reviewer. The accreditation procedures provide the certifying organization the opportunity to object for cause to the appointment of examination reviewer. The names and brief biographies of Accreditation Review Panel members and the Examination Reviewer are listed below.

#### **Accreditation Review Panel for Social Security Disability Law**

**Marlin Batista-McNamara** (Chair, Ft. Lauderdale, Florida) Ms. Batista-McNamara is Deputy General Counsel for the Broward County School Board where she has worked since 1996.

**Twila Larkin** (Albuquerque, New Mexico) Ms. Larkin is a shareholder with Sutin, Thayer & Browne in the Albuquerque office. She is board certified in family law and practices exclusively in domestic relations/family law.

**Jim Carr** (Denver, Colorado) Mr. Carr is a member of the Councils of TIPS and the Government and Public Sector Division and the ABA Commission on Law and Aging. He has served on the Denver Bar Association Board of Trustees and the Colorado Bar Association Board of Governors.

#### Examination Reviewer

**Honorable Jodi Levine** (Oklahoma City, Oklahoma) Judge Levine is a U.S. Administrative Law Judge Social Security Administration Oklahoma City, OK.

In addition to reviewing the applicant's reaccreditation application materials, members of the Accreditation Review Panel considered the information on the reaccreditation evaluation forms and comments provided by the examination reviewer who evaluated the written examination on a confidential basis. Based upon their review and communications with the

applicant, the Accreditation Review Panel recommended to the Standing Committee that the applicant's request for an extension be granted. The Standing Committee formally considered the recommendation of the Accreditation Review Panel by electronic vote and unanimously agreed to recommend the extension. We therefore recommend to the House of Delegates that this program be granted an extension until the August 2010 Annual Meeting.

Respectfully submitted,  
Timothy W. Bouch, Chair  
Standing Committee on Specialization  
February 2010

## GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Standing Committee on Specialization

Submitted By: Timothy Bouch, Chair

1. Summary of Recommendations

The recommendation requests that the American Bar Association extend the accreditation period for the Social Security Disability Advocacy Law program of the National Board of Social Security Disability Advocacy, a division of the National Board of Legal Specialty Certification to August 2010. This program has been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for such programs adopted and authorized by the House of Delegates in February 1993.

2. Approval by Submitting Entity

Via electronic ballot the Standing Committee on Specialization voted unanimously to extend the reaccreditation period for the Social Security Disability Advocacy Law program of the National Board of Legal Specialty Certification to August of 2010.

3. Has this or a similar recommendation been submitted to the House of Delegates previously?

Yes. The National Board of Legal Specialty Certification's Family Law Trial Advocacy specialty certification program was granted an extension in 2008. That recommendation was approved by the House of Delegates on the Consent Calendar at the Annual Meeting in New York.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

At its August 1992 meeting, acting upon a recommendation proposed by 16 state and local bar associations, the House of Delegates passed a resolution calling for the Association to establish standards for accrediting private organizations that certify lawyers as specialists and to establish and maintain a mechanism to accredit such organizations that meet those standards. In February 1993, the House of Delegates adopted the Standards for Accreditation of Specialty Certification Programs for Lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the Association for accreditation.

5. What urgency exists which requires action at this meeting of the House?

To comply timely and effectively with the House resolutions cited above.

Prompt action is necessary in order to prevent ABA accreditation of the programs under consideration to lapse and to continue to assist the states in regulating private certifying organizations.

6. Status of Legislation

Not applicable

7. Cost to the Association

There are no non-reimbursed costs associated with the reaccreditation of specialty certification programs as proposed in the recommendation. The costs associated with the reaccreditation process are defrayed by fees charged to the organizations seeking reaccreditation.

Expenses are kept to a minimum by utilizing volunteers to serve as members of the Accreditation Review Panels, which evaluate the applications for reaccreditation. Existing staff members who provide services to the Standing Committee act as program advisors and administrators. Activities requiring in-person meetings are conducted at regularly scheduled and funded meetings of the Standing Committee on Specialization. Other functions needed for the evaluation process are conducted by email, mail, fax and telephone conference call. Costs associated with these functions, as well as those incurred in the printing of materials, are reimbursed out of the aforementioned fees.

8. Disclosure of Interest

None

9. Referrals

Litigation Section,  
Family Law Section,  
Senior Lawyers Division,  
Commission on Law & Aging,  
Commission on Mental & Physical Disability Law  
Administrative Law and Regulatory Practice Section.

10. Contact Person (Prior to the Meeting)

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11. Contact Person (Who will present the Report to the House)

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## EXECUTIVE SUMMARY

### 1. Summary of Recommendation

That the American Bar Association extend the accreditation of the Social Security Disability Law Advocacy certification program of the National Board of Social Security Disability Advocacy, a division of the National Board of Legal Specialty Certification to August 2010 so that they have the additional time needed to make the changes requested by the Standing Committee. This program has been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for the Accreditation of Specialty Certification Programs for Lawyers, adopted by the House of Delegates in February 1993.

### 2. Summary of Issue

To respond to the need to offer an extension to the accredited program so that they can address the changes requested by the Standing Committee and continue to meet the standards adopted by the House of Delegates.

### 3. Explanation of How Proposed Policy Position Will Address Issue

The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate certifying organizations that apply for accreditation, reaccreditation and the desire to certify programs and to keep them intact.

### 4. Summary of Minority Views or Opposition

No opposition has been identified.