

RULES GOVERNING BOARD CERTIFICATION BY THE NATIONAL COLLEGE FOR DUI DEFENSE, INC.

(As revised October 10, 2006)

1.0 PURPOSE

The National College for DUI Defense board certifies attorneys in the specialty practice area of DUI Defense Law. This specialty area of law is recognized by the American Bar Association, and the National College for DUI Defense is the only organization currently accredited by the ABA to certify lawyers in DUI Defense Law. The National College for DUI Defense is dedicated to the identification of lawyers who possess an enhanced level of skill and expertise, and to the development and improvement of the professional competence of lawyers. Additionally, the board certification program serves to assist the public in identifying preeminent lawyers in the field of DUI Defense Law.

1.1 THE CERTIFICATION COMMITTEE

The Certification Committee is appointed by the Dean of the National College for DUI Defense, Inc. The Certification Committee is responsible for reviewing all applications for certification and recertification, and reporting upon them to the Board of Regents. The Certification Committee administers the examinations for certification. The Certification Committee investigates and reports to the Board of Regents regarding issues pertaining to revocation of certification. The Certification Committee shall act by majority vote.

1.2 DURATION OF CERTIFICATION

Board Certification will be for a term of five (5) years, and is subject to recertification.

1.3 APPLICATION FOR CERTIFICATION OR RECERTIFICATION

Application forms are available from the NCDD website, or from the Executive Director. The filing fee for an application for Board Certification is \$250.00, which is non-refundable. The filing fee is in addition to the examination fee of \$500.00 discussed in Section 3.0. There is currently no filing fee to apply for recertification. Both the application fee and the examination fee must be tendered at the time of the application. All Applications for Board Certification must be accompanied by an "Affidavit of Conduct."

All applications for Board Certification must be received by the Executive Director during the application period unless extended in writing by the Executive Director or the Chairperson of the Certification Committee. The application period for the following exam is defined as between February 1 and the second Friday in September of the calendar year. This application is valid for a period of twenty-five (25) months, during which time the applicant must complete all requirements for Board Certification. During each application period, no applicant may take an exam, or any portion thereof, more than twice. Should the applicant fail to complete all requirements for Board Certification within the application period, he or she shall not be eligible for reapplication (or retesting) for two (2) years from the date of the last examination taken by the applicant. Should the applicant fail to complete all requirements after the first two application periods, he or she will not be eligible for reapplication for a period of five (5) years from the expiration of the last application period.

Applications for recertification must be received no later than ninety (90) days before the expiration of Board Certification, and must be accompanied by a "Recertification Affidavit of Conduct."

Should an application for recertification be received within ninety (90) days of expiration of Board Certification, the application may be considered by the Board; however, a lapse in Board Certification may occur if the Board does not act upon the application before its expiration. An application received after the expiration of Board Certification may, upon good cause, be considered by the NCDD; however, an application for reconsideration will not be considered if received later than (1) year following the expiration of Board Certification.

2.0 CERTIFICATION STANDARDS

An attorney shall be required to satisfy the minimum standards set forth below to become Board Certified by the National College for DUI Defense.

2.1 SUBSTANTIAL INVOLVEMENT

An applicant for Board Certification must demonstrate substantial involvement in the practice area of DUI Defense Law. In order to satisfy this requirement:

- A. The applicant must have practiced in the area of DUI Defense Law for a minimum period of three (3) years preceding the application;
- B. The applicant must meet the experience requirements detailed in Section 2.1.1; and,
- C. The applicant must devote at least fifty percent (50%) of his or her practice at the time of application to DUI Defense Law.

2.1.1 EXPERIENCE REQUIREMENTS An applicant for certification must have fulfilled the following minimum experience requirements for Board Certification within three (3) years preceding the application:

- A. Applicant must have been lead counsel in at least 20 DUI trials to verdict or judgment;
- B. Applicant must have been lead counsel in 40 contested matters involving the taking of evidence (i.e. hearings or motions) not included within the trials referred to above;
- C. If applicant is unable to satisfy experience requirements A and B, applicant may submit a written statement of explanation, together with proposed alternatives which applicant believes equally satisfy requirements A and B for consideration by the NCDD.

2.2 INDEPENDENT INQUIRY AND REVIEW

The NCDD must receive in an applicant's behalf a minimum of three (3) references from judges, and a minimum of three (3) references from attorneys, in accordance with the document entitled "NCDD Policy and Procedures Regarding References," in order to be considered for Board Certification.

These references must be personally knowledgeable regarding applicant's competency in the area of DUI Defense Law, and must have observed applicant try a DUI matter within the past three years. References may not be related to, or engaged in the legal practice of law with, the applicant.

All applicants will be reviewed by the NCDD to assess whether the applicant possesses an enhanced level of skill, knowledge pertaining to the science and law involved in DUI Defense, experience in trial advocacy within the area of practice, and whether applicant has demonstrated integrity and dedication to the best interests of his or her clients. The NCDD's independent inquiry and review may extend beyond material submitted to the college by the applicant or applicant's references.

2.2.1 REFERENCES

In order to satisfy the minimum reference requirement for Board Certification, the applicant will provide the NCDD with no fewer than eight and no more than twelve names and addresses of attorneys and judges the applicant wishes to use as references. The list of names must include a minimum of four judges and a minimum of four attorneys.

Applicants are cautioned to use care when providing references, as there will not be an opportunity to submit more than twelve names for reference, unless, at its sole option, the NCDD should request additional references. Persons providing references for certification must have seen the applicant litigate issues in the DUI Defense practice area within the past three years.

Communication will occur strictly between the NCDD and each person given as a reference. The applicant will neither deliver the blank form to a reference, nor return a completed form to the NCDD. Although applicants should advise designated references of their wish to use them, under no circumstances will an applicant contact a reference concerning the status or content of a statement of reference thereafter.

The NCDD will send a form and a postage-paid envelope to persons designated by the applicant as references. If a reply is not forthcoming, the NCDD will send the form one additional time to any designated reference person who has not responded. If two requests to a reference have gone unanswered, the reference will no longer be considered, and the lack of a response from that reference person will be noted in the applicant's file.

Should an applicant be unable to meet the reference requirements, he or she is ineligible for Board Certification.

2.3 EDUCATIONAL EXPERIENCE

Within three years immediately preceding an application, the applicant must have completed either a minimum of thirty-six (36) hours of College-approved education in the field of DUI Defense Law, or the educational experience requirements of the state(s) in which the applicant seeks certification, whichever is greater. State approved continuing legal education programs in the area of DUI Defense Law, and programs provided and sanctioned by the College will be deemed to satisfy this requirement. The NCDD, in its sole discretion, may accept in satisfaction of this requirement, attendance at programs of continuing legal education, or coursework, offered by ABA accredited law schools in the area of DUI Defense Law; teaching courses or seminars related to DUI Defense Law; participating as a panelist, speaker, or workshop leader at educational or professional conferences relating to DUI Defense Law; or, writing published books or articles relating to DUI Defense Law.

2.4 CURRENT ELIGIBILITY TO PRACTICE LAW FOR CERTIFICATION

In order to be Board Certified or recertified, the applicant must be admitted, be a member in good standing, and currently eligible to practice law in one or more states or territories of the United States or the District of Columbia, or in any of the United States Courts. Attorneys practicing in foreign jurisdictions who can otherwise demonstrate eligibility may petition to be considered for Board Certification on an individual basis.

3.0 EXAMINATION

Satisfactory passage of an examination is required for Board Certification. The examination shall require a demonstration of knowledge in substantive, procedural and scientific areas, as well as evidentiary and constitutional issues, which affect the defense of a DUI case.

The examination will consist of both written and oral parts, administered by the NCDD as directed by the Board of Regents.

The written and oral portions of the examination will reflect the knowledge and skills needed for an enhanced level of DUI defense trial advocacy.

The fee for the combined written and oral examination is five hundred dollars (\$500.00). The examination fee must accompany the application. If the applicant's application is rejected, the examination fee of five hundred dollars (\$500.00) will be refunded to applicant, and the applicant will be ineligible to sit for the examination.

4.0 CONTINUING CERTIFICATION FEE

Attorneys who are Board Certified shall be required to pay an annual certification fee following the first full year of certification unless waived by the College.

5.0 RECERTIFICATION STANDARDS

The following subsections detail the minimum standards which an applicant must meet for recertification.

5.1 SUBSTANTIAL INVOLVEMENT FOR RECERTIFICATION

An attorney who is Board Certified must maintain substantial involvement in DUI Defense Law during all periods of certification. Substantial involvement requires that the experience requirements below be met, and that DUI Defense comprises at least fifty percent (50%) of the total practice of the applicant.

5.1.1 RECERTIFICATION EXPERIENCE REQUIREMENTS

An applicant for recertification must have fulfilled the following minimum experience requirements for Board Certification within the applicant's existing certification period:

- A. Applicant must have been lead counsel in at least 20 DUI trials to verdict or judgment; and,
- B. Applicant must have been lead counsel in 40 contested matters involving the taking of evidence (i.e. hearings or motions) not included within the trials referred to above.

If applicant is unable to satisfy experience requirements A and B, applicant may submit a written statement of explanation, together with proposed alternatives which applicant believes equally satisfy requirements A and B for consideration by the NCDD.

5.2 RECERTIFICATION INDEPENDENT INQUIRY AND REVIEW

Independent inquiry and review, if required by the Board of Regents, may be performed in the manner set forth in Section 2.2, *et seq.*, or as otherwise directed by the Board.

5.3 RECERTIFICATION EDUCATIONAL EXPERIENCE

An applicant for recertification must have completed either a minimum of thirty-six (36) hours of College-approved education in the field of DUI Defense Law as described in Section 2.3 within the preceding three (3) years, or the equivalent of their certifying state's educational requirements during the current certification period, whichever is greater.

6.0 RECOMMENDATION FOR CERTIFICATION OR RECERTIFICATION

The Certification Committee recommends to the Board of Regents for or against Board Certification or recertification. Approval of an applicant for Board Certification or recertification shall be decided by a two-thirds vote of the Board of Regents, subject to the Appeals Procedure set out in Section 10.0.

7.0 DENIAL OR REVOCATION OF CERTIFICATION OR RECERTIFICATION

After written notice has been sent by the NCDD that an application for Board Certification or recertification has been denied, or a certification has been revoked, the applicant seeking review must comply with the Appeals Procedure set out in Section 10.0.

8.0 REVOCATION AND SUSPENSION OF CERTIFICATION

The following subsections establish the criteria and the process by which the Board of Regents may revoke certification.

8.1 REVOCATION CRITERIA

The NCDD may revoke a certification, if:

- A. Board Certification was granted contrary to the Rules Governing Board Certification;
- B. Board Certification has been granted to an attorney who made any false representation or misstatement of material fact to the College in the process of Board Certification;
- C. The attorney who is Board Certified has failed to abide by the Rules Governing Board Certification;
- D. The attorney who is Board Certified has failed to pay any applicable fee;
- E. The attorney who is Board Certified no longer meets the established qualifications;
- F. The attorney who is Board Certified has been disciplined, disbarred, or suspended from practice by any body authorized to impose professional discipline;
- G. The attorney who is Board Certified has been convicted of a crime; or,
- H. The attorney who is Board Certified has admitted malpractice, or a final malpractice judgment has been entered against the attorney.

8.2 REVOCATION PROCESS

Prior to any action of revocation of certification by the NCDD, the certificate holder is entitled to written notice of the prospective action, and the opportunity to respond. The NCDD will deliver written notice of the proposed revocation, and the reasons therefore, to the last address of the certificate holder reported to the NCDD. The notice shall be sent by certified or registered mail, return receipt requested. The attorney who is Board Certified may respond to the prospective revocation action, in writing, within thirty days of the date the notice was mailed, by posting his response to the Executive Director of the NCDD, by certified or registered mail. The certificate holder's response should include all documents and exhibits supporting the position that the revocation action is erroneous or inappropriate.

The certificate holder is not entitled to a hearing, or to appear in person to contest the revocation, although the NCDD reserves the right, at its sole discretion, to invite the certificate holder to appear in person to respond.

The certificate holder is entitled to appeal the revocation decision in accordance with the Appeals Procedure set out in Section 10.0 below, which does include the opportunity to appear in person, or by counsel.

9.0 CERTIFICATE HOLDER REPORTING RESPONSIBILITIES

Within thirty (30) days of learning of any fact or circumstance described in Section 8.1 above, the attorney who is Board Certified is required to report that fact or circumstance in writing by certified mail, return receipt requested, to the Executive Director of the NCDD. A failure to report such a fact or circumstance is a material misstatement of fact and may be cause for revocation of Board Certification.

Within thirty (30) days of any change of address listed with the College, the attorney who is Board Certified shall provide the Executive Director with written notice of the new address.

Any notice which is required by these rules to be sent to the certificate holder, may be sent to the last address reported to the NCDD, and notice sent to this address shall serve as notice to the certificate holder.

10.0 APPEALS PROCEDURE

An attorney who is refused certification (other than for a failing examination), who is denied recertification, or whose certification is revoked may appeal in accordance with the following rules and regulations. Exhaustion of the right to appeal shall be a condition precedent to judicial review. These rules and regulations may, from time to time, be amended by the NCDD. Any appeal shall comply with the rules and regulations in effect on the date the appeal is filed.

The NCDD will review all applications to determine that the minimum standards for certification, recertification, or annual reporting have been met. If the NCDD determines that any procedural requirements have not been met, the application will be denied.

The NCDD may request any materials which bear on issues involving professional conduct and references which may assist the NCDD in its evaluations. An insufficient number of the required references qualifies for a procedural denial. If the NCDD denies a request for certification (for reasons other than a failing examination), recertification, or revokes a certification, the following appeals procedure shall govern:

- A. The applicant will be notified that the certification or recertification has been denied, or that certification has been revoked, and will be provided a written statement of the reason for such action.
- B. If an appeal is desired, within thirty days of the mailing date of the notice being appealed, the applicant shall file a written notice of appeal, together with a written response to rebut the adverse finding. The rebuttal statement may include argument as to why the decision of the NCDD is believed to be in error, but may not include new materials which could have been submitted to the NCDD prior to its decision.
- C. The matter being appealed shall be referred to an Appeals Panel consisting of an odd number of at least three members appointed by the Dean of the NCDD, and drawn from the Board of Regents, Fellows of the NCDD, or Board Certified Founding or Sustaining Members of the College. Members of the Appeals Panel cannot have taken any part in the decision being appealed. The Appeals Panel will consider the matter in executive session prior to the next scheduled meeting of the full Board of Regents. A majority vote of the Appeals Panel will determine the appeal; however, in the event of a tie vote, the appeal will be denied. The appellant may, at his or her option, make a presentation to the Appeals Panel in person, by counsel, or by telephone. The

Chairman of the Certification Committee, or a representative designated by the chairman, may make a presentation in person or by telephone.

- D. The Appeals Panel shall issue its opinion within thirty days after it finalizes its deliberations. A review of the Appeals Panel decision may lie to the Board of Regents of the NCDD, but only under the following conditions: (1) There can be convened at least two-thirds of the membership of the Board of Regents who took no part in the original decision being appealed, or the Appeals Panel decision; (2) A request for Board review is made in writing to the Executive Director within thirty days of the date the Appeals Panel decision was issued; (3) The request for Board review is made by the person aggrieved by the original decision, the Chairman of the Certification Committee, the Dean, or a minority voting member of the Appeals Panel; (4) If the Dean requests Board review of the decision of the Appeals Panel, he or she may not cast a vote in any review, and may not be considered as part of the two-thirds membership of the Board necessary for review; (5) In any Board review there shall be no right of personal appearance by the person aggrieved by the original action, or the person requesting the appeal, unless personal appearance is requested by the Board of Regents; (6) The Board may request an appearance by the Chairman of the Certification Committee, or his designee, as a part of its review, but in such case the person aggrieved by the original action shall be extended an invitation to make a personal appearance; and, (7) A two-thirds majority of the Board sitting in review is required to reverse the decision of the Appeals Panel. If two-thirds of the membership of the Board, who did not take any part in the decision for which review is sought, cannot be convened, the decision of the Appeals Panel shall be final, and there shall be no further right of appeal. If the matter is reviewed by the Board of Regents, its decision shall be final, and the person aggrieved by the original action shall be notified in writing of that decision.
- E. No written materials from the appellant, beyond the rebuttal statement and the materials already on file with the NCDD at the time of its adverse decision, will be considered on appeal, except decisions by a state ethics panel or court of law or written material expressly requested by the Appeals Panel or Board of Regents. Materials within the control of the appellant at the time of the NCDD action, but not provided, will not be considered.
- F. Any applicant denied certification or recertification, or whose certification has been revoked, may have an application reconsidered one year from the date of the original application unless the NCDD, an Appeals Panel, or the Board of Regents specifies a longer time in its written notification to the applicant. A longer time period is appropriate if, and only if, (1) the basis for denial is a felony conviction for which there has been no pardon, (2) there is a frequency of malpractice actions that raises significant concern about the applicant, (3) the nature, severity, or number of ethics complaints resulting in action by a disciplinary body justifies a longer period of time, or (4) there is substantial evidence that the applicant has intentionally misled the NCDD, a state ethics panel, or a court of law about any issue that is deemed to impact the applicant's fitness for certification.

11.0 USE OF BOARD CERTIFICATION NOMENCLATURE

An applicant who has been successfully granted Board Certification by the National College for DUI Defense, Inc. shall be permitted to use the designations "Board Certified in DUI Defense Law," "Board Certified in DUI Defense Law, National College for DUI Defense," or "Board Certified, National College for DUI Defense" only in accordance with the rules and regulations which both legally and ethically bind such applicant in their respective state(s). Upon petition to the NCDD, a nomenclature for 'DUI' appropriate to the jurisdiction of the certified specialist may be approved for usage on a case by case basis.