

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
 )  
STANDARDS FOR CERTIFICATION ) Administrative Order  
FOR NEW AREA OF ) No. 2021 - 132  
SPECIALIZATION )  
CONSTRUCTION DEFECT LAW )  
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\_\_\_\_\_ )

Pursuant to Rule 44, Arizona Rules of the Supreme Court, the State Bar of Arizona Board of Governors may make recommendations to be approved by the Arizona Supreme Court to amend and publish rules, regulations, and standards to define the authority and duties of the Arizona Board of Legal Specialization (BLS).

The Arizona Board of Legal Specialization has recommended, and the State Bar of Arizona Board of Governors has recognized Construction Defect Law as a new area of specialization. Therefore,

IT IS ORDERED that effective the date of this Order, the attached standards for certification for Construction Defect Law are approved.

Dated this 16th day of August, 2021.

FOR THE COURT:

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ROBERT BRUTINEL  
Chief Justice



## STANDARDS FOR CERTIFICATION OF LAWYERS SPECIALIZING IN CONSTRUCTION DEFECT LAW

Approved by Arizona Supreme Court: 8/16/2021

Pursuant to the authority vested in the Arizona Board of Legal Specialization (“BLS”) by the Board of Governors of the State Bar of Arizona, the BLS prescribes the following standards and requirements for certification of lawyers specializing in construction defect law in accordance with the Rules and Regulations of the Arizona Board of Legal Specialization established by the Board of Governors.

No provision contained herein shall in any way limit the right of a lawyer certified as specializing in construction defect law to practice law in all fields or to act as counsel in every type of legal matter. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though the lawyer is certified as specializing in construction defect law.

No lawyer shall be required to be certified as specializing in construction defect law before that lawyer can practice law in the field of construction defect law or act as counsel in any particular type of construction defect law matter. Any lawyer, alone or in association with another lawyer, shall have the right to practice in the field of construction defect law and to act as counsel in every type of construction defect law case, even if the lawyer is not certified as specializing in construction defect law.

### **I. GENERAL REQUIREMENTS.**

- A. Active Member of the State Bar.** An applicant for certification as a lawyer specializing in construction defect law shall be an active member in good standing of the State Bar of Arizona.
- B. Application.** An applicant shall be required to complete an application in a form prescribed by the BLS to furnish such additional and supplemental information as may be required by the BLS or the Construction Defect Law Advisory Commission, and to comply with all applicable Rules and Regulations of the Arizona Board of Legal Specialization.
- C. Recommendation by Construction Defect Law Advisory Commission.** An applicant shall be recommended to the BLS for certification as a lawyer specializing in construction defect law when the applicant is found to have complied with the applicable standards by no less than five (5) of the ten members of the Construction Defect Law Advisory Commission.
- D. Construction Defect Law Advisory Commission.** The Construction Defect Law Advisory Commission is committed to promoting racial, ethnic, and gender diversity, and to assuring the rights of the disabled within all Construction Defect Law Advisory Commission programs, committees, and activities, and will periodically monitor all existing programs, committees, and activities for compliance with the goal of diversity and with assurance of the rights of the disabled in every aspect of the Construction Defect Law Advisory Commission.
- E. Expiration of Certification.** A certificate of specialization shall expire five (5) years after the date thereon; provided, however, that if timely application for renewal of certification is made as provided under the Rules and Regulations of the Board of Legal Specialization, the certificate shall remain in effect until the BLS has acted upon the renewal application. Renewal of certification shall be required every five (5) years.

**F. Revocation/Suspension of Certification.** The BLS may revoke or suspend the certification of a lawyer recognized as specializing in construction defect law for any reason specified in the Rules and Regulations of the Arizona Board of Legal Specialization, including but not limited to advice from the Construction Defect Law Advisory Commission that the certified lawyer no longer meets the criteria for substantial involvement in the field of construction defect law as set forth in Section II hereof.

**G. Fees.** Every applicant shall pay application and testing fees as may be prescribed by the BLS.

## **II. STANDARDS FOR CERTIFICATION.**

**A. Required Period of Law Practice.** An applicant shall have been admitted to the practice of law for a minimum of seven years, of which a minimum of three years immediately preceding the application must have been within the State of Arizona, and after such admission shall have engaged in legal service (as defined in Section I of the Rules and Regulations of the Board of Legal Specialization) equivalent to at least 50% of a full-time practice.

**B. Substantial Involvement in Construction Defect Law.** An applicant shall make a satisfactory showing, as determined by the BLS in accordance with objective and verifiable standards, based upon advice of the Construction Defect Law Advisory Commission of substantial involvement in the field of construction defect law during at least five of the preceding seven years, including the year immediately preceding his or her application. This can be shown by providing such information as may be required by the BLS including but not limited to, peer review and evidence of special competence and experience.

For purposes hereof, substantial involvement in the field of construction defect law shall mean the engagement by the applicant in legal service (as defined in Section I of the Rules and Regulations of the Board of Legal Specialization) in the course of which the lawyer has annually devoted not less than 50% of a full-time practice to matters in which issues of construction defect law are significant factors.

An applicant shall demonstrate substantial involvement in the field of construction defect law by furnishing the BLS with information regarding the nature of the legal services in which the applicant has been engaged and identifying the types of issues of construction defect law with which the applicant has dealt and the frequency of involvement therewith. Such demonstration shall be made initially through completion by the applicant of the specialization application, but written or oral supplementation may be required.

An applicant shall give concise but specific explanations of the applicants' involvement in the following particular construction defect categories, and indicate the annual frequency of involvement in each category in each of the past 5 years:

1. Construction defect-related litigation or alternative dispute resolution matters
2. Administrative matters involving the Registrar of Contractors or the Department of Construction defect to resolve construction defect claims
3. Federal Fair Housing-based matters involving construction defect claims
4. Environmental law-based matters involving construction defects

The substantial involvement requirement will be determined to be met when an attorney handles a minimum of two (2) construction defect law matters in *each* of the previous five (5) years; and cumulatively over five (5) years reaches 13 points calculated as follows: One (1) point for each construction defect matter handled during the previous five (5) years.

**C. Competence and Integrity.** An applicant must demonstrate honesty, integrity, and professionalism as defined by the Lawyer's Creed of Professionalism of the State Bar of Arizona, and a high degree of competence in the practice of construction defect law. The required degree of competence is substantially higher than that possessed by a general practitioner who regularly handles a construction defect matter. For purposes hereof, a high degree of competence shall meet the following standards:

1. That the applicant demonstrates a substantially complete knowledge of substantive law and rules of practice, procedure, evidence and ethics pertaining to construction defect law; and
2. That the applicant demonstrates a high degree of skill, thoroughness, preparation, effectiveness, professionalism and judgment in the field of construction defect law; and
3. That the applicant satisfactorily completes a written examination in the topics specified in paragraphs (1) and (2) above. This examination shall be given at least once each calendar year at a date, time and location determined by the Construction Defect Law Advisory Commission. The test and its grading criteria shall be formulated at the direction of the Advisory Commission and approved by the Board of Legal Specialization.
4. That the applicant demonstrates a substantially complete knowledge of and a high degree of skill in the use of alternative dispute resolution as it applies in the field.
5. Legal competence is measured by the extent to which an attorney (1) is specifically knowledgeable about the fields of law in which they practice, (2) performs the techniques of such practice with skill, (3) manages such 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 the matter undertaken.
6. Disciplinary History:  
Imposition of a discipline sanction under Rule 60, Ariz. R Sup. Ct. within the five-year period preceding the date of application may be grounds for denying, suspending, or revoking certification.

The following shall not be considered in approving or denying an application for certification:

- a. Diversion,
- b. Dismissals, or
- c. Allegations of misconduct that did not result in a disciplinary charge.

**D. References.** With each application, the applicant will submit the names of at least five Arizona attorneys who practice in the field or judges before whom the applicant has appeared, are familiar with the applicant's practice, and shall not include current partners or associates. The Advisory Commission will select at least five additional Arizona lawyers, judges, or qualified professionals as references from cases/matters/projects submitted by the applicant to demonstrate substantial involvement. 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.

Names of applicants will be published in a State Bar of Arizona publication, providing an opportunity for comment, at least 30 days before consideration of applications by the Advisory Commission. Reference names supplied by the applicant shall not include members of the Board of Legal Specialization or the Construction Defect Law Advisory Commission. The Construction

Defect Law Advisory Commission may also consult other sources. Documentation of all matters and comments considered by the Advisory Commission shall be contained in the applicant's file.

- E. Continuing Legal Education Requirements.** Continuing legal education requirements for attorneys certified as construction defect law specialists shall be 12 hours per year in one or more seminar of advanced level programming concentrated in construction defect law issues, and 3 hours in professional responsibility. Credit for other educational activities may be granted by the BLS as specified in the Rules and Regulations, Section VIII. B.

### **III. STANDARDS FOR RE-CERTIFICATION**

For the purposes of re-certification, the term "substantial involvement" in construction defect law shall mean engagement by the applicant in legal service in the course of which the lawyer has annually devoted at least 50% of a full-time practice to matters in which issues of construction defect are significant factors. These services shall be detailed on an application form, showing the nature of the legal services in which the attorney has been engaged in the past five years, and identifying the types of issues of construction defect with which the applicant has dealt and the frequency of involvement therewith. Formal written examination for re-certification, where there has been no break in certification, shall not be required.

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